

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WADE A. ROBERTSON
Plaintiff/Counter-Defendant,

v.

WILLIAM C. CARTINHOÛR, JR.,
Individually and on behalf of
W.A.R., LLP

Defendant/Counter-Plaintiff.

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Case No.: 1:09-cv-01642
Assigned to: The Honorable Judge
Ellen S. Huvelle

AMENDED COUNTER-COMPLAINT

COMES NOW the Defendant/Counter-Plaintiff, William C. Cartinhour, Jr., by and through counsel, Patrick J. Kearney, Esquire, Michael J. Bramnick, Esquire, and Selzer Gurvitch Rabin & Obecnycy, Chartered, and in support of his Amended Counter-Complaint, respectfully states as follows:

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

1. Defendant/Counter-Plaintiff, William C. Cartinhour (“Cartinhour”), is a resident of the State of Maryland with his principal residence located at 10500 Rockville Pike, Apartment 1619, Rockville, Maryland 20852.

2. Upon information and belief, Plaintiff/Counter-Defendant, Wade Robertson (“Robertson”), is a resident of the State of Tennessee.

3. In or about early 2004, Robertson, a lawyer licensed to practice law in the District of Columbia and California, was introduced through a mutual acquaintance to Cartinhour, an 82 year-old retiree, in an effort to convince Cartinhour to “invest” in a class action securities case that was pending in the United States District Court for the Southern District of Florida.

4. During their meetings, a number of which took place in the District of Columbia, Robertson claimed that he represented the class plaintiffs in connection with that litigation, styled as *Liu, et. al v. Credit Suisse Boston, et al*, Case No. 1:03-cv-20459-JEM (hereinafter the "Litigation"). The Litigation had commenced in February, 2003.

5. Robertson advised Cartinhour that he was searching for an investor to finance the out-of-pocket costs that would be incurred in the Litigation, such as expert fees, deposition costs, class certification, etc. Robertson represented that the financing sought was *not* intended to pay plaintiffs' attorney's fees in connection with the Litigation, only the out-of-pocket costs.

6. Robertson further represented to Cartinhour that the Litigation involved a multi-billion dollar claim with a high likelihood of success. Robertson claimed that if Cartinhour contributed funds to finance the Litigation costs he would receive a fixed percentage of the recovery.

7. In September, 2004, Robertson presented an Agreement ("Business Agreement") to Cartinhour, which purports to set forth a plethora of one-sided and unconscionable provisions, disclosures and representations. Cartinhour was not represented by independent counsel in connection with entering into the Business Agreement. Cartinhour did not understand the terms and purpose of the Business Agreement. Robertson did not explain the substance, terms and effect of the provisions therein; instead, he characterized the Business Agreement as a "mere formality" being part of the partnership papers and nothing for him to be concerned about. In reliance on Robertson's representations, and upon the advice and direction of Robertson, Cartinhour executed the Business Agreement.

8. In reliance on Robertson's representations regarding, *inter alia*, the Litigation and the likelihood of a substantial recovery, Cartinhour executed a partnership agreement

("Partnership Agreement") presented to him by Robertson in or about September 2004. The Partnership Agreement was prepared by Robertson.

9. Cartinhour was not represented by independent counsel in connection with entering into the Partnership Agreement or any of its amendments. Cartinhour did not understand the contents of the Partnership Agreement or any of its amendments. Robertson did not explain the substance, terms and effect of the provisions therein; instead, he characterized the Partnership Agreement as a "mere formality" and nothing to be concerned about. In reliance on Robertson's representations, and upon the advice and direction of Robertson, Cartinhour executed the Partnership Agreement.

10. The partnership, named "W.A.R. LLP", was formed under the laws of the District of Columbia (hereinafter the "Partnership").

11. Pursuant to the Partnership Agreement, Cartinhour contributed an initial sum of \$1,000,000.00 to the Partnership or to Robertson directly, and in exchange, Cartinhour expected to receive a fixed percentage of any recovery by plaintiffs' counsel in the Litigation. Further, Robertson represented to Cartinhour that any sums contributed by Cartinhour and not exhausted by plaintiffs' counsel on costs during the Litigation would be returned to Cartinhour, notwithstanding the outcome of the case.

12. Other than his reliance upon the advice of Robertson, Cartinhour was not represented by independent counsel in connection with the preparation and execution of the Partnership Agreement or his initial contribution of \$1,000,000.00.

13. Cartinhour's only method of acquiring information regarding the Litigation thereafter was by and through Robertson. Robertson repeatedly admonished Cartinhour not to discuss the Litigation or their Partnership with anyone because of the "confidential nature" of the

proceedings and their relationship. Robertson maintained that there would be severe financial consequences should Cartinhour make any such disclosure. Cartinhour was, therefore, completely reliant on Robertson in every respect for information concerning the Litigation and his contributions. Cartinhour does not own a computer, nor is he familiar with accessing court records.

14. Thereafter, in or about March 2005, Robertson represented to Cartinhour that he “persuaded” his co-counsel to “allow” Cartinhour to contribute additional funds to the Partnership in exchange for a higher rate of return on the recovery received by them in the Litigation.

15. Unbeknownst to Cartinhour, however, there were sufficient funds previously extended by him from his initial contribution that had not been exhausted such that additional funding to cover costs was completely unnecessary. None of the \$1,000,000.00 initially contributed by Cartinhour had been utilized when Robertson requested the additional funds. Cartinhour was unaware of this at the time, and in fact, Robertson had “loaned” himself \$975,000 of that sum not later than October 2004 – a fact not disclosed to Cartinhour.

16. Further, at the time Robertson induced Cartinhour to “invest” additional funds in March 2005, Robertson failed to disclose that a motion to dismiss plaintiffs’ complaint was pending and a ruling on it was imminent.

17. As a result of Robertson’s omission of these material facts, and in consideration of his continued representations that a successful result was inevitable, Cartinhour contributed an additional \$1,000,000.00 on March 21, 2005, by and through his associate, Tatjana Misic, either to the Partnership or to Robertson directly.

18. Defendants' motion to dismiss plaintiffs' complaint with prejudice was granted shortly thereafter in April 2005.

19. Robertson, however, did not disclose this critical fact to Cartinhour or explain to him its effect on the Litigation. Instead, in a correspondence from Robertson to Cartinhour dated June 27, 2005 – two months after the court granted defendants' motion to dismiss – he falsely informed Cartinhour that “all continues on track” and “there is nothing substantively new to report with the case that the partnership is involved in”. *See Robertson's letter dated June 27, 2005, attached hereto as Exhibit "A"*.

20. Plaintiffs' appealed the District Court's decision granting defendant's motion to dismiss. The District Court's dismissal was subsequently affirmed by the United States Court of Appeals for the Second Circuit in May 2006.

21. While the appeal was still pending, however, Robertson represented to Cartinhour by letter dated March 15, 2006 as follows: “I am confident that our position continues to grow stronger and that we will ultimately be wildly successful in this endeavor. I am excited.” *See March 15, 2006 correspondence, attached hereto as Exhibit "B"*.

22. In that same correspondence, Robertson represented to Cartinhour that he had again “persuaded” his co-counsel to “allow” Cartinhour to invest additional funds to finance the Litigation.

23. In reliance upon Robertson's continued representations regarding the likelihood of success in the Litigation, representations that he persuaded his co-counsel to allow Cartinhour to “invest” additional funds, and his failure to disclose that the plaintiffs' complaint was dismissed with prejudice, Cartinhour contributed an additional \$1,500,000.00 on April 10, 2006,

either to the Partnership or to Robertson directly. As of April 10, 2006, Robertson had failed to advise Cartinhour that the Litigation had been dismissed with prejudice.

24. At the time Cartinhour contributed this additional \$1,500,000, the Partnership had expended no more than \$95,000 of his previous \$2,000,000 in contributions toward litigation expenses. Robertson, who knew this fact, failed to disclose it to Cartinhour. Further, Robertson failed to disclose that he transferred Cartinhour's previous capital contributions from the Partnership to himself for his own use and benefit.

25. Three (3) days before making this \$1,500,000 contribution, Robertson induced Cartinhour into executing what purports to be a release of all Cartinhour's rights with respect to the Partnership and his multi-million dollar contribution therein. Specifically, on April 7, 2006, Robertson, knowing that Cartinhour relied upon his advice and harbored his trust, surreptitiously presented him with an "Indemnification, Hold Harmless, and Agreement to Waive All Claims" (hereinafter the "Release"). The Release purports to preclude Cartinhour from ever bringing a claim against Robertson and absolves Robertson from any and all past, present and future liability for his actions in connection with the Partnership and the obligation to return the funds contributed by Cartinhour.

26. Cartinhour was not represented by independent counsel in connection with entering into the Release, nor did Robertson verbally advise Cartinhour to seek the advice of independent counsel. Robertson did not explain the substance, purpose, or effect of the Release to Cartinhour. Cartinhour did not understand the effect of the Release or the legalese contained therein. Robertson stated that he did not have all day to explain the document; instead, he stated that the Release was a "mere formality" and part of the "partnership papers". In reliance on

Robertson's representations, and upon the advice and direction of Robertson, Cartinhour executed the Release.

27. In total, between September 2004 and April 2006, Cartinhour contributed at least \$3,500,000.00, either to the Partnership or Robertson directly, and paid Robertson \$40,000 for professional legal services that Robertson purported to render to Cartinhour.

28. At all relevant times, Robertson's representations and material omissions concerning his relationship with plaintiffs and their counsel, the likelihood of success in the Litigation, the need for additional funding, his misappropriation of Cartinhour's contributions, as well as the procedural status of the Litigation, were false and undertaken with the intent to wrongfully induce Cartinhour to make substantial contributions totaling at least \$3,500,000.00 which, unknown to Cartinhour, were to be used solely for Robertson's personal benefit.

29. Robertson never informed Cartinhour that the Court of Appeals had affirmed the dismissal of the Litigation with prejudice.

30. Subsequent to May 2006 when the Court of Appeals affirmed the dismissal of the Litigation, Robertson failed and refused to respond to Cartinhour's inquiries and numerous letters concerning the status of the Litigation and to account for the distribution and use of his \$3,500,000.00 in contributions to the partnership.

31. Eventually, in April 2007, Robertson sent a letter to Cartinhour notifying him, *inter alia*, that "we continue to press ahead with the litigation" and that he would be "re-filing" a complaint with "new lead attorneys working with me". See letter from Robertson dated April 28, 2007, attached hereto as Exhibit "C".

32. No such "re-filing" ever occurred, nor, upon information and belief, was one ever intended, or even possible, considering the Litigation had been dismissed with prejudice.

33. Robertson did not use Cartinhour's funds for purposes related to the Partnership or the Litigation based on the fact that the costs of the Litigation, exclusive of attorney's fees, could not have reached or exceeded \$220,000, let alone \$3,500,000.00. Rather, Robertson converted and applied those funds for his own personal use and benefit or for purposes unrelated to the Litigation.

34. As no substantial costs were ever incurred, any and all remaining sums contributed by Cartinhour should have been returned to him upon dismissal of the Litigation.

35. Cartinhour made numerous demands for an accounting and return of his funds, including formal written demands by and through counsel, dated January 9, August 14, August 21, and September 2, 2009.

36. Notwithstanding demand, Robertson has failed and refused to produce an accounting.

37. Robertson has refused to return the funds contributed by Cartinhour.

38. At all relevant times, Robertson was acting as Cartinhour's attorney and counseling him with respect to the Partnership, the Litigation, and on other legal matters during this period, including: (1) preparing a codicil to Cartinhour's will; (2) appointing himself executor of Cartinhour's estate; (3) preparing a comprehensive legal analysis of a will contest should one arise upon Cartinhour's death; (4) providing legal advice and both acting and holding himself out as general counsel in connection with TCT, LLC, a business Cartinhour was involved with; and (5) advising Cartinhour on the tax consequences of donating funds to a Serbian foundation. Further, Robertson's correspondence to Cartinhour states that the correspondence constitutes "attorney work product" subject to the "attorney-client privilege".

COUNT I
(Accounting)

39. Defendant/Counter-Plaintiff incorporates herein by reference each and every allegation of Paragraphs 1-38.

40. Between September 2004 and April 2006, Cartinhour contributed a total of at least \$3,500,000.00, either to the Partnership or directly to Robertson, for the purpose of financing the out-of-pocket costs incurred by plaintiffs' counsel in pursuing the Litigation.

41. Cartinhour repeatedly requested an accounting from Robertson of all sums contributed, including formal demands for the same, by and through counsel, dated January 9, August 14, August 21, and September 2, 2009.

42. Robertson, as Cartinhour's business partner, is a fiduciary to Cartinhour.

43. Robertson has sole control over the books and records of the Partnership.

44. Cartinhour has no other means, other than through Robertson, to obtain an accounting of the Partnership funds and his contributions.

45. Robertson has consistently failed and refused, without reason or justification, to provide such accounting of the foregoing sums.

WHEREFORE, the premises considered, the Defendant/Counter-Plaintiff, William C. Cartinhour, Jr., requests that this Court direct the Plaintiff/Counter-Defendant, Wade Robertson, fully and completely account for all sums contributed by Cartinhour to Robertson directly or through W.A.R., LLP, and enter a judgment against Robertson in the sum found to be due to Cartinhour on such accounting, with pre- and post-judgment interest, court costs and such other

and further relief as the nature of this case may require and to which this Court shall appear just and proper.

COUNT II
(Fraud)

46. Defendant/Counter-Plaintiff incorporates herein by reference each and every allegation of Paragraphs 1-45.

47. Robertson wrongfully induced Cartinhour to contribute funds totaling at least \$3,500,000.00, either to the Partnership or directly to Robertson, by intentionally making false representations or omitting material facts concerning the nature and terms of the Partnership Agreement, Business Agreement, and Release which differed from the description of the business relationship that he and Cartinhour initially agreed upon, the procedural status of the Litigation, his relationship with the Litigation plaintiffs and counsel, the likelihood of a successful result in the Litigation, Cartinhour's potential return on investment, the need for additional funding, his personal use of Cartinhour's capital contribution, his intention to reduce Cartinhour's capital account by off-setting the time he allegedly billed in the Litigation against the capital accounts, Robertson's involvement in the Litigation and his ability and intention to re-file the complaint after the Litigation had been dismissed.

48. Robertson induced Cartinhour to contribute at least \$1,500,000.00 at a time when the Litigation had already been dismissed by the trial court and after Robertson got him to sign a Release in or about April 2005, and where there was absolutely no legitimate business reason for an additional contribution.

49. The statements made by Robertson constitute false representations and/or willful omissions of material facts to Cartinhour.

50. Robertson knew his representations were false when he made them to Cartinhour and were made with the purpose of wrongfully securing money from Cartinhour for his own personal use and benefit and for purposes unrelated to the Litigation or Partnership because, *inter alia*, Robertson had the exclusive contacts with the plaintiffs' counsel, access to docket information and the status of the Litigation, had sole knowledge of the Partnership's need for additional cash to fund the expenses, and had misappropriated Partnership funds for his own personal use and benefit.

51. Cartinhour reasonably relied upon Robertson's representations and contributed funds into the Partnership. Cartinhour's reliance on Robertson's representations in this regard was justified and reasonable based on the surrounding circumstances, including the fiduciary relationship that existed between the Parties as partners and the fact that Robertson was acting as Cartinhour's attorney and counselor at all relevant times.

52. Robertson's representations and/or omissions in this regard were intentional, wanton, gross, oppressive, and were made with actual malice. Evidence of Robertson's actual malice includes his successful efforts to induce Cartinhour to contribute funds after the Litigation had previously been dismissed, while affirmatively misrepresenting that "our position continues to grow stronger" and "there is nothing substantively new to report", and his failure to disclose that the Partnership had spent less than \$95,000 on Litigation expenses and had paid the rest of the contributions to Robertson.

WHEREFORE, the premises considered, the Defendant/Counter-Plaintiff, William C. Cartinhour, Jr., demands judgment against the Plaintiff/Counter-Defendant, Wade Robertson, for compensatory damages in the sum of \$3,500,000.00, pre- and post-judgment interest, court costs,

and punitive damages in the sum of \$10,000,000.00, and such other and further relief as the nature of this case may require and to which this Court shall appear just and proper.

COUNT III
(Breach of Fiduciary Duty)

53. Defendant/Counter-Plaintiff incorporates herein by reference each and every allegation of Paragraphs 1-52.

54. Robertson and Cartinhour entered into a partnership known as W.A.R., LLP, for the purpose of funding the out-of-pocket costs incurred by plaintiffs' counsel in pursuing the Litigation.

55. Robertson, as Cartinhour's partner, was accountable to Cartinhour as a fiduciary. As a partner and fiduciary, Robertson owed Cartinhour a duty to act for the benefit of the Partnership with loyalty and good faith, without any self-interest or self-dealing.

56. A fiduciary relationship also existed between the Parties by virtue of the attorney-client relationship.

57. Robertson breached his fiduciary duties to Cartinhour by and amongst other things refusing to account for partnership proceeds, failing to return the funds contributed by Cartinhour, soliciting and accepting additional capital contributions at a time when there was no reasonable business justification to request or accept such payments, making false representations of material facts, failing to disclose material facts to Cartinhour, converting partnership funds, acting with self-interest and self-dealing and failing to exercise good faith and loyalty.

58. Robertson's actions and conduct in this regard were intentional, wanton, gross, oppressive, and were undertaken with actual malice. Evidence of Robertson's actual malice includes his successful efforts to induce Cartinhour to contribute funds after the Litigation had

previously been dismissed, while affirmatively misrepresenting that “our position continues to grow stronger” and “there is nothing substantively new to report”, and misappropriating Partnership funds for his own use and benefit and failing to disclose this fact to Cartinhour.

59. Robertson knew his representations were false when he made them to Cartinhour and were made with the purpose of wrongfully securing money from Cartinhour for his own personal use and benefit and for purposes unrelated to the Litigation or Partnership because, *inter alia*, Robertson had the exclusive contacts with the plaintiffs’ counsel, access to docket information and the status of the Litigation, and had sole knowledge of the Partnership’s need for additional cash to fund the expenses.

WHEREFORE, the premises considered, the Defendant/Counter-Plaintiff, William C. Cartinhour, Jr., demands judgment against the Plaintiff/Counter-Defendant, Wade Robertson, for compensatory damages in the sum of \$3,500,000.00, pre- and post-judgment interest, court costs, and punitive damages in the sum of \$10,000,000.00, and such other and further relief as the nature of this case may require and to which this Court shall appear just and proper.

COUNT IV
(Breach of Partnership Agreement)

60. Defendant/Counter-Plaintiff incorporates herein by reference each and every allegation of Paragraphs 1-59.

61. Robertson and Cartinhour entered into a Partnership Agreement for the purpose of funding the out-of-pocket costs incurred by plaintiffs’ counsel in pursuing the Litigation.

62. The Parties intended that any sums contributed by Cartinhour that were not expended by plaintiffs’ counsel on costs during the Litigation would be returned to him, notwithstanding the outcome of the Litigation. The costs incurred by plaintiffs’ counsel in the

Litigation were nominal compared to the \$3,500,000 in contributions made by Cartinhour. At least \$3,400,000 was not expended on Litigation costs.

63. On numerous occasions after the Litigation was dismissed, Cartinhour sought an accounting and return of the funds he contributed in the Partnership, including formal written demands dated January 9, August 14, August 21, and September 2, 2009.

64. Robertson has materially breached the Partnership Agreement by refusing to account for partnership proceeds, failing to return the funds contributed by Cartinhour, converting partnership funds for his own personal use and benefit, and other wrongful conduct set forth herein.

WHEREFORE, the premises considered, the Defendant/Counter-Plaintiff, William C. Cartinhour, Jr., demands judgment against the Plaintiff/Counter-Defendant, Wade Robertson, Esquire, for compensatory damages in the sum of \$3,500,000.00, with pre- and post-judgment interest, court costs, and such other and further relief as the nature of this case may require and to which this Court shall appear just and proper.

COUNT V
(Legal Malpractice - Negligence)

65. Defendant/Counter-Plaintiff incorporates herein by reference each and every allegation of Paragraphs 1-64.

66. Robertson is an attorney-at-law, licensed to practice law in California and the District of Columbia.

67. An attorney-client relationship arose between the Parties by virtue of Robertson's legal representation of Cartinhour in numerous respects, including but not limited to (1) preparing a codicil to Cartinhour's will; (2) appointing himself executor of Cartinhour's estate; (3) preparing a comprehensive legal analysis of a will contest should one arise upon Cartinhour's

death; (4) providing legal advice and both acting and holding himself out as general counsel in connection with TCT, LLC, a business Cartinhour was involved with; and (5) advising Cartinhour on the tax consequences of donating funds to a Serbian foundation.

68. Cartinhour paid, and Robertson accepted, at least \$40,000.00 during this period for legal services rendered in connection with various business, tax, and estate planning matters.

69. Robertson was acting as Cartinhour's attorney and counselor for all purposes related to the foregoing transaction and events at all relevant times.

70. As a result of the attorney-client relationship between the Parties, Robertson owed Cartinhour a duty to exercise reasonable care, knowledge and skill expected of lawyers under similar circumstances.

71. Robertson breached that standard of care by and through his conduct, including misrepresenting material facts, failing to disclose material facts to Cartinhour, refusing to account for the sums contributed by Cartinhour in the amount of at least \$3,500,000.00, negligently representing Cartinhour and his interests, failing to exercise diligence, honesty and integrity in the representation of Cartinhour, and by engaging in self-dealing with the funds he solicited from Cartinhour.

72. As a direct and proximate result of said breach, Cartinhour incurred substantial loss and damages.

WHEREFORE, the premises considered, the Defendant/Counter-Plaintiff, William C. Cartinhour, Jr., demands judgment against the Plaintiff/Counter-Defendant, Wade Robertson, for compensatory damages in the sum of \$3,500,000.00, pre- and post-judgment interest, court costs, and punitive damages in the sum of \$10,000,000.00, and such other and further relief as the nature of this case may require and to which this Court shall appear just and proper.

COUNT VI
(Negligent Misrepresentation)

73. Defendant/Counter-Plaintiff incorporates herein by reference each and every allegation of Paragraphs 1-72.

74. Robertson's wrongful conduct as alleged hereinabove constitutes grossly negligent misrepresentations.

75. As a direct and proximate result of said negligent misrepresentations, Cartinhour incurred substantial loss and damage.

WHEREFORE, the premises considered, the Defendant/Counter-Plaintiff, William C. Cartinhour, Jr., demands judgment against the Plaintiff/Counter-Defendant, Wade Robertson, for compensatory damages in the sum of \$3,500,000.00, pre- and post-judgment interest, court costs, and punitive damages in the sum of \$10,000,000.00, and such other and further relief as the nature of this case may require and to which this Court shall appear just and proper.

COUNT VII
(Conversion)

76. Defendant/Counter-Plaintiff incorporates herein by reference each and every allegation of Paragraphs 1-75.

77. Robertson's wrongful conduct as alleged hereinabove constitutes a conversion of Cartinhour's property.

78. Robertson's wrongful conduct in this regard was intentional, wanton, gross, oppressive, and undertaken with actual malice. Evidence of Robertson's actual malice includes his successful efforts to induce Cartinhour to contribute funds after the Litigation had previously been dismissed, and his failure to disclose to Cartinhour that Cartinhour's capital contribution grossly exceeded expenses and were being transferred to Robertson for his own personal use.

79. As a direct and proximate result of said conversion, Cartinhour incurred substantial loss and damage.

WHEREFORE, the premises considered, the Defendant/Counter-Plaintiff, William C. Cartinhour, Jr., demands judgment against the Plaintiff/Counter-Defendant, Wade Robertson, for compensatory damages in the sum of \$3,500,000.00, pre- and post-judgment interest, court costs, and punitive damages in the sum of \$10,000,000.00, and such other and further relief as the nature of this case may require and to which this Court shall appear just and proper.

COUNT VIII
(Derivative Action)

80. Defendant/Counter-Plaintiff incorporates herein by reference each and every allegation of Paragraphs 1-79.

81. Cartinhour has made demand for an accounting and refund of the sums contributed as set forth herein.

82. W.A.R, LLP, at Robertson's direction, diverted at least \$3,405,000 of Cartinhour's funds for Robertson's sole benefit.

83. W.A.R, LLP, being solely controlled by Robertson, has refused to take action for the conduct complained of herein.

84. This refusal is without justification, as no valid defense exists as to Robertson's obligation to account for the Partnership proceeds and to pay the Partnership for the full amount of the misappropriated funds.

85. Plaintiff is, and has been since 2004, a Limited Partner in W.A.R, LLP.

86. W.A.R, L.L.P. has not instituted suit against Robertson because Robertson is solely responsible for managing the financial and operational affairs of the Partnership. Accordingly, demand upon W.A.R, LLP to initiate suit against Robertson would be futile.

87. Robertson's misappropriation of Partnership proceeds was intentional, without permission or justification, and constituted a conversion of W.A.R, LLP funds.

88. This action is not a collusive one to confer jurisdiction that this Court would otherwise lack.

WHEREFORE, the premises considered, the Defendant/Counter-Plaintiff, William C. Cartinhour, Jr., demands judgment in favor of Plaintiff/Counter-Defendant, to the use of the partners and W.A.R, LLP as is provided in the Partnership Agreement, against the Defendant, Wade Robertson, in the sum of \$3,500,000.00, pre- and post-judgment interest, attorney's fees, court costs, and such other and further relief as the nature of this case may require and to which this Court shall appear just and proper.

COUNT IX
(Rescission)

89. Defendant/Counter-Plaintiff incorporates herein by reference each and every allegation of Paragraphs 1-88.

90. Robertson induced Cartinhour to enter into a series of grossly inequitable agreements based on extensive fraud, misrepresentations and undue influence; namely the (1) Business Agreement, (2) Partnership Agreements and Amendments thereto, and (3) Release (collectively the "Agreements").

91. Robertson's fraud and misrepresentations in connection with these Agreements includes statements that these documents were "mere formalities" and part of the normal "partnership papers". Further, Robertson stated that he did not have time to explain the purpose

and effect of the Agreements but that they were nothing to be concerned about and Cartinhour just needed to sign them. Additionally, Robertson failed to disclose that the Partnership did not need the additional capital. Further examples are set forth elsewhere herein.

92. Cartinhour reasonably and justifiably relied upon Robertson's fraud and misrepresentations to his detriment by entering into the Agreements.

93. As a direct and proximate result, Cartinhour incurred substantial loss and damage.

94. As a result of Robertson's fraud, misrepresentations, and undue influence, Cartinhour is entitled to rescind the Agreements and recover all of the monies paid to the Partnership and/or to Robertson.

WHEREFORE, the premises considered, the Defendant/Counter-Plaintiff, William C. Cartinhour, Jr., demands that the Agreements entered into between the Parties be rescinded and Order that the Plaintiff/Counter-Defendant, Wade A. Robertson, that judgment be entered in favor of Cartinhour under the Agreements of \$3,500,000, with interest and costs and that such monies be returned; and such other and further relief as the nature of this case may require and to which this Court shall appear just and proper.

COUNT X
(Dissolution and Appointment of Receiver)

95. Defendant/Counter-Plaintiff incorporates herein by reference each and every allegation of Paragraphs 1-94.

96. Robertson has engaged in conduct relating to the Partnership which makes it not reasonably practicable to carry on the business of the Partnership.

97. The Partnership business and affairs ended in 2006 when the Litigation was dismissed. However, Robertson, as sole managing partner, has failed and refused to take actions to dissolve or wind up the Partnership business.

98. Dissolution of the Partnership is necessary and desirable to protect the interests of Cartinhour so as to preserve and protect his capital contributions and interests, and safeguard Partnership assets against further loss and damage.

99. Cartinhour requests a receiver be appointed during the pendency of the Partnership's dissolution to manage and protect Partnership affairs, assets and liabilities, and wind up its affairs.

WHEREFORE, the premises considered, the Defendant/Counter-Plaintiff, William C. Cartinhour, Jr., requests that the Partnership be dissolved and a receiver be appointed during the pendency of the dissolution with authorization to take any and all actions deemed necessary and proper to manage and protect the value, affairs, assets and liabilities of the Partnership, and such other and further relief as the nature of this case may require and to which this Court shall appear just and proper.

COUNT XI
(Equitable Trust)

100. Defendant/Counter-Plaintiff incorporates herein by reference each and every allegation of Paragraphs 1-99.

101. Robertson converted at least \$3,405,000 of Cartinhour's money to his own under the guise of "loans".

102. Robertson acquired certain assets with the funds that he converted from Cartinhour, including but not limited to a brokerage account with Charles Schwab.

103. Robertson came into possession of the \$3,405,000 through the fraud perpetrated upon Cartinhour as described herein.

104. As a matter of equity, all assets traceable to the capital contributions of Cartinhour, including but not limited to bank accounts, brokerage accounts, stocks, bonds, real estate and personal property should be subject to a constructive trust in favor of Cartinhour.

WHEREFORE, the premises considered, the Defendant/Counter-Plaintiff, William C. Cartinhour, Jr., requests that the Court impose a constructive trust upon all such assets traceable to the \$3,500,000 taken by Robertson in favor of Cartinhour, and such other and further relief as the nature of this case may require and to which this Court shall appear just and proper.

COUNT XII
(Declaratory Judgment)

105. Defendant/Counter-Plaintiff incorporates herein by reference each and every allegation of Paragraphs 1-104.

106. Robertson induced Cartinhour to execute the Business Agreement, Partnership Agreement and Amendments, and Release (collectively the "Agreements"), through means of fraud, misrepresentations, undue influence, and under circumstances and conditions that render the Agreements unconscionable and unenforceable as set forth elsewhere herein.

107. A present dispute exists as to whether the Agreements are valid and enforceable as a result of the fraud, misrepresentations, undue influence, and unconscionability, both in substance and procurement, perpetrated by Robertson.

108. A declaratory judgment is necessary to afford relief from uncertainty and insecurity with respect to whether the Agreements are enforceable.

WHEREFORE, the premises considered, the Defendant/Counter-Plaintiff, William C. Cartinhour, Jr., requests that the Court enter a judgment declaring that the Agreements are

unenforceable and such other and further relief as the nature of this case may require and to which this Court shall appear just and proper.

JURY DEMAND

William C. Cartinhour Jr. demands a jury on all matters so triable.

/s/ Patrick J. Kearney
Patrick J. Kearney

Respectfully submitted,

/s/ Patrick J. Kearney
Patrick J. Kearney, Esquire (# 382290)
Michael J. Bramnick, Esquire (# 500756)
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