

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

ALEXANDER DAWSON FOUNDATION,  
ALEXANDER DAWSON INC.,  
MARIO P. BORINI, INDIVIDUALLY AND  
AS TRUSTEE OF THE MARIO P. BORINI  
AND BIANCA C. BORINI 1991  
REVOCABLE TRUST, BIANCA C. BORINI,  
INDIVIDUALLY AND AS TRUSTEE OF  
THE MARIO P. BORINI AND BIANCA C.  
BORINI 1991 REVOCABLE TRUST,  
BIANCA C. BORINI, AS TRUSTEE OF  
THE BIANCA C. BORINI 1991 SEPARATE  
PROPERTY REVOCABLE TRUST, and  
JOSEPH C. BORINI,

Plaintiffs,

- against -

BRIAN F. ZUCKER, ZUCKER &  
ASSOCIATES, LLP, GLENN E. DAVIS,  
ROBERT M. GRABER, DAVIS, GRABER,  
PLOTZKER & WARD, LLP, and VICTOR M.  
ROSENZWEIG,

Defendants.

Index No.: -E  
Date purchased: January 07, 2011

**Summons**

Plaintiffs designate New York  
County as the place of trial.

The basis for the venue is CPLR § 503

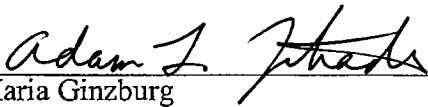
Certain Plaintiffs reside at New York,  
New York

County of New York

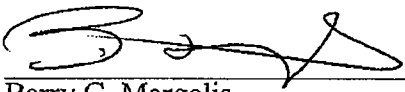
To the above named Defendant Brian F. Zucker, Zucker & Associates, LLP, 1130 Campus Drive  
West, Morganville, New Jersey 07751:

**You are hereby summoned** to answer the complaint in this action and to serve a  
copy of your answer, or, if the complaint is not served with this summons, to serve a notice of  
appearance, on the Plaintiffs' Attorneys within 20 days after the service of this summons,  
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complaint.

Dated: January 7, 2011  
New York, New York

  
\_\_\_\_\_  
Maria Ginzburg  
Joel A. Blanchet  
Adam L. Fotiades  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, New York 10022-4611  
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joel.blanchet@kirkland.com  
adam.fotiades@kirkland.com

*Attorneys for Plaintiffs the Alexander Dawson  
Foundation and Alexander Dawson Inc.*

  
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Barry G. Margolis  
ABRAMS GARFINKEL MARGOLIS  
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237 West 35th Street, 4th Floor  
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Email: bmargolis@agmblaw.com

*Attorneys for Plaintiffs Mario P. Borini, Bianca C.  
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Plaintiffs,

- against -

BRIAN F. ZUCKER, ZUCKER & ASSOCIATES, LLP, GLENN E. DAVIS, ROBERT M. GRABER, DAVIS, GRABER, PLOTZKER & WARD, LLP, and VICTOR M. ROSENZWEIG,

Defendants.

SUMMONS

Maria Ginzburg  
Joel A. Blanchet  
Adam L. Fotiades  
Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022-4611

Barry G. Margolis  
Abrams Garfinkel Margolis Bergson, LLP  
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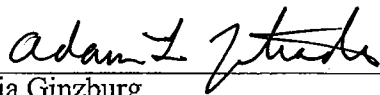
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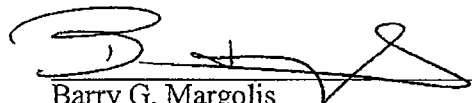
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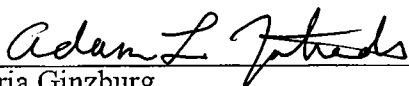
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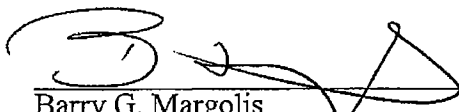
To the above named Defendant Glenn E. Davis, Davis, Graber, Plotzker & Ward, LLP, 150 E.  
58th Street, 20th Floor, New York, New York 10155:

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*Attorneys for Plaintiffs Mario P. Borini, Bianca C.  
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BRIAN F. ZUCKER, ZUCKER & ASSOCIATES, LLP, GLENN E. DAVIS, ROBERT M. GRABER, DAVIS, GRABER, PLOTZKER & WARD, LLP, and VICTOR M. ROSENZWEIG,

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Maria Ginzburg  
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The basis for the venue is CPLR § 503

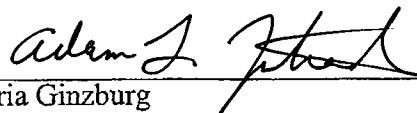
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To the above named Defendant Robert M. Graber, Davis, Graber, Plotzker & Ward, LLP, 150 E. 58th Street, 20th Floor, New York, New York 10155:

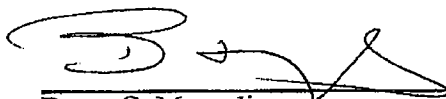
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*Attorneys for Plaintiffs the Alexander Dawson  
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To: Robert M. Graber  
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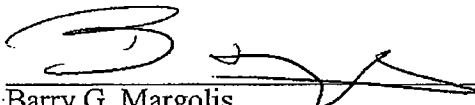
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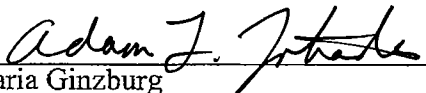
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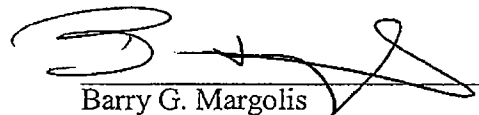
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Index No.:

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

ALEXANDER DAWSON FOUNDATION, ALEXANDER DAWSON INC., MARIO P. BORINI, INDIVIDUALLY AND AS TRUSTEE OF THE MARIO P. BORINI AND BIANCA C. BORINI 1991 REVOCABLE TRUST, BIANCA C. BORINI, INDIVIDUALLY AND AS TRUSTEE OF THE MARIO P. BORINI AND BIANCA C. BORINI 1991 REVOCABLE TRUST, BIANCA C. BORINI, AS TRUSTEE OF THE BIANCA C. BORINI 1991 SEPARATE PROPERTY REVOCABLE TRUST, and JOSEPH C. BORINI,

Plaintiffs,

- against -

BRIAN F. ZUCKER, ZUCKER & ASSOCIATES, LLP, GLENN E. DAVIS, ROBERT M. GRABER, DAVIS, GRABER, PLOTZKER & WARD, LLP, and VICTOR M. ROSENZWEIG,

Defendants.

SUMMONS

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

ALEXANDER DAWSON FOUNDATION,  
ALEXANDER DAWSON INC.,  
MARIO P. BORINI, INDIVIDUALLY AND  
AS TRUSTEE OF THE MARIO P. BORINI  
AND BIANCA C. BORINI 1991  
REVOCABLE TRUST, BIANCA C. BORINI,  
INDIVIDUALLY AND AS TRUSTEE OF  
THE MARIO P. BORINI AND BIANCA C.  
BORINI 1991 REVOCABLE TRUST,  
BIANCA C. BORINI, AS TRUSTEE OF  
THE BIANCA C. BORINI 1991 SEPARATE  
PROPERTY REVOCABLE TRUST, and  
JOSEPH C. BORINI,

Plaintiffs,

- against -

BRIAN F. ZUCKER, ZUCKER &  
ASSOCIATES, LLP, GLENN E. DAVIS,  
ROBERT M. GRABER, DAVIS, GRABER,  
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M. ROSENZWEIG,

Defendants.

Index No.: -E

**COMPLAINT**

Plaintiffs the Alexander Dawson Foundation (“ADF”), Alexander Dawson Inc. (“ADI”), Mario P. Borini, individually and as a trustee of The Mario P. Borini and Bianca C. Borini 1991 Revocable Trust (“The Mario and Bianca Borini Trust”), Bianca C. Borini, individually and as a trustee of The Mario and Bianca Borini Trust, Bianca C. Borini, as trustee of The Bianca C. Borini 1991 Separate Property Revocable Trust (“The Bianca Borini Trust”), and Joseph C. Borini, by and through their respective counsel, Kirkland & Ellis LLP and Abrams Garfinkel Margolis Bergson, LLP, file this Complaint and aver:

**PRELIMINARY STATEMENT**

1. This case is about how a group of accountants and a director assisted a felon in his scheme to defraud a charitable foundation, two of its trustees, and others out of millions of

dollars. On July 30, 2009, Mark Bloom (“Bloom”), the former head of a so-called hedge fund called North Hills, L.P. (“North Hills” or the “Fund”), pled guilty to five federal felonies relating to a Ponzi scheme that he had conducted over the course of the previous eight years. As a result of that Ponzi scheme, ADF, ADI, Mario Borini, individually and as a trustee of The Mario and Bianca Borini Trust, Bianca Borini, individually and as a trustee of The Mario and Bianca Borini Trust, Bianca Borini, as trustee of The Bianca Borini Trust, and Joseph Borini (collectively, “Plaintiffs”), lost over \$9.75 million. Eight and one-half million dollars of the lost funds were from ADF, which is a non-profit foundation, and ADI, which is its investment arm, and were supposed to be used to educate children.

2. The Ponzi scheme, and the millions that were stolen as a result of it, was not the result of Bloom’s efforts alone. He had help. Specifically, as set forth more fully in this Complaint, Bloom received assistance in his scheme from at least two groups of professionals:

- **Accountants:** Bloom and North Hills employed at least three accountants during the course of his fraudulent scheme -- Glenn E. Davis and Robert M. Graber of Davis, Graber, Plotzker & Ward, LLP, and Brian F. Zucker of Zucker & Associates, LLP. These individuals, and the firms they worked for, both aided and abetted Bloom in his fraudulent scheme and were derelict in their duties as accountants.
- **Director:** Victor M. Rosenzweig acted as a director of North Hills Management, LLC, the Fund’s General Partner, and failed in his duty as a director of the General Partner to provide oversight of Bloom’s activities and to disclose Bloom’s fraud once he learned of it.

3. As described more fully in the body of this Complaint, each of these professionals committed multiple acts that not only assisted Bloom in his scheme, but without which Bloom's scheme would not have been possible.

#### **THE PARTIES**

4. Plaintiff ADF is a Nevada charitable trust whose primary function is to support the Alexander Dawson schools in Nevada (pre-K to 8th grade) and Colorado (K to 12th grade). Through its endeavors, ADF serves the educational needs of over 1,000 children. The trustees of ADF are Mario Borini, Joseph Borini, Farrow J. Smith, Oswald Gutsche, and John D. O'Brien. ADF is also a limited partner in North Hills.

5. Plaintiff ADI is a Nevada corporation wholly owned by ADF and serves as an investment arm to ADF. The directors of ADI are Mario Borini, Joseph Borini, Farrow J. Smith, Oswald Gutsche, and John D. O'Brien. ADI is also a limited partner in North Hills.

6. Plaintiff Mario Borini is a New York resident. Mr. Borini is the Chairman of the Board of Trustees of ADF, the Chairman of the Board of Directors of ADI, and, along with his wife, a grantor and trustee of The Mario and Bianca Borini Trust. He is also a limited partner in North Hills.

7. Plaintiff Bianca Borini is a New York resident and the wife of Mario Borini. Ms. Borini is a grantor and trustee of The Mario and Bianca Borini Trust and the sole grantor and trustee of The Bianca Borini Trust. Ms. Borini is also a limited partner in North Hills.

8. Plaintiff Joseph Borini is a New York resident and the son of Mario and Bianca Borini. Joseph Borini is a trustee of ADF and a director of ADI. He is also a limited partner in North Hills.

9. Defendant Brian F. Zucker ("Zucker") is a New York and New Jersey Certified Public Accountant and is the sole equity partner in Zucker & Associates, LLP ("Zucker &

Associates”), a New Jersey-based accounting firm. Between 2004 and 2008, Zucker provided bookkeeping services to both North Hills and NHM, and prepared the Schedule K-1 returns for North Hills’ limited partners, including all of the Plaintiffs herein.

10. Defendant Zucker & Associates is an accounting firm with offices in New Jersey and New York City.

11. Defendant Glenn E. Davis (“Davis”) is a New York Certified Public Accountant and a tax partner at Davis, Graber, Plotzker & Ward, LLP (“DGPW”), an accounting firm. Davis was the tax partner at DGPW responsible for preparing Mario Borini’s, Bianca Borini’s, and Joseph Borini’s (collectively, “the Borinis”) personal tax returns for the years 2000 through 2007.

12. Defendant Robert M. Graber (“Graber”) is a New York Certified Public Accountant and an audit partner at DGPW. Graber led DGPW’s audit of North Hills for the years ending 2001 through 2004. Graber also performed auditing work for GBH Investments, Inc. (“GBH”), a revenue sharing vehicle wholly owned by ADF and ADI, in the early 2000s.

13. Defendant DGPW is an accounting firm located in New York City. DGPW provided tax and auditing services for the Borinis, North Hills, and GBH.

14. Defendant Victor M. Rosenzweig (“Rosenzweig”) is an attorney licensed to practice law in the State of New York and is currently of counsel, and was previously a partner, at Olshan Grundman Frome Rosenzweig & Wolosky LLP (“Olshan Grundman”), a law firm with offices in New York City. Rosenzweig acted as a director of NHM and provided legal services to NHM and the Fund from 2001 until 2005, during which Plaintiffs were invested in the Fund. Rosenzweig is also a New York resident.

## **JURISDICTION AND VENUE**

15. This Court has jurisdiction over this action pursuant to C.P.L.R. § 301 because all Defendants either reside in or conduct business in New York. Alternatively, this Court has jurisdiction pursuant to C.P.L.R. § 302 because all Defendants transact business in New York.

16. Venue is proper in this Court under C.P.L.R. § 503 because Mario Borini, Bianca Borini, and Joseph Borini are residents of New York County and DGPW has its principal offices in New York County.

## **BACKGROUND FACTS**

### **BLOOM, WITH DEFENDANTS' HELP, OPERATED A PONZI SCHEME AND STOLE MILLIONS OF DOLLARS FROM INVESTORS TO USE FOR HIS PERSONAL ENDS**

17. From 2001 through 2008, Bloom ran a Ponzi scheme in the guise of a legitimate hedge fund -- North Hills -- and stole investors' money to pay for his and his wife's lavish lifestyle. As a result of his egregious misconduct, on July 30, 2009, Bloom pled guilty to securities fraud, mail fraud, wire fraud, money laundering, and corruptly endeavoring to obstruct and impede the due administration of the Internal Revenue Laws. (*See* Ex. 1 (Criminal Information).) According to the Criminal Information filed against him, Bloom "perpetrated a scheme to defraud the investors of [North Hills] by soliciting millions of dollars of funds under false pretenses, failing to invest investors' funds as promised, and misappropriating and converting investors' funds to Bloom's own benefit and the benefit of others without the knowledge or authorization of the investors." (Ex. 1 at 1-2.) In December 2008, Plaintiffs ADF and ADI brought a civil action against Bloom, North Hills Management, LLC ("NHM"), and Lauren Bloom, Bloom's wife, in New York State Supreme Court. (*See Alexander Dawson Foundation, et al. v. Mark Evan Bloom, et al.*, Index. No. 603590/08, N.Y. Sup. Ct. Commercial

Division, Part 45 (Schweitzer, J.S.C.).) That matter is currently pending against Bloom and NHM.

18. To carry out his scheme to defraud, Bloom introduced North Hills to potential investors as a “fund of funds” with the goal of minimizing the risk of the stock market and achieving a twelve percent annual return. Based on these and other representations and assurances, investors -- including Plaintiffs -- put millions of dollars into North Hills. To give investors the illusion that their investments were profitable, Bloom would send them monthly account statements and annual K-1 tax returns that purported to show the balance in their capital accounts and positive returns.

19. From July 2001 until Plaintiffs uncovered Bloom’s fraud in November 2008, Bloom diverted at least \$20 million from the Fund’s bank account -- an amount far in excess of the management fees and share of profits to which Bloom was entitled under the Fund’s governing documents. Bloom transferred these funds to NHM, the Fund management company that he operated and of which Defendant Rosenzweig was director. Bloom used NHM as his personal piggy bank. During this time period, Bloom typically transferred hundreds of thousands of dollars weekly, if not daily, from North Hills to NHM.

20. Bloom attempted to disguise his theft either as bogus “officer compensation” or as fake loans by issuing the Fund phony “notes receivable” from his own management company. These notes would only occasionally take paper form, such as a \$13.23 million demand note (the “Demand Note”) papered in the summer of 2005 that purported to consolidate all of the money Bloom had stolen from North Hills through the end of 2004. (*See* Ex. 2 (Demand Note).)

21. While the Demand Note was a paper note, more often than not the “notes” that Bloom would purportedly issue were no more than notations in North Hills’ and NHM’s



accounting ledgers. (See Ex. 3 (North Hills General Ledger) at 1-12; Ex. 4 (NHM General Ledger) at 1-30.)

22. After transferring money from the Fund to NHM's account, Bloom would either use the funds directly for personal expenditures, ranging from interior decorating for his apartment to buying his family dog, or would transfer investor funds to personal bank accounts. Bloom used investor funds to pay for, among other things, a \$5.2 million luxury home at 10 Gracie Square in Manhattan, at least \$2.3 million in renovations to 10 Gracie Square and other properties owned by Bloom and his wife, at least \$750,000 in art and \$600,000 in jewelry, and hundreds of thousands of dollars for parties, travel, personal services, and clothing. (Ex. 1 at 4.)

23. In addition to his outright theft, Bloom failed to disclose to his investors that he had entered into a referral agreement to serve as a third-party marketer for the Philadelphia Alternative Asset Fund (the "PAAF"), a commodities trading pool. As a result of his role as marketer, Bloom received lucrative kick-backs for selling the PAAF to investors, including North Hills. In 2004 and 2005, Bloom received over \$1.5 million in commissions from the Philadelphia Alternative Asset Management Company ("PAAMCO") -- the PAAF's management company -- for steering investors' money into the fund. (See Ex. 5 (PAAF Referral Fee Summary).)

24. In fact, Bloom's conflict of interest led him to improperly invest \$17 million of North Hills' money -- more than 50% of its total assets -- in the PAAF over the course of 2004 and 2005. (See Ex. 6 (North Hills PAAF statements).) The North Hills investments alone earned Bloom personal kick-backs totaling nearly \$350,000. (See Ex. 5.) The PAAF itself was shut down by the United States Commodity Futures Trading Commission ("CFTC") and put into

receivership in the summer of 2005 because it was a fraudulent scheme. North Hills received a fraction of its investment from the receiver, most of which Bloom again pocketed.

25. Neither Bloom nor Defendants ever disclosed to North Hills' investors that millions of dollars had been appropriated through bogus "notes" or "officer compensation." Nor did anyone disclose to investors that the majority of their assets were invested with a single money manager until July 2005, after the CFTC shut down the PAAF and froze its assets.

26. Bloom did not act alone in carrying out this Ponzi scheme. To help him orchestrate the scheme, and to keep investors in the dark, Bloom had a number of co-conspirators -- the Defendants -- who assisted in the fraud.

**ZUCKER AND ZUCKER & ASSOCIATES PROVIDED SUBSTANTIAL ASSISTANCE TO BLOOM'S FRAUD BY PREPARING MATERIALLY FALSE SCHEDULE K-1S**

27. From March 2004 through the summer of 2008, Zucker and his firm, Zucker & Associates, provided accounting services to North Hills and NHM. He and his firm were primarily responsible for keeping the accounting ledgers that detailed all of the Fund's and NHM's financial transactions, including all money that flowed in and out of their respective bank accounts. These ledgers most plainly disclosed the constant flow of funds stolen by Bloom. Zucker and his firm were also responsible for preparing the false tax returns for the Fund and the false Schedule K-1 returns that were sent to each limited partner, including Plaintiffs. Zucker and Zucker & Associates also worked closely with the Fund's auditors, DGPW. (Ex. 7 (Excerpts from Zucker Deposition Transcript) at 37:19-38:13.)

28. From the very beginning of the engagement, based on Zucker's review of the Fund's financial records and his preparation of the ledgers, Zucker had actual knowledge that Bloom was taking money out of the Fund and using it to pay for his personal expenses. Only a few months into his tenure, Zucker discovered, after reviewing the Fund's 2003 audited financial

statement, that at least \$5 million in “notes receivable” had already been transferred from the Fund to NHM. (*See* Ex. 7 at 52:7-53:18.) As Zucker prepared detailed accounts of the Fund’s and NHM’s spending, Zucker also learned quickly that Bloom was writing checks from NHM’s checking account to pay for his personal expenses, including numerous checks that were paid to construction companies, interior design firms such as Paoli Design, and art dealers such as Anita Friedman Fine Arts. (*See* Ex. 7 at 60:8-61:6, 217:14-218:19; Ex. 8 (NHM Transaction List By Vendor) at 1, 10.) In a meeting in 2004, Zucker and Bloom agreed that any money that was transferred from the Fund to NHM or Bloom that was not for a business purpose would be treated as a “note receivable.” (*See* Ex. 7 at 67:16-68:4.) Zucker also agreed to begin documenting in the accounting ledgers all of Bloom’s personal expenses that were paid for using money stolen from North Hills’ investors. (*See id.*; Ex. 4 at 1-30.) These meticulously-maintained ledgers demonstrate that Zucker had intimate knowledge of how Bloom was stealing Plaintiffs’ money.

29. Indeed, even the most cursory review of the ledgers that Zucker prepared reveals Bloom’s persistent fraud and theft. The ledgers show that during the first half of 2004, when Zucker first began working for North Hills and NHM, Bloom transferred hundreds of thousands of dollars to himself weekly, and sometimes daily. For example, the ledgers show the following transfers from North Hills to NHM under the guise of “notes receivable” in just six months of 2004:

<b>Date</b>	<b>Note Receivable</b>
1/15/04	\$250,000
1/25/04	\$750,000
2/3/04	\$150,000
3/10/04	\$200,000

4/15/04	\$200,000
4/15/04	\$250,000
4/19/04	\$100,000
5/5/04	\$300,000
5/16/04	\$100,000
5/17/04	\$100,000
5/24/04	\$50,000
6/3/04	\$75,000
6/15/04	\$220,000
6/21/04	\$50,000

(See Ex. 3 at 20-21.)

30. The ledgers also reflect that Bloom was pulling out hundreds of thousands of dollars each month from NHM under the guise of false “officer compensation,” also on a daily or weekly basis. For example, during the first half of 2004, Bloom made the following sporadic and frequent payments to himself from NHM as “officer compensation”:

<b>Date</b>	<b>Officer Compensation</b>
1/10/04	\$125,000
2/4/04	\$100,000
3/12/04	\$110,000
3/29/04	\$52,000
4/11/04	\$80,000
4/26/04	\$85,000
5/6/04	\$40,000

5/7/04	\$110,000
5/18/04	\$25,000
5/27/04	\$40,000
6/25/04	\$30,000
6/30/04	\$15,000

(See Ex. 4 at 64-65.) These payments were well beyond the 1% annual management fee, payable quarterly, and the 20% of profits above a profitability hurdle of 8%, calculated annually, that NHM was supposed to take under the Fund's terms. (See Ex. 9 (2001 PPM) at 4.) In fact, the Fund's audited financial statement for 2003, which Zucker reviewed, indicated that in 2003 NHM only collected \$292,393 in management fees and no incentive fee (see Ex. 10 (2003 North Hills Financial Statement) at 11), whereas the ledgers showed over \$1.5 million in officer compensation the same year (see Ex. 4 at 64.)

31. Such payments were clear indicia of fraud, and Zucker, who maintained these records and prepared tax forms for investors based on these records, knew and facilitated it.

32. Indeed, all of these transfers to Bloom occurred during a year in which Bloom, according to the ledgers, spent nearly a million dollars at fancy design shops -- \$360,000 at Anita Friedman Fine Arts and over \$700,000 at Paoli Design -- using money taken directly from the NHM accounts. (See Ex. 8 at 1, 10.) Given the amount of money Bloom was pulling out of the Fund, in violation of Fund terms, how he was spending it, and the fact that he was not paying it back, Zucker had actual knowledge that Bloom was committing a fraud.

33. As the sole equity partner in Zucker & Associates, Zucker's actual knowledge of Bloom's fraud is imputed to Zucker & Associates.

34. In 2005, when it became public that the PAAF in which North Hills was so heavily invested was a fraudulent scheme, Zucker became concerned that the North Hills fraud

might come to light as well. Zucker asked Bloom to provide him cover by generating documentation that would effectively disguise the money stolen from North Hills as a would-be legitimate “loan” that Bloom was to repay. To satisfy Zucker, Bloom provided Zucker a phony Demand Note that Bloom had his counsel draft for him. While the Demand Note was dubious on its face, as it was backdated, had no due date, and interest was only payable on demand by Bloom as General Partner on Bloom as principal of NHM, the Demand Note purported to obligate NHM -- and therefore Bloom -- to repay the amount of money that it owed the Fund as of December 31, 2004 -- a total of \$13.23 million. (*See* Ex. 7 at 149:18-152:3.) Despite knowing that Bloom was misappropriating, not legitimately borrowing, these funds, Zucker and his firm continued serving as the Fund’s bookkeeper and accountant. And demand for payment of the Demand Note was never made; nor was the Demand Note repaid.

35. At the end of each year, the amount that Bloom had taken from the Fund continued to increase. (*See* Ex. 7 at 70:10-72:9; Ex. 3 at 20-23; Ex. 4 at 32-34.) In June 2007, Zucker told Bloom that the “loan” balance was “getting very large” and that he was “concerned about possible lawsuits without efforts to repay.” (Ex. 11 (Email from Zucker to Bloom, June 11, 2007).) Zucker was aware at that time that the Fund had not been audited for a few years and that the Fund’s investors had not been notified of Bloom’s transfers of funds to himself. (*See* Ex. 7 at 88:14-89:21.) Yet Zucker and his firm continued providing accounting services to North Hills and NHM, prepared K-1s for the investors, and never disclosed Bloom’s fraud to investors.

36. North Hills and NHM are not the first fraudulent enterprises for which Zucker has provided accounting services. At least four of Zucker’s former clients have been the subject of criminal investigations, and several of them were eventually convicted for their frauds.

37. By the middle of 2008, Zucker and Zucker & Associates knew that Bloom had taken more than \$14 million from the Fund. (*See* Ex. 3 at 20-23; Ex. 4 at 32-34.) All the while, Zucker and his firm furthered the fraud by preparing the Fund's false tax returns and the Schedule K-1s that were distributed to the individual partners -- including Plaintiffs' K-1s for 2004, 2005, 2006, and 2007. (*See* Ex. 7 at 210:17-211:22; Ex. 12 (ADF K-1s); Ex. 13 (ADI K-1s); Ex. 14 (Mario Borini K-1s); Ex. 15 (Bianca Borini K-1s); Ex. 16 (Joseph Borini K-1s).) Zucker also drafted cover letters addressed to Plaintiffs that were distributed along with the K-1s. (*See* Ex. 7 at 212:9-214:18; Ex. 17 (October 11, 2007 letters from Zucker to Plaintiffs).) These letters stated that the K-1s contained information relating to Plaintiffs' investments in North Hills that should be reported on their income tax returns. (*See* Ex. 17.) Zucker knew that the Schedule K-1s he was preparing would be distributed to Plaintiffs specifically, and that Plaintiffs would be relying on the accuracy of those documents to complete their own tax returns. He also knew that Plaintiffs would be relying on the accuracy of the K-1s to inform their investment decisions with respect to North Hills.

38. The K-1s that Zucker and Zucker & Associates prepared for Plaintiffs were false. Zucker and his firm knew that Bloom was stealing money from the Fund in the form of fraudulent "notes receivable" and phony "officer compensation," but the K-1s did not reflect this, and so the returns were grossly overstated. (*See* Exs. 12-16; Ex. 2; Ex. 3 at 20-23; Ex. 4 at 32-34, 64-67.) Indeed, Zucker and his firm failed to inform Plaintiffs that their investment was essentially worthless. And to the extent Plaintiffs' K-1s did show interest income reflecting interest earned on the "notes receivable," this interest was not real, as it was not actually paid from NHM to the Fund. (*See* Ex. 3 at 20.) Thus, Zucker and Zucker & Associates not only provided inaccurate K-1s, but facilitated Bloom's fraud by shielding the existence of the

fraudulent “notes receivable” and phony “officer compensation” by issuing tax documentation that appeared legitimate to Plaintiffs.

39. Plaintiffs reasonably relied on the K-1s that Zucker and Zucker & Associates prepared as accurate and reflecting North Hills’ actual performance. Plaintiffs also reasonably relied on the K-1s to make investment decisions with respect to the Fund, including their decision to maintain their investment in the Fund.

**DAVIS, GRABER, AND DGPW FAILED TO DISCLOSE BLOOM’S FRAUD TO PLAINTIFFS AND MISLED PLAINTIFFS ABOUT THE STATUS OF NORTH HILLS**

40. DGPW had a multi-faceted relationship with Plaintiffs. First, North Hills retained DGPW in early 2002 to audit the Fund’s annual financial statements. Graber performed these audits, the purpose of which was to provide limited partners such as Plaintiffs with an accurate picture of the Fund’s financial situation and to ascertain whether there had been any misuse of funds. (*See* Ex. 18 (Excerpts from Graber Deposition Transcript) at 149:19-150:10; Ex. 19 (2001 North Hills Financial Statement); Ex. 20 (2002 North Hills Financial Statement); Ex. 10.) Second, at the time DGPW was auditing North Hills, it also performed compiling work for GBH, a revenue sharing vehicle wholly owned by Plaintiffs ADF and ADI. (*See* Ex. 18 at 231:7-232:15.) As such, ADF and ADI were also accounting clients of DGPW. Finally, Davis prepared the Borinis’ personal tax returns from 2000 through 2007, which reflected their investments in North Hills. The Borinis personally invested in North Hills, and Mario and Joseph Borini were trustees of ADF and ADI throughout this period.

41. DGPW, led by Graber, audited the Fund’s financial statements for the years ending 2001, 2002, and 2003. For each of those years, DGPW issued a “clean opinion” in their auditors’ report. A clean opinion meant that DGPW had discovered nothing to suggest that the



financial statements were not in accordance with general accounting principles and fairly stated. (See Ex. 18 at 65:20-67:6, 252:9-15; Ex. 19 at 4; Ex. 20 at 4; Ex. 10 at 4.)

42. DGPW issued these clean opinions despite knowing that Bloom was engaged in a scheme to defraud his investors. DGPW's knowledge of Bloom's fraud is evidenced by the documents that DGPW reviewed in performing their audit and by the financial statements themselves. In each of the audited financial statements for 2001, 2002, and 2003, DGPW included information relating to purported "notes receivable" that Bloom, through NHM, had issued to the Fund. These "notes receivable" included both paper notes and notes that were no more than notations in a ledger. (See Ex. 21 (2001 Note); Ex. 22 (2002 Note); Ex. 23 (2003 Notes Receivable Ledger).) Thus, DGPW was aware as early as 2002 that Bloom was withdrawing substantial amounts of money from the Fund for his own use.

43. Moreover, by the end of 2003, it was apparent to DGPW that Bloom's transfers were not merely once-a-year events, but weekly occurrences. According to a ledger that Graber reviewed in preparing the North Hills audit for the 2003 year, Bloom made the following transfers from North Hills to NHM under the guise of legitimate "notes receivable" in the first half of 2003 alone:

<b>Date</b>	<b>Note Receivable</b>
2/13/03	\$100,000
2/18/03	\$125,000
2/27/03	\$100,000
3/17/03	\$500,000
3/17/03	\$275,000
4/15/03	\$100,000
4/15/03	\$300,000

5/2/03	\$200,000
5/15/03	\$200,000
5/15/03	\$60,000
6/1/03	\$125,000
6/1/03	\$100,000
6/1/03	\$125,000

(See Ex. 23.)

44. Graber and DGPW were also aware that, by the end of 2003, Bloom had taken more than \$8 million out of the Fund, without documentation, and that Bloom had made very little effort to pay back the money he had taken. (See Ex. 18 at 181:7-182:9, 209:24-210:3; Ex. 10 at 10.)

45. On March 5, 2004, the Board of Directors of ADI at a board meeting telephoned Graber to discuss the financial condition of North Hills and to ask questions regarding DGPW's audit of the Fund. Despite knowledge of Bloom's theft, Graber personally reassured the trustees of ADI of North Hills' sound financial condition and failed to disclose Bloom's misconduct. (See Ex. 24 (Mar. 5, 2004 ADI Minutes) at 12.) As a result of this conversation with Graber, ADF decided to invest an additional \$2 million in North Hills, and ADI made an initial investment of \$2 million.

46. In addition, Graber's reassurances persuaded the Borinis to make substantial additions to their investments in North Hills. Between April 2004 and January 2005, Mario Borini invested an additional \$650,000, and Bianca and Joseph Borini each invested an additional \$250,000.

47. DGPW continued performing auditing services for North Hills. Finally, in the summer of 2005, presumably because the fraudulent PAAF in which North Hills was invested

was publicly revealed, Graber became nervous. Graber disclosed Bloom's misconduct to Davis, and both agreed that DGPW needed to contact an attorney. (*See* Ex. 7 at 275:21-276:14.) After consulting with an attorney, DGPW resigned from the North Hills account due to their discomfort with the amount of money Bloom owed the Fund's investors and Bloom's failure to pay it back. (*See* Ex. 18 at 253:17-256:6, 259:9-260:12, 261:22-262:17, 265:7-10.) DGPW did not complete an audit for the 2004 year. (*Id.* at 264:23-265:10.) Nor did DGPW correct any of the prior audits.

48. DGPW chose *not* to inform Plaintiffs of Bloom's theft even though they knew Plaintiffs were relying on their assurances. This was especially egregious because Plaintiffs were clients of DGPW in their own right. (*See* Ex. 18 at 231:7-232:15.) Indeed, the tax returns that DGPW prepared for the Borinis continued to be based on North Hills' false K-1s, even after DGPW had resigned from auditing North Hills because of concerns of misconduct.

49. In fact, it was not until the fall of 2008, during a series of phone calls with Mario Borini, that Davis and Graber finally disclosed to Plaintiffs that DGPW had resigned from auditing North Hills' financial statements in 2005 due to Bloom's ongoing theft of Plaintiffs' and other limited partners' money. During these calls, Davis disingenuously defended Bloom and insisted that he intended to repay what he owed Plaintiffs and that they should wait to bring any legal action against Bloom until he could make good on his "loan." Davis also told Plaintiffs that Bloom had new investors lined up who were going to pump \$50 million into the Fund at the end of December, and that another money manager was willing to loan Bloom \$10 million that somehow would specifically be used to pay back ADF and ADI. Though Davis refused to reveal this money manager's name, Plaintiffs later learned that it was Stephen Walsh, who in 2008 was

arrested for running yet another, separate Ponzi scheme. Plaintiffs never saw any of the money that Davis promised Bloom would deliver.

50. As the Borinis' tax preparer for the years 2000 through 2007, Davis and DGPW had a duty of due care with respect to the preparation of those returns. Because Davis had actual knowledge of Bloom's fraud, Davis knew that any income that the Borinis earned from their investment in North Hills was either substantially lower than the amounts reported on the Schedule K-1s that the Borinis received from North Hills or was entirely nonexistent. Davis, however, not only failed to disclose Bloom's fraud to the Borinis, he continued preparing their returns as if there were no problems with the income reported on the K-1s from North Hills. Davis also took no steps to correct the Borinis' tax returns that were filed before Davis learned of Bloom's fraud. As a result, Davis caused the Borinis to pay taxes on non-existent profits.

51. Moreover, because DGPW for many years provided both tax preparation services for the Borinis, two of whom were ADF's and ADI's trustees and directors, and auditing services for GBH, a wholly-owned investment vehicle of ADF and ADI, it had a special relationship of trust and confidence with Plaintiffs before it learned of the fraud at North Hills. This special relationship gave rise to a duty that imposed upon DGPW an obligation to disclose its knowledge of Bloom's fraud to all Plaintiffs. Had Bloom's fraud been revealed to them, Plaintiffs would have withdrawn from the Fund and certainly would not have put more money into the Fund in 2004 based on DGPW's false assurances.

**ROSENZWEIG FAILED TO PROPERLY OVERSEE THE DEALINGS AFFECTING NORTH HILLS AND PERPETUATED BLOOM'S FRAUDULENT SCHEME BY FAILING TO DISCLOSE THE THEFT TO NORTH HILLS' INVESTORS**

52. Rosenzweig was Bloom's second cousin. During his tenure as a director of NHM, Rosenzweig not only failed to perform the oversight and due diligence required of one of the Fund's fiduciaries, but facilitated Bloom's fraud by failing to disclose it to investors even

after he discovered it, despite his duty to do so. The July 27, 2001 Private Placement Memorandum (the “2001 PPM”), which Rosenzweig helped prepare and formulate, and which Plaintiffs relied on in making investment decisions, lists Rosenzweig as NHM’s only independent director (Bloom was the only other director). The 2001 PPM also states that NHM - - and thus Rosenzweig as a director -- has a “fiduciary duty to the Limited Partners to exercise good faith and fairness in all dealings affecting the Partnership.” (Ex. 9 at 9.) The 2001 PPM touted Rosenzweig’s credentials as a law partner at Olshan Grundman, specializing in securities law. ADF, ADI, and two of their trustees and directors, Mario and Joseph Borini, received a copy of this document on August 13, 2001, and thus understood that, as a director with fiduciary responsibilities, and securities law experience, Rosenzweig would provide independent oversight of the Fund’s operations and ensure that the Fund would not be dominated by Bloom.

53. Rosenzweig failed to perform any of the responsibilities of a director. Despite beginning his tenure as a director in 2001, Rosenzweig never reviewed any of the Fund’s annual financial statements until June 2005 -- after the PAAF in which the Fund was so heavily invested publicly collapsed as a fraud in its own right. (*See* Ex. 25 (Letter from Rosenzweig to Bloom, July 7, 2005).) Rosenzweig also never reviewed either the Fund’s or NHM’s accounting ledgers or any other books and records. (*See* Ex. 26 (Excerpts from Rosenzweig Deposition Transcript) at 39:4-40:19.) Instead, Rosenzweig relied on Bloom’s casual representations at sporadic lunch meetings, as well as cursory reviews of false monthly account statements that Bloom prepared, to learn about how the Fund’s supposed managers were performing and how the Fund was operating. (*See id.* at 37:13-39:3.) Had Rosenzweig reviewed the Fund’s ledgers or financial statements, he would have learned quickly of Bloom’s chronic pilfering of assets, which was evident on the face of those documents.

54. Even though Rosenzweig was not performing his duties as a director, he had no compunction about continuing to market himself as a director of NHM in later versions of North Hills Private Placement Memoranda that he helped draft and that were distributed to investors. (See, e.g., Ex. 27 (2004 PPM) at 9; Ex. 28 (2005 PPM) at 9.) Because Rosenzweig failed to perform the duties of a director, for over four years, Bloom's theft proceeded unfettered.

55. In June 2005, once the PAAF fraud was disclosed, Rosenzweig finally decided to look into his second cousin's financial transactions. Rosenzweig learned for the first time that more than 50 percent of the Fund was imprudently invested in a single investment, the PAAF, for the sake of personal kick-backs. (See Ex. 26 at 69:9-70:8; Ex. 25; Ex. 29 (Email from Rosenzweig to D. Zakarin, August 3, 2005).) And while Rosenzweig was previously aware of Bloom's role as a third-party marketer for the PAAF, in early July 2005, Rosenzweig learned that Bloom was receiving kick-backs for the North Hills investment. (Ex. 26 at 68:6-69:3.) Bloom also admitted to Rosenzweig that he had been taking money out of the Fund in the form of "notes receivable." (Ex. 25.) After Bloom's confession, Rosenzweig reviewed the Fund's financial statements, and learned that Bloom had taken, at the very least, \$8 million from the Fund in the form of phony "notes receivable." (Ex. 26 at 80:3-25.) (In fact, it was more.) In addition, as e-mails and correspondence between Rosenzweig and Bloom's lawyer reflect, Rosenzweig had discussions about Bloom's misappropriated funds with Bloom and Bloom's lawyer. (See Ex. 25; Ex. 30 (Letter from Rosenzweig to Bloom, copying Zakarin, November 3, 2005).)

56. Upon discovering Bloom's fraud in June 2005, Rosenzweig chose not to reveal it to investors such as Plaintiffs, *despite* the fact that he continued serving as a director of NHM until November 3, 2005, and that he had a fiduciary duty to Plaintiffs that would obligate him to

make such disclosures. Had Plaintiffs been made aware of Bloom's fraud in June or July 2005, they would have withdrawn from the Fund immediately.

57. Not only did Rosenzweig fail to disclose the fraud, but he helped Bloom conceal it. Rosenzweig aided Bloom in concealing his mismanagement of North Hills' assets and theft by encouraging him to retroactively create a back-dated, phony demand note to make it look like Bloom had borrowed the money. (Ex. 25.)

58. The note had no due date, and interest was payable only when Bloom demanded it of himself. On its face, the note was bogus. Bloom used this note for at least two illegitimate purposes. First, Bloom used the Demand Note to provide Zucker a basis (albeit dubious) for treating Bloom's misappropriated funds as "notes receivable" in the Fund's accounting ledgers and to continue sending out false K-1s to Plaintiffs. Second, in October 2008, Bloom relied on the Demand Note to misrepresent to ADF, ADI, and two of their trustees and directors, Mario and Joseph Borini, that their funds were invested in legitimate "corporate" notes that supposedly paid returns of around 8 percent. (*See* Ex. 31 (Emails from Bloom to J. Borini, October 30, 2008).)

59. As a result of Defendants' misconduct, Plaintiffs collectively lost over \$9.75 million in North Hills.

### **FIRST CAUSE OF ACTION**

#### **(On Behalf of Plaintiffs, Aiding and Abetting Fraud Against Zucker and Zucker & Associates)**

60. Plaintiffs incorporate by reference paragraphs 1-59 above as if set forth fully herein.

61. Zucker and Zucker & Associates aided and abetted Bloom's scheme to defraud North Hills' investors by knowingly and willingly preparing false Schedule K-1s for Plaintiffs.

62. Zucker had actual knowledge of the fraud. Between 2004 and 2008, Zucker and his firm acted as the accountant for North Hills and NHM, keeping detailed ledgers of all money that flowed in and out of their respective bank accounts. Each time Bloom would transfer money from the Fund to NHM under the guise of “notes receivable,” Zucker would make a notation in the ledgers. Similarly, he made an entry each time Bloom transferred money from NHM to himself under the guise of “officer compensation.” And every time Bloom spent money from the NHM account on expensive artwork, jewelry, and interior design fees, to name only a few, Zucker would ensure it was noted in the ledgers. Thus, Zucker was fully aware of how much money Bloom was taking out of the Fund and what he was spending it on.

63. Moreover, Zucker knew that Bloom had no intention of paying the money back. Each year the amount that Bloom had taken from the Fund would continue to increase. Zucker also knew that investors, including Plaintiffs, had not been notified of these transfers. In June 2007, Zucker told Bloom that he was “concerned about possible lawsuits without efforts to repay” -- further evidence of Zucker’s knowledge of the fraud. (Ex. 11.)

64. As the sole equity partner in Zucker & Associates, Zucker’s actual knowledge of Bloom’s fraud is imputed to Zucker & Associates.

65. Zucker and Zucker & Associates provided substantial assistance to the fraud by helping conceal it from Plaintiffs. Specifically, Zucker and his firm knowingly and willingly prepared false Schedule K-1 returns that Plaintiffs relied upon in preparing their own returns and in making investment decisions with respect to North Hills. These K-1s were false because they concealed from Plaintiffs the fact that Bloom was stealing money from the Fund in the form of fraudulent “notes receivable” and phony “officer compensation.” Nor did the K-1s indicate that Plaintiffs’ investments were essentially worthless. And to the extent Plaintiffs’ K-1s did show



interest income reflecting interest earned on the “notes receivable,” this interest was not real, as it was not actually paid from NHM to the Fund.

66. Because Zucker and Zucker & Associates prepared misleading K-1s, Bloom was able to continue to shield the reality of his fraud from Plaintiffs. Plaintiffs reasonably relied on the K-1s as confirmation of the actual year-end position of the Fund. Had Zucker and his firm disclosed the reality of Bloom’s fraud, Plaintiffs would have immediately withdrawn their investments from the Fund.

67. As a proximate result of Zucker’s and Zucker & Associates’ aiding and abetting Bloom’s and NHM’s fraudulent scheme, Plaintiffs have sustained, and will continue to sustain, substantial damages in an amount to be proven at trial.

## **SECOND CAUSE OF ACTION**

### **(On Behalf of Plaintiffs, Aiding and Abetting Breach of Fiduciary Duty Against Zucker and Zucker & Associates)**

68. Plaintiffs incorporate by reference paragraphs 1-67 above as if set forth fully herein.

69. Zucker and Zucker & Associates aided and abetted Bloom’s breach of his fiduciary duty to North Hills’ investors, including Plaintiffs, by knowingly and willingly preparing false Schedule K-1s for Plaintiffs.

70. Zucker had actual knowledge of Bloom’s breach of fiduciary duty. Between 2004 and 2008, Zucker and his firm acted as the accountant for North Hills and NHM, keeping detailed ledgers of all money that flowed in and out of their respective bank accounts. Each time Bloom would transfer money from the Fund to NHM under the guise of “notes receivable,” Zucker would make a notation in the ledgers. Similarly, he made an entry each time Bloom transferred money from NHM to himself under the guise of “officer compensation.” And every

time Bloom spent money from the NHM account on expensive artwork, jewelry, and interior design fees, to name only a few, Zucker would ensure it was noted in the ledgers. Thus, Zucker was fully aware of how much money Bloom was taking out of the Fund and what he was spending it on.

71. Moreover, Zucker knew that Bloom had no intention of paying the money back. Each year the amount that Bloom had taken from the Fund would continue to increase. Zucker also knew that investors, including Plaintiffs, had not been notified of these transfers. In June 2007, Zucker told Bloom that he was “concerned about possible lawsuits without efforts to repay” -- further evidence of Zucker’s knowledge of Bloom’s breach of fiduciary duty. (Ex. 11.)

72. As the sole equity partner in Zucker & Associates, Zucker’s actual knowledge of Bloom’s breach of fiduciary duty is imputed to Zucker & Associates.

73. Zucker and Zucker & Associates provided substantial assistance to the breach of fiduciary duty by helping conceal it from Plaintiffs. Specifically, Zucker and his firm knowingly and willingly prepared false Schedule K-1 returns that Plaintiffs relied upon in preparing their own returns and in making investment decisions with respect to North Hills. These K-1s were false because they concealed from Plaintiffs the fact that Bloom was stealing money from the Fund in the form of fraudulent “notes receivable” and phony “officer compensation.” Nor did the K-1s indicate that Plaintiffs’ investments were essentially worthless. And to the extent Plaintiffs’ K-1s did show interest income reflecting interest earned on the “notes receivable,” this interest was not real, as it was not actually paid from NHM to the Fund.

74. Because Zucker and Zucker & Associates prepared misleading K-1s, Bloom was able to continue to shield the reality of his breach of fiduciary duty from Plaintiffs. Plaintiffs reasonably relied on the K-1s as confirmation of the actual year-end position of the Fund. Had

Zucker and his firm disclosed the reality of Bloom's breach of his fiduciary duty to investors, Plaintiffs would have immediately withdrawn their investments from the Fund.

75. As a proximate result of Zucker's and Zucker & Associates' aiding and abetting Bloom's and NHM's breach of fiduciary duty, Plaintiffs have sustained, and will continue to sustain, substantial damages in an amount to be proven at trial.

### **THIRD CAUSE OF ACTION**

#### **(On Behalf of Plaintiffs, Accountant Malpractice Against Zucker and Zucker & Associates)**

76. Plaintiffs incorporate by reference paragraphs 1-75 above as if set forth fully herein.

77. Zucker and Zucker & Associates had a sufficiently close relationship with Plaintiffs such that they owed them a duty to exercise a reasonable degree of care and competence and to act with integrity and objectivity in the performance of their accounting services.

78. Zucker and Zucker & Associates prepared Plaintiffs' Schedule K-1s for their North Hills investment for the years 2004 through 2007. These K-1s, after being prepared by Zucker and his firm, were given to Bloom and sent directly to Plaintiffs. Thus, Zucker and his firm knew that the K-1s would be distributed to Plaintiffs.

79. Zucker also drafted cover letters addressed to Plaintiffs that accompanied the K-1s. These letters stated that the K-1s contained information relating to Plaintiffs' investments in North Hills that should be reported on their income tax returns. Thus, Zucker and his firm knew that Plaintiffs would be relying on the accuracy of the K-1s to complete their own tax returns and make investment decisions.

80. Zucker and Zucker & Associates failed to prepare accurate Schedule K-1s. Despite knowing that Bloom was stealing money from the Fund and that Plaintiffs' investments

in North Hills were essentially worthless, Zucker and his firm failed to reveal these facts in the K-1s. And to the extent Plaintiffs' K-1s did show interest income reflecting interest earned on the "notes receivable," this interest was not real, as it was not actually paid from NHM to the Fund. By failing to prepare accurate Schedule K-1s, Zucker and Zucker & Associates breached their duty under Rule 102-1 and Rule 102-4 of the AICPA Code of Professional Conduct to not knowingly misrepresent facts in the preparation of financial statements or records.

81. Because Zucker and Zucker & Associates failed to prepare accurate K-1s, Bloom was able to continue to shield the reality of his fraud from Plaintiffs. Had Zucker and his firm disclosed the reality of Bloom's fraud, Plaintiffs would have immediately withdrawn their investments from the Fund.

82. As a proximate result of Zucker's and Zucker & Associates' accountant malpractice, Plaintiffs have sustained, and will continue to sustain, substantial damages in an amount to be proven at trial.

#### **FOURTH CAUSE OF ACTION**

##### **(On Behalf of Plaintiffs, Fraud Against Zucker and Zucker & Associates)**

83. Plaintiffs incorporate by reference paragraphs 1-82 above as if set forth fully herein.

84. Zucker and Zucker & Associates defrauded Plaintiffs by preparing false Schedule K-1s with actual knowledge of their falsity or with reckless indifference as to their veracity. Plaintiffs, in turn, relied upon the Schedule K-1s that Zucker and his firm prepared in completing their own returns and in making investment decisions with respect to North Hills. These false K-1s gave Plaintiffs a misleading impression of the value of their investment in North Hills.

85. Between 2004 and 2008, Zucker and his firm acted as the accountant for North Hills and NHM, keeping detailed ledgers of all money that flowed in and out of their respective

bank accounts. Each time Bloom would transfer money from the Fund to NHM under the guise of “notes receivable,” a notation would be made in the ledgers. Similarly, an entry would be made each time Bloom transferred money from NHM to himself under the guise of “officer compensation.” And every time Bloom spent money from the NHM account on expensive artwork, jewelry, and interior design fees, to name only a few, Zucker would ensure it was noted in the ledgers. Thus, Zucker was fully aware of how much money Bloom was taking out of the Fund and what he was spending it on.

86. Moreover, Zucker knew that Bloom had no intention of paying the money back. Each year the amount that Bloom had taken from the Fund would continue to increase. Zucker also knew that investors, including Plaintiffs, had not been notified of these transfers. In June 2007, Zucker told Bloom that he was “concerned about possible lawsuits without efforts to repay.” (Ex. 11.) Thus, Zucker was on notice that Bloom was defrauding his investors.

87. As the sole equity partner in Zucker & Associates, Zucker’s actual knowledge of Bloom’s fraud is imputed to Zucker & Associates.

88. Despite being on notice of Bloom’s misconduct, Zucker and his firm prepared Schedule K-1s that concealed from Plaintiffs the fact that Bloom was stealing money from the Fund in the form of fraudulent “notes receivable” and phony “officer compensation” and failed to disclose that Plaintiffs’ investments were essentially worthless. And to the extent Plaintiffs’ K-1s did show interest income reflecting interest earned on the “notes receivable,” this interest was not real, as it was not actually paid from NHM to the Fund. Thus, Zucker and Zucker & Associates had actual knowledge that the Schedule K-1s were false.

89. In the alternative, Zucker and his firm were on notice of circumstances raising doubts as to the veracity of the Schedule K-1s, which imposed upon them an obligation to verify

their accuracy. Because Zucker and Zucker & Associates took no steps to verify their accuracy, they demonstrated a reckless indifference as to the truthfulness of the K-1s.

90. Because Zucker and his firm prepared false K-1s with actual knowledge of their falsity or with reckless indifference as to their veracity, Zucker intentionally or recklessly committed fraud on Plaintiffs. Plaintiffs reasonably relied on the K-1s as confirmation of the actual year-end position of the Fund. Had Zucker and Zucker & Associates disclosed the reality of Bloom's fraud, Plaintiffs would have immediately withdrawn their investments from the Fund.

91. As a proximate result of Zucker's and Zucker & Associates' fraud, Plaintiffs have sustained, and will continue to sustain, substantial damages in an amount to be proven at trial.

#### **FIFTH CAUSE OF ACTION**

**(On Behalf of Mario Borini, Individually and as Trustee of The Mario and Bianca Borini Trust, Bianca Borini, Individually and as Trustee of The Mario and Bianca Borini Trust, Bianca Borini, as Trustee of The Bianca Borini Trust, and Joseph Borini, Accountant Malpractice Against Davis and DGPW)**

92. Plaintiffs incorporate by reference paragraphs 1-91 above as if set forth fully herein.

93. DGPW, through Davis, prepared the Borinis' personal tax returns for the years 2000 through 2007. As a result, Davis and DGPW owed the Borinis a duty to exercise a reasonable degree of care and competence in the preparation of those returns.

94. Davis and DGPW knew that each of the Borinis were investors in North Hills. DGPW, through Graber, also provided auditing services for North Hills from 2002 until 2005. By 2004, DGPW and Graber knew that Bloom was stealing money from investors based on the quantity of money that Bloom was transferring from North Hills to NHM under the guise of "notes receivable" and Bloom's failure to pay back that money. In 2005, DGPW resigned its

position as North Hills' auditor on the ground that Bloom was stealing money from his investors, including the Borinis. Prior to the time that DGPW resigned the North Hills account, Graber informed Davis of Bloom's misconduct.

95. Because Davis had actual knowledge of Bloom's fraud by at least 2005, Davis knew or should have known that any income that the Borinis earned from their investments in North Hills was either substantially lower than the amounts reported on the Schedule K-1s that the Borinis received from North Hills or was entirely nonexistent. Nonetheless, Davis failed to disclose Bloom's fraud to the Borinis and continued preparing the Borinis' returns as if there were no problems with the income reported on the K-1s from North Hills. By failing to prepare the Borinis' returns accurately, Davis and DGPW breached their duty under Rule 201 and Rule 501-4 of the AICPA Code of Professional Conduct to exercise due professional care and to not, by virtue of their negligence, make materially false and misleading entries in financial statements or records they prepare.

96. As a result of Davis's and DGPW's negligence, between 2005 and 2007 the Borinis filed personal tax returns containing incorrect figures and paid taxes on phantom profits.

97. Davis also failed to take any steps to correct the Borinis' returns that were filed before Davis learned of Bloom's fraud. Thus, the Borinis overpaid taxes for the year 2003, when they first invested in North Hills, through 2004.

98. As a proximate result of Davis's and DGPW's accountant malpractice, the Borinis have sustained, and will continue to sustain, substantial damages in an amount to be proven at trial.

## **SIXTH CAUSE OF ACTION**

### **(On Behalf of Plaintiffs, Breach of Fiduciary Duty Against Davis, Graber, and DGPW)**

99. Plaintiffs incorporate by reference paragraphs 1-98 above as if set forth fully herein.

100. DGPW, through Davis, prepared the Borinis' personal tax returns for the years 2000 through 2007. In addition, DGPW provided auditing services to GBH, a wholly-owned investment vehicle of ADF and ADI, during the early 2000s. Davis, Graber, and DGPW also knew that Mario and Joseph Borini were trustees and directors of ADF and ADI, and that they helped make investment decisions for ADF and ADI with respect to North Hills. As such, the Borinis, ADF, and ADI were all clients of DGPW and had a special relationship of trust and confidence with DGPW.

101. DGPW, through Graber, also provided auditing services for North Hills from 2002 until 2005. By early 2004, DGPW and Graber knew that Bloom was stealing money from investors based on the quantity of money that Bloom was transferring from North Hills to NHM under the guise of "notes receivable" and Bloom's failure to pay back that money. In 2005, DGPW resigned its position as North Hills' auditor on the ground that Bloom was stealing money from his investors, including Plaintiffs. Prior to the time that DGPW resigned the North Hills account, Graber informed Davis of Bloom's misconduct.

102. The special relationship of trust and confidence between the parties gave rise to a fiduciary duty that imposed upon DGPW an obligation to disclose its knowledge of Bloom's fraud to Plaintiffs. Davis, Graber, and DGPW, however, never informed Plaintiffs of Bloom's fraud until the fall of 2008 -- much too late. Had Bloom's fraud been revealed to Plaintiffs in 2004 -- at which time DGPW knew that Bloom was defrauding his investors -- Plaintiffs would have immediately withdrawn their investments from the Fund.



103. Graber and DGPW again breached their fiduciary duty to Plaintiffs when they made false assurances in March 2004 to the Board of Directors of ADI that the financial condition of North Hills was sound. As a result of these false assurances, Plaintiffs invested more funds and maintained their existing investment. Similarly, Davis and DGPW breached their fiduciary duty to Plaintiffs when they prepared the Borinis' personal tax returns and falsely signed off on the legitimacy of the North Hills investment, which was incorporated in the returns. Had the Borinis known the truth, they would have redeemed their and ADF's and ADI's investment before it had become completely worthless.

104. As a proximate result of Davis's, Graber's, and DGPW's breach of fiduciary duty, Plaintiffs have sustained, and will continue to sustain, substantial damages in an amount to be proven at trial.

#### **SEVENTH CAUSE OF ACTION**

##### **(On Behalf of Plaintiffs, Aiding and Abetting Fraud Against Davis, Graber, and DGPW)**

105. Plaintiffs incorporate by reference paragraphs 1-104 above as if set forth fully herein.

106. DGPW, through Davis, prepared the Borinis' personal tax returns for the tax years 2000 through 2007. In addition, DGPW provided auditing services to GBH, a wholly-owned investment vehicle of ADF and ADI, during the early 2000s. Davis, Graber, and DGPW also knew that Mario and Joseph Borini were trustees and directors of ADF and ADI, and that they helped make investment decisions for ADF and ADI with respect to North Hills. As such, the Borinis, ADF, and ADI were all clients of DGPW and had a special relationship of trust and confidence with DGPW.

107. DGPW, through Graber, also provided auditing services to North Hills from 2002 until 2005. By early 2004, DGPW and Graber had actual knowledge of Bloom's fraud, based on

the quantity of money that Bloom was transferring from North Hills to NHM under the guise of “notes receivable” and Bloom’s failure to pay back that money. In 2005, DGPW resigned its position as North Hills’ auditor on the ground that Bloom was stealing money from his investors, including Plaintiffs. Prior to the time that DGPW resigned the North Hills account, Graber informed Davis of Bloom’s misconduct.

108. Davis, Graber, and DGPW provided substantial assistance to Bloom’s fraud. They made false assurances in March 2004 to the Board of Directors of ADI that the financial condition of North Hills was sound. As a result of these false assurances, Plaintiffs invested more funds and maintained their existing investment. Similarly, when Davis and DGPW prepared the Borinis’ personal tax returns, they again falsely signed off on the legitimacy of the North Hills investment, which was incorporated in the returns. Had the Borinis known the truth, they would have redeemed their and ADF’s and ADI’s investment before it had become completely worthless.

109. Moreover, the special relationship of trust and confidence between the parties gave rise to an obligation to disclose their knowledge of Bloom’s fraud to Plaintiffs. Davis, Graber, and DGPW, however, intentionally failed to reveal Bloom’s fraud until 2008 -- much too late. Had Bloom’s fraud been revealed to Plaintiffs in 2004 -- at which time DGPW knew that Bloom was defrauding his investors -- Plaintiffs would have immediately withdrawn their investments from the Fund.

110. As a proximate result of Davis’s, Graber’s, and DGPW’s aiding and abetting Bloom’s and NHM’s fraudulent scheme, Plaintiffs have sustained, and will continue to sustain, substantial damages in an amount to be proven at trial.

## **EIGHTH CAUSE OF ACTION**

### **(On Behalf of Plaintiffs, Aiding and Abetting Breach of Fiduciary Duty Against Davis, Graber, and DGPW)**

111. Plaintiffs incorporate by reference paragraphs 1-110 above as if set forth fully herein.

112. DGPW, through Davis, prepared the Borinis' personal tax returns for the tax years 2000 through 2007. In addition, DGPW provided auditing services to GBH, a wholly-owned investment vehicle of ADF and ADI, during the early 2000s. Davis, Graber, and DGPW also knew that Mario and Joseph Borini were trustees and directors of ADF and ADI, and that they helped make investment decisions for ADF and ADI with respect to North Hills. As such, the Borinis, ADF, and ADI were all clients of DGPW and had a special relationship of trust and confidence with DGPW.

113. DGPW, through Graber, also provided auditing services to North Hills from 2002 until 2005. By early 2004, DGPW and Graber had actual knowledge of Bloom's breach of his fiduciary duty to North Hills' investors, including Plaintiffs, based on the quantity of money that Bloom was transferring from North Hills to NHM under the guise of "notes receivable" and Bloom's failure to pay back that money. In 2005, DGPW resigned its position as North Hills' auditor on the ground that Bloom was stealing money from his investors, including Plaintiffs. Prior to the time that DGPW resigned the North Hills account, Graber informed Davis of Bloom's misconduct.

114. Davis, Graber, and DGPW provided substantial assistance to Bloom's breach of fiduciary duty. They made false assurances in March 2004 to the Board of Directors of ADI that the financial condition of North Hills was sound. As a result of these false assurances, Plaintiffs invested more funds and maintained their existing investment. Similarly, when Davis and

DGPW prepared the Borinis' personal tax returns, they again falsely signed off on the legitimacy of the North Hills investment, which was incorporated in the returns. Had the Borinis known the truth, they would have redeemed their and ADF's and ADI's investment before it had become completely worthless.

115. Moreover, the special relationship of trust and confidence between the parties gave rise to an obligation to disclose their knowledge of Bloom's breach of his fiduciary duty to Plaintiffs. Davis, Graber, and DGPW, however, intentionally failed to reveal Bloom's breach of fiduciary duty until 2008 -- much too late. Had Bloom's breach of fiduciary duty been revealed to Plaintiffs in 2004 -- at which time DGPW knew that Bloom had breached his fiduciary duty to his investors -- Plaintiffs would have immediately withdrawn their investments from the Fund.

116. As a proximate result of Davis's, Graber's, and DGPW's aiding and abetting Bloom's and NHM's breach of fiduciary duty, Plaintiffs have sustained, and will continue to sustain, substantial damages in an amount to be proven at trial.

#### **NINTH CAUSE OF ACTION**

##### **(On Behalf of Plaintiffs, Negligent Misrepresentation Against Davis, Graber, and DGPW)**

117. Plaintiffs incorporate by reference paragraphs 1-116 above as if set forth fully herein.

118. DGPW, through Davis, prepared the Borinis' personal tax returns for the years 2000 through 2007. In addition, DGPW provided auditing services to GBH, a wholly-owned investment vehicle of ADF and ADI, during the early 2000s. Davis, Graber, and DGPW also knew that Mario and Joseph Borini were trustees and directors of ADF and ADI, and that they helped make investment decisions for ADF and ADI with respect to North Hills. As such, the Borinis, ADF, and ADI were all clients of DGPW and had a special relationship of trust and confidence with DGPW.

119. DGPW, through Graber, also provided auditing services for North Hills from 2002 until 2005. By early 2004, DGPW and Graber knew that Bloom was stealing money from investors based on the quantity of money that Bloom was transferring from North Hills to NHM under the guise of “notes receivable” and Bloom’s failure to pay back that money. In 2005, DGPW resigned its position as North Hills’ auditor on the ground that Bloom was stealing money from his investors, including Plaintiffs. Prior to the time that DGPW resigned the North Hills account, Graber informed Davis of Bloom’s misconduct.

120. The special relationship of trust and confidence between the parties gave rise to a duty that imposed upon DGPW an obligation to disclose its knowledge of Bloom’s fraud to Plaintiffs. Davis, Graber, and DGPW, however, negligently failed to inform Plaintiffs of Bloom’s fraud until the fall of 2008 -- much too late. Had Bloom’s fraud been revealed to Plaintiffs in 2004 -- at which time DGPW knew that Bloom was defrauding his investors -- Plaintiffs would have immediately withdrawn their investments from the Fund.

121. In addition, Graber and DGPW negligently misrepresented North Hills’ financial condition to Plaintiffs. Despite having actual knowledge of Bloom’s fraud, during a telephone conference with ADI’s Board of Directors on March 5, 2004, Graber gave Plaintiffs assurances that the Fund was on solid footing and that there had been no misuse of funds. Plaintiffs relied on this information. This misrepresentation convinced ADF to invest \$2 million in the Fund and ADI to make an initial investment of \$2 million. In addition, Graber’s reassurances persuaded the Borinis to invest an additional \$1.15 million in North Hills over the course of the next year. Had Graber not misled Plaintiffs, they would not have invested additional money and, in fact, would have withdrawn from the Fund.

122. As a proximate result of Davis's, Graber's, and DGPW's negligent misrepresentation and negligent misrepresentation by omission, Plaintiffs have sustained, and will continue to sustain, substantial damages in an amount to be proven at trial

#### **TENTH CAUSE OF ACTION**

##### **(On Behalf of Plaintiffs, Fraud Against Davis, Graber, and DGPW)**

123. Plaintiffs incorporate by reference paragraphs 1-122 above as if set forth fully herein.

124. DGPW, through Davis, prepared the Borinis' personal tax returns for the tax years 2000 through 2007. In addition, DGPW provided auditing services to GBH, a wholly-owned investment vehicle of ADF and ADI, during the early 2000s. Davis, Graber, and DGPW also knew that Mario and Joseph Borini were trustees and directors of ADF and ADI, and that they helped make investment decisions for ADF and ADI with respect to North Hills. As such, the Borinis, ADF, and ADI were all clients of DGPW and had a special relationship of trust and confidence with DGPW.

125. DGPW, through Graber, also provided auditing services to North Hills from 2002 until 2005. Before March 2004, DGPW and Graber had actual knowledge of Bloom's fraud, based on the quantity of money that Bloom was transferring from North Hills to NHM under the guise of "notes receivable" and Bloom's failure to pay back that money. In 2005, DGPW resigned its position as North Hills' auditor on the ground that Bloom was stealing money from his investors, including Plaintiffs. Prior to the time that DGPW resigned the North Hills account, Graber informed Davis of Bloom's misconduct.

126. Graber and DGPW defrauded Plaintiffs by affirmatively misrepresenting North Hills' financial condition to Plaintiffs. Despite having actual knowledge of Bloom's fraud, during a telephone conference with ADI's Board of Directors on March 5, 2004, Graber gave

Plaintiffs assurances that the Fund was on solid footing and that there had been no misuse of funds. Graber and DGPW knew Plaintiffs were asking for this information as part of their investment analysis, and intentionally provided false assurances. Plaintiffs relied on this information. This misrepresentation convinced ADF to invest \$2 million in the Fund and ADI to make an initial investment of \$2 million. In addition, Graber's reassurances caused the Borinis to invest an additional \$1.15 million in North Hills over the course of the next year. Had Graber not misled Plaintiffs, they would not have invested additional money and, in fact, would have withdrawn from the Fund. Similarly, when Davis and DGPW prepared the Borinis' personal tax returns, they again falsely signed off on the legitimacy of the North Hills investment, which was incorporated in the returns. Had the Borinis known the truth, they would have redeemed their and ADF's and ADI's investment before it had become completely worthless.

127. Moreover, the special relationship of trust and confidence between the parties gave rise to an obligation to disclose their knowledge of Bloom's fraud to Plaintiffs. Davis, Graber, and DGPW, however, intentionally failed to reveal Bloom's fraud until 2008 -- much too late. Had Bloom's fraud been revealed to Plaintiffs in 2004 -- at which time DGPW knew that Bloom was defrauding his investors -- Plaintiffs would have immediately withdrawn their investments from the Fund.

128. As a proximate result of Davis's, Graber's, and DGPW's fraud, Plaintiffs have sustained, and will continue to sustain, substantial damages in an amount to be proven at trial.

### **ELEVENTH CAUSE OF ACTION**

#### **(On Behalf of Plaintiffs, Breach of Fiduciary Duty Against Rosenzweig)**

129. Plaintiffs incorporate by reference paragraphs 1-128 above as if set forth fully herein.

130. Rosenzweig, as a director of NHM, the General Partner of North Hills, had a fiduciary duty to North Hills' limited partners, including Plaintiffs. Rosenzweig's fiduciary obligations are set forth in the 2001 PPM, which Rosenzweig helped draft. That document states that NHM, and thus Rosenzweig as one of its directors, has a "fiduciary duty to the Limited Partners to exercise good faith and fairness in all dealings affecting the Partnership." (Ex. 9 at 9.) ADF, ADI, and two of their trustees and directors, Mario and Joseph Borini, received a copy of the 2001 PPM on August 13, 2001, and understood that, as a director with fiduciary responsibilities and securities law experience, Rosenzweig would oversee the Fund with the care and diligence that is expected of a director and fiduciary.

131. Rosenzweig breached his fiduciary duty to Plaintiffs by utterly failing to perform any of the oversight and due diligence that was required of him as a one of the Fund's fiduciaries. Rosenzweig never reviewed any of the Fund's annual financial statements until June 2005 -- nearly four years into his tenure as a director -- and never reviewed either the Fund's or NHM's accounting ledgers or any other books and records. (Ex. 26 at 39:4-40:19.) Instead of performing his own oversight and due diligence, Rosenzweig relied on Bloom's occasional and casual, lunch-time representations as to the Fund's performance and operations, as well as his own cursory review of false monthly account statements that Bloom prepared. Had Rosenzweig reviewed the Fund's ledgers or financial statements, he would have learned quickly of Bloom's mismanagement and fraud, which was evident on the face of those documents.

132. Because Rosenzweig failed to perform the duties of a director, for over four years he failed to stop Bloom's theft. He also failed to learn how Bloom was spending the stolen money, and the fact that Bloom had invested over 50 percent of investors' money in a single fund, the PAAF, and had received kick-backs for those investments. (Ex. 25.) Had Rosenzweig



been conducting the oversight that reasonably should be expected of a director, he could have stopped Bloom's fraud and Plaintiffs would have learned of it much sooner.

133. Rosenzweig also breached his fiduciary duty to Plaintiffs by failing to disclose Bloom's fraud after discovering it. In June and July 2005, Bloom admitted to Rosenzweig that he had been taking money out of the Fund in the form of sham, undocumented "notes receivable" and that he had been receiving kick-backs for investing North Hills' money in the PAAF. (Ex. 25.) Rosenzweig then confirmed, by reviewing the Fund's financial statements, that Bloom had stolen at least \$8 million from the Fund. (Ex. 26 at 80:3-25.) Despite having knowledge of the fraud by the summer of 2005, Rosenzweig made no attempt to inform Plaintiffs of what had occurred, despite his obligation as a fiduciary to do so. Had ADF and ADI been made aware of Bloom's fraud in June or July 2005, they would have withdrawn from the Fund immediately.

134. Rosenzweig again breached his fiduciary duty to Plaintiffs when he aided Bloom in concealing his mismanagement of North Hills' assets and theft by encouraging him to "promptly reinstate a demand Note payable by NHM to the Fund" for the money that Bloom had stolen from North Hills. (Ex. 25.) Rosenzweig made this recommendation to try to cover up Bloom's outright theft as a would-be loan after the fact. However, Rosenzweig knew that the taking money out of the Fund for personal use was an improper act no matter how it was belatedly papered, and should have been disclosed to investors.

135. Bloom later used the Demand Note created by Bloom's counsel to further his fraud. First, Bloom used the Demand Note to give Zucker cover in preparing false K-1s, which were used to mislead investors and keep the fraudulent scheme afloat. Second, Bloom relied on the Demand Note to misrepresent to ADF, ADI, and two of their trustees and directors, Mario

and Joseph Borini, that their funds were invested in legitimate “corporate” notes that supposedly paid returns of around 8 percent. (*See* Ex. 31.)

136. As a proximate result of Rosenzweig’s breach of fiduciary duty, Plaintiffs have sustained, and will continue to sustain, substantial damages in an amount to be proven at trial.

## **TWELFTH CAUSE OF ACTION**

### **(On Behalf of Plaintiffs, Aiding and Abetting Fraud Against Rosenzweig)**

137. Plaintiffs incorporate by reference paragraphs 1-136 above as if set forth fully herein.

138. Rosenzweig aided and abetted Bloom’s fraud by failing to disclose that fraud to ADF and ADI, despite having a fiduciary obligation to do so, and by encouraging Bloom to create a note to cover up Bloom’s theft after the fact. Rosenzweig, as one of NHM’s two directors, had a fiduciary duty to North Hills’ limited partners, including Plaintiffs. Rosenzweig’s position as a director, and his fiduciary obligations, are set forth in the 2001 PPM, which ADF, ADI, and two of their trustees and directors, Mario and Joseph Borini, received.

139. Rosenzweig had actual knowledge of the fraud. In June and July 2005, Bloom admitted to Rosenzweig that he had been taking money out of the Fund in the form of “notes receivable” and that he had been receiving kick-backs for investing North Hills’ money in the PAAF. (Ex. 25.) Rosenzweig then confirmed, by reviewing the Fund’s financial statements, that Bloom had stolen at least \$8 million from the Fund. (Ex. 26 at 80:3-25.)

140. Rosenzweig provided substantial assistance to the fraud by keeping it quiet and not disclosing it to Plaintiffs. Despite having full knowledge of the fraud by the summer of 2005 -- and despite having an obligation as a fiduciary to disclose Bloom’s malfeasance -- Rosenzweig made no attempt to inform *any* investor, including Plaintiffs, of what had occurred. Had

Plaintiffs been made aware of Bloom's fraud in June or July 2005, they would have withdrawn from the Fund immediately.

141. Rosenzweig also provided substantial assistance to Bloom's fraud when he aided Bloom in concealing his mismanagement of North Hills' assets and theft by encouraging him to "promptly reinstate a demand Note payable by NHM to the Fund" for the money that Bloom had stolen from North Hills. (Ex. 25.) Rosenzweig made this recommendation to try to cover up Bloom's outright theft as a would-be loan after the fact. However, Rosenzweig knew that the taking money out of the Fund for personal use was an improper act no matter how it was belatedly papered, and should have been disclosed to investors

142. Bloom later used the Demand Note to further his fraud. First, Bloom used the Demand Note to give Zucker cover in continuing to prepare false K-1s, which Bloom used to mislead investors, and on which Plaintiffs relied. Second, Bloom relied on the Demand Note to misrepresent to ADF, ADI, and two of their trustees and directors, Mario and Joseph Borini, that their funds were invested in legitimate notes that supposedly paid returns of around 8 percent. (See Ex. 31.)

143. As a proximate result of Rosenzweig's aiding and abetting Bloom's and NHM's fraudulent scheme, Plaintiffs have sustained, and will continue to sustain, substantial damages in an amount to be proven at trial.

**WHEREFORE**, Plaintiffs ADF, ADI, Mario Borini, individually and as a trustee of The Mario and Bianca Borini Trust, Bianca Borini, individually and as a trustee of The Mario and Bianca Borini Trust, Bianca Borini, as trustee of The Bianca Borini Trust, and Joseph Borini respectfully request judgment as follows:

(a) On their First Cause of Action for aiding and abetting fraud, awarding damages against Zucker and Zucker & Associates in an amount to be determined at trial, together with prejudgment interest, punitive damages, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

(b) On their Second Cause of Action for aiding and abetting breach of fiduciary duty, awarding damages against Zucker and Zucker & Associates in an amount to be determined at trial, together with prejudgment interest, punitive damages, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

(c) On their Third Cause of Action for accountant malpractice, awarding damages against Zucker and Zucker & Associates in an amount to be determined at trial, together with prejudgment interest, punitive damages, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

(d) On their Fourth Cause of Action for fraud, awarding damages against Zucker and Zucker & Associates in an amount to be determined at trial, together with prejudgment interest, punitive damages, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

(e) On their Fifth Cause of Action for accountant malpractice, awarding damages against Davis and DGPW in an amount to be determined at trial, together with prejudgment interest, punitive damages, the costs of

prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

(f) On their Sixth Cause of Action for breach of fiduciary duty, awarding damages against Davis, Graber, and DGPW in an amount to be determined at trial, together with prejudgment interest, punitive damages, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

(g) On their Seventh Cause of Action for aiding and abetting fraud, awarding damages against Davis, Graber, and DGPW in an amount to be determined at trial, together with prejudgment interest, punitive damages, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

(h) On their Eighth Cause of Action for aiding and abetting breach of fiduciary duty, awarding damages against Davis, Graber, and DGPW in an amount to be determined at trial, together with prejudgment interest, punitive damages, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

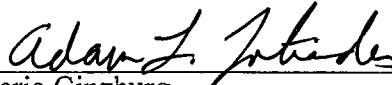
(i) On their Ninth Cause of Action for negligent misrepresentation, awarding damages against Davis, Graber, and DGPW in an amount to be determined at trial, together with prejudgment interest, punitive damages, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

(j) On their Tenth Cause of Action for fraud, awarding damages against Davis, Graber, and DGPW in an amount to be determined at trial, together with prejudgment interest, punitive damages, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

(k) On their Eleventh Cause of Action for breach of fiduciary duty, awarding damages against Rosenzweig in an amount to be determined at trial, together with prejudgment interest, punitive damages, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

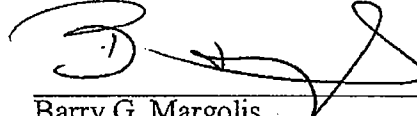
(l) On their Twelfth Cause of Action for aiding and abetting fraud, awarding damages against Rosenzweig in an amount to be determined at trial, together with prejudgment interest, punitive damages, the costs of prosecuting this action, reasonable attorneys' fees, and other such relief as the Court may deem appropriate.

Dated: January 7, 2011  
New York, New York



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Index No.:

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

ALEXANDER DAWSON FOUNDATION, ALEXANDER DAWSON INC., MARIO P. BORINI, INDIVIDUALLY AND AS TRUSTEE OF THE MARIO P. BORINI AND BIANCA C. BORINI 1991 REVOCABLE TRUST, BIANCA C. BORINI, INDIVIDUALLY AND AS TRUSTEE OF THE MARIO P. BORINI AND BIANCA C. BORINI 1991 REVOCABLE TRUST, BIANCA C. BORINI, AS TRUSTEE OF THE BIANCA C. BORINI 1991 SEPARATE PROPERTY REVOCABLE TRUST, and JOSEPH C. BORINI,

Plaintiffs,

- against -

BRIAN F. ZUCKER, ZUCKER & ASSOCIATES, LLP, GLENN E. DAVIS, ROBERT M. GRABER, DAVIS, GRABER, PLOTZKER & WARD, LLP, and VICTOR M. ROSENZWEIG,

Defendants.

COMPLAINT

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