



New York. It also has offices at 26 Court Street, 17<sup>th</sup> Floor in Brooklyn and at 271 Madison Avenue in Manhattan.

3. Defendant LAWRENCE A. GARVEY (“Garvey”) is a partner in C & G. Garvey practices law in multiple areas including Real Estate, Personal Financial Matters, Trust and Estate Planning and Litigation.

4. Defendant TODD S. CUSHNER (“Cushner”) is a partner in C & G. Cushner practices law in the areas of Consumer Bankruptcy, Trust & Estate Planning, Real Estate Development and Commercial Financing.

### **JURISDICTION and VENUE**

5. This Court has jurisdiction over Defendants pursuant to CPLR §§ 301 and 302(a).

6. Venue is proper pursuant to CPLR 503(a) as Defendant C & G’s principal place of business is located in Westchester County.

### **FACTS**

#### **OVERVIEW**

7. This case stems from a massive Ponzi scheme perpetrated by Edward Stein (“Stein”), who held himself out to be a financial advisor. Defendants herein, who are two attorneys and their law firm, facilitated that Ponzi scheme by negligently, recklessly and fraudulently funneling clients to Stein, and by improperly advising those clients to participate in investments with or through Stein. Defendants did so to further their own financial interests, and in utter disregard of their fiduciary and other legal obligations to their clients.

8. Plaintiffs herein are former clients of the Defendants, and are victims of Defendants’ facilitation of Stein’s unlawful scheme. Specifically, Defendants served as

attorneys for Plaintiff ROMANO in connection with an action to enforce certain payments due pursuant to a marital divorce decree. That action resulted in a settlement agreement providing for the payment of \$875,000 to ROMANO, on behalf of all Plaintiffs herein.

9. When that payment was received by Defendants on behalf of Plaintiffs, Defendants advised Plaintiffs to ignore the terms of the settlement agreement – which required the money to be invested with a major financial institution – and instead to invest all of the \$875,000 with or through Stein. In doing so, Defendants made numerous material misrepresentations about the nature and safety of the investment, as set forth below. Defendants also failed to disclose material information about the investment, including the fact that they would receive a secret fee from Stein if Plaintiffs invested the funds with or through him.

10. After persuading Plaintiffs to invest through Stein, Defendants transferred all of the funds to an entity controlled by him. Upon Stein's receipt of the money, he embezzled it all. Thereafter, he gave Plaintiffs certain distributions from the funds purportedly invested, in order to cover-up the theft.

11. Stein's Ponzi scheme came crashing down in approximately April 2009, when he was arrested and charged with criminal violations. Unfortunately, this was too late for Plaintiffs, who lost the bulk of the settlement proceeds that had been wrongfully sent to Stein by Defendants.

12. By engaging in this conduct, Defendants failed to perform the most basic duties incumbent upon a lawyer in representing a client. Specifically, Defendants put their own financial interests ahead of the interests of their clients, dispensed legal and

financial advice well beyond their areas of expertise, made material misrepresentations and omissions to Plaintiffs about the investment, recommended an investment that was wholly unsuitable for Plaintiffs, failed to perform ordinary and reasonable due diligence concerning the investment being recommended, failed to require the most basic documentation of the purported investment before sending any funds to Stein, sent the funds to an entity other than the entity for which authorization to transfer had been received from Plaintiffs, and ignored obvious warning signs that the investments being solicited by Stein were fraudulent. This suit seeks recompense for the Defendants' wrongful and egregious misconduct.

#### **SPECIFIC FACTUAL ALLEGATIONS**

##### **Romano Retains Law Office of Cushner & Garvey, LLP**

13. In or about February 2006, PATRICIA ROMANO brought an action against her former husband, William Romano, for non-payment of obligations arising out of their divorce settlement and decree. The action was entitled *Patricia M. Romano v. William A. Romano et al*, Index No. 3403/06, Nassau County (the "Action"). At the time ROMANO brought the Action, she was supporting her two children on a modest income. She was dependent upon the monthly payments from her ex-husband, under the divorce settlement, to provide basic financial needs for her children. In addition, the divorce settlement required that ROMANO's ex-husband make payments for their children's college education. ROMANO was represented in the Action by C & G. Both Lawrence Garvey and Todd Cushner worked on the matter, with Garvey as the lead attorney. ROMANO agreed to pay C & G for its services on an hourly basis.

14. The Action settled in June 2007 pursuant to a settlement agreement (the

“Settlement Agreement”). Defendants represented ROMANO in connection with the settlement, including drafting the Settlement Agreement. Defendants also agreed to represent ROMANO in connection with preparing various documents necessary to effectuate the terms of the Settlement Agreement, which included the preparation of Trust documents and the transfer of funds into investment vehicles. Thus, Defendants served as counsel for all Plaintiffs herein.

15. Pursuant to the Settlement Agreement, William Romano agreed to pay to PATRICIA ROMANO a lump sum payment of \$875,000, in full satisfaction of his ongoing obligations under the divorce settlement, on the following terms:

- a. William Romano agreed to place \$250,000 in trust for his daughter Toni Marie Romano and \$250,000 in trust for his daughter Patricia M. Romano. The funds for each were to be placed in a “high yield security, Morgan Stanley Dean Witter account.” Pursuant to the Agreement, William Romano would receive all interest income on both accounts and the principal remaining in the accounts would be released to his daughters upon his death. Romano’s accountant was to serve as trustee and Lawrence Garvey was to serve as successor trustee.
- b. William Romano agreed to place \$250,000 in trust for his ex-wife, Patricia M. Romano. The money was to be placed in a “high yield security, Morgan Stanley Dean Witter Account.” Pursuant to the Agreement, William Romano would receive all interest income generated by the account and Patricia M. Romano would be entitled to receive \$3000 a month from the principal. Romano’s accountant was to serve as trustee and Lawrence Garvey was to serve as successor trustee.
- c. William Romano agreed to place \$125,000 in trust for his childrens’ college education. The money was to be placed in a “high yield security, Morgan Stanley Dean Witter account” in Plaintiff Patricia M. Romano’s name. Pursuant to the Settlement Agreement, William Romano would receive all interest income generated by the account and, upon his death, the remaining principal, if any, would be distributed equally between his children. Romano’s accountant was to serve as trustee and Lawrence Garvey was to serve as successor trustee.

16. In satisfaction of his obligations pursuant to the Settlement Agreement, William Romano delivered the requisite funds totaling \$875,000 to C & G, which funds, on information and belief, Defendants deposited in the firm's escrow account in June 2007 (the "settlement funds").

**Defendants' Negligent and Fraudulent Conduct**

17. After Defendants received the settlement funds, and while still acting as counsel to Plaintiffs, they made no effort to comply with the terms of the Settlement Agreement. In fact, they did not prepare the required Trust documents and did not deposit the funds with Morgan Stanley Dean Witter, as required.

18. Instead, after Defendants received the funds, they advised ROMANO that she should disregard the terms of the Settlement Agreement and invest the entirety of the funds with or through Stein.

19. Specifically, through a series of telephone conversations and in-person meetings, Defendants advised ROMANO to invest the entire \$875,000, through Stein, in an entity named "Counsel Financial, LLC" ("Counsel"). According to Defendants, investing in Counsel was a significantly preferable way to invest the settlement funds because it would guarantee an annualized return of 10.5%, less a 1% management fee to Stein, which was a significantly higher return than Plaintiffs would have received from a "high yield security" account at Morgan Stanley Dean Witter. Notably, at that time, Defendants provided no documentation to Plaintiffs whatsoever to describe Counsel or the investment.

20. In advising ROMANO to disregard the terms of the Settlement Agreement

and to invest the funds in Counsel, Defendants advised ROMANO that they had known Stein for many years, that he was completely trustworthy and that Defendants had numerous other clients who had invested money with or through Stein, some in Counsel, and that each client was fully satisfied with Stein and the investment.

21. In advising ROMANO to disregard the terms of the Settlement Agreement and to invest the funds in Counsel, made numerous material representations as set forth below, all of which were designed to induce Plaintiffs to rely upon them and to invest in Counsel, through Stein. Defendants knew, or were reckless or negligent in not knowing, the falsity of each of these representations. Specifically, Defendants, through both GARVEY and CUSHNER, made the following material misrepresentations, among others:

(a) that the funds would be invested in Counsel, which was a solid and reputable company that was in the business of loaning money to attorneys who needed funds to finance litigations;

(b) that ROMANO would make more money by investing the money in Counsel than with Morgan Stanley Dean Witter, because Counsel paid a guaranteed first-year annual return of 10.5%;

(c) that after a one-year commitment, ROMANO could remove her principal and guaranteed interest without penalty, or could choose to continue investing with Counsel on an annual basis;

(d) that although the guaranteed return might fluctuate in the subsequent years, the return would always be higher than the return at Morgan Stanley and the management fees would always be lower;

(e) that Defendants were experienced in advising on financial matters;  
and

(f) that investing the funds with Counsel, through Stein, would be the safest way to invest the settlement funds because the principal would be secure and the return would be guaranteed on an annual basis.

22. In advising ROMANO to invest the funds in Counsel, through Stein, Defendants also failed to disclose a number of material facts, as set forth below, which material omissions rendered the other representations they made false and misleading. Specifically, Defendants failed to disclose the following material facts, among others:

(a) that Stein and Defendants had an agreement whereby Stein paid secret fees to Defendants for all assets that Defendants successfully referred to Stein for investment;

(b) that Defendants expected to receive a fee from Stein if they successfully persuaded ROMANO to invest the settlement funds with or through Stein;

(c) that Stein was a current client of Defendants, to whom Defendants owed a fiduciary duty; and

(d) that Defendants had a variety of business relationships with Stein for which they earned fees, including their service as the Trustee of certain Trusts that had been created to hold some of Stein's purported investments.

23. Defendants' false representations and material omissions were all made within the scope of Defendants' provision of legal services to Plaintiffs. ROMANO, who was unsophisticated in investment matters, believed and reasonably relied upon Defendants' representations and assurances.

24. ROMANO, relying entirely on Defendants' advice and assurances, agreed to invest the funds with Counsel, through Stein, on the terms Defendants had advised. Accordingly, in July 2007, on the Defendants' advice, she authorized Defendants to send all of the \$875,000 in settlement funds to Counsel.

**Defendants Allow Stein to Misappropriate the Settlement Funds**

25. Defendants, however, did not remit the funds to Counsel, as authorized by ROMANO. Rather, on or about July 31, 2007, Defendants, without ROMANO's consent or authority, directed that the \$875,000 held in the Firm's escrow account on behalf of Plaintiffs be wired to account # 09362343976 at Washington Mutual Bank, which account was in the name of "Prima Capital Management Corp." ("Prima"). As Defendants well knew, or should have known at the time, Prima was a Stein controlled entity which had no connection whatsoever to Counsel. Indeed, no funds were sent to Counsel as Defendants had promised ROMANO. Moreover, Defendants hid from ROMANO the fact that that the funds were not sent to Counsel, but were sent instead to an unrelated Stein-controlled entity, by failing to inform her of this fact either orally or in writing.

26. Not only did Defendants improperly send ROMANO's money to an entity that had not been discussed with or approved by ROMANO, but Defendants also sent the funds to Stein without any legal documentation whatsoever. Indeed, contrary to their promise that appropriate paperwork would be forthcoming, no evidence of the purported investment was provided to ROMANO at the time of the transfer or within any reasonable time thereafter. Further, Defendants failed entirely to conduct proper due diligence as to why they were sending the funds to Prima, rather than to Counsel, as

approved by their clients. In other words, Defendants effectively handed to Stein \$875,000 of their clients' money, without any documentation whatsoever, in utter breach of their fiduciary and other legal obligations to them.

27. After the money was transferred to the Prima account, and unbeknownst to Plaintiffs, Stein stole all of the funds and used them for his own purposes. Upon information and belief, no investment in Counsel was ever made.

**Defendants' Secret Fee and the Post-Theft Coverup**

28. After Defendants transferred the funds to Stein, they informed ROMANO, in the most general terms, that the funds had been sent. Defendants did not, however, provide to ROMANO any documentation concerning the transfer.

29. Further, Defendants did not disclose to ROMANO that, after they transferred the funds to Stein, they received a secret fee from him in exchange for their having persuaded ROMANO to invest through him. On information and belief, that fee was disguised as legal payments from Stein to Defendants, or was disguised as a payment to an entity known as Tarrytown Management, which entity was controlled by Defendants.

30. Stein, meanwhile, in order to cover up his theft, made certain monthly "interest" payments to ROMANO's ex-husband and, when requested, would send to ROMANO certain monthly payments that were authorized by the Settlement Agreement. In that way and others, he created the impression that the investment was being managed properly.

31. Thus, during the period August 2007 through approximately March 2008, although ROMANO did not receive any statements from Counsel or Stein regarding her

investment in Counsel, she believed, based upon Stein's conduct and reassurances from Defendants, that her instructions had been carried out and that Defendants had undertaken the appropriate steps to create the trusts required by the Settlement Agreement.

32. In or about April 2008, nine months after Defendants transferred the settlement funds to Stein, and long after the funds had been stolen by Stein, Defendants finally drafted the trust agreements that had been called for by the Settlement Agreement. Specifically, Defendants drafted trust agreements purportedly creating THE PATRICIA ROMANO FAMILY TRUST and the PATRICA ROMANO SUPPLEMENTAL FAMILY TRUST. However, while the Settlement Agreement had called for ROMANO's accountant to be named as Trustee of the Trusts, Defendants instead named ROMANO as the Trustee of the PATRICIA ROMANO FAMILY TRUST and named Defendant LAWRENCE GARVEY as the Trustee of the PATRICA ROMANO SUPPLEMENTAL FAMILY TRUST.

33. On information and belief, Defendants forwarded the Trust Agreements (or information concerning their creation) to Stein. Thereafter, to continue the cover-up of his theft, Stein had ROMANO complete certain paperwork and purportedly transferred the funds from an account in ROMANO's name to accounts in the names of the Trusts, and informed Defendants of those actions. By that time, however, there were no funds to be transferred, as Stein had already stolen the funds. Thus, these were paper transfers only. Alternatively, in the event funds were still in place, Stein subsequently stole the funds from the Plaintiff Trusts.

### **The Fraud is Uncovered**

34. Sometime in late 2008 or early 2009, Stein became the subject of a criminal investigation by the U.S. Department of Justice, as well as an investigation by the Securities and Exchange Commission (SEC). Although Defendants learned of these investigations, they did not advise ROMANO of their existence, despite the fact that they still represented Plaintiffs and were regularly communicating with ROMANO about her purported investment in Counsel. Indeed, during this time period, Defendants continued to assure ROMANO that the investment was performing as promised.

35. Beginning in or about February 2009, ROMANO started having growing concerns about the security of her investment with Stein, which concerns she communicated to Defendants and to Stein.

36. Thereafter, ROMANO made multiple efforts to meet with Stein and/or LAWRENCE GARVEY to discuss the situation. When she could not get the assurances she needed, she directed Stein, on March 27, 2009, to transfer all of Plaintiffs' funds to an account she opened on her own. She requested Defendants' assistance in effectuating the transfer.

37. However, ROMANO was too late. She was unable to get Stein's cooperation and thereafter contacted her accountant seeking assistance. On that telephone call, her accountant informed ROMANO that Stein had been under investigation for many months.

38. ROMANO immediately called LAWRENCE GARVEY who, only in response to a direct question, finally disclosed to ROMANO information that he had learned concerning the government's investigation of Stein.

39. Just days later, Stein was arrested and was ultimately charged with running a massive Ponzi scheme. At approximately the same time, Stein and various entities he controlled were charged in an SEC complaint with violating the securities laws. Stein pleaded guilty to the criminal charges and, on or about February 9, 2010, was sentenced to 9 years in prison.

40. Plaintiffs have not received the return of any money invested other than the “interest” and other payments made by Stein before the scheme was uncovered.

**FIRST CAUSE OF ACTION AGAINST DEFENDANTS:  
LEGAL MALPRACTICE**

41. Plaintiffs repeat and reallage each of the statements set forth in Paragraphs 1 - 40, above, as if fully set forth herein.

42. ROMANO retained Defendants to represent her in the action entitled *Patricia M. Romano v. William A. Romano e.t al*, Index No. 3403/06, Nassau County, and to guide her in connection with effectuating the Settlement Agreement that was signed in connection with the Action. ROMANO also retained Defendants to represent the Plaintiff Trusts.

43. As Plaintiffs’ attorneys, Defendants owed a duty of care and loyalty to Plaintiffs.

44. As Plaintiffs’ attorneys, Defendants owed a duty to represent Plaintiffs with the care, skill and diligence ordinarily possessed and exercised by an ordinary attorney in similar circumstances.

45. Defendants represented Plaintiffs in a grossly negligent manner in

that they failed to exercise the ordinary degree of care, skill and diligence commonly exercised by attorneys in connection with effectuating a settlement agreement, advising clients generally and in advising clients as to managing the proceeds of the settlement of an action.

46. Defendants negligently disregarded their duty to Plaintiffs to represent Plaintiffs with the reasonable care, skill and diligence of an attorney in a similar situation.

47. Defendants' acts of negligence and gross negligence included the following conduct, among others:

a. Defendants negligently advised ROMANO to disregard the explicit terms of the Settlement Agreement that settled the action with her ex-husband, which agreement required the settlement funds to be invested with Morgan Stanley Dean Witter;

b. Defendants negligently provided advice to ROMANO that was beyond their area of expertise without proper disclosure of the limitations of their knowledge and expertise;

c. Defendants failed to research or conduct proper due diligence concerning Counsel, or concerning Stein, before recommending that Plaintiffs invest in Counsel, through Stein;

d. Defendants negligently recommended an investment vehicle that was wholly unsuited for Plaintiffs' financial situation because it was far too risky;

e. Defendants negligently transferred escrow funds to Prima, an entity they knew or should have known was controlled by Stein, rather than to Counsel, as authorized by ROMANO;

f. Defendants negligently transferred the funds to Stein without securing any documentation from Stein or Counsel regarding the transfer or securing any documentation of the purported investment in Counsel;

g. Defendants negligently transferred the funds to Stein prior to the establishment of the Trusts that were required to be formed pursuant to the Settlement Agreement;

h. For their own financial gain, and taking full advantage of ROMANO's dependence and lack of sophistication in investment matters, Defendants negligently misled ROMANO into investing the settlement funds with an individual and with a company about which they knew very little, but claimed to know a great deal;

i. Defendants negligently failed to recognize and warn Plaintiffs that Stein was conducting a fraudulent investment scheme;

j. Defendants negligently reassured Plaintiffs, for well over a year, that the investment was secure in Counsel and performing as promised; and

k. Defendants negligently failed to advise Plaintiffs that Stein was under investigation by the U.S. Attorney's Office and the Securities and Exchange Commission.

48. As a direct and proximate result of Defendants' gross negligence and legal malpractice, ROMANO and/or other Plaintiffs lost all of the settlement funds that were sent to Stein, with the exception of certain withdrawals that were made prior to discovery of the Ponzi scheme.

49. Had Defendants exercised the care, skill and diligence they were required

to exercise in carrying out their professional duties, the settlement funds would not have been invested in or Counsel or otherwise with or through Stein.

50. Had Defendants exercised the care, skill and diligence they were required to exercise in carrying out their professional duties, Plaintiffs would not have been victimized by Stein's Ponzi scheme.

51. As a direct and proximate result of Defendants' negligence and malpractice, Plaintiffs were damaged in an amount to be determined at trial, but in no event less than \$700,000.

**SECOND CAUSE OF ACTION AGAINST ALL  
DEFENDANTS: FRAUD**

52. Plaintiffs repeat and reallage each of the statements set forth in Paragraphs 1 - 51, above, as if fully set forth herein.

53. Defendants made all of the material misrepresentations, and failed to make all of the material omissions, omissions set forth in paragraphs 21-22 above.

54. Each of these material representations was false.

55. Defendants knew the representations were false when they made them and/or made these representations recklessly and without regard to whether they were true or false. Defendants' omissions were also knowingly and/or recklessly omitted.

56. Defendants made these false and fraudulent representations, and failed to disclose the material omissions, for the purpose of inducing Plaintiffs to invest through Stein.

57. Since Defendants were the Plaintiffs' attorneys, Plaintiffs justifiably relied upon Defendants' representations in deciding to invest the settlement funds in Counsel, through Stein, and in deciding to keep these funds so invested.

58. For their own financial gain, and taking full advantage of Plaintiffs' dependence and lack of sophistication in investment matters, Defendants purposefully misled Romano into investing her funds through Stein.

59. Defendants' complete abdication of their responsibilities as attorneys and as officers of the Court, for their own pecuniary advantage, was done intentionally, maliciously, outrageously and in conscious disregard of Plaintiffs' rights. Such conduct evinces a high degree of moral turpitude and wanton dishonesty warranting the imposition of punitive damages.

60. On information and belief, Defendants' conduct towards Plaintiffs was part of a pattern directed at the public generally in that Defendants engaged in similar misconduct towards multiple clients on multiple occasions. Upon information and belief, Defendants recommended to numerous clients that they invest with Stein and received secret kickbacks in relation to all of these investors. Upon information and belief, these kickbacks were disguised as legal fees or as payments to an entity known as Tarrytown Management, which entity was controlled by Defendants.

61. As a direct and proximate result of Defendants' fraud, Plaintiffs suffered damages in an amount to be determined at trial, but not less than \$700,000.

**THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS:  
BREACH OF FIDUCIARY DUTY**

62. Plaintiffs repeat and reallage each of the statements set forth in Paragraphs 1 - 61, above, as if fully set forth herein.

63. Patricia ROMANO retained the law firm of C & G, and specifically

LAWRENCE GARVEY and TODD CUSHNER, to represent her in the action entitled *Patricia M. Romano v. William A. Romano et al*, Index No. 3403/06, Nassau County. Defendants were subsequently retained to represent Plaintiffs THE PATRICIA ROMANO FAMILY TRUST and THE PATRICIA ROMANO SUPPLEMENTAL FAMILY TRUST.

64. As Plaintiffs' attorneys, Defendants owed a fiduciary duty to Plaintiffs to act with absolute loyalty and undivided fidelity to them, and to disclose truthfully and fully all facts material to their investment and legal decisions. Defendants abused their position of trust and power over Plaintiffs, and breached their fiduciary duties, by virtue of the conduct set forth above.

65. Plaintiffs reasonably relied on Defendants' duty of absolute loyalty and undivided fidelity to protect Plaintiff's interests and reasonably relied on Defendants' advice that it was prudent to disregard the terms of the Settlement Agreement and to invest in Counsel through Stein.

66. Had Plaintiffs been told the true facts by Defendants, or had Defendants otherwise fulfilled their fiduciary obligations to Plaintiffs, Plaintiffs would not have invested any money in Counsel or with or through Stein.

67. For their own financial gain, and taking full advantage of Plaintiffs' dependence and lack of sophistication in investment matters, Defendants purposefully misled Plaintiffs into investing funds through Stein.

68. Defendants' complete abdication of their responsibilities as fiduciaries, for their own pecuniary advantage, was done intentionally, maliciously, outrageously in conscious disregard of Plaintiffs' rights. Such conduct evinces a high degree of moral

turpitude and wanton dishonesty warranting the imposition of punitive damages. On information and belief, Defendants' conduct towards Plaintiffs was part of a pattern directed at the public generally in that Defendants engaged in similar misconduct towards multiple clients on multiple occasions. Upon information and belief, Defendants recommended to numerous clients that they invest with Stein and received secret kickbacks in relation to all of these investors. Upon information and belief, these kickbacks were disguised as legal fees or as payments to an entity known as Tarrytown Management, which entity was controlled by Defendants.

69. As a direct and proximate result of Defendants' breaches of their fiduciary duties, Plaintiffs were damaged in an amount to be determined at trial, but in no event less than \$ 760,000, including all monies stolen by Stein and all fees paid to Plaintiffs, whether by Plaintiffs or Stein, during the period of their disloyalty.

**FOURTH CAUSE OF ACTION AGAINST CUSHNER & GARVEY:  
BREACH OF CONTRACT**

70. Plaintiffs repeat and reallage each of the statements set forth in Paragraphs 1 - 69, above, as if fully set forth herein.

71. Defendants and ROMANO had an agreement whereby Defendants agreed to provide legal representation to ROMANO in connection with the action entitled *Patricia M. Romano v. William A. Romano et al*, Index No. 3403/06. Defendants also agreed to provide legal services to ROMANO in connection with implementing the Settlement Agreement, including investment of the settlement funds.

72. In exchange for those services, ROMANO paid Defendants a fee for their legal services of at least \$25,000.

73. Defendants failed properly to perform the services for which they were retained, which failure constituted a material breach of the contract of engagement.

74. Plaintiff ROMANO fully performed all of her obligations under the agreement.

75. As a direct and proximate result of Defendants' material breaches of contract, Plaintiffs were damaged in an amount to be determined at trial, but in excess of \$25,000.

**FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS:  
UNJUST ENRICHMENT**

76. Plaintiffs repeat and reallage each of the statements set forth in Paragraphs 1 – 75, above, as if fully set forth herein.

77. Defendants had an arrangement with Stein whereby Defendants received payments from Stein based on Defendants' referral of clients that invested money in or through Stein's companies.

78. Pursuant to that arrangement, Stein paid Defendants secret fees in connection with the funds that Plaintiffs invested in Stein's companies. Those fees were disguised either as legal fees paid by Stein to Defendants, or as payment to Tarrytown Management, an entity controlled by Defendants.

79. On information and belief, Defendants received secret fees of at least \$60,000.

80. Plaintiffs thereby unknowingly conferred a benefit on Defendants by investing with or though Stein.

81. Defendants were enriched by this arrangement at Plaintiffs' expense.

82. It would be unjust and inequitable to permit Defendants to retain the proceeds they obtained at Plaintiffs' expense when Plaintiffs have lost most of the settlement funds as a result of that investment.

83. Defendants should be ordered to pay to Plaintiffs the amounts Defendants unjustly received from Stein.

**SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS:  
CONVERSION**

84. Plaintiffs repeat and reallage each of the statements set forth in Paragraphs 1 - 83, above, as if fully set forth herein.

85. The settlement funds that were held in Defendants' escrow account were Romano's personal property or the personal property of the Plaintiff Trusts.

86. Defendants, intentionally and without authority, assumed and exercised control and dominion over those funds when they transferred the funds to Prima without authority to do so.

87. As a direct and proximate result of Defendants' control and dominion over funds that belonged to ROMANO and or the Plaintiff Trusts, Romano and/or the Plaintiff Trusts have been damaged in an amount to be determined at trial, but not less than \$700,000.

**WHEREFORE**, Plaintiffs pray that the Court enter judgment as follows:

- A. On the First Cause of Action, damages in an amount to be determined at trial, but no less than \$ 700,000;
- B. On the Second Cause of Action, damages in an amount to be determined at trial, but no less than \$ 700,000;

- C. On the Third Cause of Action, damages in an amount to be determined at trial, but no less than \$ 760,000;
- D. On the Fourth Cause of Action, damages in an amount to be determined at trial, but no less than \$ 25,000;
- E. On the Fifth Cause of Action, damages in an amount to be determined at trial, but no less than \$ 60,000;
- F. On the Sixth Cause of Action, damages in an amount to be determined at trial, but no less than \$700,000; plus
- G. Punitive Damages; plus
- H. Attorneys Fees and Costs and
- I. Such other and further relief as the Court may deem just and proper.

Dated: July 1, 2010  
New York, New York

**KRANTZ & BERMAN LLP**

By: 

Larry Krantz

747 Third Avenue  
32<sup>nd</sup> Floor  
New York, New York 10017  
212-661-0009

Of Counsel: Marjorie Berman