DATE FILED: March 7, 2016 9:02 PM
FILING ID: A86ED72F20957
CASE NUMBER: 2016CV30791

DISTRICT COURT, COUNTY OF DENVER,
STATE OF COLORADO

Court Address:
1437 Bannock St.
Denver, CO 80202

Plaintiffs:
Wendy Fisher and Eric Fisher

v.

Defendants:
Daniel Reilly, an individual; Larry Pozner, an individual; and Reilly Pozner LLP, a limited liability partnership.

▲ COURT USE ONLY ▲

Case No.

Div.:

Attorneys for Plaintiffs:

M. Gabriel McFarland
Evans & McFarland, LLC
910 13th St., Suite 200
Golden, Colorado 80401
Phone: 303.279.8300
Fax: 303.277.1620
Atty. Reg. No. 26167

COMPLAINT

INTRODUCTION

1. Plaintiffs Wendy Fisher and Eric Fisher were two of 10 attorneys that founded Reilly Pozner LLP ("RP") in 2000, and were partners at RP with Dan Reilly and Larry Pozner for 12 years.

2. On June 8, 2015, with no warning, Reilly and Pozner terminated the Fishers and three other partners, five associate attorneys, and seven staff members three months after RP attorneys, including the Fishers, won a $390.5 million jury verdict in a case against bank trustees they had litigated for the prior six years.

3. Reilly and Pozner claimed the firm would soon run out of the money if it did not immediately terminate the Fishers and others despite RP's receipt of millions of dollars in contingency fee recoveries in late 2014 and early 2015, and entitlement to a share of the March 9, 2015 jury verdict.

4. Reilly and Pozner hid from the Fishers, and other RP partners and associates, that after the March 2015 jury verdict they would terminate the Fishers and others, wind down RP, and keep nearly 100% of RP's contingency fees from the bank trustee case—plus tens of millions of dollars of RP's mass tort recoveries—to fund their lavish lifestyles and impending retirements.

5. Reilly and Pozner provided no warning of the mass terminations so that the terminated partners, associates, and staff would be left vulnerable and under duress, and would sign Severance Agreements releasing all claims against them under false pretenses.

6. Reilly and Pozner breached their fiduciary duties, reneged on 15 years of commitments to substantially share contingency fee recoveries, made false representations, withheld material information, and converted monies owed to the Fishers—their partners for 12 years. Reilly and Pozner have been unjustly enriched at the Fishers' expense, and the Fishers have suffered significant damages resulting from Reilly and Pozner's tortious and inequitable conduct.

PARTIES

7. Plaintiff Eric Fisher is a Colorado resident with his residence at 6382 South Zenobia Ct., Littleton, Colorado 80123.

8. Plaintiff Wendy Fisher is a Colorado resident with her residence at 6382 South Zenobia Ct., Littleton, Colorado 80123.

9. Defendant Daniel Reilly is a Colorado resident with his residence at 5232 E. 2nd Avenue, Denver, Colorado. His current place of business is 1900 16th Street, Suite 1700, Denver, Colorado and his prior place of business for all times relevant to this complaint was at

511 16th Street, Denver, Colorado. Reilly is an attorney licensed to practice in the State of Colorado.

10. Defendant Larry Pozner is a Colorado resident with his residence in Denver, Colorado. His current place of business is 1900 16th Street, Suite 1700, Denver, Colorado and his prior place of business for all times relevant to this complaint was 511 16th Street, Suite 700, Denver, Colorado. Pozner is an attorney licensed to practice in the State of Colorado.

11. Defendant Reilly Pozner LLP (originally named Hoffman Reilly Pozner & Williamson LLP) is a Colorado limited liability partnership licensed to do business in the City and County of Denver, State of Colorado. Its current place of business is 1900 16th Street, Suite 1700, Denver, Colorado and its prior place of business for all times relevant to this complaint was at 511 16th Street, Suite 700, Denver, Colorado.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to Article VI, section 9 of the Colorado Constitution.

13. Venue for the claims against the Defendants is proper in this Court under C.R.C.P. 98(c) because at all times relevant to this complaint, the City and County of Denver was the business residence for Reilly, Pozner and RP, and the acts giving rise to the liability of the Defendants occurred in the City and County of Denver, Colorado.

GENERAL ALLEGATIONS

June 8, 2015

14. On March 9, 2015, RP secured a $390.5 million jury verdict in the federal district court for the Eastern District of Missouri. The case involved breach of fiduciary duty claims against bank trustees stemming from their failure to safeguard funds of consumers. Shortly before trial, several bank trustee defendants settled the claims against them for tens of millions of dollars.

15. In the months following the jury verdict, including June 2015, Wendy, Eric and other RP attorneys who had prevailed in the bank trustee case were working on significant post-trial issues and motions, including a motion seeking tens of millions of dollars in prejudgment interest.

16. With no warning, on Monday, June 8, 2015—less than three months after the March 2015 multi-million dollar verdict—Reilly and Pozner purported to "layoff" four senior partners, one junior partner, five associate attorneys, two paralegals, three legal assistants and two additional staff members.

17. Wendy and Eric were two of the senior partners who were terminated without warning. Wendy and Eric were both founding attorneys of RP, had been partners for 12 years, and had dedicated 15 years of their professional lives to the growth and success of RP since its inception in 2000.

18. On June 8, 2015, at approximately 10:15 a.m., Reilly and Pozner entered Eric's office and announced that he was being "laid off" effective immediately and that he had to vacate his office no later than June 30, 2015.

19. Reilly and Pozner repeatedly stated that the "layoffs" were necessary for "economic reasons" because the "phone just did not ring."

20. Eric asked Reilly and Pozner who else was being terminated. They refused to tell him except to say that the terminations would "impact all levels." They also refused to tell him whether his spouse, Wendy Fisher, who occupied the office next door, also was being terminated.

21. Eric questioned why, if RP was facing such severe economic problems, Reilly and Pozner did not approach the Fishers or the other partners to discuss deferral of compensation, reduction in benefits or other expenses, sabbaticals, or any other approaches short of immediate termination. Reilly and Pozner provided no answers.

22. Reilly and Pozner did not disclose or acknowledge that RP had received millions of dollars in contingency fee payments in the preceding months, were still receiving millions of dollars from success fees in the bank trustee case, and would receive millions more from mass tort recoveries.

23. As for why Reilly and Pozner chose June 8 for the terminations without notice, Reilly stated that if he did not terminate Eric and others immediately, RP would run out of money by the end of 2015 and have no money for severance payments.

24. Reilly and Pozner next went to Wendy's office. They repeated to Wendy that "all levels" would be impacted. They told her that there was no money to keep paying the terminated partners, attorneys and staff and that the only way severance payments could be made was to initiate the terminations immediately.

25. Reilly and Pozner made the same statement to Wendy that the reason for her termination without notice, and that of other partners, associates and staff, was because the "phone just did not ring."

26. The Fishers spent the rest of June 8 and June 9, 2015 consoling and supporting attorneys and staff who had been terminated, and talking with those attorneys and staff who did not know their fate or who had been retained.

27. The Fishers subsequently learned from information in tendered Severance Agreements that the mass "layoffs" eliminated four of six senior partners (not including Reilly and Pozner), five of 11 associates, two of five paralegals, and three of six legal assistants in the civil and criminal practices. The Severance Agreements also stated that "[t]he mass tort group may be subject to a later and separate personnel reduction program."

28. The Severance Agreements represented: "This personnel reduction program is necessitated by a firm wide reduction in available work."

Reilly and Pozner Hid Their Plan and Terminated the Majority of Attorneys Responsible for Securing a $390.5 Million Verdict Plus Millions More in Pre-Trial Settlements

29. Despite being founding attorneys and partners with Reilly and Pozner for 12 years, Reilly and Pozner hid from the Fishers their plan to terminate them without notice.

30. Reilly and Pozner also terminated, without warning, the entire criminal department that included two senior female partners, both of whom have been recognized as Top 50 Colorado Women Super Lawyers.

31. Reilly and Pozner made no effort to find a suitable firm or other opportunities for the terminated partners, associates or staff, or give the targeted attorneys and staff the chance to find other work while still employed.

32. On the contrary, Reilly and Pozner hid their plan so that the targeted partners, associates and staff would be left unprepared to deal with the shock of the terminations and be placed under financial duress.

33. Reilly and Pozner widely promoted the $390.5 million verdict and provided numerous interviews to legal journals. RP's website home page proclaimed: "Reilly Pozner LLP Secures $391 Million Jury Verdict Against PNC Bank" and linked to numerous articles discussing the verdict.

34. At this same time and without disclosure to their partners, Reilly and Pozner were working with a consulting firm and outside counsel to develop the mass termination plan and formulate the proposed Severance Agreements.

35. In the week prior to the mass terminations, Reilly and Pozner provided vague notice of impending "personnel changes" to two partners and the firm's controller because they would be out of the office on June 8. Those partners and the controller were not terminated.

36. Despite providing such information to certain retained partners and staff, Reilly and Pozner hid their intentions from the Fishers and the other targeted partners, associates and staff.

37. Reilly and Pozner instead waited until Sunday afternoon, June 7, to provide the Fishers with any indication that something of importance was to occur.

38. On Sunday, June 7, the Fishers were attending their 9-year old son's lacrosse tournament at Dick's Sporting Goods Field. At 2:10 p.m., Eric received an e-mail from Reilly entitled "Meeting," stating: "Eric-Can you meet with Larry and me later this afternoon or this evening? We can meet at the office or pick a place closer to your neighborhood if that is more convenient. Let us know what works. If today doesn't work, let's plan on first thing tomorrow morning. I am also going to reach out to Wendy to see if we can meet her separately after we meet with you. Thanks, Dan"

39. At 2:13 p.m., Wendy received an e-mail from Reilly stating: "Wendy-Can Larry and I set up a time maybe later today or this evening to meet? I just sent an email to Eric to see if we can meet with him today. We would like to talk to you after we meet with Eric. If we can't do it today, let's plan on first thing in the morning. Thanks, Dan"

40. The Fishers received no further information on the reason for the need to meet on Sunday afternoon or evening, or why Reilly and Pozner needed to meet with Wendy and Eric separately.

41. Wendy called Reilly that same evening to ask what the emails were about but he refused to tell her.

42. The Fishers, as well as those individuals both terminated and retained, were shocked by the complete lack of notice and communication from Reilly and Pozner prior to taking such drastic action particularly because Reilly and Pozner had promoted RP as being a "family" where loyalty and trust was paramount.

43. While the Fishers and other RP partners and associates worked on post-trial briefing and other matters in the bank trustee case, Pozner left for his Hawaiian ocean-front home soon after the jury verdict and spent more than six weeks there. He returned shortly before the June 8 terminations.

44. Reilly likewise left Denver after the jury verdict and spent two weeks before the June 8 terminations at his recently-constructed, ocean-front home in Jamaica.

45. The majority of the terminated partners and associates, including the Fishers, had been instrumental in achieving the $390.5 million jury verdict and millions more in pre-trial settlements just three months earlier.

46. Reilly and Pozner concealed their intention to terminate the Fishers and other RP attorneys until after the trial.

47. Reilly and Pozner needed the Fishers and other RP attorneys to devote their lives to preparing for trial including extensive travel to dozens of depositions. Wendy and many other

terminated RP attorneys spent seven weeks in St. Louis in trial at the expense of their personal lives and families—all to secure substantial settlements and a jury verdict that Reilly and Pozner would then use to enrich themselves at the expense of those attorneys.

48. Reilly and Pozner concealed from the Fishers that after the bank trustee trial they would be deemed expendable and terminated in favor of younger, less expensive, associates and junior partners, and Reilly's brother-in-law, Robert Kelly, who Reilly and Pozner hired as "of counsel" in the summer of 2014.

49. In addition to terminating the Fishers in favor of retaining Reilly's recently hired bother-in-law, Reilly and Pozner also retained Reilly's spouse, Mary Kelly, who also had been hired by Reilly and Pozner as "of counsel", and continued to pay other Reilly and Pozner family members who had been billed on the bank trustee and other cases. Those family members, none of whom had any legal training, included another Reilly brother-in-law, a Reilly sister-in-law, and two of Pozner's daughters.

50. Wendy devoted 100 percent of her time for more than six years to the bank trustee case from its commencement in 2009 through her termination on June 8, 2015. Wendy was the case manager for a team ranging from 10 to 20 attorneys at various times. Wendy billed more than 2,500 hours in 2014 preparing for the February 2015 trial. She billed approximately 300 hours per month in January and February 2015.

51. In January and February 2015, Eric worked around the clock from Denver supporting the trial team. He was the primary drafter on all key pre-trial and trial briefing.

52. Eric was the primary drafter on punitive damages briefing that resulted in the inclusion of a punitive damages instruction and a $35.5 million punitive damages award. Eric also drafted emergency motions for jury instructions on allocation of damages that prevented the defendant from arguing that a $100 million award against another defendant should reduce the jury award against it.

53. Days before trial, Eric drafted successful motions that prevented the remaining bank defendant from blocking the dismissal of co-defendants and seeking to apportion damages to those defendants at trial.

54. Eric also was the primary drafter on the case from its inception in 2009. Eric drafted the original complaint, as well as two amendments to that complaint, and spent a significant percentage of his time on that case from 2009 to 2015. He was the primary drafter of the vast majority of the key pleadings in the case, including successful oppositions to various defendants' motions to dismiss and summary judgment motions that resulted in rulings rejecting those defendants' attempts to eliminate or significantly reduce their liability.

55. Despite being terminated on June 8, Wendy continued to handle all case management and other responsibilities on the bank trustee case up to and including June 30, 2015, her last day with RP.

56. From June 8 to his last day with RP on June 30, 2015, Eric worked on post-trial briefing for the bank trustee case and completed a reply brief seeking $180 million in prejudgment interest.

57. Despite RP's purported critical financial problems, other than engaging in a "personnel reduction program" (as described in the Severance Agreements), Reilly and Pozner made no effort to cut overhead costs, sublease office space, reduce benefits, curtail extravagant purchases of art work, or reduce any other expenses.

Reilly and Pozner Hid RP's Receipt of Millions of Dollars in Contingency Fees

58. In addition to the millions in contingency fees that RP is slated to receive from the March 2015 verdict, RP received in late 2014 and early 2015 millions of dollars in contingency fees from pre-trial settlements.

59. In April 2014, Reilly and Pozner—because of their desire to sell the firm to the other partners and retire—began providing the Fishers and several other partners with daily cash reports that they described as disclosing all income and expenses flowing in and out of RP.

60. The daily cash reports also disclosed the balance in RP's operating account as well as the amount of money outstanding on a credit line.

61. Reilly and Pozner previously had not provided their partners with financial information as to flow of funds to and from RP, or other material financial information.

62. Despite the inflow of millions of dollars of contingency fees in late 2014 and early 2015, Reilly and Pozner did not inform their partners of those recoveries and did not disclose them on the daily cash reports.

63. On or about February 4, 2015, RP's line of credit, which had previously been at approximately $1,500,000, went to $0. There was no entry in the "receipts" category that showed an inflow of funds sufficient to pay off the outstanding credit line.

64. Reilly and Pozner did not inform their partners that they used a portion of RP's contingency fee recoveries to pay off the credit line.

65. As of February 9, 2015, the "Line of Credit" chart on the daily cash receipts was removed and replaced with a chart entitled "Payroll."

66. After February 9, 2015, the line of credit chart did not reappear and RP carried a $0 balance on its credit line through the mass terminations on June 8, 2015 despite previously using the line of credit to routinely fund RP's operations.

67. In addition to paying off the outstanding credit line with a portion of RP's contingency fee recoveries, Reilly and Pozner paid out their capital accounts with those funds.

68. Reilly and Pozner did not inform their partners that they used a portion of RP's share of contingency fees to pay out their capital accounts.

69. On April 6, 2015, RP received a multi-million dollar payment for some of RP's hourly work performed in the preceding months in the bank trustee case. The payment was reflected on the daily cash report and resulted in RP's operating account balance increasing significantly.

70. On June 8, 2015, the day Reilly and Pozner terminated the Fishers without warning, the daily cash flow report listed RP's operating account balance as containing millions of dollars while the line of credit remained at $0.

71. One year earlier, on June 10, 2014, RP's operating account was negative and RP carried a significant outstanding balance on its line of credit.

72. RP thus had millions of dollars in its operating account on June 8, 2015, plus had recently received millions more that it did not disclose to its partners, when Reilly and Pozner told the Fishers and others that they had to be terminated immediately and without warning because there would otherwise be no money to pay them "severance" benefits.

73. Reilly and Pozner have not offered, and do not intend to share with the Fishers or their other partners, any portion of the substantial contingency fees that RP already received as a result of the pre-trial settlements, notwithstanding the Fishers' and other RP attorneys' years of work and sacrifice that resulted in those recoveries.

74. A significant portion of the contingency fees in the bank trustee case were a result of pre-trial settlements that occurred as a direct result of prevailing on critical summary judgment rulings. Those rulings included a summary judgment opposition to a bank trustee's motion seeking to eliminate its liability based on statute of limitations and other grounds. RP's client prevailed on the bank trustee's motion in January 2015. That same month, the bank trustee agreed to settle the claims against it.

75. Eric played a significant role in drafting all summary judgment motions and responses, and related motions, and was instrumental in their success and the resulting settlements.

76. In addition to the substantial, pre-trial contingency fee recoveries, the bank trustee case also generated significant hourly fee revenue in the months leading up to and including trial. RP was still receiving payments for hourly fees generated during trial in May 2015.

77. RP also was receiving millions more during this time from its recoupment of its discounted hourly fees in the bank trustee case.

78. Reilly and Pozner's assertions that RP did not have enough money to make it to the end of 2015 absent terminating the Fishers, and other attorneys and staff, were untrue.

79. Consistent with their intention to wind-down RP and take the contingency fee recoveries for themselves, Reilly and Pozner decided that they would no longer fund the operations of the firm through the line of credit or contribute any additional monies to the firm.

Reilly and Pozner's Scheme to Secure Releases from Terminated Partners, Associates and Staff

80. Reilly and Pozner's mass "layoffs" on June 8 targeted the very partners and associates who were directly responsible for the $390.5 million jury verdict and multi-million dollar settlements.

81. Reilly and Pozner terminated those partners and associates, and sought releases from them in exchange for minimal payments, to maximize Reilly and Pozner's take of RP's share of multi-million dollar contingency fee recoveries.

82. In addition to concealing from their partners and associates the millions of dollars RP received in contingency fee recoveries in 2015, Reilly and Pozner did not tell the terminated partners or associates that they had taken, in the preceding years, many millions out of the firm for their personal use, including for construction of Reilly's ocean-front home in Jamaica.

83. In contrast to the June 8, 2015 terminations, RP associates who had been terminated prior to June 8, 2015, including those terminated purportedly for cause, received months of pay and full benefits during which time they were allowed to pursue other career opportunities. Those attorneys were not asked or required to sign a severance agreement to receive that compensation.

84. RP staff who had been terminated prior to June 8, 2015, including those terminated purportedly for cause, typically received months of pay and benefits. Those staff were not asked or required to sign a severance agreement to receive that compensation.

85. To receive any compensation after June 30, 2015, Reilly and Pozner required each of the terminated partners, associates, and staff to sign a Severance Agreement that required the release of all claims against Reilly, Pozner, RP, and its employees.

86. The Severance Agreement disclosed and referred to Eric as terminated "Partner 2" and Wendy as terminated "Partner 3."

87. RP's tender of the Severance Agreement to the Fishers, and other partners, was inconsistent with and disregarded the Fishers' status and rights as partners.

88. The Severance Agreements provided for 10 weeks of pay for all partners regardless of their seniority, eight weeks for associates, and six weeks for staff.

89. Despite being partners for 12 years and founding attorneys of RP, the Fishers were offered 10 weeks of compensation—two more weeks than a terminated first-year associate, and four more weeks than terminated staff.

90. The Severance Agreements handed to the Fishers also offered a small percentage of RP's share of the recent trial verdict except that "in the event that a new trial is ordered, then Fisher shall not be entitled to this additional severance pay . . . unless the case is settled within (90) days after issuance of the order requiring a new trial." Thus, if the case settled for $300 million on the 91st day after remand, the Fishers would receive nothing.

91. The payments offered by Reilly and Pozner to waive all claims against them included: (1) none of RP's share of the millions of dollars in contingency and success fees RP received from the bank trustee case from late 2014 through at least June 2015; (2) none of RP's receipt of tens of millions of dollars from contingency fee recoveries from RP's mass torts practice; and (3) none of the tens of millions of dollars RP will receive in future payments from the mass tort recoveries.

92. Reilly and Pozner's offer of only a conditional percentage of the March 2015 verdict was grossly inadequate because of the Fishers' status as 12-year partners who funded RP's pursuit of contingency fee recoveries, including mass torts, their material contributions to the $390.5 million trial verdict and pre-trial settlements, and their contributions for 15 years to the success and growth of RP, among many other reasons described in this Complaint.

93. The percentage of the trial verdict that the Fishers were conditionally offered to waive all their claims, and their prior receipt of a share of a contingency fee in 2002 while associates, however, illustrates Reilly and Pozner's knowledge and acceptance that the Fishers are entitled to a portion of RP's share of contingency fee recoveries.

94. The tendered Severance Agreements also mandated that the Fishers forfeit all payments if they did not provide, to Reilly and Pozner's satisfaction, "continuing assistance on the cases which Fisher worked during his/her employment." The forfeiture clause states: "To the extent Fisher fails to provide requested assistance on pending cases, as reasonably determined by RP, Fisher shall forfeit any right to the severance pay and benefits identified [above]."

95. The Fishers received no payments or other benefits set forth in the Severance Agreements because they worked through June 30, 2015, and did not sign the tendered Severance Agreements.

96. Reilly and Pozner conducted the mass "layoffs" without warning so that those dismissed had no time to explore other employment opportunities prior to facing the prospect of having no income after June 30, 2015 absent signing the Severance Agreements.

97. Reilly and Pozner provided no notice of the mass terminations, or assistance in finding other employment, so that the terminated partners, attorneys and staff would be left

vulnerable and under duress, and would sign the Severance Agreements releasing all claims, and accept the meager payments offered under false pretenses.

98. In addition to intentionally maximizing the financial and mental duress of the terminated attorneys and staff, Reilly and Pozner misrepresented the reasons for the mass "layoffs" to cause those terminated to execute the Severance Agreements.

99. Reilly and Pozner represented that the firm was in such a dire financial condition that the firm could not make it to the end of the year and there would be no money for any severance payments if the terminations did not occur immediately.

100. Reilly and Pozner's representations as to the lack of money and reasons for the mass "layoffs", without warning, were false and a pretext to significantly reduce the terminated partners and other attorneys' share of RP's contingency fee recoveries.

101. Reilly and Pozner placed partners, associates and staff under financial duress to force them to accept the meager severance payments while seeking to eliminate the risk of lawsuits over their misconduct.

102. Reilly and Pozner worked with the national, consulting firm Altman Weil to develop this plan.

103. Altman Weil was aware that Reilly and Pozner were withholding material information from the Fishers, and other partners, to whom Reilly and Pozner owed fiduciary duties of utmost loyalty and honesty.

104. Reilly and Pozner's plan was successful as all terminated partners, associates, and staff other than the Fishers signed the tendered Severance Agreements.

Reilly and Pozner Pay Themselves Millions of Dollars from Mass Tort Recoveries to Fund Their Retirements

105. During the Fishers' time as RP partners, Reilly and Pozner repeatedly represented to them that they would substantially share in the mass tort and other contingency fee recoveries. The Fishers relied on those promises that were consistent with the firm culture and structure.

106. Reilly and Pozner made the same representations to other RP partners and attorneys that joined RP from other firms.

107. In Spring 2013, Reilly and Pozner paid themselves millions of dollars that RP had received in contingency fee revenue from its mass torts practice.

108. In April 2013, RP distributed to the Fishers, and other partners and associates, a share of the mass tort recoveries.

109. Reilly and Pozner never disclosed to their partners the amount that RP received in contingency fee recoveries or how much they paid themselves.

110. In late 2013, RP received millions more in contingency fees from mass tort recoveries. Reilly and Pozner again paid themselves the vast majority of the millions of dollars received and split the remaining amounts between all other partners, associates and staff.

111. Reilly and Pozner asked the Fishers to defer their share of the second round of mass tort payments from December 2013 to January 2014. Reilly and Pozner told the Fishers that all of the mass tort monies had been distributed and that they would need to wait until additional mass tort recoveries arrived in January 2014. The Fishers agreed.

112. At this same time, Reilly and Pozner called a partner meeting in December 2013 and disclosed for the first time their intention to retire and the need for the partners to meet in early 2014 to begin succession planning.

113. Reilly and Pozner informed the partners that they had been working with consulting firm Altman Weil, and specifically consultant James Cotterman, whom they described as one of the leaders in the country on law firm succession planning.

114. In referring to the mass tort, contingent fee recoveries, Reilly told the assembled partners that "I am done when [the lead mass torts partner] gets me to my number."

115. The Fishers, and many of the other partners, were stunned by Reilly's revelation because he had never previously indicated his intention or desire to leave the practice of law.

116. Reilly expressed that he did not care what the remaining partners did with the RP name or firm after his departure as long as he continued to be paid.

117. Pozner likewise informed the partners that he intended to wind down his civil and criminal practice to spend more time at his Hawaii oceanfront home. He expressed his intention to write another deposition training book, continue speaking at CLE's around the country on deposition techniques, and train attorneys on deposition and cross-examination techniques.

118. In early 2014, Reilly and Pozner told the Fishers and other partners that the increases to their guaranteed payments for 2014 would be small because they would instead be receiving "life-changing" payments from the mass tort recoveries in 2014 and the following years. The Fishers agreed.

119. Reilly and Pozner told the Fishers that the April 2013 and January 2014 distributions were "just the beginning" and "2014 and 2015 would be big years." The Fishers relied on these representations.

120. Consistent with Reilly's stated to intention to retire once he got to his "number," and Pozner's stated intention to wind down his practice, in February 2014, RP flew Cotterman to Denver to meet with the other partners for a dinner, followed by a full day meeting.

121. Cotterman traveled to Denver from his Florida office on other occasions, including in July 2014. In the July 2014 meeting, Cotterman described the payments and other financial commitments Reilly and Pozner required from the other partners to sell a minority interest in RP. The terms were not well-received by most of the other partners.

122. Reilly and Pozner scheduled no further meetings between Cotterman and the Fishers, or other partners, and the Fishers did not see or interact with Cotterman after the July 2014 meeting.

123. Cotterman made a single, passing mention at the July 2014 meeting that if the partners in attendance could not, or would not, follow "Plan A," then Reilly and Pozner would need to go to "Plan B." Cotterman made no further mention of Plan B or what it entailed.

124. Despite having regular attorney and partner meetings throughout the history of the firm, Reilly and Pozner called only one attorney meeting between approximately October 2014 and June 8, 2015, and no partner meetings. That one attorney meeting was in March 2015 to celebrate the $390.5 million jury verdict.

125. RP received contingency fee payments from mass tort cases after January 2014.

126. Reilly and Pozner did not disclose to the Fishers the existence or amount of those mass tort recoveries, how much they distributed to themselves, and did not share any of those recoveries with the Fishers.

127. Reilly and Pozner collectively took from RP the majority of the additional mass tort recoveries in 2014.

128. After the January 2014 distributions to the Fishers, Reilly and Pozner did not share any additional mass tort recoveries with them or any other partners with the exception of the lead mass tort partner.

129. At the end of 2014, Pozner informed the Fishers that year-end distributions of the firm's profits, and guaranteed payment increases, for 2015 would be small because the firm had little money. The Fishers received year-end distributions of $10,000 each for 2014 and $5,000 increases for 2015.

130. RP received contingency fee payments from mass tort cases in 2015.

131. Reilly and Pozner did not disclose to or share with the Fishers the contingency fees that RP received from mass tort cases in 2015.

132. Reilly and Pozner collectively took the majority of the additional mass tort recoveries RP received in 2015.

133. Reilly and Pozner have not offered, and do not intend to share with the Fishers or their other partners (except one), any portion of the millions of dollars in mass tort contingency fees that RP received after January 2014 or millions more RP will receive in the future, notwithstanding the Fishers' and other RP attorneys' years of work that funded the mass torts practice and made those recoveries possible.

134. Without informing the Fishers or other partners, Reilly and Pozner used RP funds generated by the Fishers and other terminated attorneys to pay Altman Weil to develop and institute the plan to terminate the Fishers, and other partners, associates, and staff, without warning—less than one year after the unsuccessful succession planning meetings.

135. RP paid Altman Weil to consult on and institute the mass termination plan, including on June 12, 2015—five days after the Fishers and others were terminated.

Promising Substantial Participation in Contingent Fee Recoveries, Reilly and Pozner Successfully Recruited the Fishers to Leave National Law Firm McKenna & Cuneo and Start a New Law Firm with Them

136. In February 2000, the Fishers became founding attorneys of Hoffman Reilly Pozner & Williamson ("HRPW"), which is the former name of RP.

137. The Fishers graduated from the University of Colorado School of Law in 1996. During two years of law school, Eric worked at the Denver office of the national, 600-member law firm, then known as McKenna & Cuneo ("McKenna"). He built strong relationships with many McKenna attorneys over that time.

138. In 1996, Eric was offered, and accepted, an associate position to begin in 1997 at the completion of his judicial clerkship with the Colorado Court of Appeals.

139. Wendy also joined McKenna in 1997 after completing her judicial clerkship with the Colorado Supreme Court.

140. The Fishers excelled during their years as associates with McKenna, receiving stellar performance reviews and developing strong relationships with the partners.

141. At the time the Fishers were with McKenna, Dan Hoffman, Dan Reilly, Julie Williamson, and at some times, Larry Pozner, were associated with McKenna.

142. In late 1999 or early 2000, Hoffman, Reilly, Pozner, and Williamson decided to leave McKenna to start HRPW. The primary motivation for the formation of HRPW was an ongoing, contingency fee case against U.S. West. McKenna was unwilling to expand the case beyond Colorado and HRPW sought to expand the lawsuit to cover additional states. The

Fishers spent significant time working on the U.S. West case during their time with McKenna, including drafting many of the key pleadings.

143. Prior to leaving McKenna in early March 2000, HRPW negotiated with McKenna regarding recruitment of associates from McKenna to join the fledgling HRPW.

144. The McKenna associates were ranked from A to C, with A being the highest ranking, and HRPW was initially given permission only to speak with the A level associates.

145. Wendy and Eric both were ranked as "A" level associates.

146. McKenna principals, including the managing partner of the Washington D.C. office, represented to the Fishers that should they stay with McKenna, they would have bright futures with the firm including additional compensation.

147. HRPW, including Reilly and Pozner, heavily recruited the Fishers to leave McKenna and sever the relationships that they had developed there over several years.

148. Reilly and Pozner represented to the Fishers that in exchange for taking lower compensation, giving up the security and future partnership opportunities at McKenna, and accepting the risks of a start-up law firm, the Fishers would receive significant participation in and compensation from contingency fee cases the firm planned to pursue, including the then-pending litigation against U.S. West.

149. Reilly and Pozner also represented to the Fishers that HRPW would devote approximately 25% of its attorney time and resources to contingency fee cases and that all attorneys would significantly share in the proceeds of those cases that would be funded by the approximately 75% of attorney time devoted to hourly work.

150. Reilly and Pozner's commitment to significantly share in contingency fee recoveries was a critical representation that convinced the Fishers to leave the prestigious, national, 600-attorney McKenna firm and join the fledgling HRPW.

151. McKenna has since merged with other firms, most recently with Dentons, which is a multi-national firm with more than 4,000 attorneys.

152. Shortly after the Fishers left McKenna in February 2000, the salaries of McKenna associates, and other associates at many other firms in the Denver market, increased by approximately $50,000 per year.

153. The Fishers excelled at HRPW and were given immediate, significant responsibility on two cases for the Denver Broncos Football Club. Eric was primarily responsible for briefing and factual development in *Heidrick v. PDB Sports*, a class action lawsuit seeking approximately $150 million. In March 2001, the Broncos prevailed on a half-time motion at trial which was affirmed on appeal.

154. Wendy was the case manager and had significant responsibility beginning as a third-year associate on a lawsuit brought by Edgar Kaiser over ownership of the Denver Broncos Football Club. Wendy and Eric spent substantial time on that case, which resulted in a favorable outcome for the Broncos both at trial and a complete victory on appeal.

155. During 2002, the U.S. West case settled. Consistent with Reilly and Pozner's representations causing the Fishers to leave McKenna, the Fishers, then associates, received a percentage of the U.S. West contingency fee recovery.

156. The Fishers were never informed of the amount HRPW received as a contingency fee as a result of the U.S. West settlement or how those funds were distributed.

157. The Fishers recently learned that Reilly and Pozner each took many millions from the U.S. West settlement at the expense of their non-equity partners.

158. The Fishers received many accolades during their time as HRPW associates.

159. The Fishers were consistently chosen to work on HRPW/RP's most challenging and important cases.

160. In 2003, in recognition of their exceptional work and contributions to the success of HRPW, the Fishers were made partners of HRPW.

161. The Fishers began receiving K-1s instead of W2's, and had to pay increased taxes because HRPW/RP no longer paid the Fishers' payroll taxes, namely Medicare and Social Security.

162. For the remainder of their time with HRPW/RP, the Fishers received K-1s every year and paid their own payroll taxes through their termination in June 2015.

163. During the mid-2000s, disputes between the named partners, including about how much Reilly and Pozner would pay themselves, led to the departure of Daniel Hoffman and Julie Williamson, leaving Reilly and Pozner with 100% equity ownership.

164. After a period when Sean Connelly was a named partner, the firm was renamed Reilly Pozner LLP upon Connelly's departure to a judgeship. When Connelly returned two years later, the firm name remained Reilly Pozner LLP.

165. The Fishers sought to become equity partners but Reilly and Pozner declined, stating that having ridded themselves of Hoffman and Williamson, they did not want to have to answer to anyone else.

166. Reilly and Pozner also did not want any other partners to know how much money they were taking from RP.

167. Reilly and Pozner stressed and promoted RP's firm culture as a "family," with a unique, team-oriented environment premised on collegial relationships and cooperation, where the quality of work and representation of clients was the sole focus.

168. To facilitate that non-traditional legal culture, Reilly and Pozner eliminated origination credit, equity ownership beyond Reilly and Pozner, dissemination of financial information, and other traditional law-firm approaches that could lead to divisiveness.

169. Reilly and Pozner assured the Fishers that their status as non-equity partners would not negatively impact their right to share in the success and profits of RP and continually represented that the Fishers, as partners of RP, would significantly share in RP's contingency fee recoveries.

170. In 2006, Eric originated a major, class action defense for an oil and gas company. Reilly congratulated Eric in an e-mail, stating: "Congratulations to Eric for landing the [] case! Eric, Larry, Mitzi and I just got back from meeting with [the clients] and we're moving forward to immediately take over the case as lead counsel. It is a class action filed in Tulsa, will be lots of work and I expect is the start of a long and excellent relationship."

171. From early 2006 through a November 2008 trial, the class action case was RP's highest revenue case and generated approximately $8 million in hourly fees for RP.

172. Eric sought compensation tied to originating the class action case and based on the significant fees that case generated. Reilly and Pozner declined Eric's request.

173. Reilly and Pozner reiterated that the firm did not track or compensate for origination, and that the firm was founded on the commitment that all partners would significantly share in the profits of the firm regardless of who originated the client or generated the revenue.

174. Over the next five years, the class action client appealed the judgment to the Oklahoma Court of Civil Appeals and then to the Oklahoma Supreme Court, generating significant, additional revenue for RP.

175. Eric was the lead attorney on the appellate work for the case. Neither Reilly, Pozner nor any other attorney at RP had any material involvement in the appeals.

176. After a favorable ruling from the Oklahoma Supreme Court, the case was remanded to the trial court and generated additional fees for RP through Eric's termination on June 8, 2015.

177. Despite generating more than $8 million of revenue for RP over a ten-year period, Eric received no origination, override, or any other compensation tied to the class action case revenues.

178. The class action case revenues were used, in part, to fund the firm's contingency fee practice.

179. In 2007, RP started a mass torts, contingency fee practice. The mass torts practice was primarily funded by the hourly fee revenue generated by the Fishers and others, including from the significant hourly revenue generated by the class action case. Until 2011, the mass torts group did not generate any material revenue.

180. Reilly and Pozner repeatedly represented that mass tort and other contingency fee recoveries would be shared with partners and associates regardless of whether a particular attorney worked on the contingency fee cases.

181. Reilly and Pozner told the Fishers and other partners that no partner would receive a special, financial arrangement tied to his or her origination of cases or recoveries, including contingent fee recoveries.

182. In 2009, to obtain a potential case on behalf of numerous state insurance guaranty associations and others against multiple defendants, including several bank trustees, Reilly and Pozner promoted the Fishers' excellent reputations, prior successes, and status as partners that would devote significant time to the case. The case arose from a Ponzi-like scheme that caused more than $500 million in losses.

183. Reilly and Pozner committed that Wendy would be the case manager, stressing her prior exceptional work on other major litigation, including the Broncos' ownership case. Wendy was identified as one of five RP attorneys who would spend significant time on the bank trustee case.

184. Eric was chosen to take on the drafting of the complex complaint and other key pleadings against more than 40 defendants because of Reilly and Pozner's recognition of his strong analytical and writing skills.

185. RP was retained in the bank trustee case to pursue claims against numerous bank trustees and other entities and individuals. RP entered into a blended fee arrangement, which provided that RP would receive a contingency fee interest in future proceeds after certain allocations of recoveries to the parties.

186. In a 2009 article, Pozner explained that to pursue contingency fee cases the entire firm must be on board: "The smaller the firm, the more it's at risk," Pozner said. "It's called contingency for a reason; you must be willing to lose. In order to make that decision, you need all of your firm behind you and everybody to be in a similar mind-set."

187. Reilly and Pozner achieved this "similar mind-set" from their partners by committing to share the contingency fee revenue in exchange for reduced pay.

188. The Fishers and other partners continued to buy into and rely upon the "similar mind-set" that would result in much greater upside than would have been possible at a traditional firm.

189. Without significant upside from contingency fee revenue, there would have been no reason for the Fishers and other partners to devote approximately 25% of RP attorney and staff time (plus associated overhead), and the commensurate reduction in revenue available for payments and profit sharing.

190. In 2009, despite significant hourly fee revenue from the class action, bank trustee, and other cases, the Fishers received end-of-year distributions from RP's profits of $9,000 and $6,000, respectively.

191. In 2010, a pension fund retained Eric and others at RP to represent it in litigation over the constitutionality of legislation. Eric was the primary attorney handling that litigation. That case generated significant hourly fee revenue between 2010 and 2012.

192. Consistent with Reilly and Pozner's position that RP would not tie compensation to origination of cases or revenue, Eric received no compensation based on the significant revenue the pension fund case generated.

193. Despite hourly fee cases generating significant revenue in 2010, the Fishers received end-of-year distributions of $30,000 and $25,000, respectively, and $5,000 increases in their guaranteed payments for 2011.

194. Hourly fees generated by Wendy and Eric in 2007, 2008, 2009, and 2010 were used to fund RP's mass torts practice and to cover the hourly-fee discount in the bank trustee case.

195. Reilly and Pozner stated in 2008 that the mass torts practice would begin to bring in revenue in 2009.

196. RP received no mass tort, contingency fee recoveries in 2009.

197. Reilly and Pozner stated in 2009 that the mass torts practice would begin to bring in revenue in 2010.

198. RP received no mass tort, contingency fee recoveries in 2010.

199. Reilly and Pozner stated in 2010 that the mass torts practice would begin to bring in revenue in 2011. Reilly and Pozner told the Fishers' and other partners' that their share of the recoveries would be "life-changing."

200. Between the 2002 U.S. West settlement and 2011, no material, contingency fee recoveries occurred.

201. In early 2011, the first and most significant mass tort case, Avandia, settled. The defendant entered into a global settlement for a reported $3 billion.

202. After the Avandia settlement, Reilly and Pozner were extremely enthusiastic because the hourly revenue that the Fishers and others had invested in mass torts had allowed RP to develop approximately 2,000 Avandia cases, plus enabled RP to obtain a position on the steering committee that entitled RP to a percentage of every other Avandia case recovery.

203. On January 23, 2013, a Reuters article reported that RP would receive $22.6 million of the steering committee funds—the largest of any firm in the country.

204. In addition, depending on the injuries suffered by the Avandia plaintiffs, each of RP's approximately 2,000 cases that warranted a payment was expected to be worth between $100,000 and $300,000, with RP's share being approximately 40%. RP's recovery thus could exceed $100 million as RP's cases are reviewed and assigned a value.

205. Reilly and Pozner continued to represent to the Fishers and other partners throughout 2011 that the Avandia contingency recoveries would provide all partners with "life-changing" distributions in the coming years.

206. RP received its first Avandia contingency fee recoveries in 2011.

207. Reilly and Pozner told the Fishers and other partners that those payments went to pay off credit lines and other outside funding for that case. The Fishers received no Avandia or other mass tort-related distributions in 2011.

208. In 2011, Eric originated a pension fund case regarding the disaffiliation of an employer. The disaffiliation case generated significant hourly fee revenue between 2011 and 2014 and resulted in the payment of $190,000,000 to the pension fund.

209. Consistent with Reilly and Pozner's position that RP would not tie compensation to origination of cases or revenue, Eric received no origination credit for the disaffiliation case nor any compensation based on the revenue it generated.

210. Hourly fees generated by Eric and others on the disaffiliation case continued to fund RP's mass torts practice.

211. Receiving no compensation based on the significant hourly fees generated by the disaffiliation case, Eric relied on Reilly and Pozner's long-standing commitment that the Fishers would significantly share in the mass torts and other contingency fee recoveries.

212. Despite the disaffiliation and other cases generating significant hourly fee revenues in 2011, Reilly and Pozner told the Fishers there was no money for end-of-year distributions. For the first time in their 12 years with RP, the Fishers received $0 for their year-end distribution.

213. Reilly and Pozner did not disclose to the Fishers or their other partners how much RP received in mass tort funds in 2011 or how much they distributed to themselves.

214. Reilly and Pozner stated there was no money for year-end distributions in 2011 because the hourly fee revenue was being used to fund the mass torts practice and to cover the hourly fee discount in the bank trustee case.

215. Hourly fee revenue generated in 2011 was used to fund the mass torts practice and to cover the hourly fee discount in the bank trustee case.

216. RP received additional Avandia and other mass tort revenue in 2012.

217. At the end of 2012, Reilly and Pozner again told the Fishers and other partners that those payments went to pay off credit lines and other outside funding for the Avandia and other mass tort cases.

218. Reilly and Pozner again stated that there was little money available for year-end distributions and again promised the Fishers that when the significant mass tort recoveries came in—now expected in 2013—that the distributions to them and others would be "life-changing."

219. Reilly and Pozner did not disclose to the Fishers or their other partners how much RP received in mass tort funds in 2012 or how much they distributed to themselves.

220. The Fishers received nothing in 2012 from the Avandia or other mass tort recoveries.

221. Despite the disaffiliation case and other hourly work generating substantial revenue in 2012, the Fishers received year-end distributions of $15,000 each, and $5,000 increases in their guaranteed payments for 2013.

222. As described above, the Fishers received their only mass tort, contingency fee distributions in April 2013 and January 2014.

223. Wendy billed more than 2,500 hours in 2014 on the bank trustee case that resulted in the $390.5 million jury verdict in March 2015 plus millions more in pre-trial settlement funds.

224. In additional to numerous accolades from their clients and Reilly and Pozner, the Fishers were recognized in the legal community for their excellent work over many years.

225. Wendy was recognized as a Top Women Lawyer in Colorado in 2011 by Law Weekly. Wendy has been recognized as one of the Top 50 Women Colorado Super Lawyers for the last several years.

226. Eric has been voted a Colorado Super Lawyer for the past three years.

227. The Fishers' dedication, talent, and sacrifices over 15 years, including 12 years as Reilly and Pozner's partners, were critical to the growth and success of RP and enabled RP to fund and pursue its lucrative contingency fee practice.

228. When those mass tort and other contingency fee cases came to fruition after a decade with little or no contingency fee recoveries, Reilly and Pozner reneged on their commitments and terminated the Fishers, their most senior partners, without warning.

The Fishers Remained Loyal to RP and Its Clients
Despite Pozner's Misconduct

229. During the same time that Reilly and Pozner were representing to Wendy and Eric that they would be receiving "life-changing" payments from the Avandia and other mass tort recoveries, Pozner began sexually harassing Wendy.

230. Wendy was offended by Pozner's actions but because of the need to work with Pozner on the bank trustee case, and the long-awaited Avandia and other mass tort settlements finally occurring, Wendy tried to ignore his sexual innuendos, leering, and inappropriate comments.

231. Pozner's sexual harassment of Wendy escalated over time.

232. Wendy became distraught as a result of Pozner's misconduct and found it unbearable to be in Pozner's presence. Wendy's distress became so manifest that Reilly asked to meet with her privately in a conference room because he and Pozner were "worried about her."

233. Pozner attended the meeting to see if Wendy would say anything about his misconduct. She did not. Despite knowing the reason for Wendy's distress, Pozner said nothing and Reilly dismissed Wendy's distress as anxiety arising from the bank trustee case.

234. Wendy and Eric remained with RP because of their loyalty to RP, its clients, partners, associates, and staff, and because they could not jeopardize their professional careers, or their share of the impending contingency fee recoveries, after devoting many years to growing RP into a top-tier litigation firm and their decade-long funding of the contingency fee practice.

235. Wendy felt particularly loyal to her bank trustee clients to whom she had devoted years of her professional life and felt an obligation to complete the bank trustee case.

236. Reilly and Pozner repaid Wendy and Eric's loyalty, and personal and financial sacrifices over 15 years, by terminating them without notice on June 8, 2015.

Reilly and Pozner Received Significant Financial Benefits from the Fishers' 12 Year Status as Their Partners

237. From the time that Wendy and Eric became partners in 2003, Reilly and Pozner used the Fishers' partner status to obtain litigation and consistently raised their billable rates to increase RP's revenue.

238. Reilly and Pozner held out the Fishers as partners on the RP website from 2003 until their termination in June 2015.

239. Reilly and Pozner marketed the Fishers' status as partners to secure clients.

240. The Fishers received K-1s from RP from 2003 through 2014.

241. The 2014 K-1s list Wendy and Eric as "General partner or LLC member-manager" and list their distributions and share of the firm's profits as "Guaranteed payments."

242. RP did not pay employer payroll taxes for the Fishers from Fall 2003 (when they became partners), through their termination in June 2015.

Reilly and Pozner Are Hoarding the Contingency Fee Recoveries to Carry out Their Plan to Wind-Down RP and Fund Their Extravagant Lifestyles and Impending Retirements

243. In 2011, when Reilly and Pozner claimed that there was no money available for partner distributions, Reilly purchased ocean front property in the exclusive, gated Silver Sands beach front community in Jamaica.

244. Between approximately 2011 and 2013, when Reilly and Pozner claimed there was no little or no money for year-end distributions, Reilly constructed an ocean-front home. Several employees reside at and manage the property, and provide cooking, shuttle, and other services to Reilly's family and their guests.

245. Reilly's Jamaica, ocean-front home cost millions of dollars to construct.

246. Reilly also owns a home in the Denver Hilltop neighborhood valued at approximately $2,500,000.

247. In 2010, Pozner finished construction of his oceanfront home in an exclusive, gated community in Kailua-Kona, Hawaii. Pozner's neighbors include Microsoft founder Paul Allen and a co-author of the book, *Chicken Soup for the Soul*.

248. Pozner has spent approximately one-third of the year at his Hawaii home for the last several years. Pozner's Hawaii, ocean-front home is valued at approximately $4,000,000.

249. Pozner also owns a condominium at the exclusive, gated community at the Fairways at Mauna Lani Resort on the Big Island of Hawaii.

250. Pozner built a home in Breckenridge, Colorado. Pozner's Breckenridge home was recently listed for sale for approximately $1,500,000.

251. Pozner sold his home in Denver's Hilltop neighborhood for $2,500,000.

252. Upon information and belief, in June 2015, within days of the mass "layoffs", Pozner purchased a home in Brooklyn, New York for one of his daughters.

253. Reilly and Pozner have never disclosed to their partners the monies that they have paid to themselves and their family members from RP.

254. After terminating the Fishers and other RP partners and attorneys, Reilly and Pozner have carried through with their plan to wind-down RP and eliminate through attrition or termination the vast majority of attorneys and staff that remained after June 2015.

255. Reilly and Pozner seek to keep nearly 100% of RP's share of the multi-million dollar pre-trial settlements and $390.5 million verdict, wind down RP, and take the vast majority of additional mass tort recoveries to pay for their lavish lifestyles and impending retirements.

FIRST CLAIM FOR RELIEF

Breach of Fiduciary Duty
(Against Reilly and Pozner)

256. The Fishers incorporate all allegations contained in their Complaint.

257. A fiduciary relationship existed between the Fishers and Defendants Reilly and Pozner, by virtue of the Fishers' 15-year relationship with Reilly and Pozner beginning as founding attorneys of RP, their 12 years as partners at RP, and through the trust that Reilly and Pozner required that Wendy and Eric place in them, and the corresponding trust that they reposed in Reilly and Pozner.

258. The Fishers were partners of RP with Reilly and Pozner beginning in the Fall 2003 through at least June 2015.

259. The Fishers were joint venturers with Reilly and Pozner from no later than Fall 2003 through June 2015.

260. Reilly and Pozner owed their partners, including the Fishers, full, fair, open, and honest disclosure of all material information within their knowledge affecting the partnership relationship and partnership affairs.

261. Reilly and Pozner owed their partners, including the Fishers, the highest duty of loyalty because they stood in a relationship of trust and confidence to each other and are bound by standards of good conduct and square dealing.

262. This duty requires that partners and joint venturers not misrepresent or intentionally conceal material facts, as well as make timely, affirmative disclosure without prompting.

263. Reilly and Pozner breached their fiduciary duties to the Fishers as their partners and joint venturers by withholding material financial and other information as set forth above, including RP's receipt of contingency fee recoveries, how much they were paying themselves from those recoveries at the expense of the other partners, and their intention to terminate the Fishers and others without warning.

264. Reilly and Pozner breached their fiduciary duties by failing to pay the Fishers a substantial share of RP's contingency fee recoveries.

265. After Reilly and Pozner began disclosing financial information to certain partners in 2014, Reilly and Pozner breached their fiduciary duties by concealing RP's receipt of millions of dollars in pre-trial settlements in the bank trustee case.

266. In addition to the *per se* fiduciary duty that Reilly and Pozner owed the Fishers as their partners, Reilly and Pozner also owed the Fishers fiduciary duties because they occupied a superior position relative to the Fishers.

267. A fiduciary relationship arose between the Fishers and Reilly and Pozner because Reilly and Pozner exercised a high degree of control over RP's finances and justified their withholding of financial information from the Fishers by assuring the Fishers they were looking out for their best interests.

268. A fiduciary relationship between the Fishers and Reilly and Pozner also arose because Reilly and Pozner completely controlled the distribution of RP's profits and monies due to the Fishers.

269. Reilly and Pozner told the Fishers to place their trust in them, and required that the Fishers place their trust in them, and the Fishers justifiably reposed their trust in Reilly and Pozner.

270. Reilly and Pozner repeatedly told the Fishers, and other partners, that they were looking out for their best interests in how they ran RP and distributed the funds received by RP, and justified their position not to share RP's financials with any of their partners because they were looking out for those partners' best interests.

271. Reilly and Pozner invited, accepted, and acquiesced in the Fishers' trust.

272. Reilly and Pozner knew, or should have known, that the Fishers relied on them to handle RP's affairs in the best interests of all the partners, and not only Reilly and Pozner, including in the distribution of RP's contingency fee recoveries.

273. Reilly and Pozner breached their fiduciaries duties to the Fishers by concealing and withholding material information from the Fishers as set forth above, including their plan to terminate the Fishers and other RP attorneys once they became expendable after the bank trustee trial, and their plan to enrich themselves at the expense of the Fishers and other RP attorneys.

274. The Fishers suffered substantial damages as a result of Reilly and Pozner's breaches of their fiduciary duties.

SECOND CLAIM FOR RELIEF

Unjust Enrichment/Quantum Meruit Arising from the Bank Trustee Case (Against All Defendants)

275. The Fishers incorporate all allegations contained in their Complaint.

276. The Fishers conferred a benefit upon Defendants as critical contributors to RP's recovery of millions of dollars from the bank trustee case, and RP's right to millions more from the March 2015 jury verdict.

277. RP could not have achieved its extraordinary successes in the bank trustee case without the dedication and extraordinary work of the Fishers, and other attorneys on the bank trustee case team.

278. Wendy's exceptional efforts and full-time dedication to the bank trustee case for more than six years significantly contributed to the multi-million dollar pre-trial settlements and jury verdict, and RP's resulting contingency fee recoveries.

279. Eric devoted a significant amount of his time to the bank trustee case over six years, including drafting the original and amended complaints. Eric drafted the briefing that resulted in successful outcomes on numerous motions to dismiss, summary judgment motions, other critical motions, and key trial pleadings that significantly contributed to the multi-million dollar pre-trial settlements and March 2015 jury verdict, and RP's resulting contingency fee recoveries.

280. Wendy and Eric further conferred a benefit on Defendants through their significant hourly work that enabled RP to operate under discounted hourly rates in exchange for a contingency fee and other compensation.

281. The Fishers conferred a benefit on Defendants by taking lesser salaries, bonuses, raises, and no origination credit, in exchange for significant participation in all contingency fee recoveries.

282. RP has received millions of dollars in contingency fees from the bank trustee case and is entitled to millions more on the jury verdict because of the benefits provided by Wendy, Eric, and others.

283. It would be unjust and inequitable for Defendants not to distribute to the Fishers their fair share of RP's contingency fees from the pre-trial settlements, jury verdict, and any additional settlements and post-trial recoveries.

284. Defendants should, in equity and good conscience, provide the Fishers with a substantial percentage of RP's share of its success fees consistent with Wendy and Eric's contributions to the bank trustee case and RP, status as partners for 12 years, their funding of the non-hourly success fees, and the structure of RP to reward all partners for contingency fee recoveries.

285. Defendants' unjust and inequitable conduct warrants disgorgement of all benefits gained by Defendants.

THIRD CLAIM FOR RELIEF

Unjust Enrichment/Quantum Meruit Arising from Mass Tort Recoveries (Against All Defendants)

286. The Fishers incorporate all allegations contained in their Complaint.

287. The Fishers conferred a benefit upon Defendants by funding and enabling the pursuit of mass tort and other contingency fee cases through their hourly work.

288. RP was founded on the principle that approximately 25% of attorney time and resources would be devoted to developing and funding contingency fee opportunities.

289. RP followed that model throughout its existence and devoted approximately 25% of attorney time and resources to developing and funding contingency fee opportunities.

290. RP devoted approximately 25% of attorney time and resources to non-hourly revenue opportunities so that all partners, not only Reilly and Pozner, would share in the substantial upside of the mass tort, contingency fee revenue.

291. Despite that the Fishers worked throughout their careers with RP under such arrangement, when the contingency fee revenue arrived after many years of financial and personal sacrifice, Reilly and Pozner took from RP the vast majority of the mass tort recoveries at the expense of the Fishers and other partners and associates that enabled those recoveries.

292. It would be unjust and inequitable for Defendants to retain the benefits conferred on them without adequately compensating the Fishers for past and future mass tort contingency fee recoveries.

293. Defendants' unjust and inequitable conduct warrants disgorgement of all benefits gained by Defendants.

FOURTH CLAIM FOR RELIEF

Promissory Estoppel
(Against All Defendants)

294. The Fishers incorporate all allegations contained in their Complaint.

295. Defendants made promises and commitments to the Fishers to substantially share contingency fee revenue as set forth in the preceding claims and the general allegations.

296. Defendants' promises were made to induce the Fishers to leave McKenna and join RP, devote 15 years of their lives to the growth and success of RP, including six years to the bank trustee case, and take lesser compensation while funding the contingency fee recoveries.

297. Reilly and Pozner parlayed that reliance into taking for themselves the vast majority of contingency fee revenue, including the long-awaited mass tort recoveries, and nearly 100% of RP's share of the recoveries in the bank trustee case.

298. Defendants reasonably should have expected to induce action by the Fishers based on their promises and commitments.

299. Defendants' promises and commitments induced the Fishers to leave McKenna to join RP, fund the mass tort and other contingency fee recoveries through their hourly work, accept lower compensation, no origination credit or compensation, no equity ownership, stay with and devote 15 years of their lives to RP, including 12 years as partners, to obtain substantial contingency fee recoveries, including RP's share of millions of dollars of the pre-trial settlements, the $390.5 million verdict, and mass tort recoveries.

300. Defendants' commitments to substantially share RP's contingency fee recoveries and provide "life-changing" payments induced the Fishers to stay with RP.

301. Defendants' failures to honor their promises and commitments have resulted in injustice that can be avoided only by enforcement of their promises.

FIFTH CLAIM FOR RELIEF

Fraudulent Representations and Inducement (Against Reilly and Pozner)

302. The Fishers incorporate all allegations contained in their Complaint.

303. Reilly and Pozner made false representations of material fact to the Fishers.

304. Reilly and Pozner's false representations to the Fishers, set forth in detail above, include that they would significantly share in all contingency fee proceeds.

305. Reilly and Pozner falsely represented to the Fishers that in exchange for RP attorneys agreeing to devote approximately 25% of attorney time and resources to contingency fee cases, take lower compensation, and receive no origination credit, that all RP attorneys, and particularly the Fishers as founding attorneys and the longest-tenured partners, would substantially share in the contingency fee recoveries.

306. Reilly and Pozner falsely represented to the Fishers that in exchange for leaving McKenna, taking the risk of being two of 10 founding attorneys of the newly formed firm, and taking lower compensation, that they would be rewarded with a substantial share of all contingency fee recoveries.

307. Reilly and Pozner falsely and repeatedly represented to the Fishers during their 15 years with RP, including 12 years as partners, that as the most senior partners (other than Reilly and Pozner), who were instrumental to the growth and success of RP, they would receive "life-changing" payments from the contingency fee recoveries regardless of Reilly and Pozner's decision not to share equity ownership with their partners.

308. During and after the Fishers and other attorneys funded the mass torts practice for four years (from 2007 to 2011) with no return payment, Reilly and Pozner assured the Fishers that the forthcoming mass tort and other contingency fee recoveries would provide life-changing payments to them and other RP attorneys.

309. Reilly and Pozner's commitments as to life-changing payments intensified after the long-awaited Avandia settlement in 2011, and in the years prior to the first mass tort payment in 2013, and continued during 2013, and after the second payment in January 2014.

310. The Fishers were unaware of the falsity of Defendants' representations.

311. Reilly and Pozner made the representations with the intention that the Fishers rely and act on those representations.

312. The Fishers relied on the representations by leaving McKenna and becoming founding attorneys of RP, devoting 15 years of their lives to RP's growth and success, including

to the 2015 pre-trial settlements and jury verdict, and staying with RP, including 12 years as partners, despite receiving lesser compensation, and no compensation for origination.

313. Based on RP's commitment to spend approximately 25% of the firm's time and resources on contingency fee work, and Reilly and Pozner's promises of significant financial gain consistent with that approach, the Fishers gave up the security and stability of McKenna, and other established firms, in favor of joining a small, start-up firm and staying with a one-office, boutique litigation firm.

314. Reilly and Pozner's agreement to provide a significant share of RP's contingency fee revenues induced the Fishers to stay with RP despite Pozner's sexual harassment of Wendy.

315. Had the Fishers known that the Reilly and Pozner would seek to take nearly 100% of RP's share of the pre-trial settlement funds and the 2015 jury verdict, take the vast majority of the long-awaited mass tort recoveries, and terminate them without warning under false pretenses to avoid sharing the contingency fee recoveries, the Fishers would not have joined RP, funded the mass tort and other contingency fee recoveries through their hourly work, taken lower pay, bonuses, and no origination credit, and stayed with and devoted 15 years of their lives to RP, including to obtaining multi-million pre-trial settlements and the $390.5 million jury verdict.

316. The Fishers' reliance on Reilly and Pozner's representations was reasonable and justified.

317. The Fishers suffered substantial damages as a result of Reilly and Pozner's fraudulent representations.

SIXTH CLAIM FOR RELIEF

Fraudulent Concealment and Nondisclosure (Against Reilly and Pozner)

318. The Fishers incorporate all allegations contained in their Complaint.

319. Reilly and Pozner concealed material facts that in equity and good conscience should have been disclosed, including the total amount that RP received from the mass tort cases, the amount of mass tort recoveries that Reilly and Pozner took from RP, and RP's receipt of the bank trustee case pre-trial settlement funds.

320. Reilly and Pozner concealed material facts from the Fishers that in equity and good conscience should have been disclosed, including their intention to take nearly 100% of RP's share of the bank trustee case pre-trial settlements, jury verdict, and other post-trial awards, and the vast majority of the mass tort recoveries.

321. Reilly and Pozner concealed material facts from the Fishers that in equity and good conscience should have been disclosed, including that Reilly and Pozner knew, prior to or

during the February/March 2015 bank trustee trial, that they would terminate the many partners and associates involved in that case as soon as they became expendable after the trial.

322. Reilly and Pozner, in equity and good conscience, should have disclosed to the Fishers their intention to terminate the majority of the bank trustee case attorneys, including the Fishers, long before June 8, 2015.

323. Reilly and Pozner concealed from the Fishers, and other RP attorneys and staff, that after the March 2015 verdict they would implement their plan to begin shutting down RP, take nearly 100% of RP's share of the pre-trial settlement funds and verdict, and use that money to fund their extravagant lifestyles in their impending retirements.

324. Reilly and Pozner concealed from the Fishers that after the bank trustee trial they would be deemed expendable and laid off in favor of younger, less expensive, associates and junior partners, and Reilly's brother-in-law, Robert Kelly, who would be retained to handle the post-trial work and take Eric's place on other cases.

325. Reilly and Pozner knew that they were concealing material facts from the Fishers and their other partners.

326. The Fishers were ignorant of the facts that were being concealed.

327. Reilly and Pozner intended that the Fishers act on their concealments.

328. Reilly and Pozner's concealment of material facts induced the Fishers to join and stay with RP.

329. Reilly and Pozner's concealment of material facts induced the Fishers (and others) to devote their lives to the bank trustee case including through pre-trial and trial in St. Louis.

330. Had the Fishers known that the Reilly and Pozner would take the vast majority of contingency fee revenue, including 100% of RP's contingency share of pre-trial settlements, and terminate them without notice for fabricated reasons to avoid sharing the contingency fees, the Fishers would not have joined RP, funded the mass tort and other contingency fee recoveries through their hourly work, taken lower pay, bonuses, and no origination credit, and stayed with and devoted 15 years of their lives to RP including to obtain multi-million dollar settlements and the $390.5 million verdict.

331. The Fishers suffered substantial damages as a result of Reilly and Pozner's fraudulent concealment and nondisclosure.

SEVENTH CLAIM FOR RELIEF

Conversion/Civil Theft
(Against All Defendants)

332. The Fishers incorporate all allegations contained in their Complaint.

333. Defendants have exercised dominion and control over, and have converted for their personal use, substantial contingency fee revenue that rightfully belongs to the Fishers, including their share of RP's contingency fees from the bank trustee case and mass tort recoveries.

334. The Fishers have an ownership interest in RP's recoveries from the past and future mass tort funds, bank trustee case settlements to date, the March 2015 jury verdict and future settlements when received, by virtue of their status as 12-year partners, the structure of the firm to devote approximately 25% of its attorney time and overhead to contingency fee recoveries, the Fishers' funding of the contingency fee recoveries through their hourly work and reduced compensation, and the commitments by Reilly and Pozner to significantly share contingency fee recoveries with the Fishers.

335. Defendants' conversion and civil theft constitutes an unauthorized act of dominion or ownership over property rightfully belonging to the Fishers.

336. As to the pre-trial settlement funds, Defendants took possession of and controlled all the contingency fee revenue received from those settlements without informing the other partners of RP's receipt of those funds or the amounts received.

337. Defendants have not, and do not intend to, distribute any of the bank trustee case settlement funds to the Fishers or any mass tort contingency recoveries that RP received after January 2014, or will receive in the future.

338. Defendants must turn over to the Fishers their ownership interest in RP's recoveries from the bank trustee case settlements to date, past and future mass tort recoveries, and RP's share of the $390.5 million verdict and final judgment, or additional settlements, when received.

339. The Fishers are entitled to treble damages, and attorney fees and costs under C.R.S. § 18-4-405, for Defendants' civil theft of that portion of RP's recoveries from past and future mass tort funds and the past and future bank trustee case settlement funds, verdict, and final judgment that rightfully belong to the Fishers.

EIGHTH CLAIM FOR RELIEF

Equitable Estoppel
(Against All Defendants)

340. The Fishers incorporate all allegations contained in their Complaint.

341. Defendants' conduct as set forth in the preceding claims and general allegations constitutes false representations and concealment of material facts.

342. Defendants sought to and did convey the impression of the truthfulness of their representations to equitably and significantly share the contingency fee revenue with their partners and associates.

343. Defendants' current attempts to pocket the vast majority of the contingency fee revenue, including from the past and future mass tort and bank trustee case recoveries, are inconsistent with their prior actions and representations.

344. Defendants intended, or expected, that their conduct and representations would be acted on by the Fishers.

345. Defendants knew that they would act inconsistently with their representations, firm culture, and firm structure to fund the contingency fee practice with hourly revenue in exchange for sharing the contingency fee recoveries.

346. The Fishers lacked the knowledge and means of knowledge of the truth as to those facts.

347. The Fishers acted on Defendants' conduct and representations and changed their positions to their prejudice, including to leave McKenna to join RP, fund the mass tort and other contingency fee recoveries through their hourly work, accept lower compensation, no origination credit or compensation, no equity ownership, stay with and devote 15 years of their lives to RP, including 12 years as partners, to obtain substantial participation in RP's contingency fee recoveries, including RP's share of the pre-trial settlements, the jury verdict, and the mass tort recoveries.

348. Defendants are estopped from taking positions inconsistent with their previous conduct and representations.

NINTH CLAIM FOR RELIEF

Constructive Trust
(Against All Defendants)

349. The Fishers incorporate all allegations contained in their Complaint.

350. A constructive trust arises over RP's share of the past and future mass tort recoveries, and the bank trustee case settlement funds and jury verdict, because Defendants obtained the property through fraud, duress, abuse of confidence, and other questionable and unconscionable conduct.

351. A confidential, fiduciary relationship existed between the Fishers and Reilly and Pozner, by virtue of their 15-year relationship beginning as founding attorneys of RP, their 12 years as partners, the Fishers' status as the most senior partners of RP (aside from Reilly and Pozner), and through the trust that Reilly and Pozner required that Wendy and Eric place in them, and the corresponding trust that they reposed in Reilly and Pozner.

352. Reilly and Pozner abused their confidential relationship with the Fishers by violating their promises and commitments to the Fishers, failing to compensate them for their funding of the contingency fee recoveries, reduced compensation, no origination credit, and failing to honor RP's structure of devoting approximately 25% of attorney time to contingency fee revenue in exchange for substantially sharing the revenue generated by contingency fee recoveries.

353. Defendants acquired the aforementioned money and property under such circumstances that the Defendants may not in good conscience retain the beneficial interest.

TENTH CLAIM FOR RELIEF

Negligent Misrepresentations and Omissions (Against Reilly and Pozner)

354. The Fishers incorporate all allegations contained in their Complaint.

355. Reilly and Pozner knew or should have known that their representations to significantly share the contingency fee recoveries with the Fishers, and other representations to induce the Fishers to join and stay with RP, were false.

356. Reilly and Pozner knew or should have known that omissions, including that they intended to terminate the Fishers without warning, were material.

357. The Fishers were unaware of the falsity of Reilly and Pozner's representations and their omissions of material fact.

358. Reilly and Pozner made the representations with the intention that the Fishers act on those representations and on the concealed facts.

359. The Fishers relied on the representations by leaving McKenna and becoming founding attorneys of RP, devoting 15 years of their lives to RP's growth and success, including to the bank trustee case settlements and verdict, generating extensive hourly revenue to fund

contingency fee recoveries, and staying with RP despite receiving lesser compensation and Pozner's sexual harassment of Wendy.

360. The Fishers' reliance on Reilly and Pozner's representations was reasonable and justified and their actions resulted from Reilly and Pozner's concealment of material information.

361. The Fishers suffered substantial damages as a result of Reilly and Pozner's representations and omissions.

ELEVENTH CLAIM FOR RELIEF

Accounting
(Against All Defendants)

362. Plaintiffs incorporate all allegations contained in this Complaint.

363. The Fishers were partners with Reilly and Pozner from Fall 2003 through at least June 2015.

364. The Fishers were RP partners at the time of their terminations on June 8, 2015.

365. The Fishers have the right to a formal accounting under C.R.S. § 17-60-122 as to partnership affairs because they have been wrongfully excluded from the partnership business or possession of its property by Reilly and Pozner.

366. The Fishers have the right to a formal accounting under C.R.S. §§ 17-60-121 and 122 as to partnership affairs because Reilly and Pozner are accountable to RP as fiduciaries and they shall account to RP for all benefit and hold as trustees for it any profits derived by them without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of RP or from any use by Reilly and Pozner of its property.

367. The Fishers have the right to a formal accounting under C.R.S. § 17-60-122 as to partnership affairs because it is reasonable and just because of the facts set forth above.

TWELVTH CLAIM FOR RELIEF

Money Had and Received
(Against All Defendants)

368. Plaintiffs incorporate all allegations contained in this Complaint.

369. It would be unjust and inequitable for Reilly, Pozner, and RP to retain the Fishers' share of the mass tort and bank trustee case contingency fee recoveries.

370. Reilly, Pozner, and RP owe the Fishers their share of the past and future monies had and received from the mass tort and bank trustee case recoveries.

371. For reasons of equity and fairness, the Court should order that the Fishers receive their share of the past and future contingency fee recoveries had and received by Reilly, Pozner, and RP from the mass tort and bank trustee cases.

THIRTEENTH CLAIM FOR RELIEF

Aiding & Abetting Breach of Fiduciary Duty, Fraudulent Representations, and Fraudulent Concealment (Against RP)

372. Plaintiffs incorporate all allegations contained in this Complaint.

373. If the misrepresentations and non-disclosures that are the subject of claims above do not constitute the actions of RP, as well as Reilly and Pozner, then RP aided and abetted Reilly and Pozner in the tortious conduct perpetrated against the Fishers.

374. RP, separately and independently, knew and substantially assisted the principal violation of torts perpetrated by Reilly and Pozner against Plaintiffs.

375. RP, separately and independently, was aware of its role as part of an overall tortious activity at the time it provided assistance to Reilly and Pozner.

376. As a result of RP's conduct, the Fishers sustained damages.

RELIEF REQUESTED

The Fishers request that the Court award:

(a) Damages in an amount to be proven at trial, including but not limited to compensatory and consequential damages;

(b) Statutory and equitable accounting and constructive trust;

(c) Equitable relief to remedy Defendants' unjust enrichment at the Fishers' expense and disgorgement of Defendants' ill-gotten gains;

(d) Treble damages, and attorney fees and costs under C.R.S. § 18-4-405 or other applicable statute or rule of law;

(e) Interest both pre-judgment and post-judgment at the applicable rate; and

(f) Additional and/or alternative relief as the Court may deem to be just, equitable and appropriate.

EXEMPLARY DAMAGES

The Fishers reserve their right to amend their complaint to add a request for exemplary damages under C.R.S. § 13-21-102 after the parties exchange initial disclosures.

JURY DEMAND

The Fishers demand a trial by jury of all issues triable by a jury.

Dated this 7th day of March, 2016.

Respectfully submitted,

Evans & McFarland, LLC

/s/
M. Gabriel McFarland
ATTORNEYS FOR PLAINTIFFS

Plaintiffs' Address

The Fishers' address is 6382 S. Zenobia Court, Littleton, Colorado 80123.

Pursuant to C.R.C.P. 121, Section 1-26, a printed copy of this document with original signatures will be maintained by Evans & McFarland, LLC and made available for inspection upon request.