McCormick Affirmation

EXHIBIT 3

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

- x

DOW KIM,

Plaintiff,

-against-

KARL J. WACHTER,

Defendant.

- x

Index No.: 603705/09

Date Purchased: 12-09-09

SUMMONS

Plaintiff designated New York County as the place of trial. Venue is proper pursuant to CPLR §§ 503.

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York).

In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
December 8, 2009

COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.

By: Leo Leyva
Leo V. Leyva
Attorneys for Plaintiff Dow Kim,
900 Third Avenue, 16th Floor
New York, NY 10022-4728
(212) 752-8000

TO:

KARL J. WACHTER
69 BOUTON RD.
SOUTH SALEM, NY 10590

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

DOW KIM,

Plaintiff,

-against-

KARL J. WACHTER,

Defendant.

Index No. 603705/09

Civil Action

VERIFIED COMPLAINT

FILED 12-09-09

Plaintiff, Dow Kim ("Plaintiff" or "Kim"), by his attorneys, Cole, Schotz, Meisel, Forman & Leonard, P.A., as and for his Verified Complaint against Defendant, Karl J. Wachter ("Defendant" or "Wachter"), alleges and states as follows:

INTRODUCTION

1. Through this action for indemnification, Kim seeks reimbursement for all attorneys' fees and costs incurred by Kim as a result of his defense of a frivolous lawsuit brought against him by Wachter that was rejected and dismissed by the Court in its entirety.

2. The prior action involved a dispute between two former business partners who unsuccessfully attempted to launch a hedge fund at the outset of the country's worst financial crisis since the Great Depression.

3. Through no fault of either Wachter or Kim, the hedge fund was unable to raise the requisite capital to launch the new fund and the venture failed. Wachter, an experienced corporate attorney and sophisticated businessman who drafted and negotiated the documents that were the subject of the initial litigation against Kim (and the instant litigation) sued Kim personally seeking damages which, even if any were incurred (which Kim vehemently denies) could only be attributed to the corporate entities.

4. Seeing through Wachter's smoke and mirrors, the Court rejected Wachter's complaint and dismissed the action in its entirety. Pursuant to the express language of the agreements between the parties, which Wachter drafted, Kim is now entitled to indemnification for all attorneys fees, costs and expenses incurred by Kim as a result of Wachter's meritless action.

IDENTIFICATION OF THE PARTIES

5. Kim is an individual and a resident of the State of New York.

6. Upon information and belief, Wachter is a resident of the State of York.

FACTUAL BACKGROUND

Diamond Lake, LLP

7. In June, 2007, Kim along with others formed a hedge fund comprised of Diamond Lake Investment Group LP ("Diamond Lake"), and Diamond Lake GP LLC ("Diamond Lake LLC") (collectively "The Venture"). Wachter agreed to participate in The Venture as both a limited partner of Diamond Lake and a limited liability company member of Diamond Lake LLC.

8. In fact, Wachter, an experienced corporate attorney, drafted both Diamond Lake's First Amended and Restated Limited Partnership Agreement (the "Limited Partnership Agreement"), and Diamond Lake LLC's Limited Liability Company Agreement (the "LLC Agreement"). Both agreements governed the rights of the respective parties and entities which were the subject of Wachter's prior lawsuit against Kim. The Limited Partnership Agreement and LLC Agreement also form the basis for this action against Wachter.

9. In August, 2008, in the midst of the country's worst financial crisis since the Great Depression, Kim was forced to abandon plans for The Venture because, through no fault

of Kim or Watcher, The Venture was unable to raise the necessary capital to launch the new fund. As a result, all business of the entities were forced to cease operations.

The Prior Frivolous Lawsuit Filed by Wachter Against Kim

10. On or about December 22, 2008, Wachter commenced a meritless action against Kim personally in the Supreme Court, New York County, bearing index number 650532/2008 (the "Complaint"). (A true copy of the Complaint is attached hereto as Exhibit "A".) Without any basis in law and fact, Wachter sought to pierce the corporate veil of The Venture and collect directly from Kim alleged corporate obligations of The Venture purportedly due to Wachter, which allegedly included unpaid wages and/or bonuses. In his Complaint, Wachter alleged: 1) breach of oral contract; 2) breach of written contract; 3) a violation of New York Labor Law and; 4) the tort of promissory estoppel.

11. On or about January 29, 2009, Kim moved to dismiss Wachter's claims, arguing that each and every agreement executed (and drafted) by Wachter made unequivocally clear that any liability for unpaid wages, and/or bonuses, if any, was the sole responsibility of The Venture, and under absolutely no circumstances would Kim be personally responsible for any such obligations.

12. Recognizing that Wachter's claims were wholly without merit, on or about September 14, 2009, the Court rejected Wachter's claims against Kim, and dismissed his complaint in its entirety. (A true copy of the Court's September 14, 2009, decision is attached hereto as Exhibit "B".) Wachter has since filed a Notice of Appeal, which will in all likelihood meet the same fate as his Complaint.

The Limited Partnership and LLC Agreements

13. Section 1.05 of the Limited Partnership Agreement states, in relevant part, as follows:

> The general partner of the Partnership is DLIG LLC (the "*General Partner*"). The initial limited partners of the Partnership are Dow Kim, Namuk Cho, Vitaly Dukhon, Michael Kelley, David A. Milich, Michael Pasternak, Warren Silver and Karl J. Watcher, and, together with any persons subsequently admitted to the Partnership pursuant to Article V of this Agreement, are referred to herein as "*Limited Partners*". The Limited Partners and General Partner are referred to herein as "*Partners*" (emphasis in the original).

14. Section 2.10 of the Limited Partnership Agreement states, in relevant part, as follows:

> The rights of a Limited Partner shall be limited solely to such Partner's right to receive distributions and allocations in respect of such Partner's Capital Account (including, but not limited to, in connection with a liquidation of the Partnership or the sale or other disposition of all or substantially all of the assets of the Partnership that leads to a liquidation of the Partnership) and as otherwise expressly provided herein and. . .in any contract of employment or similar agreement between, or binding upon, the Partnership and such Partner.
>
> <u>In the event any Partners shall assert any claim or take any other such action which is inconsistent with the foregoing provisions of this Section 2.10, such Partner shall indemnify, defend and hold harmless the Partnership, the General Partner and all other such Partners from and against any and all liability, damage, loss, cost or expense (including, without limitation, reasonable legal fees and expenses) to which any of them may become subject as a result of such assertion of action</u>. (emphasis added)

Relevant portions of the Limited Partnership Agreement are attached hereto as Exhibit "C".

15. Section 1.05 of the LLC Agreement states, in relevant part, as follows:

> The managing member of the Company is Dow Kim (the "*Managing Member*"). The initial non-managing members of the Company are Syed Adlan, Namuk Cho, Vitaly Dukhon, Michael Kelley, Arun Melvany, David A. Milich, Michael Pasternak, Warren Silver, Karl J. Watcher, and Shinji Yoshikawa, and, together with any persons subsequently admitted to the Company

> pursuant to Article V of this Agreement, are referred to herein as together referred to herein as "*Non-Managing Members*". The Non-Managing Members and the Managing Member are referred to herein as "*Members*". (emphasis in the original).

16. Similar to the Limited Partnership Agreement, Section 2.10 of the LLC Agreement states, in relevant part, as follows:

> The rights of a Non-Managing Member shall be limited solely to such Non-Managing Member's right to receive distributions and allocations in respect of such Non-Managing Member's Capital Account (including, but not limited to, in connection with a liquidation of the Company or the sale or other disposition of all or substantially all of the assets of the Company that leads to a liquidation of the Company) and as otherwise expressly provided herein and under the Act and in any contract of employment or similar agreement between, or binding upon, the Company and such Non-Managing Member.
>
> In the event any Non-Managing Member shall assert any claim or take any other such action which is inconsistent with the foregoing provisions of this Section 2.10, <u>such Non-Managing Member shall indemnify, defend and hold harmless the Company, the managing Member and all other Members from and against any and all liability, damage, loss, cost or expense (including, without limitation, reasonable legal fees and expenses) to which any of them may become subject as a result of such assertion of action.</u> (emphasis added)

Relevant portions of the LLC Agreement are attached hereto as Exhibit "D".

17. Wachter, a Partner as defined in the Limited Partnership Agreement, and a Member as defined in the LLC Agreement, took action completely inconsistent with Sections 2.10 of the Limited Partnership Agreement and LLC Agreement by commencing his meritless action against Kim personally, seeking monies and other alleged damages which the Court determined he was not entitled to in accordance with the terms of the controlling agreement executed by the parties. Kim, also a Partner and Member in Diamond Lake and Diamond Lake LLC, is entitled to indemnification from Wachter for any and all liabilities, damages, losses,

costs or expenses, including, without limitation, reasonable legal fees and expenses incurred in connection with the defense of Wachter's claims.

18. Kim was forced to defend a frivolous action brought by Wachter and as a result is entitled to indemnification pursuant to the express terms of the agreements Wachter drafted and agreed to. Wachter's actions were clearly inconsistent with the relevant agreements, and the language of the agreements permits Kim the relief sought in this Complaint.

AS AND FOR A FIRST CAUSE OFACTION
(Indemnification Pursuant to the Limited Partnership Agreement)

19. Kim repeats and restates each of the allegations contained in the preceding paragraphs with the same force and effect as fully set forth herein.

20. Wachter, a Partner of Diamond Lake pursuant to the Limited Partnership Agreement, commenced a legal proceeding against Kim, which action was inconsistent with Section 2.10 of the Limited Partnership Agreement.

21. Pursuant to Section 2.10 of the Limited Partnership Agreement, Wachter therefore owes Kim indemnification for any and all liabilities, damages, losses, costs or expenses, including, without limitation, reasonable legal fees and expenses incurred in the defense of Wachter's claims.

22. Based on the foregoing, Kim is entitled to damages in the amount of the attorneys' fees and costs incurred in the defense of Wachter's Complaint, as well as the attorneys' fees and costs associated with the instant action.

AS AND FOR A SECOND CAUSE OFACTION
(Indemnification Pursuant to the LLC Agreement)

23. Kim repeats and restates each of the allegations contained in the preceding paragraphs with the same force and effect as fully set forth herein.

24. Wachter, a Member of Diamond Lake pursuant to the LLC Agreement, commenced a legal proceeding against Kim, which action was inconsistent with Section 2.10 of the LLC Agreement.

25. Pursuant to Section 2.10 of the LLC Agreement, Wachter therefore owes Kim indemnification for any and all liabilities, damages, losses, costs or expenses, including, without limitation, reasonable legal fees and expenses incurred in the defense of Wachter's claims.

26. Based on the foregoing, Kim is entitled to damages in the amount of the attorneys' fees and costs incurred in the defense of Wachter's Complaint, as well as the attorneys' fees and costs associated with the instant action.

WHEREFORE, Kim demands judgment against Wachter, as follows:

(a) Awarding compensatory damages; consequential damages, punitive damages, counsel fees, costs of suit, and such other and further relief as the Court deems just, appropriate and equitable.

DATED: New York, New York
December 8, 2009

COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.
A Professional Corporation

By: Leo Leyva

Leo V. Leyva
Jed M. Weiss
Attorneys for Plaintiff Dow Kim,
900 Third Avenue, 16th Floor
New York, NY 10022-4728
(212) 752-8000

New York **VERIFICATION**

STATE OF NEW ~~JERSEY~~)
New York) SS
COUNTY OF ~~BERGEN~~)

DOW KIM, being duly sworn, deposes and says:

1. I am the plaintiff in the within action.

2. I have read the foregoing Complaint and know the contents thereof and believe the same to be true to the best of my knowledge.

DOW KIM

Sworn to before me this 07 day of December, 2009

Notary Public

ERNESTO NEGRON
Notary Public, State of New York
No. 01NE6067764
Qualified in New York County
Commission Expires Dec. 17, 20 09