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Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ADAMS FINANCIAL PARTNERS, L.P., a  
Washington limited partnership, and  
ADAMS FINANCIAL CONCEPTS, LLC,  
a Washington limited liability company,

Plaintiff(s),

v.

PATKE ASSOCIATES LTD., an Illinois  
company,

Defendant(s).

NO. 2:16-cv-00392-JCC

DEFENDANT'S ANSWER TO FIRST  
AMENDED COMPLAINT

COMES NOW defendant Patke & Associates, Ltd. ("Answering Defendant" or "Patke & Associates"), by and through its counsel of record, Preg O'Donnell & Gillett, and answers Plaintiffs' First Amended Complaint as follows:

**I. PARTIES**

1. In answer to paragraph 1 of Plaintiffs' First Amended Complaint, Answering Defendant lacks sufficient information to form a belief as to the truth of the allegations stated therein and therefore denies the same.

1 2. In answer to paragraph 2 of Plaintiffs' Complaint, Answering Defendant  
2 lacks sufficient information to form a belief as to the truth of the allegations stated  
3 therein and therefore denies the same.

4 3. In answer to paragraph 3 of Plaintiffs' Complaint, Answering Defendant is  
5 an Illinois corporation with its principal place of business in Lincolnshire, Illinois. Patke &  
6 Associates' business includes certified public accounting services, and audits of hedge  
7 funds. Any remaining allegations asserted in paragraph 3 are denied.

8 **II. JURISDICTION AND VENUE**

9 4. In answer to paragraph 4 of Plaintiffs' Complaint, Answering Defendant  
10 admits that the parties are citizens of different states. Any remaining allegations  
11 asserted in paragraph 4 are denied for lack of knowledge.

12 5. Answering Defendant admits that venue is proper.

13 **III. FACTS**

14 6. In answer to paragraph 6, Patke & Associates provided an engagement  
15 letter dated December 21, 2009 to A. Michael Adams of plaintiff Adams Financial  
16 Partners, L.P. ("AFP"), which set out the terms for Patke & Associates' professional  
17 services. Mr. Adams agreed to the terms of the engagement letter by a signature dated  
18 December 29, 2009. Any other allegations asserted in paragraph 6 are denied.

19 7. In answer to paragraph 7, Answering Defendant denies that it was initially  
20 paid \$10,000. Patke & Associates issued invoices to AFP as services were performed.  
21 AFP paid those invoices, and has paid fees in excess of \$10,000. Patke & Associates  
22 did not issue an audit of AFP. Any other allegations asserted in paragraph 7 are denied.

23 8. In answer to paragraph 8, Answering Defendant lacks sufficient  
24 information to form a belief as to the truth of the allegations stated therein and therefore  
25 denies the same.

1           9.     Answering Defendant admits paragraph 9.

2           10.    In answer to paragraph 10, Answering Defendant lacks sufficient  
3 information to form a belief as to the truth of the allegations stated therein and therefore  
4 denies the same.

5           11.    In answer to paragraph 11, Kevin Hengtgen was one of the auditors on  
6 the team assigned to the audit of AFP. Any other allegations asserted in paragraph 11  
7 are denied.

8           12.    In answer to paragraph 12, Answering Defendant admits that the audit of  
9 AFP was not complete by the end of 2010, that Kevin Hengtgen left Patke & Associates,  
10 and that AFP was advised that a new auditor would be added to the team. Any other  
11 allegations asserted in paragraph 12 are denied.

12           13.    In answer to paragraph 13, Patke & Associates admits that it provided an  
13 engagement letter dated July 18, 2011 to AFP, which set out the terms for Patke &  
14 Associates' professional services for audits of AFP's 2009 and 2010 financial  
15 statements. Mr. Adams agreed to the terms of the engagement letter by a signature  
16 dated July 26, 2011. Any other allegations asserted in paragraph 13 are denied.

17           14.    In answer to paragraph 14, Patke & Associates was never provided with  
18 all of the necessary information to issue an audit of AFP, and never issued an audit.  
19 Any other allegations asserted in paragraph 14 are denied.

20           15.    In answer to paragraph 15, Patke & Associates was never provided with  
21 all of the necessary information to issue an audit of AFP, and never issued an audit.  
22 Any other allegations asserted in paragraph 15 are denied.

23           16.    In answer to paragraph 16, Patke & Associates provided Plaintiffs with a  
24 disengagement letter dated January 9, 2014, ending its engagement as Plaintiffs'  
25 auditor after Plaintiffs suspended audit procedures while negotiating proceedings

1 involving the State of Washington Department of Financial Institutions. Any remaining  
2 allegations asserted in paragraph 16 are denied.

3 17. Answering Defendant denies all allegations in paragraph 17.

4 18. Answering Defendant denies all allegations in paragraph 18.

5 **FIRST CLAIM FOR RELIEF: 2009 AUDIT**

6 19. Answering Defendant incorporates and re-states its responses to each of  
7 the Plaintiffs' allegations as set forth above.

8 20. Answering Defendant denies all allegations in paragraph 20.

9 21. Answering Defendant denies all allegations in paragraph 21.

10 **SECOND CLAIM FOR RELIEF: 2010 AUDIT**

11 22. Answering Defendant incorporates and re-states its responses to each of  
12 the Plaintiffs' allegations as set forth above.

13 23. Answering Defendant denies all allegations in paragraph 23.

14 24. Answering Defendant denies all allegations in paragraph 24.

15 **THIRD CLAIM FOR RELIEF: 2009 AUDIT**

16 25. Answering Defendant incorporates and re-states its responses to each of  
17 the Plaintiffs' allegations set forth above.

18 26. Answering Defendant denies all allegations in paragraph 26.

19 27. Answering Defendant denies all allegations in paragraph 27.

20 28. Answering Defendant denies all allegations in paragraph 28.

21 **FOURTH CLAIM FOR RELIEF: 2010 AUDIT**

22 29. Answering Defendant incorporates and re-states its responses to each of  
23 the Plaintiffs' allegations set forth above.

24 30. Answering Defendant denies all allegations in paragraph 30.

25 31. Answering Defendant denies all allegations in paragraph 31.

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32. Answering Defendant denies all allegations in paragraph 32.

**AFFIRMATIVE DEFENSES**

WHEREFORE, having answered Plaintiffs' Complaint, Answering Defendant, Patke & Associates, Ltd. asserts the following defenses:

1. Plaintiffs' Complaint fails to state a cause of action upon which relief can be granted.

2. Plaintiffs' claims are barred by the applicable statutes of limitations, statute of repose, common law, the doctrine of laches, the doctrine of waiver, estoppel or acceptance.

3. Plaintiffs' claims are barred by public policy and/or in *pari delicto*, the doctrine of "unclean hands".

4. If Plaintiffs were damaged as alleged in their claims, or in any manner whatsoever, any damages were in whole or in part proximately caused by Plaintiffs' failure to mitigate, minimize, or otherwise reduce their damages, if any.

5. Pursuant to the Terms and Conditions incorporated into the Engagement Letter signed on behalf of Plaintiffs on July 26, 2011, Plaintiff AFP agreed to timely perform its obligations pursuant to that Engagement Letter, and Defendants are not responsible for any delay or other consequences resulting from Plaintiff AFP's failure to do so.

6. If Plaintiffs were damaged as alleged in Plaintiffs' Amended Complaint, or in any manner whatsoever, any damages were in whole or in part proximately caused by the negligence, fault, or wrongful conduct of persons or entities over whom Answering Defendant exercised no control, and for whose conduct Answering Defendant had no responsibility. Such persons and entities may include named parties and other nonparties at fault who are unknown to the Answering Defendant at this time,

1 and may include A. Michael Adams, Mitchell Adams, and/or Hanlin & Moss. The trier of  
2 fact must determine the percentage of fault attributable to every person or entity causing  
3 Plaintiffs' alleged losses, damages or injuries, and apportion fault accordingly.

4 7. The liability of Patke & Associates, Ltd., if any, is several only.

5 8. Plaintiffs' damages, if any, are barred because the alleged acts of Patke &  
6 Associates, Ltd. were and are not the proximate cause of any damage.

7 9. Plaintiffs' damages, if any, are barred in whole or in part by superseding  
8 and/or intervening causes.

9 10. Plaintiffs' injuries, loss, and/or damages, if any, were the result of their  
10 assumption of the risk.

11 11. Plaintiffs' claims are barred in whole or in part by Plaintiffs' own course of  
12 conduct including their failure to investigate and/or failure to exercise due diligence.

13 12. Plaintiffs' claims against Answering Defendant, if any have been stated,  
14 are barred by the lack of any duty of any kind owed under the applicable law to  
15 Plaintiffs.

16 13. Any acts or conduct of the Answering Defendant were not the cause in  
17 fact or legal cause (proximate cause) of Plaintiffs' alleged injuries, damages or losses, if  
18 any are proven at trial.

19 14. Plaintiffs' recovery, if any, must be offset by any benefits or for any  
20 advanced payment of funds received by Plaintiffs.

21 **RESERVATION**

22 Although Answering Defendant has appeared and answered the allegations  
23 contained in Plaintiffs' Complaint, it has not yet had an opportunity to complete  
24 investigation or discovery, and therefore, Defendant reserves the right to amend its  
25 answer to allege additional affirmative defenses, claims, and/or to join additional parties.

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**PRAYER FOR RELIEF**

WHEREFORE having fully answered Plaintiffs' Amended Complaint, asserted affirmative defenses, Answering Defendant, Patke & Associates, Ltd., prays for judgment as follows:

- 1. Dismissal of Plaintiffs' Claims with prejudice and without attorney fees or costs;
- 2. An award for attorneys fees and costs incurred by Answering Defendant in defending this lawsuit; and
- 3. For such other and further relief as the court deems just and equitable.

DATED this 19th day of January, 2017.

PREG O'DONNELL & GILLETT PLLC

By /s/ Lori K. O'Tool  
 Lori K. O'Tool, WSBA #26537  
 By /s/ Molly Farr Kosten  
 Molly Farr Kosten, WSBA #25385  
 Attorneys for Defendant Patke & Associates  
 Ltd  
 901 Fifth Avenue, Suite 3400  
 Seattle, Washington 98164  
 Firm Email:  
 lotool@pregodonnell.com  
 mkosten@pregodonnell.com

DECLARATION OF SERVICE

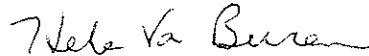
I hereby declare that on this day I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorneys of record listed below:

**Counsel for Plaintiffs Adams Financial Partners, L.P. and Adams Financial**

**Concepts, LLC:**

James T. Yand, Esq. WSBA #18730  
Christopher T. Wion, Esq.  
Miller Nash Graham & Dunn LLP  
*james.yand@millermash.com*

DATED at Seattle, Washington, this 19<sup>th</sup> day of January, 2017.



Helen Van Buren

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