

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

ELLEN STURM, GST EXEMPT STURM FAMILY TRUST, AND GST NON-EXEMPT STURM FAMILY TRUST, DERIVATIVELY ON BEHALF OF 1650 BROADWAY ASSOCIATES, INC. (D/B/A ELLEN'S STARDUST DINER); 1650 BROADWAY ASSOCIATES, INC. (D/B/A ELLEN'S STARDUST DINER); AND ELLEN STURM, GST EXEMPT STURM FAMILY TRUST, AND GST NON-EXEMPT STURM FAMILY TRUST, INDIVIDUALLY

Plaintiffs,

v.

KENNETH STURM, GETZEL SCHIFF & PESCE, LLP, JOHN DOES 1-10 (being fictitious names); ABC CORPORATIONS 1-10 (being a fictitious name);

Defendants.

Index No. 651690/2021

AMENDED COMPLAINT

Plaintiffs, (i) Ellen Sturm, the GST Exempt Family Trust and the GST Non-Exempt Family Trust, derivatively on behalf of 1650 Broadway Associates Inc. (d/b/a Ellen's Stardust Diner (the "Diner"); (ii) the Diner; and (iii) Ellen Sturm ("Ellen"), the GST Exempt Family Trust (the "Exempt Trust") and the GST Non-Exempt Family Trust (the "Non-Exempt Trust"), individually as shareholders of the Diner, (collectively known as "Plaintiffs"), by its attorneys, Nagel Rice, LLP, as its Amended Complaint against Defendants Kenneth Sturm ("Kenneth") and Getzel Schiff & Pesce, LLP ("GSP"), alleges as follows:

INTRODUCTION

1. Between 2012 and 2019, Kenneth, as the Managing Member of the Diner engaged in a pattern of fraud, insider loans and improper financial disbursements, with the knowledge, assistance, and aid of GSP, that looted the Diner of over ten million dollars.

2. As it relates to all Plaintiffs, from 2012-2019, Kenneth, as the Secretary and Treasurer of the Diner, (now owned 100% by Ellen and the Trusts), in addition to other accounting irregularities, improperly took “loans” from the Diner without Plaintiffs’ knowledge or consent, to fund his personal real estate development business in the amount of approximately between \$11-12 million dollars.

3. As it relates to Plaintiff, Ellen, in 2016-2017, Kenneth fraudulently obtained a line of credit and equipment loan for the Diner through Citibank for approximately \$2.5 million dollars, utilizing Ellen’s signature, as guarantor, without her knowledge or consent. After being contacted by Citibank for the first time for repayment of the loan, Ellen personally repaid the loan in 2021 to avoid her liability as guarantor.

4. During the years in which Kenneth was looting the Diner of its assets, defendant GSP, served as accountants to the Diner, as well as Ellen, individually, the Trusts, and Kenneth. Said defendant breached their professional obligations to Ellen, the Diner, and the Trusts, and aided and abetted Kenneth’s fraud and breach of fiduciary duties, by failing to provide Ellen any notice of Kenneth’s illicit actions, when GSP knew Ellen did not manage the day to day affairs of the Diner, did not review the Diner’s financial statements (as such documents were sent only to Kenneth) and relied on both Kenneth and GSP to ensure that the Diner’s books and records were properly maintained.

5. Specifically, despite the existence of an actual conflict of interest between Kenneth's self-serving loans (which GSP was aware as accountants to both the Diner and Kenneth), GSP ignored such fraudulent conduct and hid Kenneth's theft from Ellen for almost a decade. GSP's knowing silence in their interactions with Ellen, who was their own client, permitted Kenneth to steal millions from the Diner.

6. As a result of the Defendants' actions and inactions, Plaintiffs, both derivatively and individually, bring this action to recover at least \$15 million dollars.

PARTIES

7. At all times material and relevant herein, plaintiff, the Diner was a New York Corporation with its principal place of business at 1650 Broadway, New York, New York.

8. At all times material and relevant herein, plaintiff, Ellen is an individual who resides in New York City. Ellen is the owner of 44.5% of the shares of the Diner.

9. At all times material and relevant herein, Ellen was the trustee for plaintiff, the Exempt Trust is a trust in which Ellen is the trustee. The Exempt Trust is the owner of 26.5% of the shares of the Diner.

10. At all times material and relevant herein, Ellen was the trustee for plaintiff, the Non-Exempt Trust is a trust in which Ellen is the Trustee. The Exempt Trust is the owner of 18.0% of the shares of the Diner.

11. At all times material and relevant herein, defendant, Kenneth is an individual who resides in New York City and prior to February 26, 2021, was an 11% owner of the Diner. For all relevant times until his fraud was discovered, Kenneth served as the Secretary and Treasurer of the Diner as Kenneth obtained a Master of Business Administration. Kenneth is Ellen's son.

12. At all times material and relevant herein defendant GSP, which has its main offices at 100 Crossings Point West, Suite 403, Woodbury, New York, GSP was retained as Diner's accountants. In this role, GSP prepared the Diner's tax returns and financial statements.

13. Further, upon information and belief, GSP has been and continues to be Kenneth's personal accounting firm as well as the accountants for numerous other entities owned and/or controlled by Kenneth.

14. In addition, at all times relevant hereto, GSP also served as the accountant and tax preparer for Ellen, individually, and the Trusts. As such, in their role as Ellen's accountants and tax preparers, GSP was in possession of Ellen's financial information including her tax returns and other financial statements.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this action under CPLR 301.

16. Venue is proper in New York County pursuant to CPLR 503 because wrongful conduct that is at issue in this action occurred in New York County and is the residence of plaintiff, Ellen Sturm.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

I. The Diner

17. Plaintiff, Ellen founded and opened the Diner in 1987, locating the restaurant in the Broadway district of midtown Manhattan, New York.

18. The Diner was one of the first 1950s themed restaurants in New York City and is famous for its singing wait staff.

19. Over decades of service, the Diner has become an international tourist destination and has also served as a catalyst for a number of Broadway actors who worked and performed at the Diner.

20. On or about October 5, 1992, as part of Ellen's decision to move the location of the diner to its current location at 1650 Broadway, New York, New York, and incorporated the Diner as a New York corporation.

21. On or about October 6, 1992, the Diner enacted by-laws to govern the operations of the business.

22. The directors of the Diner were to be Irving Sturm ("Irving") (Ellen's husband), Ellen and Kenneth, with Irving serving as the Diner's president, Ellen its vice-president, and Kenneth as its treasurer and secretary.

23. On September 18, 2010, Irving passed away.

24. Upon Irving's death, Kenneth took control as the day-to-day manager of the Diner and remained its Secretary and Treasurer.

25. In this new role, Kenneth assumed all day-to-day operations of the Diner. Kenneth assumed full responsibility for supervising, managing, and accounting for the books and records of the Diner and was the primary signatory for all checks, disbursements and other financial transactions.

26. While Kenneth was running the Diner on a day to day basis, Ellen's role at the Diner was more of a figurehead and she was not involved in the finances for the Diner, trusting that Kenneth would properly manage the business as Irving had for decades.

27. Specifically, upon Irving' death, Ellen was not active in the day to day operations of the Diner other than as its public face. Among other things, Ellen did not review the Diner's

financial statements, as such accounting, tax and legal documents were sent only to Kenneth, and, thus, entrusted all financial matters of the Diner to Kenneth and GSP.

28. On or about February 26, 2021, Kenneth and Ellen entered into Stock Surrender Agreement, whereby in exchange for the forgiveness of a 2016, \$2 million personal loan given by Ellen to Kenneth, Kenneth surrendered his 11% stake in the Diner to Ellen, thereby making Ellen the 55.5% owner of the Diner.

29. As such, as of the date of the filing of this action, Ellen, the Exempt Trust, and the Non-Exempt Trust are the 100% owners of the Diner.

II. Kenneth Defrauds The Diner, Ellen, The Exempt Trust and The Non-Exempt Trust

30. Beginning in 2012, Kenneth began an eight-year scheme to defraud the Diner and its other shareholders by taking “loans” from the Diner to fund Kenneth’s fledging real estate development business and other investments made in his personal capacity or through entities Kenneth owned or controlled without the other Diner shareholders.

31. The Diner’s books and records showed “loans” and other payments made to Kenneth as follows:

Year	Payments To Kenneth
2012	\$459,450.00
2013	\$883,712.00
2014	\$1,401,804.00
2015	\$2,283,667.00
2016	\$4,896,595.00
2017	\$5,092,283.00
2018	\$3,967,193.00
2019 ¹	\$678,100.00

32. Upon information and belief, none of the purported loans taken by Kenneth was documented by any note or other formal loan documents at the time the loans were made.

¹ Through June 2019 and further amounts were loaned as expressed in the final loan balance herein.

33. Rather, upon information and belief, all documentation concerning the loans taken by Kenneth were retroactively fabricated after Kenneth had already taken the loans.

34. Moreover, unlike Kenneth's receipt of millions in improper loans, none of the other Diner shareholders received distributions in proportion to the monies purloined by Kenneth.

35. In addition, upon information and belief, Kenneth, under the advice and counsel of GSP, fabricated the Diner's accounting journal to "book" numerous unexplained entries throughout each year that were created solely to evidence a reduction Kenneth's outstanding loan budget as follows:

Year	Balance Reductions
2012	\$704,617.00
2013	\$916,977.00
2014	\$771,927.00
2015	\$360,620.00
2016	\$2,645,138.00
2017	\$261,982.00
2018	\$2,302,722.00
2019 ²	\$1,296,303.00

36. Upon information and belief, both Kenneth and GSP knew or should have known that there was no documentation or contemporaneous evidence of Kenneth contributing any money or other consideration to the Diner to warrant the reduction in the loans balance.

37. Moreover, upon information and belief, Kenneth did not provide the other shareholders of the Diner with any evidence of the contributions listed as balance reductions, nor did GSP alert the shareholders (including Ellen) to the fact that Kenneth was reducing his loans by phantom reductions to the outstanding balance.

² Through June 2019 and further amounts were reduced as expressed in the final loan balance herein.

38. As a result of these financial transactions and payments to Kenneth, the Diner's books and records (and tax returns) evidenced a balance of outstanding loans to shareholders at the beginning and end of each, which between 2012 and 2019 are as follows:

Year	Beginning Loan Balance	Ending Loan Balance
2012	\$245,167.00	\$0
2013	\$0.00	(\$33,265.00)
2014	(\$33,265.00)	\$596,612.00
2015	\$596,612.00	\$2,519,659.00
2016	\$2,519,659.00	\$4,965,004.00
2017	\$4,965,004.00	\$9,927,305.00
2018	\$9,927,305.00	\$11,658,576.00
2019	\$11,658,576.00	\$11,905,061.28

39. In fact, as demonstrated by the Diner's 2017 tax returns, between January 1, 2017 and December 31, 2017, Kenneth took almost \$5 million in loans from the Diner, which were reflected on the Diner's yearly tax returns as "loans to shareholders."

40. At the time, the loans were taken and for years thereafter, neither Kenneth nor GSP ever informed Ellen about any of the loans taken by Kenneth out of the Diner's accounts. Rather, as all of the Diner's financial statements, tax documents and other accounting and legal documents were sent only to Kenneth, Ellen did not review the Diner's financial statements during the years in which these loans were taken. Rather, Ellen relied on Kenneth and GSP to ensure that the Diner's books and records were properly maintained and that the Diner's financial health was protected.

41. In fact, it was not until 2019, when Ellen switched accounting firms in her personal capacity that she obtained the Diner's books and records purportedly showing the fraudulent loans.

42. On or about February 7, 2019, a meeting was held with Ellen, her new accountants, Kenneth, and GSP accounts Jeffrey Getzel and Jack Schiff to review the Diner's income tax return and the Diner's overall financials. At that meeting, Ellen's new accountants raised questions about

the Diner's 2017 S Corporation income tax return including shareholder loans, which were considered "high risk" for an S Corporation.

43. At that meeting, Ellen was advised for the first time, that the Diner had "loans" taken by Kenneth with a remaining balance in excess of \$11 million dollars.

44. Thereafter, Ellen requested that her new accountants monitor the Diner's finances and review the past income tax returns and the details of Kenneth's "loans," including his ability to repay the balance of the loan to the Diner, which he owed.

45. During this time, it was discovered, that in addition to the "loan," Kenneth also had the Diner make hundreds of thousands of dollars in payments to companies owned and operated by Kenneth, including, upon information and belief, Sturm Asset Management, LLC SAM Ronson Woodbridge LLC, SAM NJ 44 Stelton LLC, Challenger 60, LLC, Queens Gate IM , LLC, Woodstock Investments, LLC The Ribbon Worldwide, LLC, The Ribbon Worldwide 44 LLC, Stardust 11TS LLC, US Aquariums, LLC, The Ribbon Worldwide 44 LLC, Dine Consulting LLC, Waiting For Fame LLC, Stardust Retail LLC, Black Napkins, LLC, W.

46. In addition to the loans, Kenneth's annual compensation that he earned from the Diner, was unilaterally set each year by Kenneth without the approval or consent of the other Diner shareholders.

47. Kenneth's salary was \$329,000 in 2015, \$422,000 in 2016, and \$508,000 in 2017, not including the shareholder distributions and other assets of the Diner he purloined.

III. The Diners' Loan Forgiveness To Mitigate Further Damages

48. As part of their efforts to review Kenneth's improper financial actions, Ellen's new accountants attempted to gather information regarding the history of the loans, Kenneth's ability to repay the loan, and the impact of the loans on the Diner's tax liability. Ellen's accountants were

concerned that an undocumented and unsubstantiated loan could retroactively revoke the Diner's S Corporation status and create a potential multimillion-dollar tax liability.

49. During their investigation, Ellen's accountants obtained copies of the Diner's financials for 2017 and 2018, which revealed the loans taken by Kenneth, and which were prepared and signed off by GSP. At that time, GSP was responsible for the accounting for the Diner and Kenneth's individual investments, including the filing of the necessary tax returns. GSP therefore was actively accounting for the funds taken out of the Diner to Kenneth with full knowledge that Ellen was not being apprised of the loans taken out by Kenneth.

50. After reviewing the Diner's documents as part of their investigation, in 2020, Ellen's new accountants were able to provide Ellen with her options regarding Kenneth's improper loans. The accountants advised that as an S Corporation, IRC 1361 prohibits such a corporation from having two classes of stock. Thus, due to the lack of substantiation of the loans taken by Kenneth, there was a high probability that the loans could be deemed a second class of stock i.e. preferred stock with a preferred return as Kenneth received the money. As a result, Ellen was advised that the Diner could be assessed millions of dollars in tax, interest and penalties in the event of an audit.

51. Ellen's new accountants also performed an extensive analysis on Kenneth's ability to repay the loans, in which, they concluded that his real estate assets were highly leveraged, he had no liquid assets and he was months behind paying basic living expenses.

52. Additionally, as a result of a review of the outstanding debts of the Diner, Ellen was advised that dissolution of the S Corporation was not possible because if the corporation was dissolved, Ellen would be personally liable for the Diner's debts, including, but not limited to a) the Diner's Citibank loan obtained by Kenneth by forging Ellen's name as guarantor, which was

paid into the Diner's accounts and withdrawn by Kenneth; b) customer deposits for future events that should have been escrowed but were instead withdrawn by Kenneth; c) an employee lawsuit and judgment for \$1.4 million dollars; d) routine payables that were ignored as part of Kenneth's withdrawal of over \$600,000; e) unauthorized trust loans obtained without Ellen's approval for \$757,655 and \$819,952; and f) a \$2 million dollar personal note that Kenneth defaulted on.

53. Thus, in an effort to preserve the Diner and not expose herself to personal liability or the Diner to tax liability or revocation of its S Corporation status, in January 2021, relying upon the advice of her new accounting professionals, Ellen agreed, on behalf of the Diner, to forgive the over \$11 million in loans Kenneth took.

54. Specifically, by email Ellen stated:

To maintain harmony within the family, I am forgiving the approximately \$12 million dollar loan balance you owe to the Diner. Based on the records you have produced, I have determined that you are insolvent and unable to repay the balance. I had the accountants prepare the required forms and have forwarded a copy to you (Form 1099c). I was informed that you have tax attributes to mitigate any tax impact the cancellation of debt may cause. This will alleviate one part of the various issues you are dealing with. The accountants will need to know, of the total loan of \$12 million dollars, approximately how much was used to invest in your various real estate and/or restaurant ventures. Please detail the aforementioned by entity and amount.

55. As part of the forgiveness, however, there was no agreement to release Kenneth from any liability or claims that Ellen or the Trusts may have directly against him nor was there a waiver of either Ellen's or the Trusts' rights to pursue repayment.

56. Specifically, the Diner's forgiveness of the loans was not meant to release or forgive Kenneth from any claim by Ellen regarding Kenneth's forging of Ellen's signature for a guaranty he submitted as part of the receipt of a \$2 million loan from Citibank, which Ellen personally repaid.

57. The forgiveness therefore was not an agreement to release claims against Kenneth but instead was done based upon the recommendations of Ellen's accountants to mitigate damages to the Diner and Ellen to salvage any remaining taxable benefit to the Diner and avoid carrying these debts and devaluing the company.

IV. Kenneth Defrauds Ellen By Fraudulently Obtaining A Citibank Loan For The Diner & Misrepresenting His Ownership Interest To The New York Liquor Authority

58. Beginning in February 2016 through February 2017, upon information and belief, Kenneth utilized a forgery of Ellen's signature in loan applications and other submissions to Citibank, where Kenneth sought a line of credit and equipment loan for the Diner for \$2.5 million.

59. As part of the loan application, Kenneth, with the assistance of GSP (as further alleged herein) proffered Ellen as a personal guarantor to Citibank for the loan, without her knowledge or consent.

60. In addition, upon information and belief, Kenneth with GSP's aid and assistance, disclosed Ellen's individual financial statements and/or tax returns to Citibank demonstrating that Ellen had sufficient collateral and assets to secure the loan.

61. However, neither Kenneth nor GSP obtained Ellen's consent to be a guarantor for this loan, much less to disclosure or use her personal financial statements to demonstrate her ability to satisfy the loan should the Diner default nor was Ellen notified by GSP or Kenneth about Citibank's request for her personal financial information.

62. Although Kenneth was the treasurer for the Diner, he had no right to provide Ellen's personal financial information to Citibank to obtain a loan for the Diner and name her as a personal guarantor without her consent.

63. Moreover, GSP assisted Kenneth in procuring the loan by providing Ellen's financial information to Citibank without first confirming with Ellen that she had in fact agreed to

guaranty this loan or that they were permitted to provide Citibank with any of her financial information as part of the banks due diligence.

64. Based on Ellen's fraudulently procured guaranty, Citibank agreed to loan the Diner the requested approximately \$2.5 million, which was paid directly to the Diner.

65. Upon the Diner's receipt of the funds, upon information and belief, Kenneth purloined a portion of these loaned funds from the Diner for his own personal use through loans taken from the diner, payments of salary and other unauthorized withdrawals. Specifically, upon information and belief, Kenneth used a portion of these loan proceeds as a capital contribution for a New Jersey real estate project, wherein Kenneth was subsequently sued in multiple actions for fraudulent misrepresenting his finances and sources of investment (and in one case Kenneth's liability was later reduced to a judgment against Kenneth).

66. Upon information and belief, GSP booked the \$2.5 million loan on the Diner's books and records and recorded Kenneth's further loans from the Citibank funds deposited in the Diner's accountants in the loans, balance reductions, and loan balance financial statements prepared by GSP.

67. In addition, in the submission of certain applications and other documentation to the New York liquor authority, Kenneth represented himself as the 100% owner of the Diner when he was only an 11% shareholder.

68. Currently, the New York liquor authority is investigating Kenneth's submissions and will require the Diner to amend such submissions. At this time it is unknown whether the Diner will incur any penalties or sanctions as a result of Kenneth's conduct.

V. Ellen Mitigates Her Damages From The Citibank Loan And Other Tax Penalties

69. In January and February 2021, Citibank approached Ellen for repayment of the loan as the monies that were put into the Diner had, in part, been diverted or used by Kenneth for his personal finances. Unwilling to risk further harm to her family's future including defending litigation against Citibank, Ellen had no choice but to agree to repay the loan out of her personal finances.

70. In addition to the above-mentioned fraud, Kenneth's management of the Diner caused monetary damages to Ellen and the Trusts. For example, in October of 2017, Ellen, individually, the Exempt Trust and Non-Exempt Trust were mailed notices from New York State's Department of Taxation and Finance stating that the trusts yearly taxes required adjustments.

71. Upon information and belief, the letters from New York State's Department of Taxation were delivered to the Diner and were addressed and/or delivered to Kenneth in his role as Managing Member and Treasurer of the Diner.

72. As the treasurer of the Diner, and because Ellen, the Exempt Trust and Non-Exempt Trust are shareholders of the Diner, Kenneth owed fiduciary duties to these shareholders to properly account for their yearly distributions and other accounting of the Diner's profits and losses.

73. Kenneth however, failed to provide these letters to Ellen, the Exempt Trust and Non-Exempt Trust.

74. Moreover, Kenneth failed to take any action to alert Ellen, the Exempt Trust or the Non-Exempt Trust that they would face tax penalties and fine if these letters were not dealt with.

75. As a result, because Ellen was never notified about the tax adjustments, Ellen, individually, the Exempt Trust and Non-Exempt Trust all incurred significant interest and

penalties. Specifically, for tax years 2017 and 2018, Ellen, the Exempt Trust and Non-Exempt Trust listed recoverable overpayments of tax to which they were not entitled. As such, Ellen has since had to make restitution for her individual tax returns as well as for the returns of the Exempt Trust and Non-Exempt Trust.

76. Further, subsequently, Ellen and the Trusts have received additional notices from the IRS concerning additional penalties, unpaid taxes and/or assessments and other potential liabilities that Ellen and her accountants are only now investigating and the resulting damages to Ellen and the Trusts are not yet known.

VI. GSP Serves As Accountants For The Diner, Ellen and Kenneth

A. GSP Owed Duties To Plaintiff To Adhere To Professional Standards of Care, Including Appropriate Diligence And The Avoidance Of Conflicts Of Interests

77. Upon information and belief, beginning in 2002 and continuing into 2019, GSP was retained by the Diner, as well as by Ellen and Irving individually to provide accounting and tax services.

78. In addition, to the tax preparation and general accounting services provided by GSP, upon information and belief, GSP was also retained to perform periodic reviews of the Diner's financial statements.

79. Upon information and belief, Kenneth also retained GSP in 2002, which continues through the present, for handle Kenneth's individual accounting and tax services, as well as providing accounting and tax services to many if not all of Kenneth's other business interests, including but not limited to Sturm Asset Management, LLC SAM Ronson Woodbridge LLC, SAM

NJ 44 Stelton LLC, Challenger 60, LLC, Queens Gate IM , LLC, Woodstock Investments, LLC
The Ribbon Worldwide, LLC, The Ribbon Worldwide 44 LLC, Stardust 11TS LLC.³

80. The terms of GSP's accounting services were embodied by yearly engagement letters that set forth the terms and conditions of GSP's services and the parties' respective obligations.

81. In addition to its contractual requirements, like all accounting firms, GSP was required to abide by the United States Department of the Treasury rules in preparing tax returns for the Diner, as well as Ellen and Kenneth's personal tax returns.

82. Among other things, the Internal Revenue Service ("IRS") has issued Treasury Circular No. 230 (31 C.F.R. § 10, the "Circular") which sets forth standards for all certified public accountants (like GSP) who practice before the IRS.

83. In addition, certified public accounting firms owe a professional and contractual obligation to render services with the skill, care, knowledge, and judgment expected from members of the public accounting profession. GSP had an obligation to render services to Plaintiffs with that level of skill and diligence.

84. One source of professional standards applicable to tax preparers, like GSP, is the American Institute of Certified Public Accountants ("AICPA") Code of Professional Conduct (the "AICPA Code"). Among the many principles set forth in the AICPA Code, the following are noteworthy:

0.300.020.01: In carrying out their responsibilities as professionals, *members* should exercise sensitive professional and moral judgment in all their activities.

85. Similarly, the AICPA code also provides that:

³ Each of these entities listed its principal place of business as 1650 Broadway, New York, NY, the same address as the Diner.

A member should observe the profession's technical and ethical standards, strive continually to improve competence and the quality of services, and discharge professional responsibility to the best of the member's ability. ...

Members should be diligent in discharging responsibilities to *clients*, employers, and the public. Diligence imposes the responsibility to render services promptly and carefully, to be thorough, and to observe applicable technical and ethical standards.

AICPA Code § 0.300.060.

86. Moreover, the AICPA Code identifies certain "threats" which tax professionals should be aware of as they could create conflicts of interest and jeopardize the professionalism required of certified public accountants. Among other things, the AICPA Code identifies the following:

11 Advocacy threat. The threat that a member will promote a client's interests or position to the point that his or her objectivity or independence is compromised. ...

12 Familiarity threat. The threat that, due to a long or close relationship with a client, a member will become too sympathetic to the client's interests or too accepting of the client's work or product. Examples of familiarity threats include the following: ...

- d. Senior personnel have a long association with a client.

AICPA Code § 1.000.010.11-12.

87. The AICPA Code also expresses opinions on the limits of "client advocacy," warning members that stretch ethical boundaries.

Some *professional services* involving *client* advocacy may stretch the bounds of performance standards, go beyond sound and reasonable professional practice, or compromise credibility, thereby creating *threats* to the *member's* compliance with the rules and damaging the reputation of the *member* and the *member's firm*. If such circumstances exist, the *member* and *member's firm* should determine whether it is appropriate to perform the *professional services*.

AICPA § 1.140.010.03.

88. In addition, among other standards, AICPA issues statements setting forth the best practices or standards for tax services (the "SSTS"), which, like the Circular, requires that tax

professionals comply with good standards of practice, conduct necessarily due diligence, only recommend tax positions that are reasonable, and inquire into matters where appropriate.

89. Among other things the SSTS provides:

[A] member should not ignore the implications of information furnished and should make reasonable inquiries if the information furnished appears to be incorrect, incomplete, or inconsistent either on its face or on the basis of other facts known to the member (SSTS No.3, ¶2).

90. In addition to generally accepted standards of professional conduct concerning a tax preparer's due diligence and reliance on client information, tax professionals, like GSP, are also obligated to avoid conflicts of interests in their representation of clients and, where such conflicts are present, take sufficient steps to inform the relevant parties of the conflict and either resolve the conflict or cease representation of the conflicted clients.

91. Treasury Circular Section 10.29 provides guidance on what constitutes improper conflicts of interests. Among other things, the Circular provides as follows:

A conflict of interest exists if —(1) The **representation of one client will be directly adverse to another client**; or (2) There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner.

Circular § 10.29(a) (emphasis added).

92. Like the Circular, the AICPA Code also provides guidance on the avoidance of conflicts of interest:

A member should maintain objectivity and be free of conflicts of interest in discharging professional responsibilities. *A member* in public practice should be independent in fact and appearance when providing auditing and other attestation services. ...

In providing all other services, a member should maintain objectivity and avoid conflicts of interest.

AICPA Code §0.300.050.

A conflict of interest creates adverse interest and self-interest threats to the member's compliance with the "Integrity and Objectivity Rule" [1.100.001]. For example, threats may be created when

- a. the member or the member's firm provides a professional service related to a particular matter involving two or more clients whose interests with respect to that matter are in conflict, or
- b. the interests of the member or the member's firm with respect to a particular matter and the interests of the client for whom the member or the member's firm provides a professional service related to that matter are in conflict.

AICPA Code §1.110.010.

93. When facing conflicts of interests in their representation of clients, the AICPA code recommends that professionals either implement safeguards to lower or eliminate the effect of such conflicts, or

where an identified *threat* may be so significant that no *safeguards* will eliminate the *threat* or reduce it to an *acceptable level*, or the *member* is unable to implement effective *safeguards*, the *member* should (a) decline to perform or discontinue the *professional services* that would result in the conflict of interest; or (b) terminate the relevant relationships or dispose of the relevant interests to eliminate the *threat* or reduce it to an *acceptable level*.

AICPA Code § 1.110.010.10-11.

94. In addition to internally addressing the conflicts, the AICPA Code provides that the professional should disclose the conflicts to the client and obtain their consent to continue providing professional services. AICPA Code § 1.110.010.12. The requests for consent should be made in writing and documented. AICPA Code § 1.110.010.16.

95. The Diner retained GSP to perform accounting and tax services in an effort to ensure that the Diner's finances were properly taxed, its income and expenses properly booked, and that the Diner remained in compliance with all applicable laws and regulations.

96. Upon information and belief, although GSP was not providing the Diner with any opinion regarding its financial statements, as set forth above, it was obligated to plan and perform

the required tax services in good faith and in service to the owners of the Diner, and not just Kenneth.

97. Further, in addition to ensuring the quality of the accounting and tax preparation work product, as set forth above, GSP was also obligated to ensure that its representation of each of its clients avoided conflicts of interest that would elevate the interest of one client above another or would permit one of their clients to damage or defraud another client based on information known to GSP.

C. GSP Breaches Its Professional Duties To The Diner And Its Shareholders

98. As alleged herein, GSP was retained as the accountants and tax preparers for not only the Diner, but also individually by Ellen, the Exempt Trust, the Non-Exempt Trust, and Kenneth (as well as for various entities owned and/or controlled by Kenneth).

99. In this capacity, GSP knew the respective ownership of the Diner during its tenure as the Diner's accountants and tax preparers. In other words, GSP knew or should have known that for all times relevant hereto Kenneth was a minority shareholder of the Diner, controlling only 11% of the company's stock, while Ellen and the trusts were the majority shareholders.

100. Further, upon information and belief, GSP knew that while Ellen was controlling shareholder of the Diner she had ceded day to day control over the Diner and its finances to Kenneth and did not review the Diner's financial statements, instead relying on Kenneth and GSP to prepare the Diner's books and records and ensure that the Diner's finances were competently managed. In fact, GSP knew that Kenneth, not Ellen, was the recipient of all financial and tax information prepared by GSP as GSP addressed such documents to Kenneth and not Ellen.

101. Despite knowing Kenneth was a minority shareholder of the Diner and that Ellen exercised control over the Diner through her shares and that of the Exempt Trust and Non-Exempt

Trust, GSP never sought Ellen's approval, must less notified Ellen about any of the "loans" taken by Kenneth between 2012 and 2019.

102. Further, upon information and belief, for each year between 2012 and 2019, without sufficient documentary evidence or other required backup or supporting documents, GSP booked various loan balance reductions on the Diner's books and records, as is reflected in the Diner's yearly tax returns, which improperly reduced the amount of loans owing by Kenneth.

103. Each of these balance reductions were, upon information and belief, without any accounting justification or reasonable basis to believe that such transactions were proper.

104. Moreover, despite Ellen's status as the largest shareholder of the Diner, and the controlling person for each of the trusts, GSP never sought nor obtained Ellen's input and/or approval for any of the accounting practices that supported Kenneth's loans. Instead, and contrary to GSP's obligations as the Diner's and Ellen's accountants and tax preparers, GSP kept Ellen in the dark about the Diner's finances and the millions of dollars in "loans" being taken by Kenneth.

105. In fact, upon information and belief, GSP knowingly provided Kenneth, not Ellen, all of the Diner's financial documents, and knew she would not and did not review them.

106. For example, on March 14, 2018, GSP delivered to the Diner its 2017 tax returns, which were addressed to Kenneth and no copy provided to Ellen.

107. Moreover, between 2002 and 2018, GSP managing partner, Jeffrey A. Getzel, would personally visit Ellen at her home to discuss the status of the Diner. During these meetings, Getzel would give Ellen a broad summary of the business finances such as whether the Diner was doing well or not, but never disclosed any details about the Diner's accounting, books, tax returns, financial statements and records.

108. Getzel knew that Ellen, as President of the Diner, relied on Kenneth and GSP's experience and acumen to ensure that the Diner was being managed properly and that Ellen was not responsible for the day-to-day operation of the Diner's finances. By virtue of this knowledge, Getzel knew or should have known that Ellen had no knowledge of the Diner's actual financial condition absent information from Kenneth or GSP, including Kenneth's decision to obtain loans against the Diner.

109. Specifically, between 2012 and 2018, Getzel, upon information and belief, knowingly and willingly refused to disclose to Ellen that Kenneth had been systematically withdrawing funds from the Diner to finance his lifestyle and other business opportunities.

110. Moreover, upon information and belief, Getzel did not inform Ellen that Kenneth had taken millions of dollars, which GSP classified as shareholder "loans" that did not have any formalized loan documents at the time the loans were made nor approval from the majority shareholders of the Diner.

111. Further, upon information and belief, GSP knew or should have known that Kenneth obtained a Citibank loan for the Diner for \$2.5 million, which was then included in the loans, salary payments and other withdrawals taken by Kenneth, without Ellen's knowledge or approval. In addition, upon information and belief, GSP failed to inform Ellen that her financial information was being shared with Citibank for such a purposes, much less obtain Ellen's consent for such a disclosure.

112. In the summer of 2019, Ellen met with GSP partner Jeffrey Getzel on a number of occasions to discuss the discovery of these "loans" where Ellen expressed her disbelief and unhappiness that Kenneth was able to take all the money out of the Diner without her knowledge or approval. In fact, on August 9, 2019, Getzel admitted in an email that Ellen was unaware that

any of the loans given to Kenneth were made at the time of the loan and that Ellen had not approved any of the loans taken by Kenneth at the time they were made.

113. Further, upon its retention as accounts and tax preparers for the Diner, GSP knew that the Diner was designated an S Corporation, pursuant to the rules and regulations of the Internal Revenue Service and the New York State Department of Taxation.

114. As an S Corporation, among other obligations, the Diner is required to have only one class of stock and thus must treat its shareholders equally with respect to distributions and the allocation of income and expenses.

115. Despite GSP's knowledge of the Diner's S Corporation classification, GSP repeatedly booked as shareholder loans the amounts taken from the Diner by Kenneth despite, upon information and belief, the absence of any formal loan documents or approval of such loans by the Diner's majority shareholders.

116. By booking the withdrawals by Kenneth as shareholder loans, without the required documentation or consent, GSP jeopardized the Diner's S Corporation classification and created a de facto second class of shares wherein Kenneth received improper distributions while, Ellen and the trusts on the other hand, were attributed phantom income for each tax year and incurred taxes for monies they never received in distributions.

117. In fact, in 2019, Ellen retained a new accounting firm to review her financial affairs. During its review of Ellen's finances, the firm obtained Diner's books and records from GSP and alerted Ellen and Kenneth the "loans" booked on the Diner's ledgers, if subject to an IRS audit, could imperil the Diner's S classification.

118. In response, GSP advised Ellen and Kenneth that the risk of such a reclassification was *de minimis* because the chance that the Diner would be audited was very low given how few S corporations are subject to an audit.

119. GSP classified and/or booked these monies as loans on the books and records of The Diner despite knowledge that the loans had no relation to the business of The Diner, Sturm had no knowledge of these monies being taken from The Diner, and Kenneth Sturm was only a minority owner of The Diner.

120. Further, upon information and belief, GSP failed to file certain necessary tax documents for tax years 2018, and possibly others, which is currently causing Ellen to receive IRS notifications for tax payment deficiencies.

121. In addition, as set forth herein, GSP owed the Diner, Ellen, the Exempt Trust and Non-Exempt Trust a duty to comply with its professional obligations to avoid conflicts of interest and where such conflicts of interest exist, to inform its clients of such conflicts and obtain necessary consents to continue providing services to conflicted clients.

122. Despite such professional obligations, GSP deviated from the standard of care applicable to accountants and tax preparers by failing to identify and/or advise the Diner, Ellen, the Exempt Trust and Non-Exempt Trust about Kenneth's theft from the Diner.

123. Specifically, despite Ellen, the Exempt Trust and the Non-Exempt Trust's status as individual clients of GSP, GSP favored their other client, Kenneth, at the Plaintiffs' expense.

124. By way of example and not limitation, GSP evidenced its favoritism of Kenneth over Plaintiffs by booking yearly balance reductions of Kenneth loans in the Diner's books and records that reduced his liability to the Diner and derivatively, to the Plaintiffs.

125. GSP deviations from the standards of care regarding the reporting of conflicts of interests to their clients was especially egregious as it opened up Plaintiffs to potential tax exposure were the loans to be treated as income to Kenneth and thus, as a result of the Diner's S Corporation status, would result in unequal distributions.

126. At no time during the Diner's retention of GSP did any partner, employee, or agent of GSP ever advise Ellen of the potential conflicts of interest posed by their work for Kenneth or any of his controlled entities.

D. GSP Willfully and Knowingly Provide Substantial Aid And Assistance To Kenneth's Fraud and Breach of Fiduciary Duties

127. Not only did GSP breach its professional duties to Plaintiffs, but GSP's conduct went beyond the bounds of unprofessional and/or negligent tax preparation and accounting services when GSP actively aided and abetted Kenneth's fraud and the many breaches of his fiduciary duties.

128. In fact, upon information and belief, Kenneth advised GSP that he was using monies from the Diner to fund unrelated expenditures, including advancing his personal real estate development business and use of such monies for his personal expenses. Further, upon information and belief, Kenneth relied on and expected GSP to assist him in effectuating these transactions and providing cover for Kenneth in the Diner's books, records and tax returns.

129. In addition to merely booking and accounting for the improper balance reductions identified in the Diner's financial statements, upon information and belief, GSP aided Kenneth in creating or implementing the scheme by which to classify his receipt of Diner monies as "loans" in an effort to (i) permit Kenneth to avoid any tax obligations for the payments and (ii) to ensure that such payments would not necessitate dividend payments made to Plaintiffs by virtue of the Diner's status as a S Corporation.

130. Further, upon information and belief, GSP either initiated or assisted Kenneth in the creation of phantom balance reductions in the Diner's ledgers between 2012 and 2019, none of which were supported by any capital contributions by Kenneth to the Diner.

131. In addition, upon information and belief, GSP worked with Kenneth to provide Citibank with Ellen's financial statements, without obtaining her consent or approval, as part of Kenneth efforts to secure a \$2.5 million loan for the Diner, which he then took a portion thereof for his own projects.

132. Specifically, GSP, having access to Ellen's financial statements by virtue of Ellen's status as a GSP customer, utilized such financial information to aid Kenneth's quest to obtain a \$2.5 million loan from Citibank which required Ellen's personal financial information as a guarantor on the loan. Because Kenneth did not have sufficient assets to serve as the guarantor for that loan himself, GSP aided Kenneth's pursuit of the improper loan without Ellen's knowledge and consent.

133. Further, upon information and belief, GSP either knew or should have known that Ellen's signatures were forged in applying for the Citibank loan but nevertheless agreed to provide Ellen's financial information without first speaking with her. GSP's failure to alert Ellen to the loan and confirm her willingness to guaranty the loan permitted Citibank to bind Ellen as a guarantor on the loan.

VII. Plaintiffs Were Proximately Damaged By Defendants Conduct

134. As set forth above, Kenneth's fraudulent actions looted the Diner in excess of \$15 million.

135. In addition, as also set forth above, GSP's continuous representation of the Diner, Ellen and Kenneth, was riddled with clear conflicts of interests with respect to Kenneth's self-dealing and illegal conduct, which Kenneth and GSP hid from Plaintiffs.

136. Had GSP performed its accounting and tax services in accordance with U.S. Treasury regulations, its contractual requirements, and due standards of professional care, GSP would have identified the conflicts of interest apparent from this joint representation and sought to resolve such conflicts. Further, had GSP performed its accounting and tax services in accordance with U.S. Treasury regulations, its contractual requirements, and due standards of professional care, GSP should have alerted Plaintiffs as to Kenneth illegal conduct.

137. Further, as set forth above not only did GSP breach its professional obligations but also it aided and abetted Kenneth's fraud, taking willful and/or knowing steps that substantially assisted Kenneth fraud.

138. As such, Plaintiffs have been injured as a direct and proximate cause of Defendants' conduct in an amount to be specifically established at trial, but not less than \$15 million.

FIRST CAUSE OF ACTION

Derivative Claims For Breach of Fiduciary Duty As Against Kenneth Sturm On Behalf of The Diner

139. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 137 of this Complaint as if fully set forth herein.

140. Kenneth, as a shareholder, and the treasurer and manager of the Diner owed Plaintiffs, as the other shareholders of the Diner, fiduciary duties of loyalty and good faith.

141. As alleged herein, Kenneth breached his fiduciary duties in his role as shareholder, treasurer and manager of the Diner by among other things (i) unilaterally setting his yearly salary without the approval or consent of the other Diner shareholders, (ii) failing to provide letters from

New York State's Department of Taxation to the other Diner shareholders, and (iii) failing to properly account for shareholder yearly distributions and other accounting of the Diner's profits and losses.

142. Kenneth's breach of his fiduciary duties constituted willful neglect, willful misconduct, fraud and/or dishonesty.

143. As a direct and proximate result of that breach, the Diner suffered damages in an amount to be specifically established at trial.

SECOND CAUSE OF ACTION

Derivative Claim of Breach For Fraud As Against Kenneth Sturm On Behalf of The Diner

144. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 143 of this Complaint as if fully set forth herein.

145. As Treasurer and Managing Member of the Diner, Kenneth owed a duty of disclosure to the Diner's shareholders.

146. As alleged herein, Kenneth forged Ellen's name on a loan application to Citibank without her notice or consent, (i) forging Ellen's signature to place her as a guaranty for a \$2.5 million line of credit and equipment loan from Citibank to the Diner, which Kenneth then purloined from the Diner and Ellen was left to pay Citibank, and (ii) misrepresenting his ownership interest in an application to the New York State Liquor Authority as a 100% ownership interest of the Diner.

147. Specifically, beginning in February 2016 through February 2017, upon information and belief, Kenneth utilized a forgery of Ellen's signature in loan applications and other submissions to Citibank, where Kenneth sought a loan for the Diner for \$2.5 million.

148. As part of the loan application, Kenneth, with the assistance of GSP (as further alleged herein) proffered Ellen as a personal guarantor to Citibank for the loan, without her knowledge or consent requiring Ellen to repay the loan out of her personal finances.

149. Kenneth's fraudulent conduct proximately caused the Ellen and the Trusts to sustain losses in an amount to be specifically established at trial, but in no event less than \$2.5 million.

THIRD CAUSE OF ACTION

**Direct Claim of Breach Of Fiduciary Duty As Against Kenneth Sturm On Behalf of Ellen
and the Trusts**

150. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 149 of this Complaint as if fully set forth herein.

151. Kenneth, as treasurer and manager of the Diner owed Plaintiffs fiduciary duties.

152. As alleged herein, Kenneth breached his fiduciary duties in his role as treasurer and manager of the Diner.

153. As alleged herein, Kenneth breached his fiduciary duties by among other things (i) failing to provide letters from New York State's Department of Taxation to Ellen or the Trusts, and (ii) failing to properly account for shareholder yearly distributions and other accounting of the Diner's profits and losses.

154. As a result, because Ellen was never notified about the tax adjustments that were assessed against Ellen, individually, and as Trustee the Exempt Trust and Non-Exempt Trust, all of which resulted in taxes, interest and penalties. Specifically, for tax years 2017 and 2018, Ellen, the Exempt Trust and Non-Exempt Trust listed recoverable overpayments of tax to which they

were not entitled. As such, Ellen has since had to make restitution for her individual tax returns as well as for the returns of the Exempt Trust and Non-Exempt Trust.

155. In addition, upon information and belief, Kenneth's misconduct permitted him to take underserved salary and other benefits from the Diner while failing to issue distributions to Ellen and the Trusts.

156. Kenneth's breach of his fiduciary duties constituted willful neglect, willful misconduct, fraud and/or dishonesty.

157. Kenneth's breaches of its duty to The Diner, Ellen, the Exempt Trust, and the Non-Exempt Trust, proximately caused the Ellen and the Trusts to sustain losses in an amount to be specifically established at trial.

FOURTH CAUSE OF ACTION

Direct and Derivative Claim Of Professional Malpractice For Conflict of Interest As

Against GSP On Behalf of The Diner

158. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 157 of this Complaint as if fully set forth herein.

159. GSP was retained by the Diner to serve as its accountant and tax preparer between the years of at least 2012 through 2019.

160. In addition, GSP was also retained as the accountants and tax preparers for Ellen and the Trusts, as well as Kenneth and various business entities owned or controlled by Kenneth.

161. As a result of GSP's multi-party engagements, and as part of its continuous services provided to the Diner, Ellen, the Exempt Trust, the Non-Exempt Trust, and Kenneth for over sixteen years, Defendant owed a duty to The Diner and all its shareholders to use reasonable care in delivering tax and accounting services.

162. In addition, GSP was bound by professional duty, governing codes of professional conduct, and common law duties to avoid clear conflicts of interests that would benefit one client at the expense of another.

163. As alleged herein, in their continuous representation of The Diner, Ellen, the Exempt Trust, the Non-Exempt Trust, and Kenneth, GSP failed to use that degree of skill and learning normally possessed and used by accountants in good standing in a similar practice and under like circumstances.

164. Specifically, but without limitation, GSP breached its duties and failed to comply with common accepted accounting standards and professional duties of care by ignoring the conflicts between Kenneth (and his entities) on the one hand, and Plaintiffs, on the other hand and failed to disclose, alert or otherwise act to notify Plaintiffs of Kenneth's fraudulent schemes.

165. Instead, GSP observed, booked, recorded, and prepared tax returns and financial statements reflecting Kenneth's loans, balance reductions, and other financial improprieties and, upon information and belief, provided the Diner's financial information only to Kenneth, not Ellen or the Trusts.

166. Further, upon information and belief, despite knowing Ellen was unaware of the loans as she did not receive the financial statements or tax returns of the Diner, GSP and its partners failed to inform Ellen of Kenneth's activities during their yearly meetings. In fact, GSP and its partners admitted that Ellen was unaware of the loans when they were issued.

167. In addition, upon information and belief, GSP failed to file certain necessary tax documents for certain tax years, including 2018, which has caused Ellen to receive IRS deficiency notifications.

168. As a direct result of GSP's failure to adhere to the duty to inquire, conduct proper due diligence in the preparation and signing The Diner's tax returns, and avoid the ongoing, continuous conflicts of interest posed by Kenneth, plaintiffs suffered damages.

169. GSP's breach of its duty to The Diner, Ellen, the Exempt Trust, and the Non-Exempt Trust, proximately caused the Diner to sustain losses in an amount to be specifically established at trial, but in no event less than \$15 million.

FIFTH CAUSE OF ACTION

Direct and Derivative Claim of Aiding And Abetting Fraud as Against GSP on Behalf Of

The Diner, Ellen, and The Trusts

170. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 169 of this Complaint as if fully set forth herein.

171. As set forth herein, Kenneth Sturm defrauded plaintiffs for almost eight years, pilfering its assets for his own personal benefit.

172. At all relevant times, GSP provided continuous representation to Kenneth Sturm and The Diner, as well as Ellen and the Trusts, and was responsible for preparing all parties' tax returns and providing them general accounting services.

173. Despite GSP's knowledge of Kenneth's self-dealing, breach of fiduciary duties, and rampant fraud, GSP consciously and repeatedly avoided taking any action or implementing any procedure that would have revealed Kenneth Sturm's fraud to plaintiff.

174. As set forth above, GSP knew of, or willfully ignored, Kenneth's fraudulent conduct, in whole or in part. Nevertheless, GSP continued to file The Diner and tax returns and book the monies taken as loans.

175. Moreover, GSP actively aided Kenneth in his fraud by failing to advise Ellen or the Trusts about Kenneth's activities, despite knowing that Ellen was completely unaware that Kenneth was taking millions of dollars in loans from the Diner with no ability to repay such funds.

176. Further, upon information and belief, GSP further aided Kenneth's fraud of Ellen by assisting Kenneth in obtaining a fraudulently acquired loan from Citibank to the Diner wherein GSP provided or assisted Kenneth in providing Ellen's financial statements for purposes of making Ellen a guarantor on the loans without her knowledge and/or consent.

177. Thus, GSP substantially assisted Kenneth Sturm's fraud.

178. As a direct and proximate result of that breach, plaintiffs suffered damages in an amount to be specifically established at trial, but in no event less than \$15 million.

WHEREFORE, Plaintiffs respectfully requests that this Court enter judgment against Kenneth and GSP as follows:

A. On the first cause of action, a direct and derivative claim for breach of fiduciary duty as against Kenneth, compensatory and consequential damages in an amount to be specifically established at trial;

B. On the second cause of action, a derivative claim for fraud as against Kenneth, compensatory and consequential damages in an amount to be specifically established at trial, but in no event less than \$2.5 million;

C. On the third cause of action, a direct claim for breach of fiduciary duty as against Kenneth, in an amount to be specifically established at trial;

D. On the fourth cause of action, a direct and derivative claim for professional malpractice as against GSP, but in no event less than \$15 million;

- E. On the fifth cause of action, a direct and derivative claim for aiding and abetting fraud as against GSP, but in no event less than \$15 million;
- F. For costs and disbursements of this action, including interest according to law; and
- G. Granting Plaintiffs such other relief as the Court deems proper.

Dated: New York, New York
July 1, 2022

NAGEL RICE LLP



Bradley L. Rice
230 Park Avenue
Suite 1000
New York, New York 10029
Phone: (212) 551-1465

103 Eisenhower Parkway
Roseland, New Jersey 07069
Phone: (973) 618-0400
(Please respond to the NJ Office)