DISTRICT COURT, DENVER COUNTY **STATE OF COLORADO** 1437 Bannock St. Denver, CO 80202 (720) 865-8612	
Plaintiff: Tung Chan, Securities Commissioner for the State of Colorado v. **Defendants**: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC	▲ COURT USE ONLY ▲
Attorneys for Defendant Gary J. Dragul Paul L. Vorndran, Atty. Reg. No. 22098 Christopher S. Mills, Atty. Reg. No. 42042 Jones & Keller, P.C. 1999 Broadway, Suite 3150 Denver, CO 80202 Phone: 303-573-1600 Email: pvorndran@joneskeller.com cmills@joneskeller.com	Case No. 2018CV33011 Courtroom: 424

DEFENDANT GARY DRAGUL'S MOTION TO ORDER CLAIMS AGAINST BROWNSTEIN ABANDONED

In this motion ("Motion"), Defendant Gary Dragul, through undersigned counsel, moves for this Court to order that claims held by the GDA Entities[1] against Brownstein Hyatt Farber Schreck, LLP ("Brownstein") are abandoned. This Motion stems from Mr. Dragul addressing the Court's reason for denying Mr. Dragul's September 3, 2020 Motion to Order Claims Abandoned, as addressed below.

[1] I.e., GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC.

Certification of Conferral

Pursuant to C.R.C.P. 121 § 1-15(8), counsel for Mr. Dragul emailed counsel for the Receiver on October 12, 2020. Mr. Dragul's counsel explained that, with the statute of limitations poised to expire, Mr. Dragul, through separate counsel and consistent with the holding in *Barletta v. Tedeschi*, 121 B.R. 669 (N.D.N.Y. 1990), filed a complaint against Brownstein alleging both Mr. Dragul's personal claims and the GDA Entities' claims. (Ex. 1 at 6.) Mr. Dragul attached the 34-page complaint to this email so that the Receiver had all the information he might want to competently evaluate the claims, and asked if the Receiver wanted to prosecute or abandon the GDA Entities' claims against Brownstein. (*Id*.)

Having received no response, Mr. Dragul's counsel followed up with voice mail messages and another email on October 14th. (*Id*. at 5.) That evening, the Receiver's counsel responded that he would require "a significant amount of time" to "fact check each allegation" by reviewing the information on the GDA Server, and that Mr. Dragul should "not expect an answer from us any time soon." (*Id*. at 4.) Mr. Dragul agreed to delay filing a motion until October 23rd to give the Receiver more time to research evidence relating to the claims.[2] (*Id*. at 3.) On October 23rd, Mr. Dragul's counsel reached out to the Receiver's counsel again, asking if

[2] As discussed below, this Motion seeks for the Court to order a particular set of claims against one defendant, Brownstein, abandoned based on a complaint Mr. Dragul provided to the Receiver. It thus arises from Mr. Dragul curing the Court's concern upon which it denied Mr. Dragul's September 3, 2020 Motion to Order Claims Abandoned ("September 3 Motion"). For that reason, and because it is limited to claims against only one defendant, it seeks different relief based on a different factual predicate and thus does not seek reconsideration of the Court's October 1, 2020 Order. Nonetheless, out of an abundance of caution, Mr. Dragul was prepared to file this Motion within the 14-day motion-for-reconsideration deadline. But Mr. Dragul chose to wait in order to accommodate the Receiver's request for additional time to conduct independent research of the claims, in exchange for the Receiver waiving any argument the Motion is an untimely motion for reconsideration. (Ex. 1 at 2-3.)

the Receiver wanted to take up or abandon the GDA Entities' claims against Brownstein. (*Id*. at 1.) The Receiver's counsel did not respond. Mr. Dragul assumes he opposes this Motion.

Counsel for Mr. Dragul also twice reached out to counsel for the Commissioner about this Motion. The Commissioner has not responded with her position, and since she did not take a position in response to Mr. Dragul's meet-and-confer inquiries, or after seeing the pleadings, in connection with Mr. Dragul's September 3 Motion, Mr. Dragul assumes she is not taking a position on this Motion either.

INTRODUCTION AND BACKGROUND

The August 30, 2018 Order Appointing Receiver ("Receivership Order") provides that the Receiver may assert claims belonging to the Receivership against third parties. On September 3, 2020, Mr. Dragul filed the September 3 Motion, which sought abandonment of certain identified civil claims after Mr. Dragul identified those claims to the Receiver, but the Receiver declined to either prosecute or abandon them. On October 1, the Court denied the September 3 Motion, stating that it does not "appear from the pleadings that Mr. Dragul, though his counsel, has provided the receiver (through conferral or otherwise) a sufficient basis from which the receiver can determine whether or not viable claims may be asserted as to third parties."

Separate counsel for Mr. Dragul researched claims against one potential defendant in particular: Brownstein. That counsel then drafted a complaint alleging legal malpractice against Brownstein. Since the statute of limitations was poised to expire, they filed the complaint earlier this month. It is attached as Exhibit 2. In that complaint, claims are asserted not only by Mr. Dragul personally, but by the GDA Entities in receivership. However, the complaint itself

makes clear the GDA Entities' claims were asserted to preserve them for statute of limitations purposes, and that they belong to Receiver unless this Court rules otherwise or the Receivership terminates, at which point the claims revert to their pre-receivership owner.[3]

Mr. Dragul is not disputing that the GDA Entities' claims against Brownstein currently belong to the Receiver. Thus, Mr. Dragul provided a copy of the complaint to the Receiver's counsel on October 12, 2020 to ensure that the Receiver had all the information he might want in order to decide whether to prosecute or abandon the GDA Entities' claims against Brownstein. Then, Mr. Dragul delayed filing this Motion to accommodate the Receiver's request for additional time to research evidence on the GDA Server related to the claims. But despite (1) having the fully-drafted complaint; (2) having two weeks from receiving it to conduct evidentiary research; and (3) Mr. Dragul's follow-up calls and emails in the meet-and-confer

[3] Footnote 1 of the complaint states:

> As of the date of this Complaint Harvey Sender is serving as the receiver over the assets of Gary J. Dragul, including his companies and their claims and causes of action. However, Mr. Sender has either refused or failed to assert certain claims held by Rose, LLC; GDA Real Estate Services, LLC and GDA Real Estate Management, Inc. Therefore, in addition to asserting claims that Gary J. Dragul holds personally as set forth herein, in order to preserve claims held by Rose, LLC; GDA Real Estate Services, LLC and GDA Real Estate Management, Inc. before the applicable limitations period runs, Gary J. Dragul hereby asserts the same for the limited purpose of preserving such claims. Gary J. Dragul has sufficient standing to assert the claims as set forth herein related to Rose, LLC; GDA Real Estate Services, LLC and GDA Real Estate Management, Inc. See Barletta v. Tedeschi, 121 B.R. 669 (1990) (holding that a debtor in bankruptcy had sufficient standing to assert claims that were part of the bankruptcy estate and controlled by the trustee before the limitations period expired, as such claims revert back to the debtor at the conclusion of the bankruptcy proceeding).

process, the Receiver has not responded and articulated his decision. The Receiver's refusal to do so should be deemed abandonment of the claims.[4]

ARGUMENT

The Court's October 1, 2020 Order denying Mr. Dragul's September 3 Motion appears to turn on the Court's belief that it did not "appear from the pleadings that Mr. Dragul, though his counsel, has provided the receiver (through conferral or otherwise) a sufficient basis from which the receiver can determine whether or not viable claims may be asserted as to third parties." Mr. Dragul then provided the Receiver with not just a sufficient basis to make that determination, but a fully-drafted and filed complaint with over thirty pages of detailed factual allegations and legal claims. Thus, Mr. Dragul cured the issue upon which the Court's Order turned. Yet, despite having two weeks since receiving the complaint to research the evidence for each allegation, the Receiver still refused to choose whether to prosecute or abandon those claims, or even to state his position on this Motion.

In filing the complaint, Mr. Dragul followed the reasoning in *Barletta v. Tedeschi,* 121 B.R. 669 (N.D.N.Y. 1990). There, the debtor filed suit just before the limitations period ran on a claim the trustee had not yet abandoned. *Id*. at 674. The court refused to dismiss the debtor's claim and held that once the claim was abandoned automatically at the close of the bankruptcy estate, the claim reverted back to the debtor, and that the debtor was then retroactively deemed to

[4] The power to petition the court to authorize abandonment of property is not limited to the trustee—other parties in interest such as the debtor may do the same. 11 U.S.C. § 554(b); Fed. R. Bank. P. 6007(b); *Barletta*, 121 B.R. at 671-72 ("The debtor is a 'party in interest' who may request abandonment of estate property.")(citing 11 U.S.C. § 445(b); Bankruptcy Rule 6007(a) & (b); 8 Collier on Bankruptcy ¶6007.03[1] (15th ed. 1988)). That is what Mr. Dragul seeks to do here.

have had title to the claim all along. *Id*. It so held even though the debtor never moved the bankruptcy court to order the claim abandoned. *Id*.

Barletta's reasoning applies here. Just like in a bankruptcy, 11 U.S.C. § 554(c); *Richards v. D.R. Horton, Inc.*, 740 S.E.2d 732, 734 (Ga. App. 2013), the GDA Entities' civil claims, including claims against Brownstein, will revert back to the pre-receivership owner (Mr. Dragul) upon termination of the Receivership Estate, *e.g., Rossi v. Colorado Pulp & Paper Co.*, 299 P. 19, 33 (receiver akin to bankruptcy trustee); *Janvey v. Alguire*, Case No. 3:09-CV-0724-N, 2014 WL 12654910, *3 (N.D. Tex. July 30, 2014) (same); *Kelley v. College of St. Benedict*, 901 F. Supp. 2d 1123, 1128 (D. Minn. 2012) (same). In order to preserve not only Mr. Dragul's future right to bring these claims, but also the Receiver's current right to bring them, Mr. Dragul filed the complaint to preserve them before the limitations period expired, just like in *Barletta*.

Then, the Receiver had the choice to either prosecute the GDA Entities' claims against Brownstein or abandon them. However, he cannot throw up his hands and do neither. "A receiver is a fiduciary of the court and of the persons interested in the estate." *K-Partners III, Ltd. v. WLM Hosp. Corp.*, 883 P.2d 604, 606 (Colo. App. 1994); *see also Zeligman v. Juergens*, 762 P.2d 783, 785 (Colo. App. 1988) (same). He "is chargeable with the value of property which would have come into his hands but was lost due to his failure to act" and "a receiver may be liable for failure to ask for authority to bring suit if his lack of diligence results in loss of the claim." *In re American Bridge Products, Inc.*, 328 B.R. 274, 334 (Bankr. D. Mass 2005), *vacated on other grounds by* 599 F.3d 1 (1st Cir. 2010). In *In re American Bridge Products*, the court held that the receiver "was grossly negligent and breached his fiduciary duties as Receiver" because, among other things, "[h]e failed to recognize and proceed with causes of action, which,

if pursued, more likely than not, would have resulted in full payment of [certain] creditors." *Id.* at 341-42. Once Mr. Dragul provided the Receiver the complaint against Brownstein, the Receiver could not claim ignorance to justify his failure to prosecute these claims. He had a fiduciary duty to pursue them.

Unless, that is, the Receiver determined they lack sufficient benefit to the Estate to be worth his effort. If the Receiver determined he lacks a sufficient basis to pursue those claims consistent with his Rule 11 obligations, that would necessarily mean he determined they lacked sufficient benefit to the Estate to prosecute. Or if he determined the expense to prosecute the claims would likely outweigh the amount recovered, that also would mean they lack sufficient benefit to the Estate. Either way, it would mean the claims must be deemed abandoned. Here, the Receiver's refusal to prosecute the claims after Mr. Dragul provided the 34-page complaint, and after the Receiver had two additional weeks to research the evidence for those claims, should be deemed abandonment.

Indeed, if the Receiver does not pursue these claims, they will be automatically abandoned at the conclusion of the Receivership anyway. That is what happens in a bankruptcy proceeding, 11 U.S.C. § 554(c); *Richards v. D.R. Horton, Inc.*, 740 S.E.2d 732, 734 (Ga. App. 2013), and the same is true in receivership, *e.g.*, *Rossi*, 299 P. at 33 (receiver akin to bankruptcy trustee); *Janvey*, 2014 WL 12654910, *3 (same) *Kelley*, 901 F.Supp.2d at 1128 (same). But ignoring the GDA Entities' claims against Brownstein until the end of the Receivership would hobble the case in which the complaint has already been filed. The Receiver's refusal to pursue them should be deemed abandonment now.

CONCLUSION

After Mr. Dragul provided the Receiver with a 34-page fully-drafted and filed complaint alleging claims against Brownstein, and provided the Receiver two weeks since receiving that complaint to research the evidence relevant to those claims, the Receiver could no longer claim ignorance and avoid his fiduciary duty to either prosecute those claims or abandon them. Since he has refused to prosecute them, the Court should order the claims against Brownstein abandoned.

Respectfully submitted this 26th day of October, 2020.

JONES & KELLER, P.C.

/s/ Christopher S. Mills
Paul Vorndran, #22098
Christopher Mills, #42042
1999 Broadway, Suite 3150
Denver, CO 80202
Tel: (303) 573-1600
Facsimile: (303) 573-8133

ATTORNEYS FOR DEFENDANT GARY DRAGUL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANT GARY DRAGUL'S MOTION TO ORDER CLAIMS AGAINST BROWNSTEIN ABANDONED** was filed and served via the ICCES e-file system on this 26th day of October 2020 to the following counsel of record for the parties to the action:

Patrick D. Vellone
Michael T. Gilbert
Rachel A. Sternlieb
Allen Vellone Wolf Helfrich & Factor P.C.
1600 Stout St., Suite 1100
Denver, Colorado 80202
Phone Number: (303) 534-4499
pvellone@allen-vellone.com
mgilbert@allen-vellone.com
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Counsel for Receiver

Robert W. Finke
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Ralph L. Carr Judicial Building
1300 Broadway, 8th Floor
Denver, Colorado 80203
Sueanna.Johnson@coag.gov
Robert.Finke@coag.gov

Counsel for Tung Chan, Securities Commissioner for the State of Colorado

/s/ Christopher S. Mills
Christopher S. Mills

From: Christopher S. Mills
To: Pat Vellone; Paul L. Vorndran
Cc: Michael T. Gilbert; Rachel Sternlieb
Subject: RE: Receiver claims against professionals
Date: Friday, October 23, 2020 12:38:30 PM

Hi Pat,

Can you let us know your position on whether the Receiver wants to take up or abandon the GDA Entities' claims against Brownstein? Or alternatively your position on our motion if we need to go that route?

Thanks,
Chris

JONES&KELLER

Christopher S. Mills
Attorney At Law

1999 Broadway, Suite 3150
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P: 303.573.1600 | F: 303.573.8133

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cmills@joneskeller.com
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NOTE: Effective Nov. 1, 2020, Jones & Keller is moving offices. Our new address will be:
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Denver, CO 80202
Connect with me on LinkedIn:
https://www.linkedin.com/in/christopher-s-mills/

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From: Christopher S. Mills <cmills@joneskeller.com>
Sent: Thursday, October 15, 2020 3:05 PM
To: Pat Vellone <PVellone@allen-vellone.com>; Paul L. Vorndran <pvorndran@joneskeller.com>
Cc: Michael T. Gilbert <mgilbert@allen-vellone.com>; Rachel Sternlieb <rsternlieb@allen-vellone.com>
Subject: RE: Receiver claims against professionals

Ok, we have a deal. Thanks.

JONES&KELLER

Christopher S. Mills
Attorney At Law

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https://www.linkedin.com/in/christopher-s-mills/

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From: Pat Vellone <PVellone@allen-vellone.com>
Sent: Thursday, October 15, 2020 12:43 PM
To: Christopher S. Mills <cmills@joneskeller.com>; Paul L. Vorndran <pvorndran@joneskeller.com>
Cc: Michael T. Gilbert <mgilbert@allen-vellone.com>; Rachel Sternlieb <rsternlieb@allen-vellone.com>
Subject: RE: Receiver claims against professionals

Thanks, Chris.

We will agree to waive any argument that we might otherwise assert that your motion is an untimely motion to reconsider. However, we are not inclined to share with you our work product involving our review and analysis of the complaint allegations when compared to the information contained on the GDA server, which information is equally available to you and your client as it is for us.

Very truly,
Patrick D. Vellone
Attorney At Law

Allen Vellone Wolf Helfrich & Factor P.C.
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From: Christopher S. Mills <cmills@joneskeller.com>
Sent: Thursday, October 15, 2020 9:35 AM
To: Pat Vellone <PVellone@allen-vellone.com>; Paul L. Vorndran <pvorndran@joneskeller.com>
Cc: Michael T. Gilbert <mgilbert@allen-vellone.com>; Rachel Sternlieb <rsternlieb@allen-vellone.com>
Subject: RE: Receiver claims against professionals

Hi Pat,

Thanks for the email. I hope the trial went well. I would be curious to hear how all the COVID protocols were handled.

In the abstract, we have no problem holding off on filing a motion to give you more time to research the claims alleged in the complaint. However, we have one concern. We do not believe our planned motion would qualify as a motion to reconsider as it would rest on a different factual predicate and would be seeking slightly different relief. Nonetheless, we are sensitive to the fact that you might want to argue that if we filed it after today, our motion should be denied as an untimely motion to reconsider.

If we hold off filing until October 23rd, will you waive any argument you might otherwise assert that the motion is an untimely motion to reconsider and share with us the information you believe contradicts factual allegations in the complaint?

Please let us know right away, as otherwise we will need to get the motion on file today in light of the risk you would argue it is subject to the 14-day deadline.

Thanks,
Chris

JONES&KELLER

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From: Pat Vellone <PVellone@allen-vellone.com>
Sent: Wednesday, October 14, 2020 5:07 PM
To: Christopher S. Mills <cmills@joneskeller.com>; Paul L. Vorndran <pvorndran@joneskeller.com>
Cc: Michael T. Gilbert <mgilbert@allen-vellone.com>; Rachel Sternlieb <rsternlieb@allen-vellone.com>
Subject: RE: Receiver claims against professionals

Chris:

Now that Rachel and I have wrapped up matters from our trial last week, she and I have begun to go through the volume of information contained in the Brownstein Complaint. I anticipate that this process will take a significant amount of time, commensurate with our Rule 11 obligations, so I would not expect an answer from us any time soon. In a cursory review of the complaint, we have already observed that several of the factual allegations are contradicted by documents and communications contained on the GDA server and emails, and as a result, we must proceed cautiously and fact check each allegation.

Very truly,
Patrick D. Vellone
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From: Christopher S. Mills <cmills@joneskeller.com>
Sent: Wednesday, October 14, 2020 10:09 AM
To: Pat Vellone <PVellone@allen-vellone.com>; Paul L. Vorndran <pvorndran@joneskeller.com>
Cc: Michael T. Gilbert <mgilbert@allen-vellone.com>; Rachel Sternlieb <rsternlieb@allen-vellone.com>
Subject: RE: Receiver claims against professionals

Hi Mr. Vellone and Mr. Gilbert,

I just left a voicemail message for each of you. I want to follow up on my email below. Can you let us know whether the Receiver wants to prosecute the claims against Brownstein or would prefer to abandon them?

If the Receiver does not wish to pick either, we plan to file a motion. If that is the case, can you please let us know your position on such a motion?

Thanks,
Chris

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From: Christopher S. Mills <cmills@joneskeller.com>
Sent: Monday, October 12, 2020 11:28 AM
To: Pat Vellone <PVellone@allen-vellone.com>; Paul L. Vorndran <pvorndran@joneskeller.com>
Cc: Michael T. Gilbert <mgilbert@allen-vellone.com>; Rachel Sternlieb <rsternlieb@allen-vellone.com>
Subject: RE: Receiver claims against professionals

Hi Mr. Vellone and Mr. Gilbert,

We are writing to follow up regarding the Receiver's potential claims, on behalf of the GDA Entities, against certain professionals. We understood the Court's order on our recent motion turned on whether we provided you sufficient information about the claims the Receiver could bring. Though we believe the Receiver bears the burden to investigate claims under the Receivership Order, separate counsel for Mr. Dragul investigated the claims against Brownstein and drafted a complaint.

Since the statute of limitations was poised to expire, they filed an action against Brownstein a few days ago. The complaint is attached. As you will see, particularly in footnote 1, Mr. Dragul's counsel in that action made clear that the GDA Entities' claims belong to the Receiver, and that they were asserted to prevent the claims from becoming time-barred—particularly since upon termination of the Receivership, the claims will automatically revert to Mr. Dragul. This was done consistent with the holding in *Barletta v. Tedeschi*, 121 B.R. 669 (1990).

To be clear, we are not disputing the GDA Entities' claims belong to the Receiver until the Court rules otherwise or the Receivership terminates. The purpose of this email is to determine whether the Receiver wants to take over prosecution of these claims, or abandon them? The attached complaint provides over thirty pages of detail about them, so we would imagine it should answer all questions you might have in order to competently decide whether to prosecute the claims or abandon them. If you can please let us know right away, we would appreciate it.

Thanks,
Chris & Paul

JONES&KELLER

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Electronically Filed
10/7/2020 2:17 PM
Steven D. Grierson
CLERK OF THE COURT

COMP

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TRAVIS J. ROBERTSON, ESQ, #13387
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Attorneys for Plaintiffs

CASE NO: A-20-822625-C
Department 1

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

GARY J. DRAGUL, an individual; ROSE, LLC, a Colorado limited liability company; GDA REAL ESTATE SERVICES, LLC, a Colorado limited liability company; and GDA REAL ESTATE MANAGEMENT, INC., a Colorado corporation[1],

Plaintiffs,

v.

BROWNSTEIN HYATT FARBER SCHRECK, LLP, a Colorado limited liability partnership, ABBY KIRKBRIDE, ADAM J. AGRON, ALBERT Z. KOVACS, ANDREW C. ELLIOTT, ANDREW D. MOORE, ASHLEY BAKER WINGFIELD, CARRIE E. JOHNSON, CHARLES J. SMITH, CRISTAL M. DEHERRERA, DAVID R. ARRAJJ, DAVID B. MESCHKE, DONALD G. BOYAJIAN, EDWARD N. BARAD, GREGORY RICHES, GREGORY W. BERGER, J. TENLEY OLDAK, JEFFREY M. KNETSCH, JESSICA WILNER, JILL H.

Case No.:
Dept. No.:

COMPLAINT AND JURY DEMAND

[1] As of the date of this Complaint Harvey Sender is serving as the receiver over the assets of Gary J. Dragul, including his companies and their claims and causes of action. However, Mr. Sender has either refused or failed to assert certain claims held by Rose, LLC; GDA Real Estate Services, LLC and GDA Real Estate Management, Inc. Therefore, in addition to asserting claims that Gary J. Dragul holds personally as set forth herein, in order to preserve claims held by Rose, LLC; GDA Real Estate Services, LLC and GDA Real Estate Management, Inc. before the applicable limitations period runs, Gary J. Dragul hereby asserts the same for the limited purpose of preserving such claims. Gary J. Dragul has sufficient standing to assert the claims as set forth herein related to Rose, LLC; GDA Real Estate Services, LLC and GDA Real Estate Management, Inc. See Barletta v. Tedeschi, 121 B.R. 669 (1990) (holding that a debtor in bankruptcy had sufficient standing to assert claims that were part of the bankruptcy estate and controlled by the trustee before the limitations period expired, as such claims revert back to the debtor at the conclusion of the bankruptcy proceeding).

EXHIBIT 2
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Case Number: A-20-822625-C

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SMITH, JOHN BENSON ROWBERRY, JONATHAN G. PRAY, JONATHAN S. SAR, JULIE H. BODDEN, JULIE SANDER, KATE LOWENHAR-FISCHER, KELLEY NYQUIST GOLDBERG, LINDA M. ZIMMERMAN, MARC C. DIAMANT, MARK J. MATTHEWS, MELISSA D. NUCCIO, MICHELLE C. KALES, NANCY A. STRELAU, NEIL M. GOFF, NOELLE RICCARDELLA, RICK D. THOMAS, RIKARD D. LUNDBERG, ROBERT KAUFFMAN, SANGEETHA MALLAVARAPU, STEVE E. ABELMAN, SUSAN KLOPMAN, TAL DIAMANT, DOES I through X, inclusive; and ROE CORPORATIONS I through X, inclusive,

Defendants.

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Plaintiffs Gary J. Dragul, Rose, LLC, GDA Real Estate Services, LLC and GDA Real Estate Management, Inc. (collectively "***Plaintiffs***"), through their undersigned counsel, hereby complain of the Defendants Brownstein Hyatt Farber Schreck, LLP ("***BHFS***"), Abby Kirkbride, Adam J. Agron, Albert Z. Kovacs, Andrew C. Elliott, Andrew D. Moore, Ashley Baker Wingfield, Carrie E. Johnson, Charles J. Smith, Cristal M. Deherrera, David R. Arrajj, David B. Meschke, Donald G. Boyajian, Edward N. Barad, Gregory Riches, Gregory W. Berger, J. Tenley Oldak, Jeffrey M. Knetsch, Jessica Wilner, Jill H. Smith, John Benson Rowberry, Jonathan G. Pray, Jonathan S. Sar, Julie H. Bodden, Julie Sander, Kate Lowenhar-Fischer, Kelley Nyquist Goldberg, Linda M. Zimmerman, Marc C. Diamant, Mark J. Matthews, Melissa D. Nuccio, Michelle C. Kales, Nancy A. Strelau, Neil M. Goff, Noelle Riccardella, Rick D. Thomas, Rikard D. Lundberg, Robert Kauffman, Sangeetha Mallavarapu, Steve E. Abelman, Susan Klopman, Tal Diamant, and Does I through X (collectively, the "***Brownstein Attorneys***") and Roe Corporations I through X (collectively "***Defendants***") as follows:

PARTIES AND JURISDICTION

1. Plaintiff Gary J. Dragul ("***Mr. Dragul***") is, and at all times relevant herein was, an individual residing in the State of Colorado.

2. Plaintiff Rose, LLC is, and at all times relevant herein was, a Colorado limited liability company.

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3. Plaintiff GDA Real Estate Services, LLC ("***GDA Services***") is, and at all times relevant herein was, a Colorado limited liability company.

4. Plaintiff GDA Real Estate Management, Inc. ("***GDA Management***") is, and at all times relevant herein was, a Colorado corporation. (GDA Services and GDA Management are collectively referred to herein as "***GDA***").

5. Defendant Brownstein is, and at all times relevant herein was, a Colorado limited liability partnership with an office in the State of Nevada and has sufficient minimum contacts with the State of Nevada.

6. Upon information and belief, Defendants the Brownstein Attorneys were individuals residing in the State of Colorado but doing work for Plaintiffs in the State of Nevada as set forth herein.

7. Upon information and belief, Defendants DOES I through X, inclusive are and were, at all times material herein, individuals residing in Colorado but doing work for Plaintiffs in the State of Nevada as set forth herein, or have sufficient minimum contacts to Nevada to subject them to the jurisdiction of this Court. The names of DOES I through X are unknown to the Plaintiffs at the present time, but Plaintiffs reserve the right to amend this Complaint if and when such names become known.

8. Upon information and belief, Defendants ROE CORPORATIONS I through X are and were, at all times material herein, corporations and/or companies doing business in Colorado or Nevada, with sufficient minimum contacts to Nevada to subject them to the jurisdiction of this Court. Currently, the names of ROE CORPORATIONS I through X are unknown to Plaintiff at the present time, but Plaintiff reserves the right to amend its Complaint once these names are known.

9. This Court has jurisdiction over this matter and venue is proper because many of the acts, transactions and operations giving rise to this Complaint took place in Nevada.

10. Defendant BHFS has sufficient minimum contacts with Nevada as it operates a large office in Las Vegas and represented Plaintiffs in various real estate matters in Nevada.

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GENERAL ALLEGATIONS

11. In 1997, Plaintiff, Gary J. Dragul entered into an attorney-client relationship with BHFS and the Brownstein Attorneys pursuant to which BHFS and the Brownstein Attorneys agreed to provide general legal counsel to Gary J. Dragul, and later to the other Plaintiffs.

12. The scope of the Brownstein Attorneys' legal representation for the benefit of Plaintiffs was comprehensive and Plaintiffs relied heavily on the expertise of BHFS and the Brownstein Attorneys in all legal matters related to their business operations and financing goals for an extended period of time.

13. Mr. Dragul understood and believed that BHFS had attorneys with expertise in many different areas and that Mr. Dragul could obtain competent legal representation from BHFS related to all of Mr. Dragul's legal needs, and Mr. Dragul viewed BHFS as his general counsel for all of his personal and business legal matters.

14. From 1997 through 2018, in addition to providing general legal advice, BHFS and the Brownstein Attorneys represented Plaintiffs in hundreds of transactions, including commercial real estate acquisitions, lease transactions, loan transactions, and securities offerings (each a "***Transaction***" and collectively the "***Transactions***").

15. Generally, the manner in which Brownstein Attorneys provided legal counsel to Plaintiffs was as follows:

(a) First, Mr. Dragul would contact one or more of the Brownstein Attorneys (often Defendant Rob Kauffman) to discuss a potential opportunity that he was considering. One or more of the Brownstein Attorneys would then provide legal advice to Mr. Dragul about the potential structure of the Transaction.

(b) Then, after receiving legal advice, Mr. Dragul would further engage with the parties to the Transaction in an attempt to finalize the business terms, and on more than one occasion a Brownstein Attorney would attend meetings with Mr. Dragul and the other parties in order to facilitate structuring a Transaction.

(c) When business terms related to the Transaction were determined, Mr. Dragul would then re-engage with Brownstein Attorneys who would provide Mr. Dragul with legal

advice such as what entity(ies) should be formed in order to consummate the Transaction and to protect Mr. Dragul or limit his personal liability related to the Transaction.

(d) Then, Brownstein Attorneys or BHFS staff would form the entity(ies) in conjunction with the review and negotiation of the Transaction contract(s) (including loan documents) by Brownstein Attorneys; Mr. Dragul's personal liability being a primary concern related to all such legal representations.

(e) Each time there was opportunity for which Mr. Dragul sought legal representation, such legal representation would proceed generally as outlined above, the focus of which was Mr. Dragul's interests rather than those of entities owned or controlled by Mr. Dragul.

16. BHFS charged Plaintiffs between $235.00 and $669.00 per hour for legal services and provided an extraordinarily broad array of services for Plaintiffs upon request over a period of more than 20 years.

17. In connection with the Transactions, BHFS and the Brownstein Attorneys drafted and/or reviewed the documents BHFS and the Brownstein Attorneys deemed necessary and appropriate for each of the Transactions and provided Plaintiffs with advice relating to every legal aspect of the Transactions.

18. In addition to legal work related to the Transactions, BHFS and the Brownstein Attorneys provided Plaintiffs, including Mr. Dragul personally, with general personal, business and corporate counsel.

19. BHFS and the Brownstein Attorneys were involved in, or aware of, all of Plaintiffs' material business dealings from 1997 through 2018.

20. BHFS and the Brownstein Attorneys drafted the governing documents for Plaintiffs' numerous entities and provided explanations to Plaintiffs regarding Plaintiffs' rights and obligations with respect to such documents, and the protection such documents provided to Plaintiffs.

21. Plaintiffs relied on BHFS' and the Brownstein Attorneys' explanation of their rights, obligations and protections under the operating agreements and made decisions and took

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actions consistent their understanding of such documents, as explained by BHFS and the Brownstein Attorneys.

22. As a direct result of Defendants' actions and inactions throughout the course of their legal representation of Plaintiffs in connection with the Transactions, Mr. Dragul has been (i) the subject of several indictments, civil actions, and administrative proceedings initiated by the State of Colorado; (ii) made parties to numerous lawsuits from individuals and entities relating to the Transactions; and (iii) required to deliver control of their respective entities to a receiver that has proceeded to dismantle a profitable business, inflict irreparable damage on Plaintiff's reputation, and seek personal liability against Mr. Dragul and his family members.

23. The damages sustained by Plaintiffs as a result of BHFS' and the Brownstein Attorneys' actions and inactions, as set forth in greater detail below, have been substantial and are continuing.

Allegations Related to the YM Transaction:

24. In or about 2002, Plaintiffs acquired two parcels of real property known as Yale and Monaco in Denver, Colorado ("***YM Property***").

25. BHFS and the Brownstein Attorneys represented Plaintiffs in the acquisition of the YM Property (the "***YM Transaction***").

26. On or about January 19, 2000, Robert Kaufmann (a Brownstein Attorney) organized 3855 Forest, LLC, a Colorado limited liability company ("***3855 Forest***") by filing Articles of Organization with the Colorado Secretary of State and designating Donald Kaufmann as the registered agent and Initial Manager of 3855 Forest.

27. Donald Kaufmann, Robert Kaufmann's father, is deceased and 3855 Forest is controlled by Donald Kaufmann's surviving spouse, Harriet Kaufmann.

28. On or about May 31, 2007, Robert Kaufmann organized Prima Center 07, LLC, a Colorado limited liability company ("***Prima Center***") by filing Articles of Organization with the Colorado Secretary of State, designating Gary J Dragul as registered agent, listing Robert Kaufmann as the person forming Prima Center, and listing Robert Kaufmann's address as the address of Prima Center.

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29. The Articles of Organization of Prima Center were filed by Jennifer A Schenk, an employee of BHFS.

30. In or about 2007, Plaintiffs decided to refinance the YM Property.

31. On or about June 21, 2007, BHFS and the Brownstein Attorneys organized YM Retail 07, LLC, a Colorado limited liability company ("***YM Retail***") by filing Articles of Organization with the Colorado Secretary of State, designating GDA Real Estate Management, Inc. as the registered agent, and listing Gary J. Dragul as the person forming YM Retail.

32. The Articles of Organization of YM Retail were filed by Karen Rae Smith, an employee of BHFS.

33. In or about 2007, 3855 Forest and Prima Center invested in, and became members of, YM Retail, which entity became the owner of the YM Property.

34. 3855 Forest held the second largest interest in YM Property, owning 10.801% of the entity's equity interests.

35. In or about 2007, during efforts to refinance the YM Property, an environmental contamination was discovered on the YM Property.

36. Subsequently, Plaintiffs agreed to a voluntary clean-up program and began efforts to remediate the contamination.

37. The real estate market crash and corresponding economic recession in 2008 made the allocation of funds to the cleanup of the YM Property impossible and Plaintiffs were unable to complete the cleanup in a time period that was satisfactory to the State of Colorado.

38. In or about 2012, the State of Colorado initiated formal legal action against YM Retail and Plaintiffs.

39. BHFS and the Brownstein Attorneys represented YM Retail in the dispute with the State of Colorado related to the contamination issue ("***Environmental Action***").

40. BHFS and the Brownstein Attorneys insisted that Plaintiffs be represented by separate counsel in the Environmental Action to ensure that the YM Retail single purpose entity could be kept separate from Plaintiffs and their affiliates.

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41. Despite BHFS' and the Brownstein Attorneys' insistence that YM Retail be kept separate and be separately represented, BHFS billed GDA Real Estate for services performed by BHFS and the Brownstein Attorneys on behalf of YM Retail.

42. During the course of the Environmental Action, BHFS and the Brownstein Attorneys insisted that the investors in YM Retail be protected and recommended that the separate counsel representing Plaintiffs should advise Plaintiffs not to issue a capital call as it would harm the investors in YM Retail.

43. During the course of the Environmental Action, a discovery dispute arose with the State of Colorado regarding the disclosure of the members of YM Retail.

44. Upon information and belief, BHFS and the Brownstein Attorneys refused to disclose the members of YM Retail to the State of Colorado primarily because 3855 Forest and Prima Center, members of YM Retail, were owned and/or controlled by Brownstein Attorneys and their family members.

45. In or about August of 2012, at the request of BHFS and the Brownstein Attorneys, specifically Michelle Kales ("***Ms. Kales***") and Mark J. Matthews ("***Mr. Matthews***"), the environmental attorneys within BHFS assigned to Mr. Dragul's case, Mr. Dragul attended a meeting, which Ms. Kales indicated was to be an informal meeting with the Colorado Department of Public Health and Environment regarding the contamination issue at the YM Property. However, upon arriving at the meeting, Mr. Dragul was taken into a meeting with the Colorado Senior Assistant Attorney General, Jason King, who proceeded to use a tape recorder to record the meeting without any objection by Ms. Kales.

46. BHFS and the Brownstein Attorneys provided no opportunity or legal counsel to Mr. Dragul to prepare for or fully understand the scope of the meeting.

47. During the meeting with the Attorney General, the Attorney General asked Mr. Dragul other questions about Mr. Dragul's other businesses and personal activities and assets, all of which were irrelevant to the contamination issue.

48. BHFS and the Brownstein Attorneys did not object or otherwise instruct Mr. Dragul that he was under no obligation to answer questions that were irrelevant to the contamination issue.

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49. In January of 2014, despite the fact that the YM Property was owned by the single purpose entity YM Retail, and that YM Retail did not own the YM Property at the time it was contaminated, BHFS and the Brownstein Attorneys advised Plaintiffs to enter into a settlement agreement with the State of Colorado wherein Mr. Dragul was personally obligated to pay for all the costs of the cleanup of the contamination on the YM Property.

50. The stipulated resolution with the State of Colorado did not result in any liability for YM Retail or any of its members, including 3855 Forrest and Prima Center.

51. Upon information and belief, BHFS and the Brownstein Attorneys represented YM Retail against the State of Colorado while having a direct conflict of interest because a shareholder of BHFS, Robert Kaufmann had an interest in YM Retail as did his father Donald Kaufmann.

52. Despite this conflict of interest, BHFS and the Brownstein Attorneys engaged in strategic litigation, all with the express strategy of protecting investors, advising against fully authorized capital calls, and instructing separate counsel representing Plaintiffs to engage in the same litigation strategy.

53. BHFS and the Brownstein Attorneys advised Plaintiffs to enter into a stipulation with the State of Colorado that held Plaintiffs liable for the cleanup and even held certain individual Plaintiffs personally liable, while the stipulation did not hold the owner entity YM Retail liable nor any of its members, which included Robert Kaufmann and his father Donald Kaufmann.

54. BHFS and the Brownstein Attorneys negotiated this resolution in the Environmental Action, without allowing Plaintiffs' separate counsel to be involved and to protect its own interest to Plaintiffs' detriment.

55. BHFS and the Brownstein Attorneys also negotiated such resolution while concurrently representing Plaintiffs in other matters and while billing Plaintiffs for the services it was providing in the Environmental Action.

56. In addition to protecting its own interests, BHFS also charged GDA Real Estate in excess of $300,000 in legal fees for its representation in the Environmental Action.

57. Mr. Dragul subsequently personally spent approximately $1,000,000.00 on the cleanup of the YM Property.

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58. Upon information and belief, based on the information obtained by the Attorney General in the 2012 meeting, the Attorney General decided to investigate Plaintiffs' business operations further and issued subpoenas to Plaintiffs on March 10, 2014 seeking information and documents related to Plaintiffs' business operations.

59. As a likely result of BHFS' and the Brownstein Attorneys' representation related to the YM Property, Mr. Dragul received Colorado State Grand Jury Indictments dated April 12, 2018 and March 1, 2019 (the "***Indictments***").

Allegations Associated with Rose LLC:

60. In or about 2011, BHFS was engaged to prepare the necessary documents and disclosures related to Rose, LLC, a Colorado limited liability company.

61. Rose, LLC was formed, in part, to use investment funds to acquire an interest in the Senor Frog's restaurant (the "***Restaurant***") inside of Treasure Island on the Las Vegas Strip (the "***Senor Frog's Transaction***").

62. BHFS and the Brownstein Attorneys perceived that in order to satisfy its obligations as legal counsel for Plaintiffs related to the fundraising for the Senor Frog's Transaction it needed to produce a substantial amount of legal documentation, including in excess of 100 pages of legal documents containing detailed disclosure of risks, use of offering proceeds, qualifications and compensation of management, business plans, security holder rights, restrictions on transfer of securities, redemption of securities, projected rates of return, distributions, financial data and projections, and related disclosures (the extent of disclosure made being referred to herein as the "***BHFS Compliance Standard***").

63. BHFS charged approximately $271,000.00 for its services related to the Senor Frog's Transaction, conducted pursuant to the BHFS Compliance Standard.

64. In order to facilitate the initial sale of securities from Rose, LLC to prospective investors related to the Senor Frog's Transaction, and as part of the BHFS Compliance Standard, BHFS and the Brownstein Attorneys prepared an Amended and Restated Operating Agreement of Rose, LLC.

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65. In 2013, due to unforeseen circumstances, Rose, LLC's financial obligations related to the Senor Frog's Transaction far exceeded original estimates and it became necessary for Rose, LLC to solicit additional capital to fund such costs.

66. Mr. Dragul reached out to BHFS and the Brownstein Attorneys to obtain counsel related to the revised financial goals of Rose, LLC, and BHFS and the Brownstein Attorneys recommended a second round of the sale of securities related to the Senor Frog's Transaction (the "***Second Rose Investment***").

67. To facilitate the Second Rose Investment, which sought approximately $1,200,000.00 in fund raising, BHFS and the Brownstein Attorneys merely prepared another Amended and Restated Operating Agreement of Rose, LLC, with no disclosures to prospective investors regarding the then current status of the Senor Frogs Transactions or any of the additional risks occasioned by Rose, LLC's financial challenges.

68. BHFS and the Brownstein Attorneys also failed to advise any of the Plaintiffs that such disclosures were necessary for Rose, LLC to issue additional securities in compliance with applicable state and federal securities laws.

69. In order to procure the necessary capital, Mr. Dragul primarily engaged with individuals and entities that had invested in other Transactions, including investors that had purchased 2013 Notes (defined below) and/or an initial equity interest in Rose, LLC, in soliciting funds for the Second Rose Investment.

70. BHFS and the Brownstein Attorneys knew or should have known through its conflicts checks processes that the holders of the 2013 Notes had participated in other Transactions, yet failed to notify Plaintiffs of risks related to utilizing funds raised in connection with the 2013 Notes to assist with the Second Rose Investment or the financial needs of Rose, LLC, or any other affiliated entity, without adequate disclosure of the proposed use of such 2013 Note proceeds to the holders thereof.

71. BHFS and the Brownstein Attorneys failed to advise Plaintiffs that each investor in the Second Rose Investment was required to receive accurate and complete disclosures, whether based upon the BHFS Compliance Standard or otherwise.

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72. BHFS and the Brownstein Attorneys helped prepare or were aware of the documents issued to investors in the Second Rose Investment, and BHFS and the Brownstein Attorneys were aware of all the circumstances related to such investment and the 2013 Notes, which securities later became the subject of the First Indictment (defined below).

73. In 2014, BHFS and the Brownstein Attorneys had an additional opportunity to meet the BHFS Compliance Standard via its production of a third Amended and Restated Operating Agreement of Rose, LLC, but again failed to meet the standard required by a prudent legal practitioner, or the standard demonstrated by the Brownstein Attorneys that engaged in the initial Senor Frogs Transaction.

74. To further complicate Plaintiffs' situation, several of the investors in Rose, LLC also invested in other Transactions. However, as described below, such Transactions did not meet the BHFS Compliance Standard, or the standard of legal practitioners charging in excess of $400.00 per hour for securities work generally.

75. Plaintiffs relied on the broad and comprehensive undertaking by BHFS and the Brownstein Attorneys to provide a high level of legal counsel, particularly as it related to the sizes of the Senor Frogs Transaction, the Second Rose Investment, and related Transactions, the risks and complexities involved with respect to the issuance of securities generally, and the historical standards exhibited by other Brownstein Attorneys in the course of the Plaintiffs' legal representation.

76. BHFS and the Brownstein Attorneys effectively pulled the rug out from under Plaintiffs after endeavoring to create solid ground for Plaintiffs to traverse and assuring them, both expressly and implicitly, that the terrain was safe.

Allegations Associated with the 2013 Notes:

77. From approximately 2008 to 2013, due to the challenges associated with obtaining conventional financing for commercial property acquisitions, certain of the Plaintiffs began the practice of issuing promissory notes in order to secure the funds necessary for the companies' acquisitions.

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78. Plaintiffs implemented this business model based upon its understanding of its rights under the respective operating agreements of their various entities, as explained to Plaintiffs by BHFS and the Brownstein Attorneys, based upon the terms included in such operating agreements, and other legal guidance provided by BHFS and the Brownstein Attorneys.

79. All such operating agreements were drafted by BHFS and the Brownstein Attorneys.

80. As an example of the legal advice received by Plaintiffs during this period of time, on November 30, 2010, Brownstein Attorneys presented to Mr. Dragul a template document that facilitated the sale of securities in the form of "Senior Notes" and suggested that such template could be used by Plaintiffs accompanying a "Business Plan."

81. Unfortunately for Plaintiffs, on August 10, 2016, in response to regulatory actions involving Transactions for which BHFS and the Brownstein Attorneys were engaged as legal counsel, Brownstein Attorneys provided a memorandum regarding whether promissory notes are "securities," and this memorandum finally brought to light the risks that BHFS and the Brownstein Attorneys had failed to disclose to Plaintiffs prior to this time. The conclusion of said memorandum was as follows:

> "Determining whether a court will consider a promissory note to be a security is difficult because the determination under the Reves test is highly factual and depends on the context. In general, though, because promissory notes are presumed to be securities, we face an uphill battle in persuading the court that a promissory note is not a security. There is a good chance that some of Gary Dragul's promissory notes will be characterized as securities while others will not."

82. On or about April 12, 2018, Mr. Dragul received a Colorado State Grand Jury Indictment (the "***First Indictment***") alleging various counts of securities fraud against Plaintiffs related to promissory notes issued by Plaintiffs related to Transactions in or around 2013, for failure to make appropriate disclosures of material facts, for improper use of funds, and for the use of an unregistered promoter (the "***2013 Notes***").

83. Further, the First Indictment claimed that Mr. Dragul and GDA did not disclose to investors that they were named as defendants in several civil lawsuits for failing to timely repay other promissory notes.

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84. According to the First Indictment, Mr. Dragul had not complied with certain securities and other laws and should be prosecuted for the violation of the same.

85. In his efforts to comply with securities and generally applicable law, Mr. Dragul relied on the expertise and sophistication of BHFS and the Brownstein Attorneys and paid an extraordinary amount of money to BHFS to obtain such assurances.

86. As described above, BHFS and the Brownstein Attorneys were aware of the existence and purpose of the 2013 Notes in that such were directly related, in part, to the Senor Frog's Transaction, a Transaction with which BHFS and the Brownstein Attorneys were intimately involved over a period of years.

87. BHFS and the Brownstein Attorneys were aware that twelve (12) of the holders of the 2013 Notes were also members of Rose, LLC (and many were members of other entities related to Transactions), and that the funds from the 2013 Notes would be utilized to construct the Restaurant for the Senor Frog's Transaction.

88. The operating agreements for GDA and Rose, LLC (which were prepared by Brownstein Attorneys) contemplated that if a company required additional capital to meet its obligations, such company could borrow all or part of such additional capital from any source, including, without limitation, any member of the company, on terms and conditions acceptable to the managers of the company, in their sole and absolute discretion.

89. BHFS and the Brownstein Attorneys were aware of the financial needs of Plaintiffs and BHFS and the Brownstein Attorneys prepared the documents integrating and/or converting the holders of the 2013 Notes into members of Rose, LLC as part of the Second Rose Investment.

90. Pursuant to the First Indictment, these actions on the part of Mr. Dragul, without adequate disclosure, violated Colorado laws.

91. In addition to the foregoing, the Brownstein Attorneys knew that the holders of the 2013 Notes were involved in various other Transactions and had full knowledge of the circumstances surrounding such Transactions (having prepared the legal documents associated with all such Transactions).

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92. Having prepared the Rose, LLC Private Placement Memorandum (the "***Rose PPM***"), BHFS and the Brownstein Attorneys knew or should have known that permitting the holders of the 2013 Notes to purchase the Rose, LLC securities in the Second Rose Investment would require substantial additional disclosures related to the then current financial situation of Rose, LLC and the general status of the Senor Frogs Transaction.

93. BHFS and the Brownstein Attorneys knew or should have known that the Rose PPM should have been updated and/or amended and circulated to all new and existing investors, but failed to complete such revisions and/or amendments and to instruct Plaintiffs to distribute the Rose PPM to any of the prospective investors participating in the Second Rose Investment.

94. It is clear that the Brownstein Attorneys failed to properly and fully advise Plaintiffs of their obligations with respect to the issuance of promissory notes, securities laws generally, securities registration requirements, and disclosure requirements.

95. As a result of such failures, Plaintiffs were the subject of the First Indictment, a receiver was appointed to manage their business affairs (which have resulted in essentially complete ruin), and the Plaintiffs have suffered significant damages.

Allegations Associated with the Plainfield Transaction:

96. On or about March 1, 2019, Mr. Dragul received a second Colorado State Grand Jury Indictment (the "***Second Indictment***") alleging, among other things, various counts of securities fraud against Mr. Dragul related to the acquisition, sale and investments in the commercial property commonly known as the Plainfield Commons Shopping Center (the "***Plainfield Property***").

97. BHFS and the Brownstein Attorneys were directly involved in the acquisition and sale of the Plainfield Property, and all Transactions surrounding the same (collectively the "***Plainfield Transaction***").

98. Specifically, BHFS and the Brownstein Attorneys formed the entity named PLAINFIELD 09 A, LLC and prepared its operating agreement (the "***Plainfield Operating Agreement***"), with the understanding and intent that such document would form the basis of capital fundraising by Plaintiffs.

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99. Plaintiffs, relying on BHFS' and the Brownstein Attorneys' expertise and advise, used the Plainfield Operating Agreement in connection with the solicitation of capital related to PLAINFIELD 09 A, LLC in accordance with the terms thereof, as explained by BHFS and the Brownstein Attorneys.

100. The Plainfield Operating Agreement begins by stating the following:

> THE SECURITIES REPRESENTED BY THIS INSTRUMENT OR DOCUMENT HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE. WITHOUT SUCH REGISTRATION, SUCH SECURITIES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED AT ANY TIME, EXCEPT UPON DELIVERY TO THE COMPANY OF AN OPINION OF COUNSEL SATISFACTORY TO THE MANAGERS OF THE COMPANY THAT REGISTRATION IS NOT REQUIRED FOR SUCH TRANSFER OR THE SUBMISSION TO THE MANAGERS OF THE COMPANY OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO THE MANAGERS TO THE EFFECT THAT ANY SUCH TRANSFER OR SALE WILL NOT BE IN VIOLATION OF THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS OR ANY RULE OR REGULATION PROMULGATED THEREUNDER.

101. Notwithstanding BHFS' and the Brownstein Attorneys' clear understanding that the Plainfield Operating Agreement facilitated the sale of securities and would be used for this purpose by Plaintiffs: (i) BHFS and the Brownstein Attorneys prepared no private placement memorandum or other offering circular to disclose the proposed business plans, estimated use of proceeds, rights and obligations associated with offered securities, qualifications and compensation of management, or the general risks associated with investment; (ii) BHFS and the Brownstein Attorneys prepared no suitability questionnaire or subscription agreement pursuant to which prospective investors outlined their qualifications for participation in the offering and made representations about their levels of sophistication, accreditation, and understanding of general securities laws; and (iii) BHFS and the Brownstein Attorneys prepared no Form D or other notice filing with any jurisdictions in which investors would be solicited. Rather, BHFS and the Brownstein Attorneys included the foregoing legend regarding non-registration or qualification and a few paragraphs seeking to limit the liability of Plaintiffs in the event of claims for securities or other violations.

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102. The efforts of BHFS and the Brownstein Attorneys in connection with the securities offering of PLAINFIELD 09 A, LLC not only fell far short of the generally applicable standards of a reasonable securities attorney, but failed to meet the standard associated with securities laws compliance demonstrated by BHFS and the Brownstein Attorneys in the Senor Frog's Transaction or the Pure Transaction (which Transactions occurred only a few years later) and allegedly failed to approximate the disclosures claimed to be necessary by the Colorado Attorney General's office.

103. According to the Second Indictment, the Colorado Attorney General's office alleges that Mr. Dragul and GDA failed to disclose: (i) that they would sell/assign over 100% of the total membership interests in Plainfield Commons Shopping Center; (ii) the actual risk associated with investments; (ii) the actual financial condition and substantial debt of GDA; (iii) that investor funds would be comingled with other investment accounts; and (iv) that Mr. Dragul and GDA would engage in a course of business that would dilute the value of each membership interest.

104. Through their representation of Plaintiffs related to all aspects of the Plainfield Transaction, the Brownstein Attorneys: (i) advised Plaintiffs that the disclosures and representations specified in the Second Indictment related to the Plainfield Property were not necessary; (ii) failed to advise Plaintiffs to make certain required disclosures; and/or (iii) failed to memorialize appropriate disclosures in the Plainfield Operating Agreement and/or other documents that would be disclosed to the members of the company.

105. The Second Indictment also states that "On or about July 29, 2013, Dragul and GDA sent a letter to MSHR, Inc. – Attn: Scott Rockefeller. The letter evidenced that the investment in the Plainfield Property was funded by rolling over a previous $50,000 investment in Crosspointe 08A, LLC and a $25,000 investment in CP Loan, in addition to a cash investment of $25,000."

106. BHFS and the Brownstein Attorneys knew, or should have known the relationship between the members of PLAINFIELD 09 A, LLC and prior Transactions involving Plaintiffs because BHFS and the Brownstein Attorneys would have run a conflicts check and BHFS and the Brownstein Attorneys prepared documentation related to all Transactions, and (as stated above)

such conflicts and risks should have been disclosed by BHFS and the Brownstein Attorneys through the Plainfield Operating Agreement or other disclosure documents so that Plaintiffs were duly protected from claims associated with the same.

107. Additionally, according to the Second Indictment, Mr. Dragul allegedly failed to sufficiently describe to the members of PLAINFIELD 09 A, LLC that dilution of their interests could occur if additional capitalization was necessary, which obligation should have been satisfied by the Brownstein Attorneys through their representation of Plaintiffs.

108. Specifically, the Second Indictment provides that by "November 2012, Dragul and GDA had already sold or assigned 99.24% of the membership interests in Plainfield Commons Shopping Center (and interest in and to the Property) to approximately twenty investors" and "Dragul and GDA would go on to sell/assign additional membership interests in Plainfield Commons Shopping Center to approximately ten other investors. In so doing, Dragul and GDA failed to disclose that they had already sold membership interests in Plainfield Commons Shopping Center totaling over 100%."

109. As legal counsel for Plaintiffs, the Brownstein Attorneys became aware that additional capital was required and that dilution of the members of PLAINFIELD 09 A, LLC would need to occur in order to procure such capital (the "***Plainfield Dilution Event***"). However, based upon the Second Indictment, the Brownstein Attorneys initially utterly failed to address compliance obligations related to the Plainfield Dilution Event, and failed to do so again related to the Clearwater Transaction (defined below).

110. The foregoing failures occurred because the Plainfield Operating Agreement, and the legal representation related to the Plainfield Property, were deficient in essentially all material respects.

111. The failure of Defendants to adequately advise Plaintiffs regarding their disclosure obligations related to the Plainfield Transaction led directly to the Second Indictment and the filing of the Civil Action (defined below).

Allegations related to the Clearwater Transaction:

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112. Following the Plainfield Dilution Event it was determined by BHFS and the Brownstein Attorneys, Mr. Dragul, and GDA, that PLAINFIELD 09 A, LLC should engage in a "1031 exchange" in order to liquidate its property and create financial opportunity for its members (the "***Clearwater Transaction***").

113. To facilitate the Clearwater Transaction the Brownstein Attorneys formed a new entity, Clearwater Collection 15, LLC, and prepared a private placement memorandum, accredited investor questionnaire, and an operating agreement.

114. It is noteworthy that such documents were well in excess of what the Brownstein Attorneys prepared related to the acquisition of the Plainfield Property notwithstanding such Transaction involving many of the same investors.

115. According to the Second Indictment, "None of the investors in Plainfield Commons Shopping Center were repaid their principal investment. Investors were forced to roll their investments from Plainfield Commons Shopping Center into another LLC, known as Clearwater."

116. The actions of Plaintiffs related to the Clearwater Transaction were taken at the specific direction and under the legal guidance of the Brownstein Attorneys and Mr. Dragul was indicted for taking such actions.

117. Specifically, the Brownstein Attorneys were entirely responsible to develop and facilitate the legal strategy to accomplish the Clearwater Transaction, which they did, including the formation of a new entity, Clearwater Collection 15, LLC, and preparation of a private placement memorandum, accredited investor questionnaire, and an operating agreement.

Allegations related to the PMG Transaction and Hagshama Transaction:

118. The Second Indictment also alleged various counts of securities fraud against Mr. Dragul related to the acquisition, sale and investments in the Plaza Mall of Georgia (the "***PMG Transaction***"), which was a Transaction similar to the Plainfield Property Transaction.

119. Again, BHFS and the Brownstein Attorneys were directly involved in the acquisition and sale of the Plaza Mall of Georgia and identified that securities were being sold related to the PMG Transaction.

120. BHFS and the Brownstein Attorneys prepared the Operating Agreement for Plaza Mall North 08 B Junior, LLC, a Georgia limited (the "***PMG Operating Agreement***"), which is the entity that owned and operated the Plaza Mall of Georgia North (the "***PMG Property***").

121. The efforts of BHFS and the Brownstein Attorneys in connection with the securities offering related to the PMG Transaction not only fell far short of the generally applicable standards of a reasonable securities attorney, but failed to meet the standard associated with securities laws compliance demonstrated by BHFS and the Brownstein Attorneys in the Senor Frog's Transaction or the Pure Transaction (which Transactions occurred only a few years later) and failed to approximate the disclosures claimed to be necessary by the Colorado Attorney General's office in the Second Indictment.

122. Where the Clearwater and Senor Frog's Transactions utilize numerous pages and various documents in an attempt to satisfy disclosure requirements, the PMG Operating Agreement provides only a few sentences related to the potential risks and general business plans of the PMG Transaction.

123. Additionally, in relation to the PMG Transaction, the Second Indictment states that "As part of this closing, GDA paid themselves a $200,000 consulting fee, paid SSC a $75,000 consulting fee, and paid ACF a $500,000 consulting fee. None of these fees were disclosed to investors prior to the closing."

124. BHFS and the Brownstein Attorneys specifically advised Plaintiffs regarding the fees described in the Second Indictment and prepared the PMG Operating Agreement as well as the transaction documents providing for the payment of said fees.

125. Through its preparation of the PMG Operating Agreement, various fee agreements, and provision of legal advice generally related to the PMG Transaction, the Brownstein Attorneys either advised Plaintiffs that certain disclosures and representations related to the acquisition of the PMG Property were not necessary, or otherwise failed to advise Plaintiffs to make certain required disclosures or to make required disclosures via the PMG Transaction's documents.

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126. In 2016, the PMG Property required additional capital to maintain viability and Plaintiffs sought legal advice from the Brownstein Attorneys related to obtaining a mezzanine loan from a lender generally referred to as the "Hagshama Fund" (the "***Hagshama Transaction***").

127. Rather than pursuing a traditional mezzanine loan structure, the Brownstein Attorneys advised Plaintiffs to pursue a complicated securities transaction that became a subject of the Second Indictment. The Second Indictment provides in pertinent part the following:

> On or about April 1, 2016, Dragul and GDA brokered an agreement to sell Alan Fox's shares of Plaza Mall of Georgia North to an institutional investor from Israel, known as Hagshama Funds. Hagshama Funds invested approximately $4.6 million for the purchase of Fox's interest in Plaza Mall of Georgia North.
>
> As part of the fees paid related to that transaction, GDA also received an "Acquisition Fee" of $100,000 and Hagshama Funds received an "Equity Arrangement Fee" of $231,579.
>
> GDA also received a "Post Closing Note Loan" form HAGSHAMA in the amount of $300,000, upon transfer of the shares.

128. The Brownstein Attorneys knew that based upon the nature of the Hagshama Transaction, and the documents prepared or reviewed by the Brownstein Attorneys, that the Hagshama Fund would be treated differently that other investors.

129. Pursuant to the Second Indictment, the "circumstances surrounding the sales, acts, practices and course of business engaged in by DRAGUL and GDA, including the untrue statements of material fact and omissions of material fact as described herein . . . operated as a fraud upon investors." Such untrue statements of material fact and omissions of material fact existed due, in no small part, to the legal malpractice of the Brownstein Attorneys that performed work related to the Hagshama Transaction.

Allegations Related to the Civil Lawsuits:

130. On August 15, 2018, Gerald Rome, Securities Commissioner for the State of Colorado, filed a lawsuit against Mr. Dragul and GDA making allegations substantially similar to those contained in the Indictments, but expanded the list of violative Transactions to those involving Broomfield Shopping Center 09 A, LLC, Clearwater Collection 15 LLC; Clearwater Plainfield 15 LLC, Crosspointe 08 A, LLC, Highlands Ranch Village Center II (HR II 05 A LLC),

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Southwest Commons 05 A LLC Meadows Shopping Center 05 A LLC Laveen Ranch Marketplace 12 LLC, Trophy Club 12 LLC, Market at Southpark 09, LLC, 2321 S High Street LLC, 2329 S High Street LLC, Plaza Mall North 08 B Junior, LLC, Plainfield 09 A, LLC, PS 16 LLC, Rose, LLC, Syracuse Property 06 LLC, Village Crossroads 09 LLC, Walden 08 A LLC, and Windsor 15 LLC (the "***Initial Civil Case***").

131. On August 30, 2018, Harvey Sender was appointed as the Receiver for Mr. Dragul and such property derived from or related to investor funds (the "***Receivership***").

132. The Receivership resulted in additional lawsuits involving Mr. Dragul, Charli Dragul, Samuel Dragul, Spencer Dragul, Shelly Dragul, Benjamin Kahn, The Conundrum Group, Susan Markusch, Alan C. Fox, ACF Property Management, Inc., Marlin S. Hershey, and Performance Holdings, Inc. (the "***Receiver Litigation***"), many of whom were then current or prior clients of BHFS and the Brownstein Attorneys [2].

133. The Civil Lawsuits and the Indictments have caused the collapse of a thriving business, the ruin of Mr. Dragul's reputation, extreme emotional distress for the individuals named therein, and millions of dollars in damages, all of which could have been avoided had BHFS and the Brownstein Attorneys consistently provided sound legal advice and produced legal documentation that fully complied with applicable law and regulations.

134. During the course of BHFS' and the Brownstein Attorneys' representation of Plaintiffs, Plaintiffs paid over $7,000,000 in legal fees and costs. At the very least, after spending millions of dollars with BHFS and the Brownstein Attorneys, Mr. Dragul should not have been indicted and been forced to watch his entire world collapse around him while BHFS and the Brownstein Attorneys rapidly distanced themselves from him.

Allegations Related to SPE Provisions:

135. BHFS and the Brownstein Attorneys were responsible for drafting and/or reviewing the special purpose entity provisions ("***SPE Provisions***") in many operating agreements of entities

[2] The Initial Civil Case, the Receivership, and the Receiver Litigation shall be collectively referred to herein as the "***Civil Lawsuits***".

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owned or operated by Plaintiffs, primarily in conjunction with Plaintiffs' efforts to obtain conventional financing in connection with one or more Transactions.

136. Brownstein Attorneys failed to properly draft and or negotiate the SPE Provisions to ensure that Plaintiffs were not improperly prejudiced by such SPE Provisions.

137. Brownstein Attorneys' failure to properly negotiate or even review the SPE Provisions is illustrated by the fact that in certain instances, including the operating agreement for the Plainfield Transaction, the SPE Provisions pagination is off and the font is different, suggesting that the SPE Provisions were simply copied and pasted into the respective operating agreement without subsequent careful review.

138. Additionally, Brownstein Attorneys failed to properly advise Plaintiffs regarding Plaintiffs' obligations under such SPE provisions and to instruct Plaintiffs regarding various requirements in certain SPE Provisions that were difficult or impossible for Plaintiffs to fully comply without making major adjustments to its business operations and overall structure of ownership and control. Brownstein Attorneys also failed to instruct Plaintiffs to make such necessary changes to ensure compliance with SPE Provisions.

Allegations Related to Legal Fees and Costs:

139. During the course of the Brownstein Attorneys legal representation of Plaintiffs, BHFS charged approximately $7,000,000 in attorney fees.

140. Brownstein Attorneys regularly engaged in block billing and group billing for their respective services, failing to outline the specific services rendered with an appropriate level of specificity and charging Plaintiffs for the time of multiple attorneys in meetings or phone conferences, whether such attorneys were providing actual services to Plaintiffs or not.

141. Brownstein Attorneys charged Plaintiffs to attend social events at their own options and pursuant to their own decisions.

142. During the course of BHFS' legal representation of Plaintiffs, BHFS charged thousands of dollars in costs associated with its legal services, and some costs unrelated to legal services such as in-office meals.

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143. Additionally, BHFS charged Plaintiffs administrative fees each month related to many Transactions despite there existing no contract allowing for such fees.

144. BHFS overbilled Plaintiffs for legal services and charging inappropriate and exorbitant costs to Plaintiffs.

145. A meaningful portion of the legal fees and costs charged by BHFS, and paid by Plaintiffs, were unreasonable and inappropriate.

FIRST CAUSE OF ACTION
(Legal Malpractice against all Defendants)

150. Plaintiffs hereby incorporate and re-allege all preceding paragraphs as though fully set forth herein.

151. An attorney-client relationship was first created between BHFS and Plaintiffs in or about 1997.

152. From 1997 through 2018 BHFS and the Brownstein Attorneys represented Plaintiffs in hundreds of Transactions, including commercial real estate acquisitions, lease transactions, loan transactions, and securities offerings.

153. In connection with the Transactions, BHFS and the Brownstein Attorneys drafted and/or reviewed the documents BHFS and the Brownstein Attorneys deemed necessary and appropriate for each of the Transactions and provided Plaintiffs with advice relating to every legal aspect of such Transactions.

154. In addition to the Transactions, BHFS and the Brownstein Attorneys provided Plaintiffs with general business and corporate counsel.

155. BHFS and the Brownstein Attorneys were involved in, or aware of, all of Plaintiffs' business dealings from 1997 through 2018.

156. Defendants owed to Plaintiffs a duty to use such skill, prudence and diligence as other members in the legal profession commonly possess and exercise.

157. Defendants' duties to Plaintiffs in connection with the Transactions and related legal counsel were commensurate with the complex nature of the Transactions, the significant risk involved in connection with the Transactions, the substantial compensation received by

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Defendants in exchange for their services related to the Transactions, and the intricate, detailed, and multi-layered scheme of applicable laws and regulations associated with and impacting the Transactions.

158. Because of Defendants role in providing legal counsel to Plaintiffs in their capacities as issuers of securities, Defendants owed special duties to Plaintiffs to, among other things:

(a) Make a reasonable inquiry as to whether or not the sale of securities requires state and/or federal registration or whether applicable exemptions apply;

(b) Exercise due diligence in connection with the responsibilities the Defendants had voluntarily undertaken;

(c) Advise Plaintiffs to ensure that no false or misleading statements were made;

(d) To make a reasonable, independent investigation to detect and correct false or misleading materials or statements;

(e) To guide Plaintiffs through the uniquely challenging landscape of securities offerings and protect the Plaintiffs from liability; and

(f) To not stand by idly and permit the Plaintiffs to unknowingly engage in conduct that is in clear violation of the antifraud provisions of the securities laws.

159. Defendants articulated their own elevated standard of practice and heightened duties to their clients seeking legal counsel in connection with securities transactions, including Plaintiffs, by providing the following on their generally accessible website:

> [We] offer clear, practical advice regarding the full spectrum of securities laws and regulations, including SEC disclosure and compliance and stock exchange listing and compliance. . . We work from a deep knowledge of securities law, corporate governance and financial markets to anticipate new developments and devise a strategy to better position your company for compliance and, more importantly, for success . . . We offer a full complement of services that includes assistance in SEC reporting and the formulation and implementation of programs to assist in the management of securities law compliance.

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160. In connection with its legal services offered in the realm of "private equity", Defendants' website further provides:

> We are immersed in the private equity market, participate in high profile deals literally every quarter, and have decades of experience working on some of the nation's most significant transactions . . . We strive to understand our client's business, investment history and criteria, and how those elements apply to their business models. We then apply our diverse experience in transactional law to help companies, funds, venture capitalists, money managers and private investors in all aspects of the private equity transaction, including fund formation, platform acquisitions, follow-on acquisitions and divestitures.

161. Touting their experience and extensive knowledge of and meaningful, ongoing participation in significant securities transactions, Defendants referenced "disclosure" and "understand[ing] client's business, investment history and criteria" as foundational aspects of its securities services. The term "compliance" with securities laws is repeated ***four (4) times*** within the foregoing critical summary of Defendants' promoted services.

162. It is noteworthy that Defendants' state that "success" is more important than legal compliance, as their collective efforts to provide comprehensive legal counsel to Plaintiffs regarding the Transactions evidenced a preference for the successful receipt of significant legal fees over legally compliant securities counsel.

163. Defendants breached the elevated and special professional duties owed to Plaintiffs in connection with the Transactions and their legal counsel related to the same, particularly as it relates to Plaintiffs roles as issuers of securities, as follows:

(a) Failing to properly negotiate, draft and/or review the SPE Provisions in Plaintiffs' various entities and provide proper advice and instruction to ensure that Plaintiffs would be able to comply with such SPE Provisions;

(b) Failing to properly prepare Mr. Dragul for the August 2012 meeting with the Colorado Attorney General related to the YM Property and subjecting Mr. Dragul to irrelevant questioning resulting in an intrusive investigation by the Attorney General;

(c) Failing to properly advise Plaintiffs of all of the appropriate legal requirements and considerations related to the 2013 Notes, the PMG Transaction, the Second Rose

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Investment, the Clearwater Transaction, the Hagshama Transaction, working with an unlicensed broker, and the Plainfield Transaction and failing to properly draft and ensure the proper use of the necessary documentation to avoid violations of applicable securities laws;

(d) Failing to properly advise Plaintiffs as to the nature of the 2013 Notes it was selling in connection with its fundraising, in particular, the understanding and legal counsel that all such instruments were in fact securities under applicable federal and state laws and were required to either be registered with the SEC and/or state securities regulators or sold in reliance on an exemption from such registration;

(e) Failing to properly identify and advise Plaintiffs as to the scope and nature of the federal and state exemptions from registration for which its securities offerings qualified and clearly delineating the parameters of such exemptions to ensure continued compliance, including with regard to aggregation and integration concerns, limitations on the amount of capital to be raised, disclosure and anti-fraud obligations imposed on issuers generally, restrictions on the classes of investors that may participate in any particular offering, due diligence obligations on the part of issuers to confirm the accredited nature of prospective investors; and the limitations on the number of certain classes of investors that may participated in any particular exempt offering;

(f) Failing to properly identify and advise Plaintiffs as to the registration and notice requirements associated with its sale of securities, including the obligation to file Form D with the SEC and various notice filings with state securities regulators, even where the transaction involving the sale of securities is exempt from general registration;

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(g) Failing to properly advise Plaintiffs as to the distinction between accredited and unaccredited investors and the impact of unaccredited investors' participation in its securities offerings;

(h) Failing to understand and/or properly advise Plaintiffs as to the disclosure obligations issuers owe to prospective investors in connection with its securities offerings, including the elevated disclosure obligations to investors who are deemed unaccredited and detailed legal counsel regarding what information is deemed to be material for prospective investors, regardless of their accredited status;

(i) Failing to conduct sufficient due diligence regarding the terms of Plaintiffs' securities offerings and the risks associated with an investment and preparing detailed disclosure and offering documents that adequately disclose the risks of investment to potential participants in the offerings, the nature and history of the issuer's business activities, the anticipated use of proceeds from Plaintiffs' securities offerings, the experience, expertise, and compensation to Plaintiffs' principals and employees, the financial and legal condition of Plaintiffs at the time of the securities offerings, and similar material considerations for prospective investors; and

(j) Failing to properly advise Plaintiffs as to their obligations to strictly adhere to the disclosures made to investors and the civil and criminal liability that could arise if any of the foregoing items related to a private securities offering were disregarded or insufficient or if Plaintiffs otherwise failed to maintain strict compliance with federal and state laws impacting issuers of securities.

164. As a direct and proximate result of Defendants' breach of their heightened professional duties owed to Plaintiffs, Mr. Dragul has been indicted for various counts of securities fraud related to the 2013 Notes, the PMG Transaction, the Second Rose Investment, the Clearwater Transaction, the Hagshama Transaction, working with an unlicensed broker, and the Plainfield

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Transaction, which counts are based primarily on Plaintiffs' failure to properly disclose certain risks and material facts related to the such investments.

165. The Colorado Attorney General's charges have caused Mr. Dragul to incur a substantial amount of attorney fees and costs, have caused significant damages to Plaintiffs, and such charges may result in significant liability and additional damages against Plaintiffs, including criminal penalties against Mr. Dragul personally, and the complete and utter devastation of Mr. Dragul's reputation and that of his family and many of his associates.

166. Plaintiffs reasonably relied on advice from BHFS and the Brownstein Attorneys regarding the characterization of the 2013 Notes, the existence and scope of exemptions from registration related to their securities offerings and the level and extent of compliance required to maintain such exemptions, the material disclosures required or not required related to the 2013 Notes and multiple Transactions, and Plaintiffs acted in each instance based on such advice, ultimately to their severe detriment.

167. In the event Plaintiffs are held civilly or criminally liable for failure to comply with applicable securities laws, including and particularly the obligation to disclose certain material information related to the 2013 Notes, the PMG Transaction, the Second Rose Investment, the Clearwater Transaction, the Hagshama Transaction, working with an unlicensed broker, and the Plainfield Transaction, such liability is a direct result of the failure of BHFS and the Brownstein Attorneys to properly advise Plaintiffs regarding required disclosures and applicable legal requirements.

168. As a direct and proximate result of BHFS' and the Brownstein Attorneys' legal malpractice, Plaintiffs have been damaged in the approximate amount of $50,000,000.00, which exact amount will be proven at trial.

169. It has become necessary for Plaintiffs to retain the services of an attorney to prosecute this matter and Plaintiffs are entitled to an award of its reasonable attorney fees and costs.

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SECOND CAUSE OF ACTION
(Breach of Contract Against BHFS)

170. Plaintiffs hereby incorporate and re-allege all preceding paragraphs as though fully set forth herein.

171. BHFS provided legal representation of one or more of the Plaintiffs at all times from 1997 through 2018.

172. During the course of representation from 1997 through 2018, BHFS billed Plaintiffs over $7,000,000 in fees.

173. Several of the fees charged by BHFS were unreasonable and excessive, including block billing, excessive billings for travel and social meetings, and a 2.5% administrative fee on all billed amounts.

174. Additionally, during the course of representation from 1997 to 2018, BHFS assisted Plaintiffs in setting up a myriad of entities and Brownstein Attorneys recommended legal strategies that were overly complicated in order to enhance legal fees, but which strategies resulted (in part) in the Indictments.

175. Upon information and belief, many of the entities that BHFS recommended be set up were unnecessary and resulted in added, yet unnecessary, maintenance costs, including additional registration costs and attorney fees associated with BHFS' monitoring and maintaining Plaintiffs complex web of entities.

176. BHFS breached its agreement and caused the violation of the ethical responsibilities of the Brownstein Attorneys to Plaintiffs by charging unreasonable and excessive fees, charging administrative fees whether BHFS had actual administrative costs or not, and by setting up Plaintiffs' businesses in a way that required a substantial, yet unnecessary amount of legal oversight and maintenance for the benefit of BHFS, and to the detriment of Plaintiffs.

177. As a direct and proximate result of BHFS' breach of the representation and fee agreement, Plaintiffs have been damaged in an amount to be proven at trial but at least $7,000,000.00.

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178. It has become necessary for Plaintiffs to retain the services of an attorney to prosecute this matter and Plaintiffs are entitled to an award of its reasonable attorney fees and costs.

THIRD CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing against BHFS)

179. Plaintiffs hereby incorporate and re-allege all preceding paragraphs as though fully set forth herein.

180. The agreement between Plaintiffs and BHFS contains an implied covenant of good faith and fair dealing.

181. Plaintiffs had a justifiable expectation that BHFS would bill reasonable, justified and appropriate amounts for all services provided and that BHFS would cause the Brownstein Attorneys to adequately represent Plaintiffs' interest in the various transactions and dealings in which Brownstein Attorneys acted as counsel to Plaintiffs.

182. Upon information and belief BHFS breached the implied covenant of good faith and fair dealing by charging unreasonable and excessive fees and by failing to cause Brownstein Attorneys to adequately represent Plaintiffs' interests in various Transactions, thereby depriving Plaintiffs of the benefit Plaintiffs' anticipated it would receive pursuant to the representation and fee agreement.

183. As a direct and proximate result of BHFS' breach of the implied covenant of good faith and fair dealing, Plaintiffs have been damaged in an amount to be proven at trial, but no less than $7,000,000.00.

FOURTH CAUSE OF ACTION
(Unjust Enrichment against BHFS)

184. Plaintiffs hereby incorporate and re-allege all preceding paragraphs as though fully set forth herein.

185. Plaintiffs conferred a benefit on BHFS by paying BHFS over $7,000,000 in legal fees.

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186. BHFS accepted and retained the benefit of possession of the legal fees paid by Plaintiffs under circumstances where it would be inequitable to allow BHFS to do so without providing services commensurate with the fees paid.

187. Plaintiffs were deprived of the value of the more than $7,000,000 paid to BHFS.

188. As a direct and proximate result of BHFS' unjust enrichment, Plaintiffs have been damaged in the principal amount of at least $7,000,000.00 the exact amount of which shall be proven at the time of trial in this matter.

189. It has become necessary for Plaintiffs to retain the services of an attorney to prosecute this matter and Plaintiffs are entitled to an award of its reasonable attorney fees and costs.

FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty against BHFS and the Brownstein Attorneys)

190. Plaintiffs hereby incorporate and re-allege all preceding paragraphs as though fully set forth herein.

191. BHFS, the Brownstein Attorneys, and specifically Robert Kaufmann, owed a fiduciary duty to Plaintiffs.

192. Defendants breached this fiduciary duty by:

(a) Representing YM Retail in the Environmental Action while simultaneously holding an interest in YM Retail;

(b) Engaging in a litigation strategy that protected BHFS' and Robert Kaufmann's interest in YM Retail by refusing to disclose the members of YM Retail and insisting that no capital calls should be made, which litigation strategy exposed Plaintiffs to liability generally, and eventually to the Indictments;

(c) Charging exorbitant fees to GDA Real Estate for BHFS' representation of YM Retail, which representation prejudiced Plaintiffs; and

(d) Advising Mr. Dragul to enter into a stipulation with the State of Colorado exposing Mr. Dragul to personal liability, while protecting BHFS' and Robert

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Kaufmann's interest in YM Retail and insisting that this stipulation was the only way to resolve the Environmental Action.

(e) Informing Mr. Dragul that the only way to resolve the Environmental Action was for Mr. Dragul to assume personal liability for the same, while failing to advise Mr. Dragul to have the liability shared among the members of YM Retail.

193. As a direct and proximate result of Defendants' breach of their fiduciary duties, Plaintiffs have been damaged in the amount of approximately $1,100,000.00, the exact amount of which shall be proven at the time of trial in this matter.

194. The representations made by BHFS and the Brownstein Attorneys related to the resolution of the Environmental Action constitute fraud entitling Plaintiffs to an award of punitive damages in an amount equal to three times the compensatory damages or $300,000.00, whichever is greater.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray as follows:

1. For judgment against all Defendants on the First Cause of Action in an amount to be proven at trial but no less than $50,000,000.00;

2. For judgment against BHFS on the Second, Third and Fourth Causes of Action in an amount to be proven at trial but no less than $7,000,000.00.

3. For judgment against all Defendants on the Fifth Cause of Action in an amount to be proven at trial but no less than $1,100,000.00.

4. For an award of reasonable attorney fees and costs of suit incurred herein;

5. For an award of pre-judgment and post-judgment interest as provided by contract or statute. *See* NRS 17.130.

6. For punitive damages in an amount equal to three times the compensatory damages related to the breach of fiduciary claim or $300,000.00, whichever is greater;

7. For a continuing judgment that shall augment as rent, interest, costs, and attorney fees continue to accrue; and

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8. For such other and further relief as this Court deems just, equitable, and proper.

DATED this 7th day of October, 2020.

SHUMWAY VAN

/s/ Travis J. Robertson

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