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SAMUEL S. RAIA, TINA M. RAIA, KIMBERLY RAIA NARDONE, TINA T. RAIA, ANDREW RAIA, SAMUEL S. RAIA FAMILY DYNASTY TRUST, LAWRENCE A. RAIA, ELAINE RAIA, JACQUELINE A. RAIA, JENNIFER T. MARINO, LAWRENCE A. RAIA FAMILY DYNASTY TRUST, JOSEPH S. RAIA, ANNETTE RAIA, JOSEPH A. RAIA, NADINE A. RAIA, JOSEPH S. RAIA FAMILY DYNASTY TRUST, LAWRENCE C. RAIA, ILLANA RAIA, LCR FAMILY 2012 TRUST, SAMUEL A. RAIA, BENITA RAIA, SAR FAMILY 2012 TRUST, RAIA PROPERTIES CORPORATION, and RAIA CAPITAL MANAGEMENT,

Plaintiffs,

Address to be used for all Plaintiffs:

500 North Franklin Turnpike
Ramsey, NJ 07446,

v.

LOWENSTEIN SANDLER LLP and ERIC D. WEINSTOCK,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CIVIL PART
BERGEN COUNTY

DOCKET NO. BER-L-

Defendants,

Address to be used for all Defendants:

One Lowenstein Drive
Roseland, New Jersey 07068.

COMPLAINT

1. This is an action for legal malpractice and breach of fiduciary duty brought by the plaintiffs against Defendants Lowenstein Sandler LLP ("Lowenstein"), and Senior Counsel Eric D. Weinstock, an attorney employed by Lowenstein. At all times and in all circumstances referenced herein, Mr. Weinstock acted on behalf of his employer, Lowenstein, which is liable for his conduct directly and based on the doctrine of *respondeat superior*.

Summary

2. The defendants rendered negligent estate-planning and related advice to the plaintiffs, such that the plaintiffs have been harmed and are at imminent risk of further harm.

3. The defendants negligently failed to conduct a proper analysis of the risks and benefits of the estate plan they formulated for the plaintiffs, and negligently failed to apprise the plaintiffs of the risks inherent in conveying the plaintiffs' real estate ownership interests into dynasty trusts. Because of the manner in which the defendants designed the plaintiffs' estate plan, plaintiffs and the plaintiffs' estates have suffered substantially adverse consequences, and will suffer additional adverse consequences into the future.

4. The consequences of the defendants' advice, and the legal services they performed to implement this advice, will continue to affect multiple generations of the Raia family.

5. The defendants failed to determine, and failed to alert the plaintiffs, that conveying certain interests in real estate into dynasty trusts could eliminate the plaintiffs' ability to transfer

assets with a "stepped up" basis, trigger phantom gains that create tax liabilities, cause losses relating to eliminating the depreciation reset of assets, and cause other damages.

6. The applicable standard of care requires that defendants know and apprise the plaintiffs of the consequences of the advice defendants provide and the implementation of that advice. Nonetheless, Mr. Weinstock and the Lowenstein firm failed, over a period of years, during the course of meetings, correspondence and telephone conferences with the plaintiffs, to appreciate these consequences or to advise the plaintiffs of them. This was a breach of the applicable standard of care, which was the proximate cause of damages to the plaintiffs.

7. Tax basis under the tax code can offset income. Tax basis is also referred to as cost basis. Tax basis is the original value of an asset for tax purposes, usually the purchase price. The properties owned by the plaintiffs are assets with tax bases.

8. When the "switch is flipped" on the dynasty trusts, grantor trusts are changed to complex trusts. When this occurs, either voluntarily or through the death of the grantor, the alter ego status between the grantors and the trusts is severed. This eliminates the ability for the grantors to swap assets in and out of the trusts without penalty, and creates a phantom gain tax liability. This results in substantial adverse tax consequences.

9. Because Lowenstein advised the Raias to place their real estate partnership interests into dynasty trusts, these assets in trust will not be deemed to be part of their respective grantors' estates when the grantors pass away. As a consequence, the assets will not be treated with what is known as "stepped up" basis.

10. A step-up in basis is a readjustment of the value of an appreciated asset for tax purposes. A step-up in basis occurs upon inheritance, when an asset that has appreciated is passed on to a beneficiary. When the asset is part of a decedent's estate and is passed on to a beneficiary,

it receives a "step-up" in its tax basis, which is determined to be the appreciated, current market value of the asset at the time of inheritance. Assets that receive a step-up in basis minimize the capital gains tax, and the depreciation recapture tax liability, to be realized by a beneficiary.

11. Because of Mr. Weinstock's and Lowenstein's advice, the Raias' partnership interests held by the dynasty trusts, which had appreciated significantly prior to being conveyed to the dynasty trusts, will not be treated with stepped-up bases. Moreover, Mr. Weinstock and Lowenstein knew that the plaintiffs' partnership interests carried negative capital accounts when they dispensed and implemented the legal advice at issue here.

12. The defendants' negligent advice has adversely affected the management of the Raia family businesses in a number of respects, and will continue to have such effects. As a result of the tax implications described here, and a lack of liquidity available to swap out at-risk assets in the dynasty trust, the plaintiffs have had to liquidate partnership assets that they would not have otherwise had to do, had they received appropriate legal advice. Further, defendants' advice has caused adverse economic consequences relating to, *inter alia,* the potential relocation of individuals and the family business, additional expenditure of legal and accounting fees, loss of depreciation resets, additional life insurance premiums, additional New Jersey income tax obligations, fees and costs relating to employees, loss of lifetime gifting capacity, and costs associated with attempted partial remedial measures.

Parties

13. The following plaintiffs bring this action

- Samuel S. Raia
- Lawrence A. Raia
- Joseph S. Raia
- Tina M. Raia

- Kimberly Raia Nardone
- Tina T. Raia
- Andrew Raia
- Samuel S. Raia Family Dynasty Trust
- Elaine Raia
- Jacqueline A. Raia, *nee* Jacqueline St. Germaine
- Jennifer T. Marino
- Lawrence A. Raia Family Dynasty Trust
- Annette Raia
- Joseph A. Raia
- Nadine A. Raia, *nee* Nadine A. Desiderio
- Joseph S. Raia Family Dynasty Trust
- Lawrence C. Raia
- Illana Raia
- LCR Family 2012 Trust
- Samuel A. Raia
- Benita Raia
- SAR Family 2012 Trust
- Raia Properties Corporation
- Raia Capital Management

14. Plaintiffs Samuel S. Raia and Tina M. Raia formerly resided in New Jersey. They now reside in the State of Florida. Samuel S. Raia is the grantor of the Samuel S. Raia Family Dynasty Trust. Samuel S. Raia's children are plaintiffs Kimberly Raia Nardone, Tina T. Raia,

Samuel A. Raia, and Andrew Raia. The Samuel S. Raia Family Dynasty Trust was established to provide for Samuel S. Raia's family.

15. Lawrence A. Raia and Elaine Raia are married and reside in New Jersey. Lawrence A. Raia is the grantor of the Lawrence A. Raia Family Dynasty Trust. The children of Lawrence A. Raia and Elaine Raia are plaintiffs Jacqueline A. Raia, Lawrence C. Raia, and Jennifer T. Marino. The Lawrence A. Raia Family Dynasty Trust was established to provide for Lawrence A. Raia's family.

16. Lawrence C. Raia and Illana Raia are married and reside in New Jersey. The LCR Family 2012 Trust was established by Lawrence A. Raia to provide for Lawrence C. Raia and his descendants.

17. Plaintiffs Joseph S. Raia and Annette Raia are married. They formerly resided in in New Jersey. They now reside in Florida. Joseph S. Raia is the grantor of the Joseph S. Raia Family Dynasty Trust. His children are Joseph A. Raia and Nadine A. Desiderio.

18. Plaintiffs Samuel A. Raia and Benita A. Raia are married and reside in New Jersey. Samuel S. Raia is the grantor of the SAR Family 2012 Trust. Samuel S. Raia established the SAR Family 2012 Trust to provide for his descendants.

19. Nadine A. Raia, Joseph A. Raia and Tina T. Raia, who reside in New York. With the exception of Nadine A. Raia, Joseph A. Raia and Tina T. Raia, and the individuals noted above who reside in Florida, all of the plaintiffs reside in the State of New Jersey.

20. The Raia family businesses, Raia Properties Corporation and Raia Capital Management, as well as the plaintiff dynasty trusts and the individual plaintiffs, participated in generating most of the funds at issue in this Complaint. Raia Properties Corporation and Raia

Capital Management have their principal place of business at 500 North Franklin Turnpike, Ramsey, New Jersey 07446.

21. Lowenstein Sandler LLP is a national law firm of over three hundred lawyers. Lowenstein maintains an office in New Jersey at One Lowenstein Drive, Roseland, New Jersey 07068.

22. Defendant Eric Weinstock holds the title of "Senior Counsel" with Lowenstein and is an attorney in Lowenstein's New Jersey office. According to his biography on Lowenstein's website, he "is experienced in the design and execution of estate planning vehicles, including wills, insurance trusts, and sophisticated gifting techniques." He also "provides insightful counseling regarding effective minimization of estate, gift, generation-skipping transfer, and income taxes."

Jurisdiction and Venue

23. Jurisdiction exists in this Court because the acts and omissions complained of herein occurred in New Jersey. Venue is proper in this Court because the advice complained of herein related to assets that had been generated through the activities of Raia Properties Corporation and Raia Capital Management and their related entities, including the above-referenced plaintiff dynasty trusts and the individual plaintiffs, whose principal place of business is 500 North Franklin Turnpike, Ramsey, New Jersey 07446, in Bergen County, New Jersey. Further, a number of the individual plaintiffs reside in Bergen County, New Jersey.

Facts

24. The plaintiffs consist of essentially two categories: the first generation (the "G1s") and the second generation (the "G2s"). The G1s include Plaintiffs Joseph S. Raia, Lawrence A. Raia, and Samuel S. Raia. The G2s consist of Plaintiffs Joseph A. Raia, Nadine Raia, Jacqueline

Raia, Lawrence C. Raia, Jennifer Marino, Kimberly Nardone, Tina T. Raia, Samuel A. Raia, and Andrew Raia.

25. The Raia family has, for decades, owned and run a successful real estate business. The Raia family business is approximately ninety years old. There are five Raia family members directly involved in the family business, including three G1s – Lawrence A. Raia, Samuel S. Raia and Joseph S. Raia, and two G2s – Lawrence C. Raia and Samuel A. Raia.

26. The Raia family business first began as a construction materials business nearly a century ago. The business was and still is managed solely by the family. It grew and eventually evolved into a business focused upon the acquisition, development, management and sale of real estate.

27. The family business is run by a management company, Raia Capital Management. Its predecessor entity was Raia Properties Corporation. Raia Capital Management maintains a portfolio of approximately 3,000 apartments, contained in Class A multi-family properties in Florida, Tennessee, Alabama, North Carolina, South Carolina, Missouri, and Virginia. Raia Capital Management is owned by G2s Lawrence C. Raia and Samuel A. Raia.

Estate Taxes and Estate Planning

28. When a person passes away, he or she is subject to an estate tax under the Federal Tax Code. An estate tax is a tax on a person's or estate's transfer of property upon death. It is separate and distinct from income tax. The tax is assessed based on the fair market value of the items or property in the decedent's estate. No estate tax is assessed for estates that do not exceed a certain threshold. That threshold is established by federal law and varies from year to year.

29. Estate planning services, such as those provided by the defendants, assist individuals and entities in the allocation and/or disposal of assets in an effort, consistent with legal

restrictions, to minimize the tax consequences that otherwise would ensue upon the death of an individual, such as estate taxes, inheritance taxes, and income taxes.

Lowenstein Sandler Advises and Implements the Creation of Dynasty Trusts

30. For approximately thirty years, Lowenstein advised the Raia family business, and the individuals operating it, concerning business-related issues, and facilitated transactions relating to this advice. Lowenstein principally advised the Raia family business concerning real estate transactions and provided legal services in order to assist in implementing this advice. John Stolz, a partner at Lowenstein, provided legal assistance to the Raia family business concerning a number of significant transactions. These transactions occurred from approximately 2005 to mid-2018, and are estimated in total to exceed 1.5 billion dollars. Lowenstein had intimate knowledge of the Raia's real estate holdings and business operations. Lowenstein did both professional and personal legal work for the Raia family.

31. The years 2012 through 2016 were years of transition for the Raia family business. The family discussed these changes during family retreats and in other contexts. The business was in transition from a regional real estate entity to a national investment management platform. Lowenstein marketed its estate plan to the Raia family as an integral part of this transition.

32. Years after the commencement of its attorney-client relationship with the Raia family business, Lowenstein began advising the Raia family on estate planning. In the early 2000s, Lowenstein provided legal advice concerning, and provided legal services in order to establish, Grantor Retained Annuity Trusts (also referred to as "GRATs") for the G1s. The G1s' GRATs were established in or around 2003 for a term of ten years.

33. A Grantor Retained Annuity Trust (a "GRAT") is an irrevocable trust established for a fixed number of years. A grantor contributes assets to a GRAT while retaining a right to

receive the original value of the assets contributed to it, plus a certain annual rate of return (the "annuity"). If a grantor dies before the GRAT completes, the assets within the GRAT are treated as part of the taxable estate of the grantor. If the grantor is alive when the GRAT completes, that may trigger a taxable event with respect to the assets within the GRAT, a fact which had not been communicated to the Raia family when the GRATs were created.

34. The Raia family received legal advice from Lowenstein that sought to address issues relating to the expiration of the GRATs, as well as to develop a broader, long-term estate plan.

35. In 2011 and thereafter, Lowenstein lawyer Eric D. Weinstock, Senior Counsel, provided legal advice to the Raias regarding estate-planning issues. Mr. Weinstock advised the Raias to create, as an estate-planning vehicle, a number of "dynasty trusts," into which assets would be conveyed. Mr. Weinstock's advice included conveying assets from the above-referenced GRATs into the dynasty trusts. While Mr. Weinstock previously had interacted with the Raia family, he assumed a leadership role with respect to estate planning.

36. A dynasty trust is a long-term trust designed for descendants of multiple generations. It entails the creation of a dynasty trust by a grantor, and the subsequent conveyance of assets into it for the benefit of his or her descendants. These transfers can occur by gift or sale. The assets and any income generated by them are for the benefit of the trust's beneficiaries, typically consisting of descendants of the grantor. A trustee, tasked with safeguarding the trust, administers the trust assets.

37. Mr. Weinstock and Lowenstein worked together with an accounting firm, J.H. Cohn LLP, which became CohnReznick LLP (hereinafter "CohnReznick") in or around 2012. CohnReznick, as both J.H. Cohn LLP and then CohnReznick, had a longstanding relationship with

the Raia family. CohnReznick provided accounting, tax advice and filings, and other services for Raia Properties Corporation, Raia Capital Management, associated entities, the plaintiff dynasty trusts, and several of the individual plaintiffs.

38. The defendants purported to assist the plaintiffs in mitigating tax consequences from the expiration of the GRATs and in building a broader, long-term estate plan that would, among other things, also take care of the G1s as they continued to age.

39. The defendants advised the G1s to convey partnership interests in real estate into their respective dynasty trusts. The partnership interests came either from the G1s' GRATS or from the G1s themselves. Partnership interests were conveyed in one of two ways: either by gift, which sought to invoke the G1s' gift tax exemptions, or in exchange for promissory notes.

40. Under the defendants' plan, the partnership interests would appreciate in the dynasty trusts, where they would not be subject to the G1s' estate taxes. The partnership interests would continue to generate income that would be used either to reinvest in the family business or to pay promissory notes back to the G1 or his dynasty trust. The promissory notes would provide the G1s with cash flow to meet their needs as they approached retirement.

41. Each G1 also was in the process of winding down net operating losses. Net operating losses are generated when a business's allowable tax deductions exceed its taxable income. Net operating losses therefore could provide additional tax relief to the G1s.

42. The plan, according to Mr. Weinstock and Lowenstein, was that when each G1 ran out of net operating losses, Lowenstein would prepare documentation to assist each G1 to "flip the switch," which meant voluntarily implementing a separation of the dynasty trust from its respective G1.

43. When a grantor "flips the switch," a dynasty trust is no longer treated as a grantor trust, and no longer is regarded as a legal alter ego of the grantor. The switch is flipped automatically, as a matter of law, upon the death of the grantor. The G1s, at the time of this filing, are all at least in their seventies.

44. While the dynasty trust remains a grantor trust, before "flipping the switch," the grantor remains personally liable for any tax associated with income or gains realized by the trust. Likewise, the grantor personally retains the benefits of any deductions or losses generated by the trust. Further, the transactions that formed the GRATs and dynasty trusts are not taxable because of these trusts' alter ego status, from the perspective of the Internal Revenue Code.

45. The defendants advised plaintiffs to, at some point in the future, convert each dynasty trust from a grantor to a complex trust. They further advised plaintiffs, at some point in the future, to separate each dynasty trust from New Jersey, in favor of a state such as Florida. Defendants advised that this would cause significant tax savings.

46. Accordingly, the defendants provided legal advice concerning the creation, as well as legal services that created, a total of five dynasty trusts: one for each of the G1s and G2s active in the family business. The grantors of the five trusts were Plaintiffs Lawrence A. Raia, Joseph S. Raia, and Samuel S. Raia of the G1s.

47. The trusts were established in 2012. Before their creation, Mr. Weinstock and Lowenstein met with the Raia family on multiple occasions, corresponding with them at length about issues such as the structure of the dynasty trusts, what assets should be conveyed into them, and what the consequences of this course of action would be. The defendants advised that the principal benefit of creating the trusts would be mitigating the effects of estate taxes. Lowenstein

provided the Raias with no adequate economic model or comparison that would convey the *risks* inherent in the estate plan it marketed. It concentrated only on the plan's positive consequences.

48. Mr. Weinstock wrote a memorandum dated March 30, 2012, addressed to Samuel S. Raia, Lawrence A. Raia, Joseph S. Raia, Lawrence C. Raia, and Samuel A. Raia, which Mr. Weinstock characterized as a "preliminary executive summary" of the legal advice he provided. Exhibit 1 (Mar. 30, 2012 Weinstock Memorandum).

49. In this memorandum, Mr. Weinstock outlined his estate planning recommendations. The memorandum recommended the sale of GRAT assets to each principal for the purpose of "avoiding the recognition of gain upon the termination of the GRAT and preserving the net operating loss carryforwards currently available to the Principals for use in offsetting future gain realizations." Exhibit 1 at 2. Mr. Weinstock's preliminary executive summary further recommended the creation of family branch dynasty trusts as well as the transfer of assets to the dynasty trusts via gifting and sale.

50. On April 3, 2012, Mr. Weinstock forwarded, via email, a "revised executive summary" to Lawrence C. Raia and Samuel A. Raia, for them to forward to the other G1s for their consideration. Exhibit 2 (Email of April 3, 2012). In this revised executive summary, Mr. Weinstock reemphasized the advice provided in Exhibit 1, with one significant change: The new version recommended a sale of GRAT assets to each G1's dynasty trust.

51. Mr. Weinstock prepared the Revised Executive Summary in advance of an April 5, 2012, meeting with the Raia family.

52. Mr. Weinstock addressed his Revised Executive Summary to G1s Joseph S. Raia, Lawrence A. Raia, and Samuel S. Raia. Two G2s, Lawrence C. Raia and Samuel A. Raia, were copied, as were persons from J.H. Cohn LLP, JP Morgan Chase, and John Stolz of Lowenstein.

53. In this memorandum, Mr. Weinstock stated that the recommendations "are designed to achieve the following planning goals to the maximum possible extent," referencing

> 1. Utilization of the temporarily elevated federal gift and generation-skipping transfer ("GST") tax exemptions available to the senior Raias (the "Principals") to transfer wealth currently and minimize eventual estate taxes; . . .
>
> 3. **Avoid the negative income tax results that otherwise will occur upon the termination of the 2003 GRATs in 2013**; . . . .

Exhibit 2 (emphasis added).

54. Mr. Weinstock re-emphasized that "each Principal [would] establish a 'Dynasty Trust' for his own family line." *Id*. at 2. Mr. Weinstock advised:

> This Dynasty Trust will be structured in the most flexible fashion, and will permit coordinated management of family business ventures in the future. The Dynasty Trust will be a generation-skipping wealth transfer vehicle through the use of available lifetime gift exemptions and GST exemptions, enabling wealth to pass from one generation to the next free of gift, estate and GST taxes. . . . The Dynasty Trust will be a "grantor trust" with respect to the Principal for income tax purposes, meaning that the Principal and his family's Dynasty Trust will be alter egos of one another. **Transactions between the Principal and his Dynasty Trust will be "non-events" for income tax purposes, but the Principal will remain liable for the Trust's income tax liability.**

Exhibit 2 at 2 (emphasis added).

55. The first recommendation in the memorandum provided:

> Recommendation #1: Mechanisms to Transfer Wealth to Dynasty Trusts. We recommend that business assets owned by each Principal be transferred to the Dynasty Trust for his family through a combination of gifts and sales which leverage available tax exemptions.

Id. Mr. Weinstock further recommended that "the Principal sell other business assets to his family's Dynasty Trust. *Id.* at 3, as well as that each principal's GRAT assets be sold to the family's Dynasty Trust," *Id.* at 4. With respect to the sale of GRAT assets, Mr. Weinstock opined:

> **For income tax purposes, the sale will be disregarded, since both the Dynasty Trust and the GRAT are "grantor trusts" for income tax purposes** (i.e., the sale is treated as a sale between the Principal and himself). . . . This strategy **will avoid triggering any immediate gain** when the GRAT terminates while preserving the 'win' achieved by the GRAT strategy.

Id. at 4 (emphasis added).

56. Mr. Weinstock and Lowenstein failed to understand, acknowledge or advise the plaintiffs concerning the income tax consequences that would ensue when the grantor status ceased.

57. One of the principal avowed objectives of the legal advice and services provided to plaintiffs by the defendants was to avoid the income tax consequences caused by the expiration of the GRATs. Further, the avowed purpose of the creation and funding of the dynasty trusts was to achieve tax savings. In fact, however, the estate plan devised and implemented by defendants resulted in adverse income tax consequences that defendants did not understand or appreciate, and of which they failed to advise plaintiffs.

58. In August 2012, Mr. Weinstock made a presentation to the Raia family at the Grand Cascade Lodge in Hamburg, New Jersey. This was one of a series of Raia family meetings concerning succession planning for the business as well as estate planning. Approximately fifty members of the Raia family attended each of these meetings. Mr. Weinstock was present for several of these family planning meetings. The substance of his presentation to plaintiffs outlined the dynasty trusts estate plan he had devised.

59. At no point did Lowenstein or Mr. Weinstock provide the Raia family with an analysis of estate tax effects versus income tax effects resulting from the advice and legal services they provided, nor additional analysis of the effects of their solution.

60. Because the plaintiffs were unaware of these adverse tax consequences, they authorized defendants to implement the legal advice defendants had provided.

61. Samuel S. Raia created the "Samuel S. Raia Family Dynasty Trust" on October 17, 2012. Exhibit 3.

62. Lawrence A. Raia established the "Lawrence A. Raia Family Dynasty Trust" on October 17, 2012 as well. Exhibit 4.

63. The Joseph S. Raia Family Dynasty Trust was created on October 17, 2012. Exhibit 5.

64. The Samuel A. Raia Family Dynasty Trust was created on August 29, 2012. Exhibit 6.

65. The Lawrence C. Raia Family Trust was created on August 29, 2012. Exhibit 7.

66. After the dynasty trusts were established, based upon the defendants' advice, the grantors of the trusts caused assets to be conveyed into their respective dynasty trusts, partly by gift and partly by sale. The defendants provided legal services to implement this advice, which included drafting transfer documents and working with lenders on gaining consent to transfer. Per the advice provided by defendants, this included but was not limited to conveyances of assets from the GRATs. The Raias executed these transfers in reliance upon defendants' advice that said transfers would not trigger income tax recognition.

67. For example, Lawrence A. Raia executed a series of transactions in November 2012 to transfer assets into the Lawrence A. Raia Family Dynasty Trust.

68. On November 25, 2012, Lawrence A. Raia sold certain partnership interests to the Lawrence A. Family Dynasty Trust through a purchase and sale agreement. The interests were

percentage ownership stakes in entities, as described in Exhibit A to the Purchase and Sale Agreement. Exhibit 8 (Nov. 25, 2012 LAR Dynasty Trust Purchase and Sale Agreement).

69. In exchange for these partnership interests, the Lawrence A. Raia Family Dynasty Trust executed a promissory note to Lawrence A. Raia for the amount of partnership interests conveyed. Exhibit 9 (Nov. 25, 2012 LAR Dynasty Trust Promissory Note). The Raia Properties Corporation acceded to the purchase and sale agreement, agreeing to admit the purchasers as substituted limited partners or members, as applicable. Exhibit 8.

70. Similarly, Lawrence A. Raia executed a purchase and sale agreement from his 2003 GRAT to his dynasty trust. Exhibit 10 (Pledge Agreement of November 25, 2012).

71. Mr. Weinstock subsequently created a PowerPoint presentation for the Raia Family. This presentation actually was initially presented to the Raia family in 2012, with a revised version presented a year later, in 2013. The version attached to this Complaint was created and presented in 2013, even though it bears a 2012 date. *See* Exhibit 11 ("Raia Family Meeting, August 17, 2012, Estate Planning – Trusts").

72. In this presentation, Mr. Weinstock wrote, "Last year we outlined what we were planning to accomplish – what actually happened . . ." *Id.,* slide 2. Mr. Weinstock outlined a series of goals, including reducing the G1 taxable estates and "avoid[ing] bad income tax consequences of GRAT terminations in 2013" (*Id.,* slide 3). He again described the basic elements of the planned methodology:

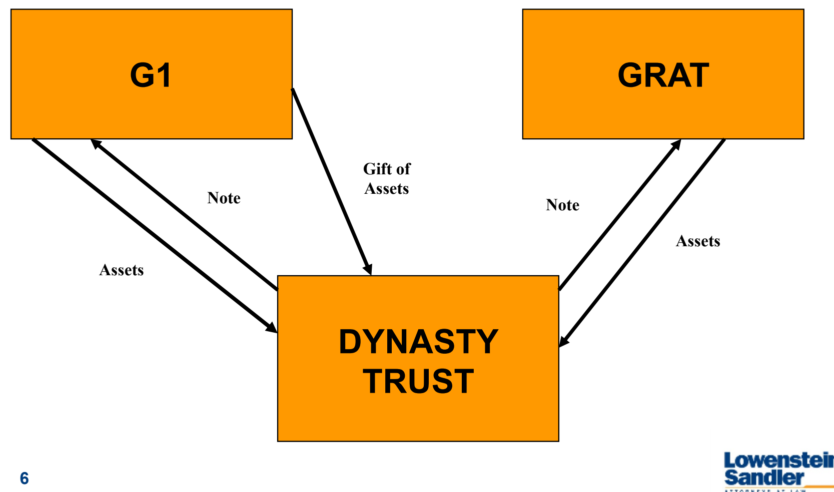
a. Each G1 member would establish a dynasty trust for his family.

b. Through a combination of both gifts and sales, the G1s would transfer assets into the dynasty trusts. Mr. Weinstock observed that gifting would reduce the G1's taxable estate and take advantage of federal gift tax exemptions.

c. The sales would provide cash flow to the G1s over a period of years.

d. Finally, he outlined the sale of project ownership by the GRATs to the dynasty trusts. *Id.,* slide 4.

73. Mr. Weinstock illustrated how the transactions occurred:



Id., slide 6.

74. Each dynasty trust received business assets from three sources: (1) each G1 gifted certain business interests to his respective dynasty trust; (2) each G1 also sold other business interests into the dynasty trusts; and (3) each dynasty trust bought assets held in the GRATs.

75. Mr. Weinstock asserted, "Each principal saved over $1.5 million in gift/estate taxes through Dynasty Trust gifting & over $1 million in income taxes due to GRAT sale," thereby "shift[ing] business assets into a trust vehicle that benefits multiple generations while avoiding estate taxes at subsequent generation levels." (*Id.,* slide 9). He further represented: "Family as a whole is substantially better off in the long term because of this planning." (*Id.,* slide 21).

76. Mr. Weinstock noted that "Had G1s done NO PLANNING at all, G2s would have been worse off." *Id.,* slide 16. He further wrote: "No planning would have meant substantially more in estate taxes." This presentation, however, contains no discussion of the negative income tax consequences of the plan, which are more substantial than the estate tax consequences.

77. Each of the five dynasty trusts, like the Lawrence A. Raia Family Dynasty Trust, now owns partnership interests in various real estate entities.

78. Each G1 has approximately thirteen partnership interests in his respective dynasty trust. Each G1's partnership interests have over fifteen million dollars in negative capital, meaning an excess of liabilities over assets, which was not taken into consideration when the plan was recommended.

79. After the trusts were established, Mr. Weinstock wrote a trust administration guide to Lawrence A. Raia regarding the Lawrence A. Raia Family Dynasty Trust. This letter was dated May 22, 2013. Mr. Weinstock wrote similar letters to the other grantors of the four other dynasty trusts.

80. In this May 22, 2013 letter, Mr. Weinstock elaborated on the income tax status of the trust. Exhibit 12 (May 22, 2013 letter at 5). He explained the reasoning behind structuring the dynasty trust as a grantor trust: "The reason for this was to avoid having the sales of assets from you to the Trust give rise to capital gain recognition, or to have the interest paid by the Trust to you under the promissory notes treated as income to you." *Id.*

81. He further noted that while the dynasty trust remained a grantor trust, "you personally will remain liable for any tax associated with the income or gains realized by the Trust." *Id.* Mr. Weinstock further noted, "At some future point in time, you may wish to have the trust

cease to be treated as a grantor trust, and thereafter become responsible for its own income tax liability, thus relieving you of that burden." *Id.*

82. At no point in his care and maintenance letter did Mr. Weinstock advise Lawrence A. Raia of the substantial adverse income tax consequences that would ensue when the "switch was flipped" and the trusts ceased operating as grantor trusts, nor did he provide such advice to any other plaintiff.

83. Mr. Weinstock, through his extensive interactions with the plaintiffs, knew their financial capabilities, assets, and liabilities. The plaintiffs provided to Mr. Weinstock balance sheets and other financial statements to ensure that Mr. Weinstock was fully aware of the plaintiffs' financial circumstances.

84. Mr. Weinstock reaffirmed the defendants' legal advice in an email exchange on May 21, 2014 email exchange, in the course of which Mr. Weinstock stated in reply to a question from Lawrence C. Raia (a G2):

> 2. (Lawrence C. Raia's question): Need some clarification from you on the Grantor Trust Status ending when the Grantor dies. What are the practical implications of this and what should our action plan be?
>
> (Weinstock's answer): The death of a G1, and hence the end of grantor trust status for his dynasty trust and the continuing GRAT trusts under his GRAT trust agreement, **has limited practical implications**. Specifically, to the extent any balance remains unpaid under any of the existing promissory notes, subsequent (post-death) interest payments under those notes would be treated as taxable income to the recipient of the interest, since the payment no longer would be treated as being made from a single taxpayer to himself. Thus, for example, if the Dynasty Trust makes a post-death interest payment to the continuing GRAT trusts, those interest payments would be treated as taxable income to the recipient continuing GRAT trusts. Same would hold true if the note payable to the G1 from his Dynasty Trust is not fully paid off at his death – any *interest* paid by the Dynasty Trust to the G1's estate or successor-in-interest (trust for G1's spouse or the G1 spouse herself) would be taxable income to that recipient. All that said, there isn't much in the way of an action plan that I think would be needed.

> (Lawrence C. Raia's response): UNDERSTOOD [. . .]
>
> 6. (Lawrence C. Raia): Eric to provide the document(s) for each G1 to "flip the switch" to discontinue G1 from being the alter-ego for his DT and GRAT Continuing Trusts from an income tax perspective. Need to revisit this annually. This decision applies separately to the GRAT Continuing Trusts as well.
>
> (Weinstock's answer): I will prepare these documents – one for each of the G1's dynasty trusts and one for the continuing trusts under each G1's GRAT trust agreement. I'll email those to you when drafted.
>
> (Lawrence C. Raia's response): GREAT

Exhibit 13 (May 21, 2014 email) (emphasis in bold added; underscored emphasis in original).

85. As is plain from his May 21, 2014 email, Mr. Weinstock still did not realize or understand that "flipping the switch" would cause an income recognition event (*i.e.*, be treated as a sale) with respect to the assets in the trust. Mr. Weinstock believed that only interest would be taxable.

Effects of Defendants' Conduct

86. In May 2016, as a result of consultation with a different law firm concerning business planning related to the conduct described here, Plaintiffs learned of the adverse income tax and other consequences of the defendants' advice.

87. During the course of interactions with this other law firm and the defendants during and after May 2016, the defendants never professed that they had been aware of the adverse income tax and other consequences of their legal advice and associated legal services.

88. As a direct consequence of the advice and associated legal services described here, that were provided by Mr. Weinstock and Lowenstein, plaintiffs have suffered and will suffer substantially adverse financial consequences. These consequences are, in part, the substantial risk of tax liability from what is known as a "phantom gain," for tax purposes, and the loss of a step-

up in basis with respect to the assets held by the G1s' dynasty trusts and loss of the depreciation reset for the assets held by the G1s' dynasty trusts. Further, the advice provided by defendants has had, and will continue to have, other far-reaching adverse consequences for the Raia family and businesses. These issues affect all five dynasty trusts as well as Raia Capital Management.

COUNT ONE

(Legal Malpractice)

89. Plaintiffs repeat and reallege the allegations contained in all of the preceding paragraphs as if fully set forth herein.

90. In providing the advice and associated legal services described above, defendants were required to adhere to the applicable standard of care relating to the advice and other professional services they provided to and for the benefit of plaintiffs. The standard of care required providing accurate, complete tax and other legal advice that took account of the particular circumstances affecting the individual plaintiffs and plaintiff dynasty trusts, and taking account of this advice with respect to their subsequent professional work undertaken to implement this advice, including, *inter alia,* the creation and maintenance of dynasty trusts and the conveyance of assets into them. Further, it required apprising the plaintiffs of all such consequences before implementing this advice.

91. Defendants breached the applicable standard of care by providing negligent legal advice, and by negligently undertaking legal services to implement this advice. In particular, defendants failed to understand and to advise plaintiffs concerning substantial adverse income tax consequences that would result, and have resulted, from the dispensing and implementation of this advice.

92. As a direct and proximate result of defendants' professional malpractice and negligence, plaintiffs have suffered and continue to suffer damage, as described above.

COUNT TWO

(Breach of Fiduciary Duty)

93. Plaintiffs repeat and reallege the allegations contained in all of the preceding paragraphs as if fully set forth herein.

94. Defendants, as attorneys rendering legal services to plaintiffs, owed plaintiffs a fiduciary duty of care and loyalty. This duty included providing non-negligent advice to plaintiffs that adhered to the applicable standard of care.

95. Defendants breached their fiduciary duty to plaintiffs as described above, resulting in the proximately caused damages described above.

Request for Relief

96. Plaintiffs seek an award of damages sufficient to compensate them for the damages they suffered as a result of defendants' wrongful and negligent conduct, including an amount sufficient to restore them to the condition they would have enjoyed but for defendants' wrongful conduct, including pre- and post-judgment interest and an award of costs and attorneys' fees if permitted under the circumstances.

Dated: February 1, 2019

Respectfully submitted,

/s Gary Werner, Esq.
Gary Werner, Esq.
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---and---

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(Not admitted in New Jersey – will seek admission *pro hac vice*)

Certification Pursuant to New Jersey Court Rule 4:5-1(b)

We provide this certification pursuant to Rules 4:30A and 4:5-1(b). The dispute referenced in this complaint is the subject of a separate action against another defendant in this Court, Samuel S. Raia, *et al.* v. CohnReznick LLP, *et al.*, Case No. BER-L-002262-18. Pursuant to the Entire Controversy Rule, we will immediately move to consolidate this case with Case No. BER-L-00262-18, which is stayed, by Order of this Court, pending efforts to mediate this dispute. No additional action or arbitration proceeding is contemplated. Further, other than parties set forth in this complaint and in Case No. BER-L-002262-18, we know of no other parties who should be made a part of this lawsuit. In addition, we acknowledge our continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

We note, pursuant to Rule 4:5-1(b), that entities other than the defendants named here and in Case No. BER-L-002262-18 were involved in rendering related advice and in related conduct. Such persons are Barry S. Berger and The Private Bank, J.P. Morgan. However, it is our view that their involvement was such that they should not be made a part of this lawsuit.

Dated: February 1, 2019

Respectfully submitted,

/s Gary Werner, Esq.
Gary Werner, Esq.
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Jury Demand

The plaintiffs demand trial by jury on all of the triable issues in this complaint.

Dated: February 1, 2019

Respectfully submitted,

/s Gary Werner, Esq.
Gary Werner, Esq.
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Civil Case Information Statement

Case Details: BERGEN | Civil Part Docket# L-000921-19

Case Caption: RAIA SAMUEL VS LOWENSTEIN SANDLER L LP
Case Initiation Date: 02/01/2019
Attorney Name: GARY F WERNER
Firm Name: SCHENCK PRICE SMITH & KING, LLP
Address: 220 PARK AVENUE
FLORHAM PARK NJ 07932
Phone:
Name of Party: PLAINTIFF : Raia, Samuel, S
Name of Defendant's Primary Insurance Company (if known): Unknown

Case Type: PROFESSIONAL MALPRACTICE
Document Type: Complaint with Jury Demand
Jury Demand: YES - 6 JURORS
Hurricane Sandy related? NO
Is this a professional malpractice case? YES
Related cases pending: YES
If yes, list docket numbers: BER-L-2262-18
Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? YES

If yes, is that relationship: Business

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO
If yes, please identify the requested accommodation:

Will an interpreter be needed? NO
If yes, for what language:

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

02/01/2019
Dated

/s/ GARY F WERNER
Signed