SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

--X
ADAM S. KAPLAN AND DANIEL E. KAPLAN

Index #

Plaintiffs

SUMMONS

- against -

Plaintiff designates Nassau County as the place of trial under CPLR 503(a)

CADWALADER WICKERSHAM & TAFT, LLP
and TODD BLANCHE

Defendants.
--X

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and serve a copy of your answer on the Plaintiffs' attorneys within twenty (20) days of service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons was not personally delivered to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to appear or answer, judgment will be entered against you by default for the relief demanded in the Complaint.

Dated: June 12, 2023
New York, New York

LAW OFFICE OF DANIEL L. ABRAMS, PLLC

Attorneys for Plaintiff

Daniel Abrams

By: Daniel L. Abrams
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
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ADAM S. KAPLAN AND DANIEL E. KAPLAN

Index #

Plaintiffs

COMPLAINT

- against -

CADWALADER WICKERSHAM & TAFT, LLP
and TODD BLANCHE

Defendants.
--X

Plaintiffs Adam S. Kaplan ("Adam") and Daniel E. Kaplan ("Daniel") (collectively, the "Kaplans" or "Plaintiffs") by and through undersigned counsel, for their Complaint against defendants Cadwalader Wickersham & Taft, LLP ("Cadwalader") and Todd Blanche ("Blanche"), allege as follows:

NATURE OF ACTION

This is a legal malpractice case as well as a case for access to the Kaplans' legal file, breach of fiduciary duty, fee forfeiture, the return of legal fees expended, and punitive damages. As detailed herein, upon information and belief Defendant Blanche forged the Plaintiffs' signatures on a purported retainer agreement and either recklessly or intentionally sabotaged the entire representation by prejudicing the Kaplans' standing with the Securities and Exchange Commission ("SEC") and undermining the Kaplans' ability to pay legal fees to defend themselves. Defendant Blanche also failed to notify the insurance carrier who was responsible for paying legal fees, the result of which was to enrich the Defendants who were free to bill without the constraints of an insurance carrier, at the Kaplans' expense.

Without any written retainer agreement, Defendants represented the Kaplans for approximately fifteen months, purporting to bill roughly $2.4 million and collecting $1.65 million. In November of 2022, Defendants abruptly changed their mind about the Kaplans' scheduled depositions with the SEC, then the SEC cancelled those depositions. Days later Cadwalader stopped representing the Kaplans, citing the Kaplans' purported failure to pay invoices which had been received less than four weeks earlier. At the time, the Kaplans had a number of unanswered questions concerning the Defendants' handling of the matter, had requested a more itemized billing breakdown as well as a meeting with the Defendants to discuss the outstanding issues, and *had not* reached any decision as to whether to pay the purportedly outstanding balance. Following Defendants' resignation, Defendants refused to forward to the Kaplans their files, and it soon emerged that Defendants forged a retainer agreement with the Kaplans, had accepted service of process of subpoenas issued by the SEC without authority and without forwarding those subpoenas to the Kaplans, and defamed the Kaplans to third parties, including lawyers with whom the Kaplans sought assistance in the aftermath of Defendants' abrupt resignation.

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over this action because the Defendants are each New York residents who operate businesses in New York.

2. Venue is proper in this County under CPLR 503(a), in so far as a substantial part of the events or omissions giving rise to the claim occurred in this County.

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PARTIES

3. Plaintiff Adam Kaplan is a Florida domiciled resident.

4. Plaintiff Daniel Kaplan is a Florida domiciled resident.

5. Defendant Cadwalader Wickersham & Taft, LLP is, on information and belief, a New York LLP with a primary place of business at 200 Liberty Street, New York, NY 10281.

6. Defendant Todd Blanche is, on information and belief, a resident of New York

County. Blanche was a Partner at Cadwalader until on or about April 3, 2023. On information and belief, Blanche was forced to resign from Cadwalader due at least in part to the misconduct alleged herein, which the Kaplans brought to the attention of Cadwalader in December of 2022 and January of 2023.

FACTUAL ALLEGATIONS

7. On August 13, 2021, on behalf of Cadwalader, Blanche met the Kaplans for the first time in the Great Neck, New York medical office of the Kaplans' mother, Dr. Idida Kaplan. ("Idida") ("Great Neck Meeting"). Also present at this meeting was Idida, the Kaplans' father, Stewart Kaplan and Cadwalader associate Samantha Greenfield.

8. The Great Neck Meeting materialized because the Kaplans were in need of legal representation stemming from their then-recent separation from IHT Wealth Management, LLC ("IHT"). The Kaplans had entered into an independent contractor agreement with IHT to serve as investment advisors. Four weeks prior to the Great Neck Meeting, IHT terminated its affiliation with the Kaplans; this termination was a few weeks after IHT informed the Kaplans that one of their customers had lodged a complaint with the SEC (the substance of which the Kaplans vigorously disputed then and continue to dispute now). After the termination of its affiliation with the Kaplans but prior to the Great Neck Meeting, the Kaplans learned that IHT had been contacting their clients and making derogatory statements about them. Thus, at the time of the Great Neck Meeting, the Kaplans had certain putative claims against IHT which were contemplated to be pursued in arbitration, and also had concerns over possible law enforcement activity in connection with this customer complaint, and more generally their prior association with IHT. Among other things, the Kaplans wanted counsel to confirm whether there were, in fact, any criminal or regulatory investigations, and if so, to represent them in any such investigation.

9. At the Great Neck Meeting, Blanche acknowledged his understanding that the Kaplans had recently separated from IHT and had therefore undergone a then-recent, significant career setback. Blanche told the Kaplans that the Kaplans would not be paying Cadwalader prices. Blanche also advised the Kaplans that he did not want to make money on the representation, the implication being that while there would be some cost involved, it would be at a steep discount, given the Kaplans' then-recent seperation from IHT.

10. At the Great Neck Meeting, Blanche, Adam and Daniel verbally agreed that Cadwalader would represent the Kaplans. No written retainer agreement was presented or signed. Consistent with the Kaplans' career setbacks and Blanche's representation that he did not want to make money on this, there was no initial retainer monies asked for or collected. Blanche did not advise the Kaplans of the hourly rates of Blanche and the other Cadwalader professionals who might do work on behalf of the Kaplans.

11. At the Great Neck Meeting, the Kaplans advised Blanche that they had insurance to cover certain legal costs. AFB Financial Services Errors & Omissions Insurance Policy No. RIA2697737-02, underwritten by Underwriters at Lloyds, Syndicates 2623 and 623 (the "London E&O Policy" and "London Underwriters", respectively) was issued to IHT Wealth Management, LLC, and provided the Kaplans with up to $1 million of coverage for defense costs with respect to the SEC Investigation and related matters. At the August 13, 2021 Great Neck Meeting the Kaplans informed Blanche that they were covered insureds under the London E&O Policy; at that meeting the Kaplans also gave Blanche a copy of the London E&O Policy. Also at the Great Neck Meeting, Blanche promised to seek insurance coverage for Cadwalader's legal fees under the London E&O Policy.

12. Although Blanche and Cadwalader were aware that the Kaplans were covered

under the London E&O Policy, and had a copy of that policy, Cadwalader/Blanche to this day has: (i) never notified the London Underwriters of the Kaplans' claim under the London Policy; (ii) never complied with the terms and conditions found in the London Policy so as to serve as defense counsel to the Kaplans; and (iii) never submitted a single invoice to the London Underwriters for payment of the Kaplans' defense costs under that policy.

13. The Kaplans, having provided proof of insurance to Blanche, thereafter assumed that Blanche would contact the carrier.

14. Blanche never contacted the carrier.

15. On information and belief, Blanche never contacted the carrier because the carrier would not have allowed Blanche to inflate fees, to bill haphazardly, to block bill, or at a minimum would have insisted on significant fee reductions and detailed itemized billing entries. Moreover, Defendants' practice of lumping all of the Kaplans work together without separating claimant-side IHT arbitration work from investigatory defense work would have been rejected by any insurance company, as legal fees for the pursuit of the Kaplans' claims against IHT were not covered by insurance.

Cadwalader's Haphazard and Untimely Billing

16. Despite being hired in August of 2021, Cadwalader did not send the Kaplans any legal bill until June 20, 2022.

17. Prior to June 20, 2022, and particularly without having received any legal bill, the Kaplans reasonably believed that Cadwalader had successfully obtained coverage for at least much of their legal fees.

18. The Kaplans were disabused of any such notion, however, on June 20, 2022, when Cadwalader forwarded the Kaplans five separate monthly bills on June 20, 2022.

19. By e-mail dated June 20, 2022, Blanche wrote Adam and Daniel:

> "I learned today that my billing folks have not sent you any bills. I am very sorry about this and I'm sure you've been confused about not receiving any bills!...I'm sending you November to March today."

20. Blanche noted in the same e-mail "I understand timing is not great to get 5 months of bills at once."

21. The billing for these first five months was $677,925.32. And while the billings for these months were finally sent on June 20, 2022, the billing still did not include bills for time and expenses incurred in April, May or June. The Kaplans would later learn they had incurred ***more than a million dollars*** in purported legal fees and expenses prior to Cadwalader sending them these first invoices.

22. Had Cadwalader sent monthly bills, the Kaplans could have evaluated whether they wanted to continue working with such an expensive law firm, or hired somebody else before they became purportedly responsible for paying such large fees, and before the representation had proceeded to a point where it became exceedingly difficult for the Kaplans to replace Cadwalader with a different, less expensive law firm.

23. Had Cadwalader sent monthly bills, the Kaplans could have inquired about applicable insurance and whether and to what extent the carrier was contributing, or should be contributing to the legal fees associated with the representation. Moreover, had Cadwalader sent monthly bills, the Kaplans could have analyzed the line items and been in a better position to challenge the individual entries. It was virtually impossible for the Kaplans to evaluate so many months of billing dumped on them all at once, long after the purported services were performed.

24. In late June, 2022 when Cadwalader sent these bills, the Kaplans were shocked at

the amount due, the hourly fees, the hourly rates of Blanche and the numerous subordinate attorneys who were all billing out at more than $900 an hour, and the sheer amount of purported time spent. At the same time, the Kaplans were facing a number of deadlines related to the SEC's investigation in addition to other pressing matters, and lacked the time or expertise to meaningfully review the nearly $678,000 of legal billing. Moreover, the Kaplans were apprehensive about jeopardizing the attorney-client relationship in light of their heavy reliance on Cadwalader and Blanche in connection with active matters, especially the ongoing SEC investigation.

25. On June 30, 2022, the Kaplans wrote Blanche concerning the invoices and advised that they had not read through them carefully and would need to do so.

26. On July 11, 2022, Blanche wrote the Kaplans and asked the Kaplans to pay the pending invoices. Blanche sought this payment "even if you have concerns or questions about particular entries".

27. Accordingly, the Kaplans initiated payments on account with the expectation that they could raise billing concerns with Cadwalader at a later date. The Kaplans collectively paid $100,000 on or about July 12, 2022, an additional $100,000 on or about July 20, 2022, and an additional $200,000 on July 21, 2022,

28. On or about August 4, 2022, Cadwalader sent the Kaplans for the first time bills for April, May and June of 2022. These three months collectively added another $677,100.08 in purported billing. Blanche thereafter demanded near-immediate payment. As was the case in June, the Kaplans were receiving legal bills seeking a massive payment from them alongside pressure to pay.

29. As of August 4, 2022, Cadwalader still claimed a balance owed from the earlier invoices of $277,925.32. Thus, with the additional invoices for April, May and June which were

finally sent on August 4, 2022, Cadwalader claimed the Kaplans owed Cadwalader $955,025.40. This amount did not even include July's time, for which Cadwalader did not provide an invoice until October 20, 2022. As the Kaplans would find out much later, July alone totaled more than $284,000.

30. In August of 2022, despite having nearly a million dollars in purported unpaid legal fees, the Kaplans did not make any payments to Cadwalader. The Kaplans continued to be stunned at the sheer size of the bills, the amount of purported time being spent on their matters, and the hourly rates of the various attorneys which Cadwalader was ostensibly assigning to their matters.

31. In September of 2022, with a fast-approaching deadline to produce documents in response to an SEC investigative subpoena, Blanche advised the Kaplans that Cadwalader would stop working on the matter -- including suspending its work on the document production -- unless the Kaplans paid Cadwalader in full. Blanche contacted Idida and advised that the Kaplans were under certain SEC-imposed deadlines to produce documents, and that if the deadlines were not met, the Kaplans would likely be going to jail.

32. Blanche also told Idida that the Kaplans must make immediate payments on account or Cadwalader would quit the representation. Blanche observed that it would be impossible for the Kaplans to comply with the SEC's deadline if Cadwalader quit. The implication was clear that payment to Cadwalader was necessary to avoid the Kaplans going to jail.

33. Under the duress imposed by Blanche's threat, from September 28, 2022 to October 21, 2022, the Kaplans paid Cadwalader $1,250,000. The last of these payments was for $150,000 on October 21, 2022.

34. On October 21, 2022, as of receipt of this last payment, and even accepting *arguendo* Cadwalader's invoices as legitimate (which they were not), the Kaplans were fully paid

up, and actually had a credit on account of $294,974.60. Stated differently, the Kaplans had paid Cadwalader almost $300,000 more than Cadwalader had purported to bill as of October 21, 2022.

35. On October 24, 2022, Cadwalader sent the Kaplans bills for the first time for the months of July, August and September. These bills, each dated October 20, 2022, purported to total $647,252.24. Subtracting the amount the Kaplans had as a credit, the amount purportedly due after the October 24, 2022 billing was $352,277.64.

36. At the time, the Kaplans had already paid Cadwalader a total of $1,650,000, with $1,250,000 of it having been received in the prior five weeks.

37. On November 14, 2022, Cadwalader sent the Kaplans an invoice for the month of October. This invoice purported to add $238,314.65 to the Kaplans' balance.

Cadwalader Abruptly Stops Work and Then Resigns Without Cause

38.` On Saturday, November 19, 2022, at 5:27 in the morning, Blanche e-mailed Adam and Idida and advised: "I am forced to instruct my team to stop work on this matter" pending resolution of the purportedly unpaid legal fees.

39. At the time, the Kaplans were seeking additional information about the legal bills from Blanche and Cadwalader. More specifically, the Kaplans had informed Blanche that before paying any additional invoices, they required an itemized breakdown of Cadwalader's fees delineating the amounts billed for Cadwalader's work on the SEC investigation, the arbitration against IHT, and on related matters, including the parellel criminal investigation.

40. At the time, the Kaplans were also seeking information about what portion of the bills were covered by insurance.

41. At the time, the Kaplans were hoping and expecting to receive the aforesaid information and then have a meeting with Cadwalader's CFO, as Blanche had represented to the

Kaplans that it was Cadwalader's CFO who was placing pressure on Blanche to procure immediate payment from the Kaplans. Blanche offered to schedule a meeting with Cadwalader's CFO and head-of-litigation, but declined to provide the billing information the Kaplans requested.

42. Cadwalader has never sent the Kaplans the breakdown in billing that the Kaplans requested. It is noteworthy that the type of breakdown the Kaplans were requesting would have been required by any insurance company to determine, among other things, which legal fees were covered by the Kaplans' errors and omissions policy.

43. On November 19, 2022 -- less than one month after the Kaplans made their account current, only to receive another set of invoices all at once – Blanche advised the Kaplans that Cadwalader would stop work on the matter because the Kaplans "made it clear…that you do not intend to pay on the 4 months of outstanding bills." But as of November 19, 2022 when Cadwalader stopped working, the Kaplans had not made a determination as to whether or not to pay the alleged balance, in whole or in part, and had not communicated to Cadwalader any intention to not pay the bills. Indeed, Adam Kaplan responded to Blanche at the time, noting that the Kaplans never said they would not pay Cadwalader for the work it had performed; but "[w]hat I did say is that we are not able to continue making large payments on account without the proper breakdown and discussion of billing concerns…".

44. Less than thirty days before Blanche advised that Cadwalader would stop working on the matter, the Kaplans were fully paid up, and in fact had a credit on account of $294,974.60.

45. In the five months prior to Cadwalader stopping its work for the Kaplans, the Kaplans had paid Cadwalader $1.65 million.

46. Of that $1.65 million, $1.25 million of it the Kaplans transferred to Cadwalader within two months prior to Cadwalader stopping its work.

47. The parties prior course of dealings did not suggest that the Kaplans were required to pay invoices within 30 days. Cadwalader had repeatedly waited many months before sending invoices and had no reasonable expectation or contractual right to demand payment within 30 days.

48. While it is unclear precisely when Cadwalader resigned, Cadwalader followed up its "stop work" e-mail from November 19, 2022 by resigning from the representation of the Kaplans no later than the morning of November 22, 2022, when Blanche advised the Kaplans repeatedly that "we are no longer your lawyers."

49. Blanche advised on November 22, 2022 that "[W]e are not representing you because you have refused to pay for our work."

50. At no point on or prior to November 22, 2022 did the Kaplans state or imply that the Kaplans would not pay Cadwalader.

51. As detailed immediately below, upon information and belief, the real reason Cadwalader resigned when they did is due to their negligent or intentional mis-handling of the Kaplans' representation and a desire to cover up this mis-handling by retaining the Kaplans' legal file.

Cadwalader Schedules Depositions For The Kaplans With The SEC Then Tells The Kaplans Not To Attend

52. Cadwalader's representation of the Kaplans in connection with the SEC investigation appeared to be reaching a critical juncture in November of 2022. As coordinated by the SEC, Cadwalader, Adam and Daniel were scheduled to fly to Chicago to testify in depositions on November 15^{th} and 16^{th}, 2022, with Adam scheduled to tesify on the 15^{th} and Daniel on the 16^{th}. Not coincidentally, this was just days before Cadwalader resigned.

53. Based on the legal bills, Cadwalader commenced preparation for these depositions no later than September of 2022. Five separate Cadwalader attorneys were involved in deposition

preparation which spanned approximately seven weeks. One of the attorneys was DC-based and billed $25,000 in legal fees including travel time to come to New York and help prepare for these depositions. And while deposition preparation time is often lumped with time for other tasks, it appears like Cadwalader billed well in excess of $200,000 of time and expenses directly related to preparing for these depositions.

54. On or about November 10, 2022, the Kaplans met Vincent Ancona, Esq. and apprised him generally of the current status of the investigation and their planned depositions the following week.

55. On or about November 11, 2022, Mr. Ancona discussed the Kaplans and the anticipated depositions with Blanche.

56. On November 13, 2022, Mr. Blanche and the Kaplans discussed by phone whether or not the Kaplans should attend the depositions in Chicago. The Kaplans were planning to travel by air from New York to Chicago the very next day. But in that discussion Mr. Blanche advised that the Kaplans should not attend their depositions in Chicago.

57. Blanche did not explain why he had scheduled these depositions and supervised seven weeks and hundreds of thousands of dollars worth of deposition preparation and then, on the eve of the day to fly to Chicago, was changing his legal advice.

58. Upon information and belief, Blanche had a phone conversation with the SEC the evening of Sunday, November 13, 2022, and then the depositions were cancelled by the SEC.

59. Upon information and belief, the SEC had previously made lodging arrangements in Chicago, and paid for Adam's and Daniel's round trip flights. The SEC attorneys working on the investigation had also presumably spent a lot of time preparing for these depositions.

60. Upon information and belief, whatever Blanche told the SEC in this phone call, it

was not the complete truth (e.g., "I changed my mind about these depositions"), and it was not flattering to the Kaplans.

61. Upon information and belief, the SEC was angered by the abrupt and extremely late change of mind which led to the cancellation of these depositions. It wasted the time and money of the SEC and its professionals working the investigation, caused the SEC to spend many hours of time investigating the Kaplans in preparation for the testimony, and left the SEC with the distinct impression that the Kaplans themselves were to blame for last-minute change of mind which led to the cancellations.

62. Defendants have not turned over any of the correspondence between Defendants and the SEC.

63. Blanche's "stop work" e-mail came just days after these depositions had been scheduled to take place.

Post-Representation, Cadwalader's Insurance-Related Malpractice Comes to Light

64. Since Cadwalader has resigned from representing the Kaplans, the Kaplans have endeavored to hire counsel to help them with the matters for which Cadwalader was previously supposed to be handling.

65. The Kaplans retained Andrew Calamari, Esq. of Finn, Dixon & Herling, LLP to represent them in connection with the SEC investigation. Upon information and belief, Mr. Calamari introduced himself to the SEC as the Kaplans' new attorney on Friday, December 9, 2022.

66. Mr. Calamari only represented the Kaplans for a few days, as he withdrew on December 13, 2022 after, on information and belief based on Mr. Calamari's verbal account, Mr. Calamari spoke with Blanche the evening of December 12, 2022. Mr. Calamari advised the

Kaplans that he was withdrawing from representing them because of Cadwalader's outstanding fees, and especially because Cadwalader would not share the legal file. Calamari also mentioned that he will alert the SEC of his withdrawal.

67. Upon information and belief, and through no fault of the Kaplans or Mr. Calamari, the SEC was further prejudiced against the Kaplans when they heard of a second law firm resigning from the representation in the span of a few weeks.

68. While Mr. Calamari was involved for less than a week, he did one important thing that Defendants never bothered to do; Mr. Calamari noticed the insurance carrier which set events in motion such that the Kaplans had some insurance coverage going forward for its ongoing legal bills in connection with the SEC investigation**.**

69. More specifically, on Monday, December 12, 2022 -- the very next business day after his initial contact with the SEC -- Mr. Calamari sent a letter via email to Starkweather & Shepley (the broker who placed the London E&O Policy, (the "Broker")) informing the Broker that the Kaplans were claiming coverage and seeking indemnification and advancement of legal fees incurred by the Kaplans for all aspects of the SEC Investigation and related matters. Such correspondence was precisely what any prudent and competent attorney and law firm would do immediately when any of their clients were involved in SEC matters similar to those facing the Kaplans.

70. Within weeks of receiving Mr. Calamari's email, by letter dated January 30, 2022, counsel for the London Underwriters replied that the [London] "Underwriters have determined that coverage is triggered by this matter". More specifically, the London Underwriters stated that they "will provide the Kaplans with a defense in connection with the SEC Investigation".

71. In determining that coverage was available to the Kaplans under the London Policy, and in response to Mr. Calamari's letter, the London Underwriters: (i) expressly acknowledged that the Kaplans were indeed "Insureds" under the London Policy; (ii) that the matter submitted for coverage was a "Claim" covered by the London Policy; (iii) determined that under the London Policy the London Underwriters would provide coverage for all of the Kaplans' claims expenses (defined, in part, in the policy to include all reasonable and necessary costs and expenses) relating to the SEC Investigation In re Matter of IHT Wealth Management, LLC, Case No. C-8834; and (iv) that approximately half of the limit of liability under the London Policy already had been paid out on behalf of insureds other than The Kaplans.

72. The London Underwriters determined that they would reimburse the Kaplans' for the SEC Investigation and related matters defense costs billed by Vincent Ancona, Esq. and Daniel Viola, Esq. beginning only on December 12, 2022, (the date of Mr. Calamari's letter to the broker) through March 3, 2023 (the date the SEC Enforcement Action was filed).

73. The London Underwriters have taken the position that they will not pay any claims expenses/defense costs billed by Cadwalader because those defense costs and expenses were billed prior to Mr. Calamari's December 12, 2022 letter.

Cadwalader Unlawfully Hides Information From The Kaplans

74. On November 23, 2023, and November 28, 2023, upon information and belief, the SEC attempted to serve the Kaplans nine RFPA Subpoenas by serving Blanche at Cadwalader. Cadwalader had already resigned from representing the Kaplans, as Blanche had declared he was no longer the Kaplans' lawyer on November 22, 2023, but Cadwalader did not

tell the SEC of the resignation until, on information and belief based on Blanche's account, December 2, 2023. Even when Cadwalader advised the SEC that it was no longer representing the Kaplans, Cadwalader did not tell the SEC it was rejecting the prior service, or that it was not authorized to accept service of the RFPA Subpoenas served in late November. Instead, Cadwalader left the SEC with the mistaken impression that it continued to represent the Kaplans through the end of November, and that Cadwalader was therefore authorized to accept service of the RFPA Subpoenas and had sent the RFPA Subpoenas to the Kaplans.

75. Cadwalader did not provide the Kaplans with a copy of the RFPA Subpoenas.

76. In addition to Mr. Calamari, Cadwalader has refused to provide the Kaplans legal files to the Kaplans directly, and to four other lawyers who are representing the Kaplans on related matters. These four lawyers are Vincent Ancona, Esq., Daniel Viola, Esq., Brian Kennedy, Esq., and Daniel Abrams, Esq.

77. Because Cadwalader is withholding the Kaplans' file, the Kaplans do not have Cadwalader's communications with the SEC, other governmental authorities or other third parties.

78. On information and belief, Cadwalader interviewed at least five former clients of Adam and/or Daniel Kaplan, and quite possibly many more. The Kaplans were never given access to interview notes or other evidence of the interview results. Cadwalader has interview notes from these interviews which the Kaplans have a present, critical need to access.

79. Blanche has advised the Kaplans' successor counsel that Blanche withheld certain documents from production to the SEC while producing many others. Specifically, Blanche told Daniel G. Viola, Esq., in sum and substance that Blanche deliberately withheld responsive

documents from the SEC. Blanche did not provide the Kaplans' successor counsel any reasons for the withholding, and Cadwalader has not agreed to turn over these withheld documents. Thus, neither the Kaplans nor their present counsel know which documents were withheld from the SEC, the reasons for any withholding, the volume of documents withheld, nor the significance of the withheld documents.

80. This withholding of documents made it impossible for the Kaplans or their successor counsel to properly respond to a Wells Notice served on or about February 3, 2023. The SEC also refused to grant replacement counsel courtesies that new counsel could usually, reasonably expect; on information and belief, the SEC blamed the Kaplans for Blanche's disregard of the SEC's time when he waited until near the last minute before changing his mind and causing the SEC to cancel the depositions which had been scheduled for the Kaplans. The prejudice associated with the lack of courtesies was magnified by the fact that Cadwalader did not notify the Kaplans of the RFPA subpoenas despite having received them at a time in which Cadwalader was, unbeknownst to the SEC, no longer representing the Kaplans.

81. On March 3, 2023, the SEC filed a civil complaint against the Kaplans in the Eastern District of New York.

82. The Kaplans presently have a critical need for their entire case file in order to defend themselves against the SEC's allegations.

On Information and Belief, Cadwalader Forges A Retainer Agreement

83. In the course of correspondence whereby the Kaplans were attempting to obtain their files from Cadwalader and Cadwalader was refusing to provide such files, Cadwalader sent the Kaplans' counsel a purported retainer agreement which the Kaplans had never before seen.

The purported retainer agreement had supposed signatures for Adam Kaplan and Daniel Kaplan, but those signatures do not match the known signatures of either Adam Kaplan or Daniel Kaplan.

84. The Kaplans never signed a written retainer agreement with Cadwalader.

85. Cadwalader never presented the Kaplans with a written retainer agreement to sign.

86. Cadwalader had never represented the Kaplans before August of 2021.

87. Defendants were required by law to have a retainer agreement in writing with the Kaplans.

88. On information and belief, Defendants' own internal policies also required the Defendants to have a written retainer agreement with the Kaplans.

89. When confronted with the allegation that the document did not reflect the Kaplans' actual signatures, Blanche falsely claimed that the Kaplans had signed the purported retainer agreement at the Great Neck Meeting.

90. Upon seeing the forged document for the first time in December of 2022, the Kaplans almost immediately hired Jeffrey Luber, a preeminent handwriting expert, to compare the Kaplans' purported signatures on the document Cadwalader provided with the Kaplans' known signatures.

91. In January of 2023, Cadwalader made a better copy of the retainer agreement available for copying and made the original available for photos, while denying the Kaplans' request that their expert be able to view the original document.

92. In February of 2023, the Kaplans' expert, Jeffrey Luber, concluded that the document which Cadwalader claims is a retainer agreement contained signatures of Adam Kaplan and Daniel Kaplan which were simulated forgeries. In a written report dated February 22, 2023, Luber opined with the "highest degree of confidence" as defined by the Scientific Working Group for Forensic Document Examination that the signatures appearing on the engagement letter were not those of Adam Kaplan and Daniel Kaplan. A copy of the detailed and sworn Expert Report including Mr. Luber's credentials and sans exhibits is attached hereto as Exhibit A.

93. Since offering to allow Adam Kaplan and Daniel Kaplan to obtain a better copy of the document and take photos in January of 2023, Cadwalader has since refused the Kaplans' follow up requests for additional information for evidence related to the supposed authenticity of this document. Cadwalader has denied the Kaplans' request to have the Kaplans' expert inspect the original document, and denied the Kaplans electronic discovery into the origins of the Word version and pdf version of the document. Cadwalader has not turned over metadata to document the creation or history of the purported engagement letter.

94. Moreover, there is no evidence that Cadwalader or Blanche ever referenced the purported engagement agreement during the period that Cadwalader represented the Kaplans. The Kaplans have not found in their possession any correspondence during the period of Cadwalader's representation in which Blanche references the existence of the engagement letter—not even in response to an email from Adam and Daniel's mother, Dr. Idida Kaplan, to Blanche, dated November 19, 2022, in which she represented that "[w]e had no idea what your hourly fees would be nor those of various associates. No rates or estimates were ever quoted to

us and we never would have agreed to such huge and excessive billing amounts had we known in advance[,] keeping in mind that we are individuals and not corporations."

The Conflicted and Negligent Referral To Priya Chaudhry, Esq.

95. In December of 2021, Cadwalader referred the Kaplans to Priya Chaudhry, Esq. to commence a motion to vacate a FINRA arbitration award which Merrill Lynch had obtained against the Kaplans.

96. According to Blanche, Cadwalader refrained from doing this work itself due to Cadwalader's conflict with Merrill Lynch's parent company, Bank of America.

97. Cadwalader nevertheless billed considerable time working with Priya Chaudhry on the matter, including work on the Motion To Vacate.

98. The Motion to Vacate was dismissed by Justice Ramos of the Southern District of New York, for untimeliness for failure to properly serve Merrill Lynch within the required time period, and because the motion was filed in the wrong court.

99. Priya Chaudhry is a criminal defense lawyer.

100. Prior to working with the Kaplans, Priya Chaudhry had no relevant experience that would make her a suitable referral from Cadwalader.

Cadwalader Severely Overbilled the Kaplans' Matters

101. Cadwalader's legal bills and work product were noteworthy for severe overbilling. The Kaplans never agreed to any of the hourly rates. These rates started at $905 an hour for a junior associate. Moreover, there were two unannounced rate increases in 2022.

102. Even relatively junior associates were billing out at far more than $1,000 an hour, and there was almost no support staff billing, leading to attorneys at exorbitant rates doing work that is typically done by paralegals and others at a small fraction of the cost. While Cadwalader's attorneys reported more than 2,475 hours in the bills, only 6.34 hours of time were billed by Cadwalader's support staff.

103. The invoices generally lumped differing tasks together which make it difficult or impossible to understand how time was supposedly spent. Indeed, when Cadwalader abruptly stopped working on November 19, 2022, the Kaplans were trying to obtain a break-down between the investigatory work and the arbitration-related work. Cadwalader never provided such a break-down.

104. Cadwalader typically sent the invoices many months after the actual work was ostensibly performed. The staggering amounts of the bills, the delay in sending the bills out, and the fact that the bills arrived in bunches all made evaluating the lumped billing even more difficult.

105. In one instance, Blanche advised that his billing was for the investigation, and the billing of another Cadwalader partner, Jared Stanisci, was for the IHT arbitration. This statement did not explain the billing entries of any of the other five Cadwalader time-keepers, and was also transparently untrue, as Mr. Stanisci billed significant time to the SEC investigation.

106. While the lumped billing makes precise and definitive allegations impossible, it appears that approximately $700,000 in billing is attributable to document review in connection with the SEC investigation, or unspecified document review (billing which should have been covered by the London E&O Policy, as detailed *supra*).

107. Seven attorneys billed time to the Kaplans. Hundreds of thousands of dollars are attributable to these attorneys speaking to or conferring with one another. This is contrary to Blanche's promise to the Kaplans near the inception of the representation that only one professional per conference or per call would be billing their time.

108. The Kaplans have other concerns about the individual time entries, and the reasonableness of the work undertaken by the Defendants which will be the subject of expert testimony and are not necessary to specify in this pleading.

Cadwalader Mishandled The Contemplated Arbitrations Against IHT

109. The Kaplans through Cadwalader filed a FINRA Arbitration Demand against IHT. Hundreds of thousands of dollars appear attributable to research and preparation of this Demand.

110. FINRA rejected the Demand for, *inter alia*, the Demand's failure to abide by Non-FINRA Member Rules due to the fact that IHT was not a FINRA Member.

111. Cadwalader followed up on the rejection of the Demand with research and preparation of a revised Demand. Cadwalader billed a lot of time of research into the FINRA rules and basic FINRA practice *after* the rejection of the Demand. Cadwalader had represented itself as having expertise in FINRA and SEC matters, yet there was a massive amount of research into basic FINRA issues, and Cadwalader exhibited significant difficulties with FINRA practice.

112. From July of 2022 to September of 2022, Cadwalader billed approximately $130,000 in blocked billed time entries to the preparation of a letter to FINRA complaining about, *inter alia*, the rejection of the Demand.

113. Upon information and belief, this letter was never sent.

FIRST CAUSE OF ACTION

(Legal Malpractice Against Both Defendants, Jointly and Severally)

114. The Kaplans repeat and reallege the allegations contained in the previous paragraphs as if fully set forth herein.

115. At all relevant times, Defendants purported to possess the skill and knowledge required for the practice of law. This includes responsibilities to reasonably, timely and accurately communicate non-negligent legal advice.

116. By the actions alleged herein, including without limitation the scheduling and abrupt last-minute changing of mind concerning the Kaplans' depositions with the SEC; the unexplained withholding of documents from the SEC production; the unlawful retention of the Kaplans' legal files despite the Kaplans' need for such files; on information and belief the forging of the Kaplans' names to a phony retainer agreement; the failure to procure readily-available insurance which deprived the Kaplans of the ability to obtain legal fee reimbursement during the period of time that Cadwalader represented the Kaplans, the failure to procure insurance while allowing an eroding $1 million policy to significantly erode; the improper and ineffective filing of an arbitration demand against IHT; and the unwarranted, excessive and haphazard billing of the Kaplans, Cadwalader and Blanche failed to exercise the ordinary skill and legal knowledge commonly possessed by a member of the legal profession, and departed dramatically from the standard of care.

117. On information and belief, Cadwalader and Blanche have undertaken additional negligent or intentional acts which have harmed the Kaplans, but these acts cannot be identified because Cadwalader continues to withhold the Kaplans' legal files.

118. The amount of damages cannot be calculated with precision as of this date because the outcome of the matters for which Cadwalader previously had responsibility are still uncertain. But the fact of damages is clear. As a direct and proximate result of Cadwalader's and Blanche's malpractice, the Kaplans have been forced to pay certain legal fees which should have been paid by insurance, and also hire and pay subsequent lawyers to take over the matters which Cadwalader was handling. These subsequent lawyers had to expend numerous hours getting up to speed, and had to do so without the benefit of the underlying case file, causing both expense to the Kaplans and prejudice to the Kaplans' legal rights. In the case of the SEC matter, the Kaplans are prejudiced by the failure of Cadwalader to send the Kaplans or successor counsel their file, the unauthorized acceptance of service of process of the RFPA Subpoenas without notice to the Kaplans, and by Blanche's abrupt changing of mind which led the SEC to cancel the Kaplans' previously-scheduled depositions.

119. The aforementioned misconduct is, in whole or in part, intentional, malicious and wanton, and therefore warrants the imposition of punitive damages.

120. Therefore, the Kaplans should receive compensatory and punitive damages in an amount to be proven at trial, together with statutory interest and the full return of their file.

SECOND CAUSE OF ACTION

(Disgorgement and a Declaration That Cadwalader Is Entitled To No More Money)

121. The Kaplans re-allege and incorporate by reference all preceding paragraphs with the same force and effect as if fully set forth herein.

122. The Kaplans paid Cadwalader $1.65 million for their representation.

123. An attorney may not recover or retain fees for legal services performed in a negligent or unethical manner.

124. For the reasons stated herein, including but not limited to Cadwalader's decision

on information and belief to deliberately forge both of the Kaplans' signatures to a purported retainer agreement, Cadwalader's negligence, Cadwalader's haphazard, excessive and inappropriate billing, Cadwalader's securing payment with threats of jail time, Cadwalader's improper and unlawful withdrawal from the representation, Cadwalader's conduct with the SEC, including without limitation withholding of documents and the scheduling and abrupt cancellation of the Kaplans' scheduled depositions, Cadwalader's failure to procure readily-available insurance for the Kaplans, a failure which enabled Cadwalader to bill and procure monies from the Kaplans without the approval of an insurance carrier, and Cadwalader's improper and unlawful withholding of the Kaplans' legal files, Cadwalader must disgorge and pay back to the Kaplans all legal fees it received from them, with statutory interest and the full return of their file.

THIRD CAUSE OF ACTION

(Breach of Fiduciary Duty)

125. The Kaplans re-allege the allegations contained in preceding paragraphs with the same force and effect as if separately set forth herein.

126. By virtue of the attorney-client relationship, Defendants owed the Kaplans a fiduciary duty to deal fairly, honestly and with undivided loyalty, including maintaining confidentiality, avoiding conflicts of interest, operating competently, safeguarding client property and honoring the client's interests over their own, not incurring unnecessary work or expenses, and in general, being knowledgeable about how to handle the matters for which the Kaplans entrusted them.

127. While acting as an attorney for, and performing work for the Kaplans, by virtue of the allegations stated herein, Defendants breached their fiduciary duty.

128. That breach of fiduciary duty was a substantial factor in damages to the Kaplans.

129. By reason of the foregoing violations and breaches, Plaintiffs are entitled to judgment against Defendants for a sum to be determined based on the fiduciary duty claim.

WHEREFORE the Kaplans demand judgment for money damages from Cadwalader and Blanche, who are jointly responsible for legal malpractice, judgment against Cadwalader for restitution/disgorgement, and punitive damages against both Cadwalader and Blanche. The Kaplans request judgment in an amount to be determined at trial for the first claim, and for at least $1,650,000 for the second and third claims. On the second claim, the Kaplans are also entitled to a declaration that they owe no further monies to Cadwalader, and an order that Cadwalader must provide the Kaplans a full copy of their legal file.

Dated: June 12, 2023

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