1 2	Mark B. Wilson, P.C Bar No. 137400 Joseph V. Miceli - Bar No. 261772 KLEIN & WILSON LLP Superior Court of California, County of San Francisco				
3	3 4770 Von Karman Avenue Newport Beach, California 92660 (949) 631-3300; Facsimile (949) 631-3703				
4					
5	Attorneys for Plaintiffs INTERNATIONAL SWIMMING LEAGUE				
6	LTD. and KONSTANTIN GRIGORISHIN				
7					
8	IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA				
9	FOR THE COUNTY OF SAN FRANCISCO - CIVIC CENTER COURTHOUSE CGC-24-621032				
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11	INTERNATIONAL SWIMMING LEAGUE LTD., a Swiss Corporation; and KONSTANTIN	Case No.			
12	GRIGORISHIN, an individual,	COMPLAINT FOR: (1) PROFESSIONAL NEGLIGENCE; (2) BREACH OF			
13	Plaintiffs,	FIDUCIARY DUTY; (3) BREACH OF IMPLIED CONTRACT; (4) UNFAIR			
14	V.	BUSINESS PRACTICES; AND (5) DECLARATORY RELIEF; DEMAND			
15	FARELLA BRAUN + MARTEL LLP, a California limited liability partnership; NEIL A.	FOR JURY TRIAL			
16	GOTEINER, an individual; and DOES 1 through 100, inclusive,				
17	Defendants.				
18					
19	Plaintiffs International Swimming League Ltd. ("ISL") and Konstantin Grigorishin				
20	("Grigorishin") (collectively, "Plaintiffs") allege the following against defendants Farella Braun +				
21	Martel LLP ("Farella"), Neil A. Goteine	er ("Goteiner"), and Does 1 through 100			
22	(collectively, "Defendants").				
23	PARTIES AND VENUE				
24	1. ISL is a corporation with its princip	pal place of business in Baar, Switzerland.			
25	2. Grigorishin is an individual.				
26	3. Farella is a law firm and a limited l	liability partnership.			
27	4. Goteiner is an attorney and individ	dual who, at all relevant times herein, was a partner			
28	of Farella.				
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5.	Does	1 through	100, inc	lusive, are	defendants	whose	identi	ties have	not yet 1	been
ascertained.	They a	are individ	luals, pa	rtnerships,	corporation	is, or	other	business	entities.	On
information ar	nd belie	ef, each Do	e defend	ant was so	nehow respo	nsible	for the	damages	caused in	this
case. As soon	as the	e true iden	tities an	d capacitie	s of the Do	e defer	ndants	have beer	ascertai	ned,
Plaintiffs will	amend	this compl	aint to re	flect the tri	ie names and	l capaci	ties of	each Doe	defendan	ıt.

- 6. Each defendant was the agent, alter-ego, employee, principal, partner, joint venturer, employer, or in some other capacity derivatively responsible for each of the acts of the other defendants.
- 7. On information and belief, venue is appropriate in San Francisco County because the one or more defendants reside in, and Farella's principal place of business is in, the County of San Francisco.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

- 8. Grigorishin has a passion for swimming and founded ISL in 2017 for swimmers to gain international recognition like professional footballers and basketball players.
- 9. When ISL announced its first major swimming competition in 2018, it was met with staunch opposition by the Fédération Internationale de Natation ("FINA"), now known as World Aquatics. FINA is the body recognized by the International Olympic Committee for administering international competitions in water sports, and FINA sought to prevent swimmers from competing in ISL's events.
- 10. Faced with this existential threat, Plaintiffs told Goteiner ISL was considering initiating an antitrust action against FINA in the United States District Court for the Northern District of California. Plaintiffs asked Goteiner to refer a qualified law firm to handle it.
- 11. Despite having little experience prosecuting antitrust actions, Goteiner persuaded ISL to hire Defendants and, on or about October 9, 2018, ISL and Defendants entered into a written fee agreement that is void for several reasons.
- 12. When Defendants agreed to represent ISL, Grigorishin was a current or former client of Farella. Defendants' representation of both Grigorishin and ISL, which Grigorishin founded and

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served as an officer, presented potential conflicts of interest that required Defendants to obtain Plaintiffs' informed written consent to proceed with the representation.

- 13. But Defendants failed to obtain Plaintiffs' informed written consent and, as a result, the fee agreement between ISL and Defendants is void.
- 14. On or around December 3 and 4, 2018, Farella agreed to represent Thomas A. Shields, Michael C. Andrew, Katinka Hosszu, three professional swimmers, to be class representatives in a class action antitrust claim against FINA. Farella's clients in the class action are referred to as the "Swimmer Class Plaintiffs."
- 15. Although Farella's dual representation of ISL and the Swimmer Class Plaintiffs presented potential conflicts of interest, Defendants did not obtain ISL's informed written consent to the joint representation. Because of Defendants' failure to obtain ISL's informed written consent to the joint representation, the fee agreement between ISL and Defendants is void.
- 16. On or about December 7, 2018, Defendants filed ISL's complaint in *International Swimming League*, *Ltd. v. Fédération Internationale de Natation* in the United States District Court, Northern District of California, case number 3:18-cv-07394.
- 17. Also on December 7, 2018, Defendants filed the Swimmer Class Plaintiffs' complaint in *Shields, et al. v. Fédération Internationale de Natation* in the United States District Court, Northern District of California, case number 3:18-cv-07393.
 - 18. The two cases are referred to collectively as the "Underlying Matter."
- 19. Throughout the course of the underlying representation, Defendants provided Plaintiffs with litigation budgets that they routinely exceeded.
- 20. Throughout the course of the underlying representation, Defendants overbilled ISL by, among other things, double billing, overstaffing, and exceeding litigation budgets.
- 21. Defendants failed to timely designate an expert in the Underlying Matter, and partially because of this mistake, the trial court entered summary judgment against ISL because it could not establish the relevant market needed to prevail on an antitrust claim without expert testimony.

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- 22. Although the Ninth Circuit Court of Appeals reversed the judgment, the appellate court did not provide ISL relief from Defendants' failure to designate a market expert, and ISL must, therefore, pursue a different liability theory to prevail.
- 23. In November 2019, Farella's invoices caused a temporary liquidity issue because Defendants greatly exceeded the legal fees budget that they provided ISL. This prevented ISL from timely paying Farella's invoices. Rather than withdraw from the representation or direct the client to counsel that could handle the case on a contingency basis, Farella instead required Grigorishin to personally guarantee Farella's fees.
- 24. On November 27, 2019, Grigorishin and Farella executed an Amendment to a June 28, 2018 engagement letter, but that engagement letter was never signed and was superseded by the executed October 9, 2018 agreement. The October 9, 2018 fee agreement is not referenced in the November 27, 2019 amendment. The November 27, 2019 amendment purportedly required Grigorishin to personally guarantee \$2.5 million of ISL's legal fees and costs.
- 25. To secure the guarantee, Defendants required Grigorishin to turn over to Farella several pieces of artwork from Grigorishin's personal collection, and to execute a Continuing Guaranty agreement that references the unsigned and superseded June 28, 2018 letter, but does not reference the October 9, 2018 agreement that superseded it.
- 26. ISL's liquidity issues continued after May 1, 2020. Rather than withdraw from representation or help find the client new counsel who would consider the representation on a contingency basis, Defendants instead required Grigorishin to execute another amendment increasing the amount of his personal guaranty of Farella's fees from \$2.5 million to \$3.5 million. This May 14, 2020 "Amendment to Engagement Letter" also references only the unsigned June 28, 2018 engagement letter.
- 27. Defendants also insisted that Grigorishin execute an Amendment and Reaffirmation of Continuing Guaranty that references the "Engagement Agreements" referenced in the May 14, 2020 amendment. No mention of the signed October 9, 2018 fee agreement is made in the Amendment and Reaffirmation.

	28.	In November 2020, when ISL was still having difficulty paying Farella's fees, rather
than v	vithdraw	or help ISL find new counsel, Defendants again made Grigorishin sign yet another
letter	amendm	ent increasing the amount of Grigorishin's personal guaranty to \$5.5 million, among
other	terms. L	ike the two before it, this November 2, 2020 amendment refers only to the unsigned
June 2	8, 2018	letter and not the October 9, 2018 agreement that superseded it.

- 29. Defendants also insisted that Grigorishin execute an Amendment No. 2 and Reaffirmation of Continuing Guaranty that references the November 2, 2020 amendments to the Engagement Agreements. No mention of the signed October 9, 2018 agreement is made in the Amendment No. 2 and Reaffirmation.
- 30. On information and belief, Defendants contend that Grigorishin is bound by the guarantees that he signed and demand that he pay all of ISL's invoices.
- 31. Before initiating this action, Plaintiffs and Defendants engaged in a non-binding fee arbitration pursuant to the Mandatory Fee Arbitration Act. After the arbitration panel issued its award, Plaintiffs and Defendants entered a tolling agreement extending the time provided by *Business & Professions Code* section 6204(c), such that this action is timely filed.

FIRST CAUSE OF ACTION

FOR PROFESSIONAL NEGLIGENCE

(By ISL Against All Defendants)

- 32. Plaintiffs incorporate by reference paragraphs 1 through 31 of this complaint as though fully set forth.
- 33. Defendants are attorneys and had the duty to use such skill, prudence, and diligence as members of their profession commonly possess and exercise.
- 34. At all relevant times referenced in this complaint, Defendants served as ISL's attorneys in the Underlying Matter.
- 35. In handling the Underlying Matter, Defendants performed legal services below the standard of care in a variety of ways.

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- 36. ISL would have obtained a better result in the Underlying Matter if Defendants had acted as reasonably careful attorneys. The same harm would not have occurred anyway without Defendants' conduct.
- 37. As a proximate result of Defendants' negligence, ISL has suffered compensatory damages that exceed the jurisdictional limits of this court in an amount to proven at trial, prejudgment interest as provided by law, and attorney's fees pursuant to *Business and Professions Code* section 6204.

SECOND CAUSE OF ACTION

FOR BREACH OF FIDUCIARY DUTY

(By All Plaintiffs Against All Defendants)

- 38. Plaintiffs incorporate by reference paragraphs 1 through 31 and 33 through 37 of this complaint as though fully set forth.
- 39. As ISL's attorneys in the Underlying Matter, Defendants owed ISL fiduciary duties, including an undivided duty of loyalty, a duty to provide competent representation, a duty to charge reasonable fees, and a duty to communicate. Defendants also owed Grigorishin fiduciary duties as a former client.

A. Duty of Loyalty

- 40. California Rules of Professional Conduct ("CRPC"), former rule 3-110 and CRPC, rule 1.7(b) required Defendants to obtain Plaintiffs' informed written consent to the dual representation of Plaintiffs and the dual representation of ISL and the Swimmer Class Plaintiffs due to the potential and/or actual conflicts presented by such dual representation.
- 41. The potential conflicts between ISL and Grigorishin, ISL's president and founder, included the fact that Defendants' prior representation of Grigorishin provided Defendants with confidential information about Grigorishin and his finances that Defendants could leverage against Plaintiffs when ISL had liquidity issues impacting its ability to pay Defendants' invoices.
- 42. The potential conflicts between ISL and the Swimmer Class Plaintiffs included the fact that both ISL and the Swimmer Class Plaintiffs were seeking economic damages from FINA (when FINA's finances may have been insufficient to satisfy all clients' claims) and likely would

have to agree to any settlement and execution upon any judgment. Also, Defendants' joint representation presented an obstacle to class certification (a fact that FINA raised in its opposition to the class certification in the Underlying Matter).

43. Defendants breached their fiduciary duties to Plaintiffs by failing to disclose these potential and/or actual conflicts of interest to Plaintiffs and by failing to obtain Plaintiffs' informed written consent to the joint representation.

B. Duty of Competency

- 44. Defendants did not have experience prosecuting complex international antitrust cases before accepting the representation of ISL in the Underlying Matter. CRPC, former rule 3-110 and CRPC, rule 1.1 required Defendants to either associate with an attorney who possessed the requisite knowledge and skill to handle such matters, acquire the requisite knowledge and skill before performance was required, or refer the matter to an attorney who possessed the requisite knowledge and skill.
- 45. Defendants breached the duty of competency by failing to do any of these things. Defendants' breach is evidenced most clearly by Defendants' failure to designate a merits expert in the Underlying Matter to provide the testimony needed to establish a relevant market required to prevail in an antitrust case.

C. Duty to Charge Reasonable Fees

- 46. Attorneys are prohibited from charging or collecting an unconscionable or illegal fee.
- 47. Throughout the underlying representation, Defendants breached the duty to charge a reasonable fee and overbilled Plaintiffs by, among other things, overstaffing the case, double billing (i.e., having two or more attorneys bill Plaintiffs to complete the same task), and engaging in block billing to artificially inflate the time spent working on the case.

D. Duty to Communicate

- 48. CRPC, rule 1.4(a) required Defendants to promptly keep Plaintiffs reasonably informed about significant developments relating to Defendants' representation.
- 49. ISL requested and Defendants provided several litigation budgets throughout the course of the representation.

- 50. Plaintiffs relied on these litigation budgets to make decisions about how to proceed with the litigation.
 - 51. Defendants routinely and substantially exceeded these litigation budgets.
- 52. Defendants knew that they were exceeding the legal budgets that they provided Plaintiffs and that Plaintiffs would have difficulty paying invoices that exceeded the budgets.
- 53. Defendants breached their duty to communicate by failing to provide Plaintiffs with accurate budgets, failing to inform Plaintiffs in advance that Defendants' litigation budgets were inaccurate, or by failing to inform Plaintiffs of unforeseen circumstances impacting the reliability of Defendants' litigation budgets.
- 54. As a result of Defendants' breaches, Plaintiffs were harmed by, among other things, incurring and paying Defendants' substantial legal fees and costs which were barred by CRPC, former rule 3-310 and CRPC, rule 1.7 which states the representation was prohibited without Plaintiffs' informed written consent.
- 55. Defendants' breaches of their fiduciary duties were a substantial factor in causing Plaintiffs' harm.
- 56. As a result of Defendants' breaches of their fiduciary duties, Plaintiffs are entitled to a judgment: (a) finding that the fee agreement between ISL and Defendants is void; (b) finding that the various guarantees Grigorishin signed are void; (c) awarding Plaintiffs damages equal to full disgorgement of legal fees and costs Plaintiffs paid to Defendants (totaling not less than \$7,200,000); (d) awarding Plaintiffs compensatory damages that exceed the jurisdictional limits of this court in an amount to proven at trial; (e) finding that Plaintiffs do not owe Defendants any more money; and (f) awarding Plaintiffs attorneys' fees pursuant to *Business and Professions Code* section 6204.

THIRD CAUSE OF ACTION

FOR BREACH OF IMPLIED CONTRACT

(By ISL Against All Defendants)

57. Plaintiffs incorporate by reference paragraphs 1 through 31, 33 through 37 and 39 through 56 of this complaint as though fully set forth.

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	58.	Although the written fee agreement between ISL and Defendants is void for the
reasons	stated	herein, by their conduct, ISL and Defendants entered into an implied-in-fact contract
whereb	y ISL a	greed to pay Defendants a reasonable rate to Defendants in exchange for legal services
meeting	g the sta	andard of care related to the Underlying Matter.

- 59. ISL performed all obligations on its part to be performed under the implied contract, except for those obligations for which it was excused or prevented from performing.
- 60. Essential terms of the implied contract included Defendants' obligations to: (a) meet the standard of care in their representation of ISL in the Underlying Matter, (b) comply with their fiduciary duties, and (c) follow the California Rules of Professional Conduct.
- 61. Defendants breached the implied contract by, among other things, failing to timely designate an expert required to establish a relevant market, failing to obtain Plaintiffs' informed written consent to the dual representation described above, and by overbilling Plaintiff.
- 62. As a result of Defendants' breach of the implied contract, ISL did not receive fair value for the money it spent on Defendants' legal services and has been damaged in an amount that exceeds the jurisdictional limits of this court to be proven at trial, together with interest as provided by law, and ISL is entitled to attorneys' fees pursuant to *Business and Professions Code* section 6204.

FOURTH CAUSE OF ACTION

FOR UNFAIR BUSINESS PRACTICES – BUSINESS AND PROFESSIONS CODE SECTION 17200, ET SEQ.

(By All Plaintiffs Against All Defendants)

- 63. Plaintiffs incorporate by reference paragraphs 1 through 31, 33 through 37, 39 through 56, and 58 through 62 of this complaint as though fully set forth.
- 64. As alleged more fully herein, Defendants have engaged in unlawful, unfair, and fraudulent business practices in violation of California *Business & Professions Code* section 17200 including, but not limited to: (a) failing to perform competent legal services in violation of CRPC, rule 1.1; (b) failing to obtain the informed written consent of Plaintiffs to the dual representation described above in violation of CRPC, former rule 3-110 and CRPC, rule 1.7(b); (c) charging

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Plaintiffs an unreasonable and/or unconscionable fee; and (d) failing to communicate material developments impacting the Underlying Matter, in violation of CRPC, rule 1.4.

- 65. Plaintiffs lost money and property because of these unfair business practices including, but not limited to, fees paid to Defendants.
- 66. Plaintiffs are entitled to and do seek restitution of fees paid to Defendants because of these unfair business practices, with prejudgment interest, in an amount to be proven at trial, but not less than \$7,200,000.

FIFTH CAUSE OF ACTION

FOR DECLARATORY RELIEF

(By All Plaintiffs Against All Defendants)

- 67. Plaintiffs incorporate by reference paragraphs 1 through 31, 33 through 37, 39 through 56, 58 through 62, and 64 through 66 of this complaint as though fully set forth.
- 68. As a result of the conduct alleged in this complaint, an actual controversy has arisen regarding the validity and enforceability of: (a) the October 9, 2018 fee agreement between ISL and Defendants; and (b) the guarantees that Grigorishin signed.
- 69. Defendants contend: (a) ISL is bound by the fee agreement and owes Farella money under the fee agreement; and (b) Grigorishin is personally liable for any fees that ISL has not paid Farella.
- 70. Plaintiffs contend the fee agreement and guarantees are void because of Defendants' serious ethical breaches.
- 71. Plaintiffs also contend Farella should disgorge all legal fees and costs Plaintiffs paid to Farella totaling approximately \$7,200,000.
 - 72. Declaratory relief is necessary to clarify the parties' rights.
- 73. Declaratory relief would expedite the resolution of this dispute, prevent the multiplicity of lawsuits, and result in judicial economy.
- 74. Accordingly, Plaintiffs seeks a declaratory judgment declaring: (a) the October 9, 2018 fee agreement and subsequent amendments are void; (b) the guarantees Grigorishin signed are

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1	void; (c) Defendants should disgorge all legal fees and costs Plaintiffs paid to Defendants totaling not			
2	less than \$7,200,000.00, plus prejudgment interest; and (d) Plaintiffs do not owe Farella more money.			
3	PRAYER FOR RELIEF			
4	WHEREFORE, Plaintiffs pray for the following relief against Defendants.			
5	As To The First Through Fourth Causes Of Action:			
6	1. Damages according to proof;			
7	2. Prejudgment interest; and			
8	3. Attorneys' fees pursuant to <i>Business & Professions Code</i> section 6204.			
9	As To The Fifth Cause Of Action:			
10	4. A declaration that: (a) the October 9, 2018 fee agreement and subsequent			
11	amendments are void; (b) the guarantees Grigorishin signed are void; (c) Defendants should disgorge			
12	all legal fees and costs Plaintiffs paid to Defendants totaling not less than \$7,200,000, plus			
13	prejudgment interest; and (d) Plaintiffs do not owe Farella more money.			
14	As To All Causes Of Action:			
15	5. Costs of suit; and			
16	6. Any and all relief the court may deem just and proper.			
17	KLEIN & WILSON LLP			
18				
19	Dated: December 30, 2024 By: /s/ Mark B. Wilson			
20	Mark B. Wilson, P.C. Attorneys for Plaintiffs International Swimming			
21	League Ltd. and Konstantin Grigorishin			
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DEMAND FOR JURY TRIAL Plaintiffs International Swimming League Ltd. and Konstantin Grigorishin demand a jury trial in this case. By: <u>/s/ Mark B. Wilson</u> Mark B. Wilson, P.C. Dated: December 30, 2024

KLEIN & WILSON LLP

Attorneys for Plaintiffs International Swimming League Ltd. and Konstantin Grigorishin