

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
CIVIL ACTION NO. 21-2950

_____)
 RAYMOND C. GREEN INC., as TRUSTEE OF THE)
 RAYMOND C. GREEN TRUST)
)
 Plaintiff)
)
 v.)
 LOUIS DELPIDIO and NICHOLAS FIORILLO)
)
 Defendants)
 And)
)
 GOTCAPITAL, LLC,)
 GOTSPACE DATA FUND ONE, LLC,)
 GOTSPACE DATA PARTNERS LLC,)
 GOTSPACE DEVELOPMENT LLC,)
 OCEAN DEVELOPMENT PARTNERS, LLC,)
 OCEAN DEVELOPMENT PRECINCT I, LLC,)
 OCEAN INVESTMENT HOLDINGS, LLC,)
 OCEAN VACATIONS, LLC,)
 OCEAN VACATIONS REALTY TRUST)
 ONE SEVEN ONE LLC, WONDERLAND)
 PROPERTIES, LLC, TREMONT)
 ENTERTAINMENT ENTERPRISES, INC., W)
 LOFTS DEVELOPMENT, LLC, OCEAN)
 REALTY PARTNERS, LLC, GOTSPACE DATES)

AFFIDAVIT OF COMPLINCE OF 9A SERVICE RAYMOND C GREEN et al, OF MOTION TO DISQUALIFY LAW FIRM ARENT FOX et al AND STRIKE OPPOSITION OF ARENT FOX FOR FILING LATE

I Nicholas Fiorillo, do hereby depose and state as follows:

1. I am pro se in good standing and had served motion to disqualify on March 23 , 2022 and in compliance with Rule 9A, with no opposition being filed, timely filed our 9A papers.
2. Plaintiffs Counsel did not file any answer timely.
3. We have complied and filed such motion to disqualify timely, with no opposition.
4. We are respectfully requesting the court strike the Plaintiffs late response and grant our motion or in the alternative, allow for discovery and subsequently schedule such evidentiary hearing.

Signed under the penalties of perjury this 6th day of April 2022,

/s/ Nicholas Fiorillo
Nicholas Fiorillo, PRO SE
3 Kales Way
Harwich Port, MA 02646-1936
Tel: (508)-776-7219
Email: metrowestrealty@yahoo.com

CERTIFICATE OF SERVICE

I, Nicholas Fiorillo, do hereby certified that I caused a true and correct to be served E-FileMA to be served on all counsel of record this 6th of April, 2022.

/s/ Nicholas Fiorillo
Nicholas Fiorillo, pro se

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.: 21-2894-HSAMUEL B. SPITALNEY, JACOB L.
SPITALNEY, STEPHEN QUILLINAN, and
S&Q DATA, LLC,

Plaintiffs,

E-FILED 4/04/2022 (LAW)

V.

NICHOLAS FIORILLO and GOTSPACE DATA
EQUITY FUND, LLC,

Defendants,

and

NICHOLAS FIORILLO, et al.

Reach and Apply Defendants.

**DEFENDANTS (1) MOTION TO DISQUALIFY ATTORNEYS NICHOLAS NEGOS
DAVID RIER, BENJAMIN GREENE, NATHANIEL HYMAN AND THE LAW FIRM OF
ARENT FOX, F/K/A POSTERNAK LLP IMPERMISSIBLE, NON-WAIVABLE, AND
UN-WAVED CONFLICTS OF INTEREST BETWEEN PLAINTIFFS, DEFENDANTS,
AND REACH AND APPLY DEFENDANTS; AND (2) DEFENDANTS' MOTION TO
DISQUALIFY THE ARENT FOX ATTORNEYS**

Defendants Nicholas Fiorillo, pro se, Gotspace Data Equity Fund, LLC and Reach and Apply Defendants, including but not limited to Gotspace Equity Fund 1, LLC, Gotspace Equity Fund I, LLC, and Got Space, LLC (collectively hereinafter the "Defendants") hereby move the Court to schedule an evidentiary and/or motion hearing and decision on Defendants' Motion to Disqualify Attorneys Nick Negos, III ("Negos"), David Rier ("Rier"), Benjiman Green ("Green"), Nathaniel Hyman ("Hyman") and their law firm, Arent Fox. (the "Firm") (collectively the "Arent Fox Lawyers"). By way of Defendants' Motion to Disqualify, Defendants move to have the Arent Fox Attorneys disqualified from appearing in this action;

representing any parties in this action in a position adverse to Defendants; and/or from taking any adverse positions against Defendants related to Nicholas Fiorillo (“Fiorillo”), Ocean Development Partners, LLC and (“Ocean”) GotSPACE Data Equity Fund, LLC (“GotSPACE Data”), and any and all affiliated GotSPACE entities and/or corporately controlled by Fiorillo. On grounds that they have multiple impermissible, non-waivable, and/or un-waved conflicts of interest in violation of Massachusetts Rules of Professional Conduct, Rules 1.3, 1.6, 1.7, 1.8, and 1.9 arising from their former representation, consultation(s), collaboration, potential representation(s) and numerous consultations and joint and several legal action(s) work out efforts against Ralph Caruso, Steve Caruso and the self-storage facility located at 330 Charger Street, Revere MA “Charger Street” and the self storage development site located in Peabody Massachusetts “Peabody”. Where Nick Nesgos for the benefit of Fiorillo, Ray Green and the Ray Green Companies and George McLaughlin, his former attorney and rebuked real estate partner. The Arent Fox Law firms conflicting prosecution of the same party in adverse positions, directly adverse parties, their prior representation of Nicholas Fiorillo and his related businesses from 2007-20021. Attorneys Nick Nesgos, George McLaughlin, David Rier, Benjamin Greene, Nathaniel Hyman, Kevin Peters and Jeff Helman, since the onset of their now 6 collaborative debt collection law suits, they have filed in the Massachusetts and Connecticut state courts. In addition to the Federal Bankruptcy court cases that they are alleged creditors and against Nicholas Fiorillo and his development companies. The Arent Fox Attorney's continued to conspire in an unlawful and nefarious way, with Attorney McLaughlin, Peters, Hellman Nesgos to the benefit of adverse third parties, including but not limited to Plaintiffs Samuel B. Spitalney, Jacob L. Spitalney, Stephen Quillinan, and S&Q Data, LLC (“S&Q”) (collectively the “Spitalney Actors”).

Defendants bring this motions because:

1. The Arent Fox Lawyers, the Spitalney Actors; Raymond C. Green, as Trustee of the Raymond C. Green Trust (“Green”); and other associated persons and entities are acting in concert and are using confidential and proprietary information that the Arent

Fox Lawyers obtained while representing Fiorillo and Gotspace Entities which they are now using in this action for their own financial benefit and to the substantial detriment of Defendants. Such Attorney's at Arent Fox were officially noticed of such conflicts as communicated and served by Attorney Neil Kreuzer 4 different times throughout this litigation. Arent Fox has not withdrawn and purports they have no conflicts.

2. The Arent Fox Attorneys ' multiple conflicts of interest arising from its representation of both Plaintiffs and Defendants require disqualification from this case and the related case, Suffolk Superior Court Case No. 21-2950 (the "Green Action") and their involvement in this action and coordination with Green, have so tainted this action and the Spitalny Action that there are serious questions as to whether these cases may proceed in their current form or at all and discovery and/or an evidentiary hearing are required to adequately inform the parties and the Court of the ramifications and consequences of the conduct of the Arent Fox Lawyers, The McLaughlin Brothers, Kevin Peters, Attorney Hellman and the Spitalney Actors, and Green.
3. If Plaintiffs' are allowed to proceed in their debt illegal debt collection action any further with out an evidentiary hearing of this motion of disqualification , the Arent Fox Lawyers, Plaintiffs, and Green and Spitalny "bad actors" will have the unfair and impermissible advantage of leveraging ill-got confidential and proprietary information from Defendants in support of their motions for extraordinary and oppressive preliminary relief.
4. The Arent Fox Lawyers are in fact witnesses in these cases and potential defendants in counter claim. As we know, the defendants have stated their counterclaims would be brought under R.I.C.O. 18 USC Ch. 96: RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT . Where such illegal collection activities, by the collection attorney's themselves are considered racketeering acts. This is the case in multiple circuits, that the lawyers that were knowingly participating in the affairs

of an association enterprise in committing, aiding and abetting their illegal activities and not merely providing services to their clients are liability under RICO. Clearly in these cases, the level of misconduct and criminality of the Arent Fox Attorneys, and their incestuous conspiring with Attorney's McLaughlin, Peters, and Hellman have went way beyond the traditional acts of representing a client even one whose business was illegal. In these cases, their Plaintiffs are know convicted felons, carrier loan sharks and money launders and are now subjects of an ongoing investigation. In the Fiorillo cases, all the lawyers have witnessed, observed, participated, and conspired to collect clearly usurious sums of money and property and demand for their own legal fees, not due or owing themselves or their purported clients. With carnal knowledge of the continued extortion and threats to financially ruin and even kill Fiorillo, if he did not “turn over” or “give up” what was demanded of him by their clients and McLaughlin Peters and Helman. Clearly the hard evidence that has now been turned over to the Federal Authorities and to Arent Fox, is indisputable. Green and the Spitalny's are operating an illicit predatory “loan to own” scheme and have established a pattern of their criminal activities over many years, against Fiorillo and his development corporations.(see foot note) 4(Feld Entertainment Inc. v. American Society for the Prevention of Cruelty to Animals, 873 F. Supp. 2d 288 (D.D.C. 2012).) Feld proved such allegations that lawyers who violate RICO be treated like racketeers

5. This is because of Arent Fox's continued demand for legal fees, on top of their demands for the turning over of upwards of 350% in usurious interest demands, millions of dollars in property and upwards of \$500,000 in fees. In addition McLaughlin and Peters continue to conspire, where McLaughlin “is in hiding” but actively involved in the illegal activities to collect and “loan to own” Fiorillo's personal assets and real estate holdings. Not to mention the personal stake in the

Swansea Mall property that is at issue in these actions, where all the attorneys stand to benefit financially at their former clients' expense if Defendants' interests and actionable claims to recovery in the Swansea Mall are usurped.

6. The Arent Fox Lawyers should not be allowed to proceed as counsel for Green or their closely associated Spitalny Actors or GEFI in this action because of their disqualifying conflicts and prior representation of Defendants.

Defendants further request that these cases be stayed and postponed indefinitely, Defendants be allowed 60-days to conduct discovery into the Arent Fox Lawyers', McLaughlin, Peters and Helman's conduct and representation of both Plaintiffs and Defendants in this action, and an evidentiary hearing scheduled soon thereafter on whether this action can proceed given that the Arent Fox Lawyers have improperly disclosed confidential information gleaned from their prior representation of Defendants which they are now using for the benefit of the Spitalny Actors to Defendants' detriment.

I. SUMMARY OF RELEVANT FACTS

Attorneys Nick Negos, III ("Negos"), David Rier ("Rier"), Benjamin Green ("Green"), Nathaniel Hyman ("Hyman") (collectively the "Arent Fox Lawyers") and George McLaughlin, III ("McLaughlin"), , Kevin Peters ("Peters") Jeffery Helman ("Helman") , have represented and advised Defendants Nicholas Fiorillo ("Fiorillo"), Gotspace Data Equity Fund, LLC ("Gotspace Data"), and numerous of the Reach and Apply Defendants named in Suffolk Superior Court Case Nos. 21-2894-H (the "Spitalny Action") and 21-2950 (the "Green Action") in various business transactions, deals, and business opportunities over the last several years. [Affidavit of Nicholas Fiorillo ("Fiorillo Aff."), ¶¶ 1-3.] The Spitalny Action and the Green Action are hereinafter referred to collectively as the "Conspirators' Lawsuits". By way of example:

- Between 2007-2015 Fiorillo, as a Plaintiff engaged, consulted, collaborated and was advised by Attorney David Reier, a partner at Arent Fox f/k/a Posternak

LLP in Fiorillo's Federal RICO predatory and unlawful debt collection lawsuit, he brought against defendants David Massad, Marcello Mallegini, LBM Financial and Commerce Bank. Reier took many in person meetings and spent over 80 hours on the phone and reviewing all Fiorillo's confidential files, Reier requested from him. Fiorillo spent over 25 hours explaining in detail his legal strategies, confidential and privileged information and provided incriminating evidence and his detailed review of the pleadings. Fiorillo was billed over \$5000 dollars for such work and Reier worked out a hybrid contingent fee agreement on the Massad case. Over the next 7-10 years, Fiorillo continued to stay in close touch with Attorney Reier, where they often discussed the Massad pleadings and many other companion cases that Posternak was even representing other clients against the Massad Defendants. As the legal ramblings went on for many years, Fiorillo was actually often contracted by Reier and other attorney's from Arent, when they were reviewing other potential co-plaintiffs that were harmed by Massad. Reier and Fiorillo even worked for a period of time to assemble a class of plaintiffs, with the intent to bring a "class action" against the Massad. Reier was also very interested and continued to consult and considered engaging as Fiorillo's special counsel for Fiorillo's eventual adversary proceeding in his 2010 bankruptcy. Fiorillo did not move forward with such engagement, where Fiorillo was successful working with his US Bankruptcy Trustees Goldsmith and Balldigger, that were overseeing his estate, and brought such adversary proceedings under Federal RICO.

- Over the last 5 years, Fiorillo has worked simultaneously with Arent Fox and Nick Nesgos directly, often collaborating on legal strategies and loan work outs for the benefit of GotSPACE ("GS") and Raymond Green Companies ("RCG") and loans and investments made to Ralph Caruso and his related companies that were in default. Where Nicholas Fiorillo at the direction of Attorney Nesgos and Raymond Green, invested upwards of \$400,000 in good faith deposit monies, to "seal the deal" on the RCG loan work out, that was to pave the way for GotSPACE to acquire the Charger Street self-storage facility. All such monies were then used to pay down the outstanding balance on the RCG Caruso Loans. Nick Nesgos and David Reier over the years, often gave Fiorillo legal advice, Fiorillo often confided in Arent Fox, from time to time and often shared confidential legal and financial information in Fiorillo and Greens and McLaughlin joint efforts to complete the "work out" of the Charger Street and Peabody loans and simultaneous acquisition of the self-storage facility by GS. Nesgos, Green, McLaughlin and Fiorillo worked diligently in the attempts of the restructuring of various "bad loans" that Raymond Green had advanced to Ralph Caruso. Nesgos and McLaughlin, both former Attorneys of the Defendants have continued to use confidential and privileged information obtained from their representation, former representation and consultation and collaboration with Nicholas Fiorillo and his development businesses for their own benefit.
- Between 2019 and 2021, Fiorillo engaged with Attorney George McLaughlin, III ("McLaughlin"), a principal and owner of the law firm The McLaughlin Brothers, P.C. (the "Firm"), to represent and advise him on several development opportunities and transactions involving his businesses, including but not limited

to GotSpace Data Equity Fund, LLC; Got Space, LLC; GS Gloucester, LLC; GS Beverly, LLC; GotSpace Gloucester, LLC; GotSpace Beverly, LLC; GotSpace Equity Fund 1, LLC; GotSpace Equity Fund I, LLC; and other related affiliates and businesses. [Fiorillo Aff., ¶ 2.]

- During the fall of 2019, McLaughlin and the Firm represented and advised Fiorillo and his company, Got Space, LLC, with regard to the company's purchase of self-storage facilities located in Miami, Florida from Storage Partners of K and P, LLC and Storage Partners of Miami. McLaughlin provided legal services to Fiorillo and Got Space, LLC in this transaction including but not limited to review of the sellers' financials, review of written agreements, and review of purchase and sale agreements. McLaughlin travelled to Florida with Fiorillo as his personal lawyer and as counsel for Got Space, LLC. During the course and scope of his representation, Fiorillo provided confidential information to McLaughlin regarding his business strategy, personal and company finances, and other confidential matters to facilitate his representation. [Fiorillo Aff., ¶ 3(a).]
- During the spring of 2019, McLaughlin represented and advised both myself and Got Space, LLC with regard to the purchase of the Swansea Mall properties located at Swansea Mall Drive, Swansea, Massachusetts, from Carlyle Swansea Partners, LLC. McLaughlin and the Firm provided comprehensive legal advice to me and Got Space, LLC with regard to the purchase and sale agreements, financing, zoning and legal issues with the town of Swansea, and legal issues related to Walmart's interests at the mall properties, among others. During the course and scope of his representation, I provided confidential information to McLaughlin regarding my business strategy, personal and company finances, and other confidential matters to facilitate his representation. [Fiorillo Aff., ¶ 3(b).]
- In late 2019 and early 2020, McLaughlin and the Firm represented and advised Fiorillo and Got Space, LLC related to the company's purchase of self-storage facilities located in Beverly and Gloucester, Massachusetts. Among other things, McLaughlin advised Fiorillo and the company with regard to the purchase and sale agreement and amendments thereto. Their representation included important legal advice warning against indemnifying the sellers of the properties for environmental issues that could arise after consummation of the deal. During the course and scope of his representation, Fiorillo provided confidential information to McLaughlin regarding his business strategy, personal and company finances, and other confidential matters to facilitate his representation. During the course and scope of his representation, McLaughlin and the Firm requested that Fiorillo and business partner Brian Sheehan each wire \$30,000 to Rising Tides, LLC. [Fiorillo Aff., ¶ 3(c).]
- Between 2019 and 2022, Nesgos, Reier, Peters, Greene, Hyman, Helman McLaughlin and their various law firms tortiously conspired, collaborated, intervened, filled joint and several unlawful legal papers, throughout their 6

different predatory debt collection actions against Fiorillo and Gotspace Development, LLC and its affiliates. Their consorted and tactical efforts to collect usurious sums of money and property under the threats of financial and physical harm, that Peters and McLaughlin have individually made directly to Fiorillo and his counsel physical, Peters threats to “blow up”, “bomb” “kill” and financially ruin Fiorillo is despicable. All along, Nesgos and Arent Fox have continued to aid and abett their clients continued extortion, embezzlement and threats to “shoot with guns”, “kill”, and “blow up”and foreclose on Fiorillo's Family home, as they have “sat on their hands”. Now they themselves have threatened criminal prosecution of Fiorillo in an attempt to gain a civil settlement of money and demand of upwards of \$6,800,000 not due or owing, is criminal. There is no question the millions of dollars this group of Attorneys are seeking to collect by illegal means of embezzle and extortion is illegal. Their attempts to usurp tens of millions of dollars in cash and real estate on top of such 350% usurious interest and their incestuous demand for their very own legal fees pushed the effective rates of usurious interest upwards of 450% collectively, not due or owing themselves or their Plaintiffs, is illegal. Peters and McLaughlin continue to stay in daily contact and “work from behind the scenes with each other ” with both Attorney's, Nesgos, Hyman and Hellman to financially ruin Fiorillo. As they continue as a criminal group to tortiously interfere with Fiorillo's multiple other self-storage developments. Where both Peters and McLaughlin continue to conspire with the Spitalny “bad actors”, convicted felon, Peter Spitalny and Raymond Green, Thomas Quinn and Suart Borstien, this clearly criminal group. Where they are in constant contact with Bluevista Capital, Prime Group Financial, Lifestorage and Cubesmart and Brady Sullivan and others in their efforts to complete their predatory “loan to own” scheme against Fiorillo. Where they, as a group, have continued to purport to be in control or actual “owners” of such self-storage facilitates and data campus sites throughout New England and other real estate opportunities/transactions that Fiorillo has underway in Connecticut, Massachusetts and Rhode Island. During the course and scope of their collective representation of Fiorillo, over the many years they had all worked for and on the behalf of Fiorillo. He provided highly confidential strategies, legal theories, potential claims and privileged and confidential information to the Arent Fox Attorneys, Nesgos, Reier, Greene, Peters, Hellman and McLaughlin regarding his business strategy, personal and company finances, and many other attorney client confidential matters to facilitate his representation. [Fiorillo Aff., ¶ 3(d).]

No later than the summer and early fall of 2021, McLaughlin and the Firm was representing several parties directly adverse to Fiorillo, Got Space, LLC and its affiliates; Gotspace Data Development, LLC and its affiliates; and Gotspace Equity Fund I, LLC; Gotspace Equity Fund 1, LLC¹, including but not limited to the Spitalney Actors. [Fiorillo Aff., ¶ 4.] On

¹ Gotspace Equity Fund I, LLC and Gotspace Equity Fund 1, LLC are hereinafter referred to collectively as GEFI.

his own behalf and on the behalf of Spitalney Actors and other parties involved in Fiorillo’s businesses, Arent Fox and McLaughlin and others in this criminal group sent threatening correspondence to Fiorillo and his attorneys and took various actions to make it difficult and/or impossible for Fiorillo to operate his businesses and/or raise capital as part of their concerted effort extort additional equity in Fiorillo’s businesses. [Fiorillo Aff., ¶ 5.]

Notwithstanding the Arent Fox Lawyers’ prior representation of Fiorillo, GotSPACE Data Equity Fund, LLC, Got Space, LLC; GotSPACE Data’s affiliates and associated companies, and other of Fiorillo’s businesses, McLaughlin filed the Spitalney Action *against* Fiorillo, GotSPACE Data and the Reach and Apply Defendants² on December 21, 2021. In the Spitalney Action, the Arent Fox Lawyers purport to indirectly represent Samuel B. Spitalney, Jacob L. Spitalney, Stephen Quillinan, and S&J Bros Storage, LLC (collectively the “Spitalney Actors”) against Fiorillo, GotSPACE Data, and the Reach and Apply Defendants. In the Spitalney Action, with Kevin Peters as merely a front for McLaughlin, the Arent Fox Lawyers have named GotSPACE Equity Fund I and GotSPACE Equity Fund 1 (collectively “GEFI”) as Reach and Apply Defendants. [Spitalney Action Dkt. No. 1, Complaint.]

Undeterred by the obvious disqualifying conflict arising from both suing and representing the *same* party in closely related actions arising from similar nexuses of facts, on January 11 and later in 2022 the Arent Fox Lawyers and McLaughlin/Peters filed notices of appearance in the Green Action purporting to be *counsel* for GEFI – the very same entity it is prosecuting as a defendant in the Spitalney Action. [Green Action Dkt., January 4, 2022 Arent Fox Lawyers’ Notices of Appearance.] On January 12, 2022, McLaughlin filed an Emergency Opposition to Plaintiff’s Motion for Writ of Attachment in the Green Action contending that they will be harmed if Plaintiff in the Green Action, Raymond C. Green, Inc. as Trustee of the Raymond C. Green Trust, is allowed to obtain an attachment prior to them obtaining a preliminary injunction – still purporting to be counsel for GEFI. [[Green Action Dkt. No. 6.]

² The Reach and Apply Defendants named in the Spitalney Action include numerous GotSPACE Data affiliates and associated companies

However, as Peters/McLaughlin now concedes in its prior Emergency Opposition, Fiorillo owns a 65% *controlling* interest in GEFI, a Massachusetts Limited Liability. [*Id.*] And while Peters/McLaughlin alleges that their client S&Q, is the Manager of GEFI and they are GEFI's counsel, in reality, it is indisputable that: (1) Fiorillo is the *actual* Manager of GEFI; (2) in his capacity as Manager, Fiorillo never hired McLaughlin to represent GEFI in the Green Action or otherwise consented to such representation; and (3) even assuming that McLaughlin was at some point counsel for GEFI – which they were not – Fiorillo has terminated any such representation, but now Peters is just a new face of Mclaughlin as they continue even up and until this moment to conspire with each other to financial ruin and physically harm Fiorillo. [Fiorillo Aff., ¶¶ 6-12, and Ex. 1 thereto (Mass SOS. Entity Summary).] Accordingly, Arent Fox and McLaughlin, which both have previously represented Fiorillo, Gotspace Data and its affiliates, other of Reach and Apply Defendants and Fiorillo's businesses, is attempting to both *prosecute* claims against GEFI in the Spitalney Action in position adverse to GEFI's sole manager and controlling owner, while simultaneously *defending* GEFI as a reach and apply defendant in the Green Action.

The Peters, Nesgos, Reier, Hellman and McLaughlin Lawyer's web of disqualifying conflicts does not end there. Not only did McLaughlin and Nesgos represent and advise Fiorillo in the aforementioned deals, transactions, and business opportunities, Mclaughlin simultaneously obtained stakes in Fiorillo's businesses without: (1) providing Fiorillo with written explanation of the potential or actual conflicts arising from such competing relationships; (2) without ensuring that Fiorillo and his businesses were represented by separate counsel in entering into such conflicting arrangements; and (3) without obtaining Fiorillo's informed written consent – to the extent Fiorillo could have even given such consent. [Fiorillo Aff., ¶¶ 15-16.] Specifically, McLaughlin and Nesgos and Reier continue to exploit the confidential information they have learned from their representation of Fiorillo and his businesses and used a deceptive scheme to collect millions of dollars in real estate, usurious interest, legal fees and intellectual property and McLaughlin's rebuked 18% ownership of the Swansea Mall he stole from Fiorillo. As

McLaughlin, has a personal interest in the Swansea Mall he attempted to hide from the court. All along, this criminal group continues to collude with Ray Green, Peter Spitalny, Thomas Quinn and Stuart Borstien and the other bad actors, including but not limited to orchestrating and prosecuting multiple illegal debt collection actions against Fiorillo and the Gotspace Entities as part of this group's deceptive scheme to "loan to own" Fiorillo. Where they have effectively halted Defendants' ability to conduct business or raise money, and freeze Fiorillo's ability to repay this criminal group. So then they can claim defaults on their illicit debts, and then convert Defendants' ownership interests as their own. Given that McLaughlin, Peters, Hellman and Arent Fox have continued to demand legal fees from Fiorillo directly and McLaughlin and Peters' existing interest in the Swansea Mall where they stand to benefit financially if Defendants are disemboweled of their claims to ownership interests that was extorted from Fiorillo – which will thus allow them to increase their personal stake, McLaughlin, Peters, Reier, Hellman and Nesgos effectively all have a *personal* interest in *this* litigation. And given their involvement in this criminal predatory "loan to own" enterprise, their demand for legal fees and McLaughlin and Peters' usurping of the Swansea Mall deal, not just as conflicted counsel to various adverse parties, but as a part owner, they are in *fact witness* in this case. Notably, in conversations and email demands for legal fees, tacked on to their sometimes, as much as 350% usurious rates of interest demands. Where McLaughlin, Hellman, Peters and Nesgos, had demanded from Fiorillo, extorted him into paying them upwards of "\$500,000 in legal fees, as part of their illegal collection activities", and demands to turn over millions of property and money, or else lose ownership interest in properties or be financially ruined or even killed. Where Fiorillo's life could be in danger if he did not comply with such expressionistic demands. [Fiorillo Aff., ¶ 16.]

At no time in Fiorillo's individual capacity or as manager and/or controlling owner of the Gotspace Entities did he ever consent to the Arent Fox Lawyers' representation against any of the Green or Spitalny Defendants against him or his companies. Indeed, if he were to do so, he would be in breach of his fiduciary duties to the Gotspace Entities and their other investors and owners. [Fiorillo Aff., ¶ 17.] At no time through the present have the Arent Fox Lawyers contacted

Fiorillo to request my informed, written consent to allow them to represent or work with the Spitalney Actors or anyone else in a position adverse to me or the GotSPACE Entities. [Fiorillo Aff., ¶ 18.]

Starting in September 2021, Attorney Neil Kruezer, counsel for Fiorillo, GotSPACE Data and the other GotSPACE affiliates (including GEFI), have sent numerous Disqualification Notices to the Arent Fox Lawyers: (1) advising of their numerous conflicts arising from their representation of Fiorillo in the aforementioned business transactions, deals, and opportunities and their current representation of the Green and Spitalney Actors matters (and now litigation) directly adverse to Fiorillo and the GotSPACE entities; (2) advising that they are impermissibly using confidential and proprietary information obtained from Fiorillo in their representation of him and his businesses for their own benefit and for the benefit of their adverse clients, such as the Green and the Spitalney Actors; and (3) demanding that they cease and desist from continuing to take any positions adverse to Fiorillo, the GotSPACE entities, and any other of Fiorillo's businesses. Fiorillo Aff., ¶ 13, and Ex. 2 thereto (Disqualification Notices).] The Arent Fox Lawyers have and continue to refuse to comply with the Disqualification Notices, have denied any conflicts, and rather have dug in their heels by continuing to represent the Green Entities and Spitalney Actors and prosecuting this action against their former clients. [*Id.*, at 14; Spitalney Action, Dkt. No. 1.]

II. **ARGUMENT**

A. **A Lawyer's Duties to His Client**

“A lawyer should represent a client zealously within the bounds of the law” and “act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.” MRPC R. 1.3 (Diligence), and cmt 1. This means that the lawyer must use all information available to him or which may be lawfully discovered to advance his client's position and interests. A lawyer also may not disclose a client's confidential information related to the representation if such disclosure would harm the client and only if and when the lawyer

has the client's consent to do so unless an exception to Rule 1.6 applies. MRPC R. 1.6 (Confidentiality of Information).

A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent or as otherwise permitted by these Rules, the lawyer must not reveal confidential information relating to the representation. See [Rule 1.0\(f\)](#) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship.

MRPC R. 1.6 (Confidentiality of Information), cmt 2.

The lawyer-client relationship “is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. MRPC R. 1.7 (Conflicts of Interest), cmt. 12. “Loyalty and independent judgment are essential elements in the lawyer’s relationship to a client.” MRPC R. 1.7, cmt 1; see *Hilti, Inc. v. HML Development Corp.*, 2007 WL 809792, 26 (Mass.Super. 2007) (unless consent is provided, “an attorney may not simultaneously represent differing interests that are adverse to one another.”) and *Inverness Medical Switzerland GMBH v. Acon Laboratories, Inc.*, 2005 WL 1491233, 7-8 (D.Mass 2005) (quoting MRPC 1.7, Comment 4) (“[T]he focus of the court [in conflicts analysis] must be on whether the lawyer's loyalty to the client is threatened...[or whether] ‘the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.’”).

The duties of loyalty and confidentiality survive the termination of the lawyer-client relationship. MRCP R. 1.9(a)-(c) and cmt. 2; *Bays v. Theran*, 418 Mass. 685, 691 (1994). Thus, if a lawyer represents Client A in certain business transactions and then later represents Client B in matters arising from those same transactions in position adverse to Client A, the lawyer will not be able to fulfill his ongoing duty of loyalty and confidentiality to Client A while simultaneously fulfilling his duty of loyalty and zealous representation to Client B because he will be both prohibited from disclosing Client A's confidential information Client B by Rule 1.6 and bound to disclose and use Client A's confidential information for the benefit of Client B

pursuant to Rule 1.3. MRCP R. 1.9(a)-(c) and cmt. 2; MRCP R. 1.3 and cmt. 1; MRCP R. 1.6. Thus, absent informed written consent, “[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client...” MRPC R. 1.9(a).

B. David Reier and Nick Nesgos and Arent Fox's Prior Representation of Fiorillo and his other development companies, and the Gotspace Entities, with identical predatory lending claims and actions against other “loan sharks” that Fiorillo clearly was a victim of and the more recent Same Type Business Transactions, Deals, and Opportunities that Are at Issue in this Litigation that mirror the Caruso Issues, Prohibit them from Taking Any Adverse Position to Fiorillo and/or the Gotspace Entities Because Any Such Representation Is Explicitly Prohibited by Rule 1.9 and Would Require Them to Violate Their Ongoing Duties of Loyalty and Confidentiality to Their Former Clients Fiorillo and Gotspace – the Arent Fox Lawyers Must Be Disqualified

As set forth above, the Arent Fox Lawyers advised and represented Fiorillo and Gotspace Entities with regard several business transactions and deals related to the purchase development properties including but not limited the Got Space, LLC’s purchase of self-storage facilities in Revere and Peabody and the collective collection efforts that are ongoing of Swansea Mall recovery and the sale of the Beverly and Gloucester self-storage facilities. [Fiorillo Aff., ¶¶ 2-4, 13-16 and Exs. 1-3, 5-6.] In this action, they represent the Greens and the Spitalney Actors with regard to alleged promissory notes which related to the financing of the Connecticut Data Deal, Newton Deal, Revere Deal, Newport Beach Club Deal, the Beverly and Gloucester Deal and the Swansea Mall deal, which the Greens and the Spitalney Actors all contend are in default thus entitling them to Fiorillo and Gotspace Storage and Data’s ownership interests in these properties.

During the course and scope of the Arent Fox and McLaughlin Lawyer’s representation of Fiorillo and Gotspace Entities, Connecticut Data Deal, Newton Deal, Revere Deal and the Beverly Gloucester deal, Bluevista deal and in the Swansea Mall transactions, Fiorillo provided the lawyers with substantial confidential and proprietary information regarding his personal and

company finances, his business strategy, and his concerns and potential legal exposure. Earlier on David Reier, then later Nick Nesgos and now Peters and McLaughlin advised him with regard to the same. As such, the Arent Fox Lawyers are privy to and in possession of substantial confidential information belonging to Fiorillo, and his identical predatory lending claims against Massad he consulted for months with Attorney Reier and the GotSPACE Entities which they are bound to keep confidential for the benefit of Defendants on the one hand, and simultaneously obligated to use and disclose in furtherance of their representation of the Green and the Spitalney Actors *against* Defendants in this action. Fiorillo has not, cannot, and will not give consent to the Arent Fox Lawyers to take adverse positions against him and the GotSPACE Entities and the Arent Fox Lawyers have never approached Fiorillo and sought his consent. Accordingly, the Arent Fox Lawyers' representation of the Green and Spitalney Actors in this action and/or the Green Action constitutes clear, ongoing, egregious, and sanctionable violation of Rules of Professional Conduct 1.3, 1.6, and 1.9. Such conduct mandates the disqualification of the Arent Fox Lawyers in this action and the Spitalney Action and they should be prohibited from taking any further adverse positions against Defendants.

C. Arent Fox and McLaughlin and the Firms that represented Fiorillo and the GotSPACE Entities While Taking Ownership Interests in Fiorillo's Businesses in Violation of MRCP Rule 1.8(a)-(b) and Are Pursuing This Action Against on Behalf of Plaintiffs in Part for Their Own Financial Gain and to Defendants' Detriment

MRPC Rule 1.8(a) prohibits a lawyer from "entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client unless: (1) the terms are fair and reasonable to the client and are fully disclosed and provided in writing in a manner that can be understood by the client; (2) the client is advised of the desirability of seeking and is given a reasonable opportunity to secure the advice of independent counsel; and (3) the client gives written informed consent to the essential terms, the lawyer's role, and whether the lawyer is representing the client. MRPC Rule 1.8(b) prohibits a lawyer from using confidential information related to his representation of a client for the

lawyer's own advantage or the advantage of a third party unless the client gives informed consent as set forth in subsection (a) and MRPC Rule 1.0(f).

Here, it is clear that Arent Fox and Helman, McLaughlin, Peters and their Firms represented and advised Defendants in the aforementioned transactions and that McLaughlin has obtained a 18% stake in the Swansea Mall property by extortion. By way of this action, which he purports to bring on behalf of the Green and the Spitalney Actors, Mclaughlin and Peters will personally benefit if Fiorillo and the Gotspace entities are stripped of their ownership interests in the Mall because it will allow him to remove a perceived enemy and potentially increase his ownership stake in what all parties can agree is a lucrative development opportunity. Regardless, undeterred by the obvious conflicts which often arise when a lawyer takes an ownership interest in a client's business venture or property by way of a demand of legal fees or demand of property not due or owing, Arent Fox, McLaughlin and Peters have brazenly failed to take any action to comply with MRCP Rule 1.8(b) – he has not sought or requested Defendants' informed, written consent to their assumptions of demand for over \$500,000 in legal fees on top of demands of upwards of 350% in usurious interest. Defendants have not and will not provide any such consent because it would cause them clear harm. Indeed, McLaughlin's and Peters ownership interest is resulting in the precise outcome Rule 1.8 is designed to prevent – they continue to use confidential information obtained from their attorney-client relationship with their prior clients – Defendants – to not only represent the Greens and the Spitalney Actors against Defendants in an obviously related matter, but in a way that will result in pecuniary personal gain for themselves and substantial harm to Defendants if they are successful. Moreover, given Arent Fox, Peters, Hellmans and McLaughlin's demands for legal fees as they carry out their duties to “collect at all costs” the criminal groups ill gotten and clearly usurious gains, they have a direct personal involvement and ownership stake in the successes of the criminal groups collection activities and McLaughlin and Peter's Swansea Mall deal, they are not only conflicted counsel to various adverse parties, but also a *fact witness* in this case.

Therefore, Arent Fox, Peters, Hellman and Mr. McLaughlin's demands of legal fees from Fiorillo and his entities and coupled with the illegal usurping of an ownership interest in the Swansea Mall, and Mclaughlin's failure to obtain informed written consent from his now former clients, and the other attorney prosecution of this action which, if successful, will likely result in financial gain for them while wiping out their prior clients' interests in their real estate self-storage and data assets and family home and the Swansea Mall rights of redemption, is a clear violation of Rule 1.8 which requires immediate dismissal.

D. The Arent Fox Lawyers' Concurrent Representation of the Greens *Against* GEFI in the Spitalney Action and Purported Representation of the GEFI in the Green Action is a Prohibited and Disqualifying Concurrent Conflict of Interest in Violation of MRPC Rule 1.7(a)

As set forth above, the Arent Fox Lawyers represent Green in this action *against* Fiorillo, Gotspace Data, and reach and apply defendant GEFI and by way of their complaint and motion for preliminary injunction, they seek to effectively enjoin GEFI from conducting business and to freeze its assets. And yet, contrary to their adverse position to GEFI in this action, they also purport to *represent* GEFI as a reach and apply defendant in the Spitalny Action. There can be no greater conflict than representing and suing the same client at the same time in related actions and such representation is clearly proscribed by Rule 1.7(a).

Moreover, Fiorillo has corporate controlling interest in GEFI and Ocean Development companies, is presently its sole manager, and has not given any informed consent to Arent Fox, Mclaughlin and Peters or permission to represent GEFI and Ocean – much less simultaneously represent and sue the company. Indeed, even if Fiorillo were to attempt to give any such informed consent pursuant to Rule 1.7(b) – which he cannot – he would be in clear breach of his fiduciary duties to the company because he would be authorizing the company's retention of lawyers who are actively engaged in taking its assets and enjoining it from conducting business. For this reason alone, the Arent Fox Lawyers should be disqualified from representing any parties in this action.

III. CONCLUSION

For the foregoing reasons, and because such Attorney's at Arent Fox were officially noticed of such conflicts as communicated and served by Attorney Neil Kreuzer, 4 different times throughout this litigation. Arent Fox has not withdrawn and purports they have no conflicts. Defendants respectfully request that the hearing on Defendants motion to disqualify may have 60-days to conduct discovery into the Arent Fox Lawyer's aforementioned conflicts; that the Court set a schedule an evidentiary hearing so that the parties may examine witnesses with relevant knowledge of the conflict issues; and/or the Court schedule a motion hearing on Defendants' motion to disqualify as soon as practicable after the 60-day discovery period.

Respectfully Submitted,
Defendants Nicholas Fiorillo, pro se

By

/s/ Nicholas Fiorillo
Nicholas Fiorillo metrowestrealty@yahoo.com
3 Kales Way, Harwichport
MA 02646 (508)776-7219

CERTIFICATE OF SERVICE

I, Nicholas Fiorillo, pro se GotSPACE Data Equity Fund, LLC, and the GotSPACE Reach and Apply Defendants, hereby certify that I caused a true copy of the within document to be served upon the following via e-mail on March 23, 2022:

Nicholas Fiorillo
3 Kales Way, Harwichport
MA 02646 (508)776-7219
metrowestrealty@yahoo.com

/s/ Nicholas Fiorillo
Nicholas Fiorillo, pro se

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
DOCKET NO.

RAYMOND C. GREEN, INC., as TRUSTEE OF
THE RAYMOND C. GREEN TRUST,

Plaintiff

v.

LOUIS DELPIDIO and NICHOLAS FIORILLO,

Defendants

and

GOTCAPITAL LLC,
GOTSPACE DATA FUND ONE LLC,
GOTSPACE DATA PARTNERS LLC,
GOTSPACE DEVELOPMENT LLC,
OCEAN DEVELOPMENT PARTNERS LLC,
OCEAN DEVELOPMENT PRECINCT I LLC,
OCEAN INVESTMENT HOLDINGS LLC,
OCEAN VACATIONS LLC,
OCEAN VACATIONS REALTY TRUST,
ONE SEVEN ONE LLC, WONDERLAND
PROPERTIES, LLC, TREMONT
ENTERTAINMENT ENTERPRISES, INC.,
W LOFTS DEVELOPMENT, LLC, OCEAN
REALTY PARTNERS, LLC, GOTSPACE DATA
EQUITY FUND, LLC, GOTSPACE EQUITY
FUND I, LLC, GOTSPACE SELF STORAGE
HOLDINGS, LLC, GOTSPACE
MANAGEMENT, LLC, GS BEVERLY, LLC, GS
GLOUCESTER, LLC, GOTSPACE BEVERLY,
LLC and GOTSPACE GLOUCESTER, LLC,

Reach and Apply Defendants.

C.A. No. 2184-cv-02950-BLS1

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISQUALIFY

Defendant Nicholas Fiorillo (“Fiorillo”) has brought a confused and meritless motion to disqualify ArentFox Schiff LLP (“Arent Fox” or the “Firm”) and Attorney Nicholas J. Nesgos (“Nesgos”) from representing their longstanding client, Raymond C. Green, Inc., as Trustee of the Raymond C. Green Trust (the “Trust”). Although the grounds for the disqualification motion are difficult to decipher, Fiorillo appears to argue that Arent Fox and its attorneys should be disqualified from representing the Trust because, in or about 2006, Fiorillo spoke with David Reier, then a partner at Posternak Blankstein & Lund LLP (“Posternak”), the Boston office predecessor of Arent Fox, about possibly representing him in a potential claim against Commerce Bank. However, Fiorillo never retained Reier or Posternak to represent him in that matter. No engagement letter was ever executed and no fees were charged. The Firm has no confidential information belonging to Fiorillo. Even if Fiorillo’s limited consultation with Attorney Reier over 13 years ago makes him a “former client,” which the Trust denies, Arent Fox should not be disqualified under Mass. R. Prof. C. 1.9 because the current litigation is not “substantially related” to the matter Reier was consulted about in 2006.

The Trust’s principal counsel in this litigation (Attorney Nesgos) has never spoken with Mr. Fiorillo other than meeting him in court in this case and participating in one brief telephone call along with Fiorillo’s counsel in November 2021 at which time Mr. Nesgos was representing the Trust and was threatened by Mr. Fiorillo. There simply are no conflicts of interest precluding ArentFox from representing the Trust in this litigation. The Court should summarily deny Fiorillo’s motion to disqualify.

In Support of this Opposition, the Trust submits the Affidavit of Nicholas J Nesgos (“Nesgos AFF.”) and the Affidavit of David Reier (“Reier Aff.”).¹

BACKGROUND FACTS

The Trust filed this action on November 29, 2021 against Nicholas Fiorillo and Louis Delpidio each of whom unconditionally guaranteed repayment of all sums due and owing to the Trust under two promissory Notes (the “Notes.”). The Notes were issued to the Trust by Ocean Development Partners, LLC (ODP”), an entity now in bankruptcy. Verified Complaint, ¶¶ 18-20. The Notes are in default and, despite demand, Defendants have failed to honor their guaranty obligations. Id., ¶¶ 21-23. As of March 31, 2022 the debt stood at over \$ 7,000,000.00. Affidavit of Raymond Green in Support of Default Judgment, ¶ 1.²

Nicholas Nesgos, a litigation partner at ArentFox, has represented Raymond C. Green, Inc (“RCG”) and affiliated entities, including the Trust, on various matters for approximately 10 years. Nesgos Aff. ¶ 4. Both Reier and Nesgos were partners at Posternak until that firm merged with Arent Fox in January 2019. They continued to represent RCG and the Trust at Arent Fox. Nesgos Aff., ¶1 and 4; Reier Aff., ¶ 1-3.

Reier spoke with Mr. Fiorillo in or around December 2006 after a lawyer had referred Fiorillo to Reier for possible legal representation. At the time, Reier was a partner at Posternak.

¹ Mr. Fiorillo improperly filed his motion with the Court clerk on the morning of April 4, 2022 in contravention with Rule 9A, stating, in an email to the Court, that he had not received an opposition to his motion to disqualify. Mr. Fiorillo served his motion to disqualify in the early hours of the morning on March 23, 2022. Under Rule 9A, Plaintiff had 10 days to serve an opposition to that motion, which in this case resulted in a service date of April 4, 2022.

² On April 2, 2022, Plaintiff filed a request for entry of default judgment via e-filing. That filing has not, as of the date and time this brief is submitted, been docketed yet, but will shortly be available to the Court.

Fiorillo was involved in a dispute with Commerce Bank & Trust of Worcester, Massachusetts, which was owned and/or controlled by a certain David Massad. Reier Aff. ¶ 5-6.

Fiorillo and Reier were not able to reach agreement on the terms of an engagement. Accordingly, Posternak never opened up a matter for him and neither Reier nor the Firm actually represented Fiorillo in any matter. Reier Aff., ¶ 5-6. Reier may have met Fiorillo once at the office (although he has no memory of the substance of the meeting). He may have spoken with Fiorillo on the telephone a few times thereafter regarding the matter and most likely exchanged a few emails with him. Reier recall no other communications with Fiorillo regarding the Commerce Bank matter. *Id.* Fiorillo did not attempt to contact Reier further about representing him. Reier had no subsequent communications with Fiorillo about representing him on any matter. *Id.*, ¶ 7-8.

Reier has no recollection of ever having given Fiorillo substantive legal advice on any matter, including, specifically, the Massad/Commerce Bank matter and what his Motion refers to as a matter involving a dispute with a certain Marcello Mallegini and LBM Financial. *Id.* Reier was never involved in any manner in Mr. Fiorillo's subsequent personal bankruptcy and at no time did he ever consider representing him as "special counsel" in an "adversary proceeding in his 2010 bankruptcy," as alleged in the Motion, or any other aspect of Mr. Fiorillo's dispute with Commerce Bank, Mr. Massad or LBM Financial. Nor did Reier ever represent any other persons in any litigation against Commerce Bank, as alleged in the Motion. Whether or not Fiorillo might have himself entertained the idea of a class action against Commerce Bank, at no time did Reier ever work "to assemble a class of plaintiffs" who were "harmed by Massad," as the Motion alleges. *Id.*

There was never any engagement agreement between Fiorillo and Posternak, and the Firm's client file system has no record of any client files ever having been opened on his behalf. Reier Aff., ¶ 7-8. Fiorillo was never invoiced by Posternak for legal services and the Firm has no

record of his ever having paid for any. The Firm has no record of setting up a billing number for Fiorillo or any of his entities. *Id.*

Nesgos never represented Fiorello or any of the Reach and Apply Defendants in any matter. Nesgos Aff., ¶ 5-6. Fiorillo’s Motion references a development project involving Ralph Caruso. As described in his affidavit, Nesgos represented the Trust in litigation against Caruso. Nesgos Aff., ¶ 6. Fiorillo is not mentioned in the Complaint the Trust filed against Caruso and Fiorillo was not a party to the litigation. *Id.*, Exhibit B. Nesgos did not represent Fiorillo in that matter. Indeed, Nesgos has no memory of ever speaking with Fiorillo with respect to the Caruso litigation and he does not know what involvement Fiorillo had in dispute. *Id.*

The first time Nesgos met Fiorello was in court on March 22, 2022 when he appeared at a hearing as a *pro se* defendant in this action. Nesgos Aff., ¶ 5. Nesgos spoke by telephone with Fiorello on one occasion on November 9, 2021. At that time, Nesgos was representing the Trust with respect to its claims under the Fiorillo guaranty. Neal Kreuzer (counsel for Fiorillo) had telephoned Nesgos asking that he call him back to discuss the dispute between the Trust and Fiorello. When Nesgos called Kreuzer back, Fiorillo was also on the line. Fiorillo berated and made threats against Nesgos, RCG, Raymond Green (“Mr. Green”) and his wife, Joan Green. Nesgos hung up the phone. *Id.*, ¶ 5

ARGUMENT

Fiorillo has a heavy burden in seeking to dislodge opposing counsel. “While the right of a litigant to counsel of his choosing is not absolute and cannot always predominate, [m]otions to disqualify must be considered in light of the principle that courts ‘should not lightly interrupt the relationship between a lawyer and [a] client. A disqualification may occur only if the trial court [judge] determines that [a lawyer’s] continued participation as counsel taints the legal system.” *Slade v. Ormsby*, 69 Mass. App. Ct. 542, 545-46 (2007) (internal quotations and citations omitted).

Also, “[j]udges must guard against the Canons of Ethics being brandished for tactical advantage and must prevent litigants from wielding the rule as a weapon to maneuver opposing counsel’s withdrawal and to that degree unsettle the adversary.” *Smaland Beach Ass’n, Inc. v. Genova*, 461 Mass. 214, 221 (2012). “In sum, judges should hesitate to order disqualification except ‘when absolutely necessary.’” *Slade*, 69 Mass. App. Ct. at 545-46, quoting *G.D. Matthews & Sons Corp. v. MSN Corp.*, 54 Mass. App. Ct. 18, 21 (2002). Defendants do not come close to meeting their burden here.

A. Fiorillo Was Never A Client Of The Firm

Fiorillo’s disqualification motion fails in the first instance because he never formed an attorney-client relationship with the Firm. An attorney-client relationship normally requires “an express contract.” *International Strategies Group, Ltd. v. Greenberg Traurig, LLP*, 482 F.3d 1, 7 (1st Cir. 2007). Here, there was never an express agreement by which Posternak agreed to represent Fiorillo in his dispute with Commerce Bank (or on any other matter). The Firm never entered into a retention agreement with Fiorillo; nor did it bill Fiorillo for services. Accordingly, Fiorillo was never a client of the Firm. *Id.* (no express attorney client relationship formed where “no evidence ... of a retainer agreement or other contract for legal services ...; nor is there evidence of billing or remittance for such services.”).

Fiorillo also cannot establish an implied attorney-client relationship with the Firm based upon his limited communications with David Reier 13 years ago. In order to establish an implied attorney-client relationship, a party must identify a “concrete communication by the [person] requesting that the attorney represent him, or explicitly seeking individualized legal advisement.” *International Strategies*, 482 F. 3d at 8 (emphasis added), citing *Robertson vs. Gaston Snow & Ely Bartlett*, 404 Mass. 515 (1989). Fiorillo has not done so here. He identifies no specific advice

sought or received. Additionally, “the question whether there was an attorney-client relationship depends on the reasonableness of the [person’s] reliance” on the lawyer as his own counsel. *Devaux*, 387 Mass. at 819; *International Strategies*, 482 F. 3d at 7, 10. There is absolutely no evidence that Reier provided any substantive advice let alone that Fiorillo relied on any such or believed that Reier was *his* personal counsel. Indeed, after he was unable to reach agreement on engagement terms, Fiorillo never again spoke with Reier. These facts preclude the imputation of an implied attorney-client relationship. *See e.g., Wessell v. Minkbrook Associates, Inc.*, 87 Mass. App. Ct. 747 (2015) (no implied attorney-client relationship even though attorney had provided informal legal advice to and drafted legal documents for the plaintiff on multiple occasions over a period of four years); *Sheinkopf v. Stone*, 927 F.2d 1259, 1266-67 (1st Cir. 1991) (no implied relationship even though attorney prepared various legal documents for the investor’s signature and requested that he sign them; promised to “protect” the investor; told the investor that “other clients of [the firm]” were also investing in the venture; listed the firm’s address on the joint venture’s legal documents; and transacted the joint venture out of his law firm office with the assistance of his law firm secretary).³

B. Even Assuming Arguendo that the Firm Did Represent Fiorillo, the Prior and Current Matters are Not “Substantially Related.”

Mass. R. Prof. C. Rule 1.9(a), which concerns a lawyer’s duties to “former clients,” provides:

A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests

³ *See also Robertson v. Gaston Snow & Ely Bartlett*, 404 Mass. 515 (1989) (no implied relationship between corporate officer and law firm representing corporation, even though the officer previously had been a client of the firm on other matters, had numerous discussions with the firm about the corporate reorganization and his future employment with the corporation and had requested and received a sample employment agreement from the firm).

are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

Matters are “substantially related” for purposes of this Rule only if “they involve the *same transaction or legal dispute ...*”. Mass R. Prof. C. 1.9, cmt. 3 (emphasis added.) The Trust’s litigation against Fiorillo concerns guarantees executed by Fiorillo to secure loans made in 2018. Fiorillo does not describe with any clarity his prior dispute with Commerce Bank, but it clearly is not *the same* transaction or legal dispute involved in this litigation.

Moreover, in order to disqualify counsel under Rule 1.9(a) “counsel must possess confidential information that could be used against the former client in the current representation.” *Wessell*, 87 Mass. App. Ct. at 752 (disqualification motion denied where counsel never gained confidences in prior matters that could be used at trial) *citing Masiello v. Perini Corp.*, 394 Mass. 842, 847-50 (1985). *See also, Adoption of Erica*, 426 Mass. 55, 51 (1997) (same). This is because “[t]he conflict of interest in representing a current client with interests adverse to those of a former client arises from the attorney’s duty under Canon 4 to preserve his client’s confidences and secrets.” *Masiello*, *supra* at 847. As the Court stated in *Masiello*: “Clearly, where the judge determines that there exist no confidences from the first representation which would be relevant to the second, disqualification is unnecessary and the parties’ choice of counsel should prevail.” *Id.* at 848.

There simply is no evidence that the Firm possesses any confidential information from Reier’s limited contact with Fiorillo 13 years ago. For this additional reason, the motion to disqualify should be denied.

CONCLUSION

For each of the reasons discussed above, the motion to disqualify should be denied.

RAYMOND C. GREEN, INC., as Trustee
of the Raymond C. Green Trust,

By its attorneys,

/s/ Nicholas J. Nesgos

Nicholas J. Nesgos, BBO No. 553177

nicholas.nesgos@afslaw.com

ArentFox Schiff LLP

The Prudential Tower

800 Boylston Street

Boston, MA 02199-8004

(617) 973-6100

Dated: April 4, 2022

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document is being served, via email and first class mail,
on the following counsel of record for the other parties in this matter on April 4, 2022:

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/s/ Nathaniel J. Hyman
Nathaniel J. Hyman (BBO No. 698506)

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
DOCKET NO.

RAYMOND C. GREEN, INC., as TRUSTEE OF
THE RAYMOND C. GREEN TRUST,

Plaintiff

v.

C.A. No. 2184-cv-02950-BLS1

LOUIS DELPIDIO and NICHOLAS FIORILLO,

Defendants

and

GOTCAPITAL LLC,
GOTSPACE DATA FUND ONE LLC,
GOTSPACE DATA PARTNERS LLC,
GOTSPACE DEVELOPMENT LLC,
OCEAN DEVELOPMENT PARTNERS LLC,
OCEAN DEVELOPMENT PRECINCT I LLC,
OCEAN INVESTMENT HOLDINGS LLC,
OCEAN VACATIONS LLC,
OCEAN VACATIONS REALTY TRUST,
ONE SEVEN ONE LLC, WONDERLAND
PROPERTIES, LLC, TREMONT
ENTERTAINMENT ENTERPRISES, INC.,
W LOFTS DEVELOPMENT, LLC, OCEAN
REALTY PARTNERS, LLC, GOTSPACE DATA
EQUITY FUND, LLC, GOTSPACE EQUITY
FUND I, LLC, GOTSPACE SELF STORAGE
HOLDINGS, LLC, GOTSPACE
MANAGEMENT, LLC, GS BEVERLY, LLC, GS
GLOUCESTER, LLC, GOTSPACE BEVERLY,
LLC and GOTSPACE GLOUCESTER, LLC,

Reach and Apply Defendants.

**AFFIDAVIT OF NICHOLAS J. NESGOS IN
OPPOSITION TO MOTION TO DISQUALIFY**

I, Nicholas J. Nesgos, do hereby depose and say as follows:

1. I am a partner at the law firm ArentFox Schiff LLP (“Arent Fox”). I was formerly a partner at Posternak Blankstein & Lund LLP (“Posternak” and together with Arent Fox, the “Firm”). Effective January 1, 2019, Posternak merged with Arent Fox thereby becoming its Boston office.

2. I submit this affidavit in opposition to the motion of Nicholas Fiorillo to disqualify me and other counsel at Arent Fox based upon an alleged conflict of interest (the “Motion”). I make this affidavit on the basis of my own personal knowledge and, where indicated, based upon my review and supervision of the review of the Firm’s books and records.

3. I have been engaged in the private practice of law since 1988. I am admitted to practice in Massachusetts, including the Massachusetts Federal District Court. I am a member of the Massachusetts Bar in good standing, and have never in my career been the subject of any disciplinary proceedings in any jurisdiction where I am or have been admitted to practice. The concentration of my practice is complex litigation. I am the Boston office leader of the Arent Fox complex litigation group.

4. I have represented Raymond C. Green, Inc. (“RCG”) and certain affiliated entities including The Raymond C. Green Trust (the “Trust”) on various matters over the past 10 years. RCG retains me (and the Firm) from time to time with respect to workout or litigation matters. I am the billing and originating partner with respect to RCG and, as such, have knowledge of the Firm’s historic relationship with RCG.

5. I have never represented Nicholas Fiorillo (“Mr. Fiorillo”) or any of the Reach and Apply Defendants in any matter. The first time I met Mr. Fiorello was in court on March 22, 2022 when he appeared at a hearing as a *pro se* defendant in this action. To the best of my knowledge,

the only occasion on which I spoke with Mr. Fiorello occurred on November 9, 2021. At that time, Mr. Fiorillo was represented by Neil Kreuzer (“Mr. Kreuzer”). Mr. Kreuzer had telephoned me asking that I call him back to discuss the dispute between the Trust (my client) and Mr. Fiorillo (Mr. Kreuzer’s client) with respect to Fiorillo’s guarantee obligations to the Trust. When I called Mr. Kreuzer back, Mr. Fiorillo was also on the line. Mr. Fiorillo at that time berated me and made threats against me, RCG, Raymond Green (“Mr. Green”) and his wife, Joan Green. I hung up on Mr. Fiorillo and Mr. Kreuzer. Thereafter, I sent Mr. Kreuzer an email which is attached hereto as **Exhibit A**.

6. In his affidavit and the Motion, Mr. Fiorillo makes various vague allegations that I represented him on prior occasions. I never did so; nor did the Firm. Mr. Fiorillo references my representation of the Trust in a matter adverse to Ralph Caruso, Jr. (“Mr. Caruso”). A copy of a complaint my Firm filed against Mr. Caruso on behalf of the Trust is attached hereto as **Exhibit B**. As is evident from the complaint, I did not represent Mr. Fiorillo in this matter. To the best of my memory, I never spoke with Mr. Fiorillo with respect to the lawsuit against Mr. Caruso.

7. Neither I nor the Firm has in its possession any confidential information belonging to Mr. Fiorillo. I do not have an ownership or other interest in any of Mr. Fiorillo’s development projects or his affiliated entities.

8. I have reviewed my emails and I find no evidence of any email communications with Mr. Fiorillo prior to December 2021. The emails Mr. Fiorillo sent to me beginning in or about December 2021 concern his dispute with the Trust. I was representing the Trust (and not Mr. Fiorillo) with respect to this dispute.

9. Nathaniel Hyman (“Mr. Hyman”) is an associate who is assisting me in this litigation. Mr. Hyman joined Arent Fox in 2021. Mr. Green also is an associate with Arent Fox.

Signed and sworn to this 4th day of April, 2022.

/s/ Nicholas J. Nesgos

Nicholas J. Nesgos

EXHIBIT A

Hyman, Nathaniel J.

From: Nesgos, Nicholas J.

Sent: Tuesday, November 9, 2021 6:27 PM

To: nkreuzer@aol.com

Subject: Ray Green/Fiorillo

Mr. Kreuzer, that was a most unprofessional ploy. You asked me to call you and then, without advance notice, placed your client on a conference line. The client then yelled at me, made a series of demands directed at Ray Green followed by threats against me and my firm. You said nothing. My prior email to you was quite clear that any communications concerning this matter should be run through the lawyers only. I will not communicate with Mr. Fiorillo; nor will I communicate with you while Mr. Fiorillo is on the line.

Nicholas J. Nesgos

Partner

Arent Fox LLP | Attorneys at Law

The Prudential Tower

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Boston, MA 02199

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nicholas.nesgos@arentfox.com | www.arentfox.com

EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
Civil Action No.

19-3809 C

SUFFOLK SUPERIOR COURT
CIVIL DIVISION OFFICE
2019-DEC-5 PM 3:21
MICHAEL J. COUGHLIN
CLERK

RAYMOND C. GREEN, INC., as Trustee
of THE RAYMOND C. GREEN TRUST,
Plaintiff,

vs.

RALPH CARUSO, JR.,
Defendant,

And

340 CHARGER REVERE STORAGE,
LLC,
Reach and Apply Defendant.

VERIFIED COMPLAINT

Plaintiff, Raymond C. Green, Inc., in its capacity as Trustee of The Raymond C. Green Trust (the "Trust"), brings this collection action against defendant, Ralph Caruso, Jr. ("Caruso"). Caruso personally guaranteed two loans made by the Trust to entities controlled by Caruso, Circle Storage, LLC and Race Peabody, LLC. Caruso has defaulted on the loans, the guarantees, and a forbearance agreement and owes the Trust in excess of \$4,900,000.00.

PARTIES

1. Plaintiff, The Raymond C. Green Trust, is a Massachusetts trust organized under the laws of the Commonwealth of Massachusetts, with a principal place of business at 155 Federal Street, Boston, MA 02110. Raymond C. Green, Inc. is a Massachusetts corporation and the Trustee of the Trust. Raymond C. Green ("Mr. Green") is the President of Raymond C. Green, Inc.

2. Defendant, Ralph J. Caruso, Jr., is an individual who, upon information and belief, resides at 4 Gussett Road, Wenham, MA 01984.

3. Reach and Apply Defendant, 340 Charger Revere Storage, LLC, is a Massachusetts limited liability company with a principal place of business at 4 Gussett Road, Wenham, MA 01984.

FACTS

4. Caruso is a manager and, upon information and belief, an owner and/or member, of Circle Storage, LLC (“Circle”) and Race Peabody, LLC (“Race”).

5. On or about June 21, 2017, the Trust loaned Circle the sum of \$3,500,000.00 (the Circle Loan”).

6. In connection with the Circle Loan, Caruso, as Manager of Circle, executed a Promissory Note on June 21, 2017 in the amount of \$3,500,000.00 payable to the order of the Trust. A true and accurate copy of the \$3,500,000.00 Promissory Note is attached as Exhibit A and incorporated herein by reference.

7. Caruso also executed a Guaranty in his individual capacity, unconditionally guaranteeing all of Circle’s liabilities to the Trust, including its liabilities under the \$3,500,000.00 Promissory Note. A true and accurate copy of the Guaranty is attached as Exhibit B and incorporated herein by reference.

8. Among other terms, the Guaranty provides:

The obligations of the undersigned hereunder are primary, with no recourse necessary by the Lender against the Borrower or any collateral given to secure the Liabilities or against any other person liable for or on the Liabilities prior to proceeding against the undersigned hereunder.

The rights, remedies, powers, privileges, and discretions of the Lender hereunder (hereinafter, the Lender’s Rights and Remedies”) shall be cumulative and not

exclusive of any rights or remedies it would otherwise have. . . . All of the Lender's Rights and Remedies and all of the Lender's rights, remedies, powers, privileges, and discretions under any other agreement or transaction with the undersigned, the Borrower, or any such other person shall be cumulative and not alternate or exclusive, and may be exercised by the Lender at such time or times and in such order of preference as the Lender in its sole discretion may determine.

Ex. B, at p. 3-4.

9. On or about June 21, 2017, the Trust made another loan to Race in the sum of \$1,105,974.25 (the "Race Loan").

10. In connection with the Race Loan, Caruso, as Manager of Race, executed a Promissory Note on June 21, 2017 in the amount of \$2,000,000.00 payable to the order of the Trust. A true and accurate copy of the \$2,000,000.00 Promissory Note is attached as Exhibit C and incorporated herein by reference.

11. Caruso also executed a Guaranty in his individual capacity, unconditionally guaranteeing all of Race's liabilities to the Trust, including its liabilities under the \$2,000,000.00 Promissory Note. A true and accurate copy of the Guaranty is attached as Exhibit D and incorporated herein by reference.

12. Among other terms, the Guaranty provides:

The obligations of the undersigned hereunder are primary, with no recourse necessary by the Lender against the Borrower or any collateral given to secure the Liabilities or against any other person liable for or on the Liabilities prior to proceeding against the undersigned hereunder. . . .

The rights, remedies, powers, privileges, and discretions of the Lender hereunder (hereinafter, the Lender's Rights and Remedies") shall be cumulative and not exclusive of any rights or remedies it would otherwise have. . . . All of the Lender's Rights and Remedies and all of the Lender's rights, remedies, powers, privileges, and discretions under any other agreement or transaction with the undersigned, the Borrower, or any such other person shall be cumulative and not alternate or exclusive, and may be exercised by the Lender at such time or times and in such order of preference as the Lender in its sole discretion may determine.

Ex. D, at p. 3-4.

13. Caruso, Circle, and Race defaulted on the loans.

14. On or about July 20, 2018, the Trust, Caruso, Circle, and Race entered into a Forbearance Agreement, a copy of which is attached as Exhibit E and incorporated herein by reference.

15. As set forth in the Forbearance Agreement, as of the date of the Forbearance Agreement, the Loans were in default and the Trust had filed suit against Caruso, Circle, and Race in Suffolk Superior Court, Civil Action No. 1884CV01839.

16. Pursuant to the Forbearance Agreement, the Trust agreed to forbear from further collection action until September 30, 2019 provided, among other things, that (1) Caruso, Circle, and Race continued to pay interest due to the Trust under both promissory notes at the contract rate of 6% per annum through September 30, 2018 and, thereafter, at the rate of 12% per annum and (2) Caruso, Circle, and Race paid all outstanding amounts due by September 30, 2019, including principal, contract interest, and the Trust's attorneys' fees and costs.

17. As of the date of the Forbearance Agreement (July 20, 2018), the Trust, Caruso, Circle, and Race agreed that the following amounts were due and owing under the Circle Loan:

| | |
|--------------------|-----------------------|
| Principal: | \$3,507,351.16 |
| Contract Interest: | \$17,506.40 |
| Default Interest: | \$244,456.76 |
| Late Charges: | \$105,000.00 |
| Total: | \$3,874,314.32 |

18. As of the date of the Forbearance Agreement (July 20, 2018), the Trust, Caruso, Circle, and Race agreed that the following amounts were due and owing under the Race Loan:

| | |
|--------------------|----------------|
| Principal: | \$1,105,974.25 |
| Contract Interest: | \$5,529.87 |
| Default Interest: | \$77,233.88 |

| | |
|---------------|-----------------------|
| Late Charges: | \$33,179.23 |
| Total: | \$1,221,917.23 |

19. On November 7, 2019, Mr. Green emailed Caruso attaching statements for the Circle Loan and the Race Loan as of November 29, 2019. Both loans were in arrears, with \$247,951.89 in monthly payments due and owing on the Circle Loan and \$78,155.51 in monthly payments due and owing on the Race Loan. Mr. Green notified Caruso that he would initiate collection action if the outstanding total monthly payments were not paid by November 29, 2019. A true and accurate copy of Mr. Green's November 7, 2019 email including its attachments is attached as Exhibit F.

20. No further payments have been made on the loans as of the date of this filing.

Count I
(Breach of Guaranty – Circle Loan)

21. The Trust repeats and incorporates by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

22. The Guaranty executed by Caruso with respect to the Circle Loan contains valid and binding contractual obligations of Caruso.

23. Caruso materially breached his obligations under the Guaranty by failing to repay Circle's liabilities to the Trust, including its liabilities under the \$3,500,000.00 Promissory Note and the Forbearance Agreement.

24. The Trust is entitled to judgment against Caruso for breach of the Guaranty in the amount of \$3,756,823.05 plus interest and collection costs, including reasonable attorneys' fees.

Count II
(Breach of Guaranty – Race Loan)

25. The Trust repeats and incorporates by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

26. The Guaranty executed by Caruso with respect to the Race Loan contains valid and binding contractual obligations of Caruso.

27. Caruso materially breached his obligations under the Guaranty by failing to repay Race's liabilities to the Trust, including its liabilities under the \$2,000,000.00 Promissory Note and the Forbearance Agreement.

28. The Trust is entitled to judgment against Caruso for breach of the Guaranty in the amount of \$1,184,129.76 plus interest and collection costs, including reasonable attorneys' fees.

Count III
(Reach and Apply)

29. The Trust repeats and incorporates by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

30. Upon information and belief, Caruso has a fifty percent membership interest in 340 Charger Revere Storage, LLC ("340 Charger").

31. Upon information and belief, 340 Charger recently entered into a Purchase and Sale Agreement to sell certain real estate located at 340 Charger Street, Revere, Massachusetts for the sale price of \$18,750,000.00.

32. Upon the closing of the sale, 340 Charger will receive substantial sale proceeds.

33. Upon information and belief, the closing of the sale may be imminent.

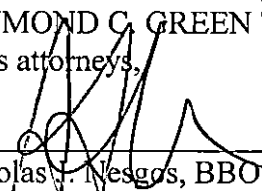
34. The Trust is entitled, pursuant to G.L. c. 214, § 3, to reach and apply Caruso's interest in 340 Charger in satisfaction of his debt to the Trust.

PRAYERS FOR RELIEF

WHEREFORE, the Trust respectfully requests that this Court:

1. Enter Judgment against Caruso in the amount owed to the Trust as determined at trial, plus prejudgment interest, costs, and attorneys' fees;
2. Issue a Writ of Attachment in the amount of \$5,500,000.00 against all of Caruso's right, title, and interest in all real property located in any and all counties of the Commonwealth of Massachusetts;
3. Issue an injunction to reach and apply Caruso's interest in 340 Charger Revere Storage, LLC, in favor of the Trust, in the full amount of Caruso's debt to the Trust;
4. Enter an order requiring 340 Charger Revere Storage, LLC to pay Caruso's share of the proceeds of the sale of 340 Charger Street, Revere, MA into an escrow or Court account pending resolution of this action;
5. Temporarily enjoin Caruso from (a) transferring, selling, hypothecating or encumbering his ownership interest in any business or legal entity, including Circle Storage, LLC, Race Peabody, LLC, or 340 Charger Revere Storage, LLC, or (b) transferring, selling, hypothecating or encumbering any personal property in which Caruso holds an interest, directly or indirectly, including, without limitation, bank accounts and brokerage accounts, except as reasonably necessary for his health, maintenance, or support, limited to \$7,500 per month; and
6. Grant such other and further relief as is reasonable and just.

Plaintiff,
RAYMOND C. GREEN, INC., as Trustee of THE
RAYMOND C. GREEN TRUST,
By its attorneys,



Nicholas J. Nescgos, BBO No. 553177

Adam L. Littman, BBO No. 673407

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adam.littman@arentfox.com

Dated: December 6, 2019

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
DOCKET NO.

RAYMOND C. GREEN, INC., as TRUSTEE OF
THE RAYMOND C. GREEN TRUST,

Plaintiff

v.

LOUIS DELPIDIO and NICHOLAS FIORILLO,

Defendants

and

GOTCAPITAL LLC,
GOTSPACE DATA FUND ONE LLC,
GOTSPACE DATA PARTNERS LLC,
GOTSPACE DEVELOPMENT LLC,
OCEAN DEVELOPMENT PARTNERS LLC,
OCEAN DEVELOPMENT PRECINCT I LLC,
OCEAN INVESTMENT HOLDINGS LLC,
OCEAN VACATIONS LLC,
OCEAN VACATIONS REALTY TRUST,
ONE SEVEN ONE LLC, WONDERLAND
PROPERTIES, LLC, TREMONT
ENTERTAINMENT ENTERPRISES, INC.,
W LOFTS DEVELOPMENT, LLC, OCEAN
REALTY PARTNERS, LLC, GOTSPACE DATA
EQUITY FUND, LLC, GOTSPACE EQUITY
FUND I, LLC, GOTSPACE SELF STORAGE
HOLDINGS, LLC, GOTSPACE
MANAGEMENT, LLC, GS BEVERLY, LLC, GS
GLOUCESTER, LLC, GOTSPACE BEVERLY,
LLC and GOTSPACE GLOUCESTER, LLC,

Reach and Apply Defendants.

C.A. No. 2184-cv-02950-BLS1

AFFIDAVIT OF DAVID J. REIER IN OPPOSITION TO MOTION TO DISQUALIFY

I, David J. Reier, do hereby depose and say as follows:

1. I am a partner at the law firm ArentFox Schiff LLP (f/k/a Arent Fox LLP) ("Arent Fox"). In November 2006, I joined the law firm Posternak Blankstein & Lund LLP ("Posternak") as a partner. Effective January 1, 2018, Posternak merged with Arent Fox thereby becoming its Boston Office.

2. I submit this affidavit in opposition to the Motion of Nicholas Fiorillo to Disqualify me and other counsel at Arent Fox based on an alleged conflict of interest ("Motion"). I make this affidavit on the basis of my own personal knowledge and, where indicated, based upon my recent review and supervision of the review of the historic books and records of Arent Fox and Posternak.

3. I have been engaged in the private practice of law since 1985. I am admitted to practice in Massachusetts, including the Massachusetts Federal District Court and the Massachusetts Bankruptcy Court. I am also admitted to practice in the Federal Court of Appeals for the First Circuit, the United States Supreme Court and the U.S. Court of Claims. I remain a member of the Massachusetts Bar in good standing, and have never in my career been the subject of any disciplinary proceedings in any jurisdiction where I am or have been admitted to practice. Since 1990, I have concentrated my practice in bankruptcy law.

4. I have read the Motion and found it to be grossly inaccurate in respect of references made to me. Prior to submitting this affidavit, I conducted a search of my email folder dating back to January 1, 2009. Our Firm no longer has email files dating prior to 2009. I also conducted a search of records on our document management system and supervised a review of our historic accounting and client records system dating back to 2006.

5. I first became acquainted with Mr. Fiorillo in or around December 2006 when a lawyer had referred Mr. Fiorillo to me for possible legal representation. At the time, Mr. Fiorillo

was involved in a dispute with Commerce Bank & Trust of Worcester, Massachusetts, which was owned and/or controlled by a certain David Massad.

6. Mr. Fiorillo and I were not able to reach agreement on the terms of an engagement. Accordingly, the Firm never opened up a matter for him and I never actually represented Mr. Fiorillo in any matter. As best I recall, I may have met Mr. Fiorillo once at the office (although I have no memory of the substance of the meeting). I probably spoke with Mr. Fiorillo on the telephone a few times thereafter regarding the matter and most likely exchanged a few emails with him. I recall no further communications with him regarding the Commerce Bank matter. I have no memory that Mr. Fiorillo attempted to contact me further about representing him. I have no recollection of ever having given him substantive legal advice on any matter, including, specifically, the Massad/Commerce Bank matter and what his Motion refers to as a matter involving a dispute with a certain Marcello Mallegini and LBM Financial. I was never involved in any manner in Mr. Fiorillo's subsequent personal bankruptcy and at no time did I ever consider representing him as "special counsel" in an "adversary proceeding in his 2010 bankruptcy," as alleged in the Motion, or any other aspect of Mr. Fiorillo's dispute with Commerce Bank, Mr. Massad or LBM Financial. Nor did I ever represent any other persons in any litigation against Commerce Bank, as alleged in the Motion. Whether or not Mr. Fiorillo might have himself entertained the idea of a class action against Commerce Bank, at no time did I ever work "to assemble a class of plaintiffs" who were "harmed by Massad," as the Motion alleges.

7. The only document I have been able to locate in our file system related to the allegations contained in the Motion (as concerns me) is a cover letter from me to Mr. Fiorillo dated December 26, 2006 returning to him the originals of the files he had given to me that month related to his dispute with Commerce Bank. There was never any engagement agreement between him

and Posternak, and our client file system has no record of any client files ever having been opened on his behalf. He was never invoiced by the Firm for legal services and the Firm has no record of his ever having paid for any. We have no record even of setting up a billing number for Mr. Fiorillo or any of his entities.

8. As noted above, our Firm does not have emails prior to 2009. Based on a search of my own email folder since January 1, 2009, I found no email communications with Mr. Fiorillo on any subject prior to the recent Raymond Green dispute and I have no memory of ever having had any other communication with Mr. Fiorillo since the Commerce Bank matter.

Signed under the pains and penalties of perjury this 4th day of April, 2022.

/s/ David J. Reier

David J. Reier