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7 *Attorneys for Plaintiffs*

8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
9 IN AND FOR THE COUNTY OF MARICOPA

10 AZ ROOT BAR, LLC, an Arizona limited
11 liability company; JONATHAN BIROS
12 and DANA BEARINGER, Arizona
13 residents; CHARLES and SUANNE
14 WOO, Arizona residents,

15 Plaintiff,

16 v.

17 KELLY MCCOY PLC, an Arizona
18 professional limited liability company;
19 WALID ZARIFI and JENNY LYNN
20 LOVING, Arizona residents,

21 Defendants.

Case No: **CV2024-031103**

COMPLAINT

(Legal Malpractice)

22 For their Complaint against Defendants Kelly McCoy PLC (“Kelly McCoy”) and
23 Walid Zarifi (“Zarifi”), Plaintiffs AZ Root Bar LLC (“Root Bar”), Jonathan and Dana Biros,
24 and Charles and Suanne Woo allege as follows:

25 **PARTIES, JURISDICTION, AND VENUE**

26 1. Plaintiff Root Bar is an Arizona limited liability company that was at all times
relevant to this litigation operating in Maricopa County, Arizona.

2. Plaintiffs Jonathan Biros and Dana Bearinger are a married couple residing in

1 Maricopa County, Arizona.

2 3. Plaintiffs Charles and Suanne Woo are a married couple residing in Maricopa
3 County, Arizona.

4 4. Defendant Kelly McCoy is an Arizona professional limited liability company
5 doing business in Maricopa County, Arizona.

6 5. Defendant Walid Zarifi is an Arizona resident believed to reside in Maricopa
7 County, Arizona, and who committed acts in Maricopa County, Arizona that are the subject
8 of this litigation.

9 6. Upon information and belief, Defendant Jenny Lynn Loving is the spouse of
10 Walid Zarifi, and is named as a Defendant to bind the martial community of Mr. Zarifi and
11 Ms. Loving should any such marital community exist.

12 7. The conduct alleged below took place in Maricopa County, Arizona.

13 8. The amount in controversy exceeds this Court's minimum jurisdictional
14 amount.

15 9. Jurisdiction and venue are proper in this Court.

16 **GENERAL ALLEGATIONS**

17 10. Plaintiffs Dana Bearinger and Suanne Woo are the owners of Plaintiff Root
18 Bar, which operates a hair salon in the Arcadia neighborhood.

19 11. Defendant Walid Zarifi was the attorney for Root Bar and its owners.

20 12. Upon information and belief, at all times relevant to this litigation Mr. Zarifi
21 was an attorney working at Kelly McCoy, rendering that firm vicariously liable for his
22 actions.

23 13. Since the resolution of the matters to be discussed below, Mr. Zarifi was
24 suspended by the Arizona bar for repeated violations of the Arizona Rules of Professional
25 Conduct in other matters that resulted in no fewer than five separate actionable bar
26 complaints against him. *See generally* PDJ2023-90013.

1 14. In June 2018, Plaintiff Root Bar executed a lease agreement (the “Lease”)
2 with non-party Westcor Santan Village, LLC (“Westcor”).

3 15. Mr. Zarifi negotiated the Lease on behalf of Plaintiffs in his capacity as their
4 attorney.

5 16. All of the above-named individual Plaintiffs personally guaranteed Root
6 Bar’s obligations under the Lease.

7 17. The purpose of the Lease was to open a second Root Bar location in
8 anticipation of further expansion and potential franchising of the concept.

9 18. Due to unforeseen circumstances, including Westcor’s immediate subsequent
10 rental of a better space in the same commercial property to a competing hair salon, Root
11 Bar did not ultimately occupy the premises that was the subject of the Lease (the
12 “Premises”) at any point.

13 19. Root Bar did not perform tenant improvements, occupy, or even obtain the
14 keys to the Premises.

15 20. In October 2018 Root Bar notified Westcor that it would not be taking
16 possession of the Premises and would be terminating its Lease.

17 21. Westcor responded to this notice of termination by sending Plaintiffs a
18 demand for some \$335K in payment, representing all unpaid rent on the Lease plus various
19 fees and penalties.

20 22. Westcor filed suit against Plaintiffs in June 2019 in Maricopa County
21 Superior Court, Case No. CV2019-055421 (the “Litigation”).

22 23. Mr. Zarifi appeared on behalf of Plaintiffs in the Litigation.

23 24. Westcor and Plaintiffs attempted mediation in an attempt to resolve their
24 dispute, at which Westcor offered to settle with Plaintiffs in exchange for a payment from
25 Plaintiffs of \$120,000.

26 25. Mr. Zarifi advised Plaintiffs not to accept the settlement, as he believed he

1 could secure their exit from the Lease for little or no money paid on the theory that Westcor
2 failed to adequately mitigate its damages for the breach of lease.

3 26. In reliance on Mr. Zarifi's advice, Plaintiffs did not settle the matter and opted
4 to continue litigating the dispute.

5 27. Mr. Zarifi continued to represent Plaintiffs, but did not keep them reasonably
6 apprised of the progress of the Litigation nor live up to any possible standard of care for
7 legal representation.

8 28. Mr. Zarifi entirely abdicated all disclosure and discovery obligations in the
9 case, failing to disclose a single fact witness, expert witness, or document in support of their
10 arguments.

11 29. A Scheduling Order was entered in the Litigation on September 27, 2019,
12 calling for an Initial Disclosure Statement to be circulated no later than October 11, 2019.

13 30. Mr. Zarifi neither prepared nor issued any disclosure statement by that
14 deadline, nor any disclosure before the close of discovery in the case.

15 31. Westcor filed a Motion for Summary Judgment on May 28, 2020, seeking
16 entry of judgment and an award of rent and other amounts owed through December 2020
17 (a figure that was reduced from its initial demand, which included additional rent through
18 2021, rent increases, late fees, interest, and other charges).

19 32. Mr. Zarifi filed a Response opposing the Motion for Summary Judgment,
20 arguing that Westcor had not proven that it met its duty to mitigate its damages.

21 33. Mr. Zarifi also disclosed for the first time an expert witness and affidavit
22 attesting that Westcor had aggressively marketed other spaces in the same property, but
23 taken little effort to market the property that Plaintiffs had leased and were obligated to pay
24 for, suggesting a bad faith failure to mitigate damages on the part of Westcor.

25 34. While the expert's testimony may have been substantially persuasive had it
26 been disclosed in a timely fashion, Westcor's Reply correctly pointed out Mr. Zarifi's

1 failure to disclose any of these theories, witnesses, or evidence prior to the close of evidence
2 precluded their consideration.

3 35. Westcor moved to strike the new expert witness exhibit.

4 36. Westcor further noted correctly that the burden of proof on a failure to
5 mitigate defense lies with the defendant tenant, not with the landlord, undermining Mr.
6 Zarifi's new legal arguments.

7 37. In a Minute Entry dated January 8, 2021, the trial court granted the motion to
8 strike the late-proffered expert witness affidavit and further entered summary judgment
9 against Plaintiffs in the full amount sought by Westcor on summary judgment, roughly
10 \$230,000 plus attorneys' fees.

11 38. When notifying Plaintiffs that judgment had been entered against them, Mr.
12 Zarifi did *not* notify them that his own failures to disclose evidence and witnesses had been
13 a substantial reason for their failure to escape summary judgment.

14 39. Following various post-trial motions, Mr. Zarifi filed a Notice of Appeal of
15 the judgment and advised Plaintiffs to post a supersedeas bond, which they did in reliance
16 on his advice.

17 40. Mr. Zarifi further advised his clients that the trial court had made serious
18 errors that should be appealed, but omitted mention of how his own abdication of his
19 responsibility to litigate the case was a primary factor in the judgment being entered against
20 them.

21 41. The appeal, heard by Division One, was numbered 1 CA-CV 21-0357.

22 42. The Court of Appeals predictably affirmed the trial court.

23 43. Mr. Zarifi filed a Petition for Review, which was denied on November 1,
24 2022.

25 44. The Court of Appeals issued its Letter of Transmittal and Order of Mandate
26 on November 23, 2022.

