

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

In re: Sidney A. Goodman Revocable Trust,  
u/a/d December 16, 1985, as amended,

The Honorable Edward T. Wahl

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER FOR JUDGMENT**

Case Type: Trust  
Court File No. 27-TR-CV-16-14

This matter came on for a Court Trial before the Honorable Edward T. Wahl, Judge of District Court, on July 29–31, August 1–2, August 5–7, November 4–8, November 12–15, and November 18–19, 2019. Closing Arguments were held on January 28, 2020.

Scott Harris, Esq., Frank Berman, Esq., and Timothy Kelley, Esq., appeared for and on behalf of Plaintiffs/Petitioners Holly Goodman Shapiro, Brad Shapiro, Chad Shapiro, Dorothy Clemmer, and Millie Egan. Todd Wind, Esq., Joseph Cassioppi, Esq., and Emily Unger, Esq., appeared for and on behalf of Respondent Jim Weichert and Respondent/Defendant The Goodman Group, LLC. Joseph Anthony, Esq., and Daniel Hall, Esq., appeared for and on behalf of Respondent/Defendant Daniel Peterka. Justin Jenkins, Esq., appeared for and on behalf of Respondent David Gotlieb. Denise Rahne, Esq., appeared for an on behalf of Respondent South Dakota Trust Company, LLC.<sup>1</sup>

**SUMMARY OF FINDINGS**

Sidney Goodman was a businessman and the former owner of SAGE Company. In 2006, Sidney created a complex estate plan to minimize taxes and maintain flexibility over his assets during his lifetime. Sidney’s estate plan involved the creation of a pour-over Will, a Revocable

<sup>1</sup> Appearances during individual days of trial are noted on record.

Trust, and an Irrevocable Trust, or Family Dynasty Trust. The core asset of the Irrevocable Trust was an Option Agreement, which granted the Irrevocable Trust the first option to purchase any assets held in Sidney's Revocable Trust (i.e., Sidney's assets) upon Sidney's death.

Petitioners are the beneficiaries of the Irrevocable Trust. One of the trustees of the Irrevocable Trust was Dan Peterka, the chief executive officer of SAGE Company. Petitioners argue that Peterka breached various fiduciary duties owed to them by engaging in actions that divested Sidney of assets after the creation of his estate plan, and reduced the amounts they would have received as beneficiaries had Sidney died immediately after it was estate plan was executed. Petitioners seek to reverse the transactions Sidney engaged in after the formation of this estate plan that divested him of assets and reduced Petitioners' reward.

The Court concludes that Peterka did not breach any fiduciary duties owed to Petitioners, and that he acted at all times in good faith and in accordance with the intentions of Sidney Goodman. The Court also concludes that neither Peterka nor Sidney were required to maintain all of the assets Sidney owned at the time his 2006 estate plan was formed. To hold otherwise would be antithetical to Sidney's intentions. Accordingly, the Court denies Petitioners' claims for relief.

Based upon all the filings and arguments of counsel, the Court makes the following:

### **FINDINGS OF FACT**

#### **Parties**

1. Decedent Sidney A. Goodman ("Sidney")<sup>2</sup> passed away on October 20, 2013.<sup>3</sup>  
(Stip. Facts ¶ 22).

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<sup>2</sup> The Court referred to decedents and the parties by first name during trial for clarity and convenience. The Court has also elected to refer to the decedents and the parties in this Order by first name for the purposes of clarity and convenience. The Court means no disrespect to these individuals by this informality.

<sup>3</sup> Several documents and entities are signified by the initials SAG. Unless otherwise noted, SAG is an initialism or acronym for "Sidney A. Goodman."

2. Decedent John B. Goodman (“John”) passed away on March 20, 2016.<sup>4</sup> (Stip. Facts ¶ 24).

3. Plaintiff/Petitioner Holly Goodman-Shapiro (“Holly”) is Sidney’s daughter and John’s sister. (Stip. Facts ¶ 1). Plaintiff/Petitioner Brad Shapiro (“Brad”) is Holly’s son and Sidney’s grandson. (Stip. Facts ¶ 2). Plaintiff/Petitioner Chad Shapiro (“Chad”) is Holly’s son and Sidney’s grandson. (Stip. Facts ¶ 2). Plaintiff/Petitioner Dorothy Clemmer (“Dorothy”) was a longtime companion of Sidney. (Stip. Facts ¶ 4). Plaintiff/Petitioner Millie Egan (“Millie”) was a longtime companion of Sidney. (Stip. Facts ¶ 4).

4. The Plaintiffs/Petitioners are collectively referred to as the Petitioners.

5. Respondent/Defendant Dan Peterka (“Peterka”) was the Individual Trustee of the Sidney A. Goodman 2006 Irrevocable Grantor Trust (“2006 SAG Irrevocable Trust”) and the Sidney A. Goodman 2009 Irrevocable Grantor Trust (“2009 SAG Irrevocable Trust”). (Stip. Facts ¶ 9). Peterka also served as the General Manager/”President” of the Sage Company Limited Partnership (“SAGE”) and later served as the Chief Executive Officer and President of The Goodman Group, LLC (“TGG”).

6. Respondent James Weichert (“Weichert”) is the trustee of the John B. Goodman Revocable Trust. (Stip. Facts ¶ 6).

7. Respondent David Gotlieb (“Gotlieb”) is the trustee of the Sidney A. Goodman Revocable Trust and Personal Representative of John’s Estate. (Stip. Facts ¶ 7).

8. Respondent The Goodman Group, LLC (“TGG”) is a Minnesota limited liability company. (Stip. Facts ¶ 8).

9. Respondent South Dakota Trust Company (“SDTC”) was the Corporate Trustee of

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<sup>4</sup> Several documents and entities are signified by the initials JBG. Unless otherwise noted, JBG is an initialism for “John B. Goodman.”

the 2006 SAG Irrevocable Trust and the 2009 SAG Irrevocable Trust. (Stip. Facts ¶ 10).

**SAGE Company**

10. Sidney Goodman was a businessman involved in various real estate companies.

11. On April 24, 1981, Sidney and John created The Sage Company Partnership (“SAGE”). (Exs. 2, 176). Effective July 1, 1985, SAGE was reconstituted as a Minnesota General Partnership. (Exs. 2, 176).

12. The SAGE Partnership Agreement was amended again in 1988. (Ex. 9). The Second Amendment and First Restatement of the SAGE Partnership Agreement (“1998 SAGE Agreement”) was the operative agreement for SAGE during 2006.

13. Peterka started working at SAGE on January 15, 1993. (Peterka Testimony, Aug. 4, 2019 a.m.). Peterka’s first title was general manager. (Peterka Testimony, Aug. 4 2019 a.m.). His duties included managing commercial real estate operations, restaurants, retail, and John and Sidney’s personal financial investments, tax planning, and estate planning. (Stip. Facts ¶ 12).

14. SAGE eventually became The Goodman Group, LLC.

**Sidney’s 2006 Estate Plan**

15. As early as 1985, Sidney developed varying estate plans that he frequently amended and revised over the years.

16. In 2006, Sidney wanted to revise his estate plan.

17. Sidney had three main goals in revising his estate plan in 2006: (1) minimizing taxes; (2) maintaining flexibility over his assets during his lifetime; and (3) transferring SAGE to John. Sidney’s estate planning documents reveal no ambiguity as to Sidney’s intention with regard to these three goals.

18. Sidney’s goal of minimizing taxes is directly reflected in his estate planning

documents. (Ex. 831).

19. The circumstances surrounding the creation and execution of Sidney's 2006 estate plan confirm that Sidney intended to transfer his interests in SAGE and Elmo Park to John and to maintain control over his assets until death.

20. Peterka and Gotlieb credibly testified that the three objectives of Sidney's estate plan were to minimize estate taxes, to complete the sale of Sidney's interest in SAGE to John during his lifetime, and to maintain flexibility over his assets. (Peterka Testimony, July 30, 2019, a.m., Aug. 1, 2019, a.m.; Gotlieb Testimony, Nov. 12, 2019 a.m.).

21. On May 22, 2006, in furtherance of his desire to revise his estate plan, Sidney executed several estate planning documents. Sidney's 2006 estate plan consisted of, *inter alia*, (1) Sidney's Last Will and Testament; (2) the 2006 SAG Irrevocable Trust; (3) the Nineteenth Amended and Restated Sidney A. Goodman Revocable Trust ("2006 SAG Revocable Trust"); and (4) the 2006 Option Agreement. (Stip. Facts ¶ 14).

22. Sidney's estate plan also involved a charitable lead annuity trust ("CLAT"). A CLAT is an estate planning technique that enables the settlor of a trust to minimize taxes by making contributions to a charity for a period of years. In this CLAT estate plan, the Revocable Trust creates a Charitable Lead Annuity Trust. (Ex.141A § 6.2(1)). The trustee of the Revocable Trust pays a fixed payment stream to a charity for some time. Subsequently, the remainder of Revocable Trust's assets is then passed to someone other than the charity, typically a family member. (Stein Testimony, Aug. 7, 2019 a.m.).

23. The structure of Sidney's estate plan allowed him to reduce taxes and retain personal control over his assets during his life. Sidney's Will was structured as a pour-over will, and upon his death, Sidney's personal assets would be transferred to his Revocable Trust. Once

Sidney's assets were transferred to his Revocable Trust, the Irrevocable Trust would then have the option to purchase any of those assets in the Revocable Trust via the Option Agreement. The Revocable Trust would make periodic payments to the CLAT to minimize estate taxes. The Irrevocable Trust would be minimally funded. (Ex. 141 at 40).

24. When Sidney executed his estate plan on May 22, 2006, Sidney had ownership interests in a number of entities, including 100% ownership of SAG-Sage, LLC and 28.25% ownership interest in Elmo Park Apartments, LLC ("Elmo Park") (Ex. 177). SAG-Sage, LLC owned 54.42% of SAGE (Ex. 176). SAGE owned 48.04% of the partnership units of Elmo Park (Ex. 177).

#### *Sidney's Last Will and Testament*

25. Sidney's Last Will and Testament and First Codicil thereto were executed on May 22, 2006 (Ex. 146). Sidney's Will provided for the disposition of his personal assets to be added to and commingled with the assets of the 2006 Revocable Trust. (Ex. 146). This provision made Sidney's Will a pour-over will, which meant that substantially all of Sidney's assets, at the date of his death, would become property of the 2006 SAG Revocable Trust.

#### *2006 SAG Revocable Trust*

26. The 2006 SAG Revocable Trust was executed on May 22, 2006. (Ex. 141A).

27. Sidney and John were the Trustees of the 2006 SAG Revocable Trust. (Ex. 141A).

28. Sections 2.4–6 of the SAG Revocable Trust provided for the distribution of the Trust Estate. Section 3 of the SAG Revocable Trust would give the Trustees of the SAG Irrevocable Trust the first option to purchase any assets owned by the Trust Estate "at the Grantor's death for their then fair market value." (Ex. 141A § 3.1). After payment of various debts and expenses, the SAG CLAT would receive the balance of the Trust Estate. (Ex. 141A § 6.1).

29. Section 1.2 of the 2006 SAG Revocable Trust reserves various rights in Sidney, which could be exercised during Sidney's lifetime. (Ex. 141A). Among these enumerated rights is Section 1.2(8), the right "[t]o withdraw, replace, or exchange any or all of the income, principal or assets of the Trust Estate, with or without notice to or consent from the Trustee or Trustees." (Ex. 141A).

#### 2006 SAG Irrevocable Trust

30. The SAG 2006 Irrevocable Trust was executed on May 22, 2006.

31. Peterka was the Individual Trustee of the 2006 SAG Irrevocable Trust. (Ex. 141 at 38). SDTC was the Corporate Trustee of the 2006 SAG Irrevocable Trust. (Ex. 141 at 38). The Trust was funded with \$5,000. (Ex. 141 at 40).

#### Trustee Provisions

32. The 2006 SAG Irrevocable Trust contains provisions that permit certain actions to be undertaken by the trustees, abrogate duties owed by trustees, and limit liability of the trustee.

33. Section 3.2 of the Irrevocable Trust directs the Trustee to manage trust assets in accordance with the intent and demand of the Grantor:

To carry out the intent of the Grantor, upon demand by the Grantor, and notwithstanding any other provision of this Trust Agreement, the Trustee shall:

- (1) Transfer any assets of the Trust Estate to the Grantor in exchange for assets of equivalent value; or
- (2) Lend to the Grantor any of the Trust income and principal, in exchange for the Grantor's promissory note equal in value to the amount lent, bearing adequate interest or adequate security, but not both.

(Ex. 141 at 4).

34. Section 13.15 of the 2006 SAG Irrevocable Trust abrogates a trustee's duty to inform beneficiaries of the trust's existence: "The Grantor hereby directs that the Trustees are not

required to provide the notice set forth in SDCL § 55-2-13 to qualified beneficiaries.”<sup>5</sup>

35. Section 14.1 of the 2006 SAG Irrevocable Trust limits a trustee’s fiduciary liability to actions made in bad faith:

Notwithstanding anything contained herein to the contrary, the Trustee may exercise such discretionary powers in administering, dividing and distributing this Trust. The Trustee shall be liable only if it can be clearly established that the exercise of the Trustee’s discretionary powers was made in bad faith. Any additional or successor Trustee shall not be liable for any action taken or omission by a Trustee prior to the time such additional or successor Trustee becomes a Trustee.

(Ex. 141 at 31).

36. Section 14.2 of the 2006 SAG Irrevocable Trust exculpates a trustee from being held strictly liable for any conflicts of interest:

The Grantor acknowledges that in the exercise of the power granted to the Trustee by this Trust Agreement, the Trustee may be placed in a position where a court could find the Trustee to have conflicting interests as the Trustee of a Trust under this Trust Agreement and under other trust agreements which have been established by the Grantor or the Grantor’s spouse, as the personal representative of the Grantor’s probate estate or the probate estate of the Grantor’s spouse, as a General Partner of various General of Limited Partnerships, and as a director or officer or other managing executive of a corporation or limited liability company or other business enterprise in which a trust administered under this Trust Agreement may invest. As a result, the Trustee could be held liable for self-dealing or perceived conflicts of interest without further inquiry for the Trustee’s acts in such a situation regardless of any fault or wrongdoing on the Trustee’s part. Therefore, the Grantor hereby directs that any rule of law which may impose strict liability on the Trustee on such a basis shall not be applied to the Trustee and any such law is specifically waived so that the Trustee is exculpated from any and all strict liability related to perceived self-dealing or conflicts of interest... The liability of the Trustee shall be limited solely to any action or omission made in bad faith, or which constitutes gross negligence, willful misconduct, intentional wrongdoing, or fraud against the beneficiary....

(*Id.*).

37. Section 15.14 of the 2006 SAG Irrevocable Trust states that: “No Beneficiary or

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<sup>5</sup> South Dakota Codified Law § 55-2-13 was amended pursuant to 2020 S.D. Sess. Laws Ch. 206 § 12.



other person shall have any right to question the judgment and decision of the Trustee when acting in good faith in reliance upon any express or implied trustees' powers as set forth herein." (Ex. 141 at 35).

### Independent Trustee Provisions

38. Several provisions in the 2006 SAG Irrevocable Trust apply to the "Independent Trustee." Section 2.5 of the 2006 SAG Irrevocable Trust defines the term "Independent Trustee":

The term "Independent Trustee" means any Trustee hereunder who is acting at any time other than: (1) the Grantor; (2) the Grantor's spouse, (3) any issue of Grantor; (4) *any person, corporation or entity which is not wholly independent of Grantor, as defined by Section 672 of the Internal Revenue Code, applicable Treasury Regulations, and relevant case precedent*; and (5) any person, with respect to a particular power or duty, who would have income or principal of any trust hereunder included in the estate of such person due to the right of such person as Trustee to exercise such power or duty.

(Ex. 141 at 3, emphasis added). Bill Forsberg credibly testified that he intended to define persons not "wholly independent" as identified in subsection 4 to mean any person, corporation or entity that is "related or subordinate." (Forsberg Testimony, Nov. 18, 2019 p.m.).

39. Section 15.1(1) of the 2006 SAG Irrevocable Trust appoints Peterka as Trustee. This section is titled Independent Trustee, but identifies Peterka as an Individual Trustee<sup>6</sup>:

Independent Trustee. During the life of the Grantor, DAN PETERKA shall act as the sole Individual Trustee. If at any time, however, an Independent Trustee is required to act or exercise a power under the provisions of a trust created under the terms of this Trust Agreement and no acting Individual Trustee is an Independent Trustee as defined in paragraph 2.5, then DAVID A. GOTLIEB is appointed as the Independent Trustee to exercise said power....

(Ex. 141 at 32).

40. Section 6.1 of the 2006 SAG Irrevocable Trust allows the Independent Trustee to make discretionary distributions during Sidney's life. This provision permits these discretionary

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<sup>6</sup> Petitioners and Respondents agree that Peterka is an Individual Trustee of the 2006 SAG Irrevocable Trust. Petitioners and Respondents do not agree that Peterka is an Independent Trustee of the 2006 SAG Irrevocable Trust.

distributions to be made disproportionately to John:

During the life of the Grantor, the Independent Trustee may pay to or expend for the benefit of the Grantor's children or their issue such sum or sums from either the net income from or principal of the Trust Estate as the Independent Trustee, in the Independent Trustee's discretion, may deem necessary or advisable to provide for the proper health, maintenance, support and education of such persons. Notwithstanding the foregoing, it is the Grantor's direction that JOHN B. GOODMAN be the primary beneficiary during his lifetime and the Independent Trustee is authorized in his discretion to make disproportionate distributions from the Trust Estate, or to distribute the entire Trust Estate to JOHN B. GOODMAN, without regard to the interests of other or more remote or contingent beneficiaries.

(Ex. 141 at 5–6).

41. Section 13.1 of the 2006 SAG Irrevocable Trust permits the Independent Trustee the power to terminate the Trust:

Notwithstanding any other provision in this Trust Agreement to the contrary, the Independent Trustee shall have the power to terminate any trust created hereunder, without court approval, whenever such Independent Trustee deems it advisable for any reason, including but not limited to reasons of economy of administration or for tax reasons. Upon such termination, the Trustees shall pay over and distribute, outright and free of trust, the balance of such trust, including principal and all undistributed income, to the persons and in the proportions determined as though such trust had terminated immediately prior to the time specified in this paragraph. Notwithstanding any provision of this paragraph to the contrary, no discretion granted to the Independent Trustee hereunder shall be exercisable by any Trustee who is a beneficiary of the trust which is to be terminated.

(Ex. 141 at 25).

42. Section 13.2 of the 2006 SAG Irrevocable Trust permits the Independent Trustee to amend the Trust Agreement to carry out Sidney's tax objectives:

Notwithstanding any other provision in this Trust Agreement to the contract, the Independent Trustee shall have the power to amend this Trust Agreement to carry out the tax objectives of the Grantor and to carry out the intent of the Grantor, as determined solely by the Independent Trustee, without court approval.

(*Id.*).

43. Peterka signed the 2006 SAG Irrevocable Trust on May 22, 2006. (Ex. 141 at 38–

39). Lisa Schneiderman, on behalf of SDTC, signed the 2006 SAG Irrevocable Trust Agreement on May 26, 2006. (*Id.*). As part of the execution of the 2006 SAG Irrevocable Trust Agreement, Peterka and SDTC signed a Statement of Trustees:

We are aware of the nature of a fiduciary duty that Trustees owe to trust beneficiaries. Specifically, Trustees must act at all times in good faith and for the primary benefit of the trust beneficiaries. When given discretionary power by the Trust Agreement, the Trustees must exercise their own judgment. The Trustees cannot delegate that duty to others... We have not agreed, expressly or by implication, to be subject to the control of anyone. We understand that to do so would be a breach of my fiduciary duty. Furthermore, we have not yet made any specific decisions regarding the management of trust property or the investment of trust funds, and have not stated or intimated otherwise to anyone.

(Ex. 141 at 41).

44. The 2006 SAG Irrevocable Trust contained a number of specific distributions to Sidney's children and grandchildren. These special distributions included: \$2,000,000.00 in tax-exempt securities and certain personal property to the Holly Shapiro Irrevocable Trust (Ex. 141 § 8.1); \$250,000.00 to the Brad Shapiro Irrevocable Trust (Ex. 141 §8.1(2)(a)(i)); \$250,000.00 to the Chad Shapiro Irrevocable Trust (Ex. 141 §8.1(2)(b)(i)); \$1,000,000.00 and forgiveness of any debt to Mildred Egan's Trust (Ex. 141 §8.1(2)(c)(i)-(ii)); and \$1,000,000.00 and forgiveness of any debt to Dorothy Clemmer's Trust (Ex. 141 §8.1(2)(d)(i)-(ii)).

#### 2006 Option Agreement

45. The 2006 Option Agreement was executed on May 22, 2006 by Peterka and Lisa Schneiderman, on behalf of SDTC, as trustees for the 2006 SAG Irrevocable Trust, and Sidney and John, as Trustees for the 2006 SAG Revocable Trust. (Ex. 142).

46. The 2006 Option Agreement provides the 2006 SAG Irrevocable Trust the first option to purchase any and all of the assets held in the 2006 SAG Revocable Trust upon Sidney's death "for a purchase price equal to the fair market value of the assets held in the [2006 SAG

Revocable Trust] as of the date of death of SIDNEY A. GOODMAN.” (Ex. 142, emphasis in original).

47. The 2006 Option Agreement had no quantifiable value. Mr. Berens also testified credibly that the 2006 Option Agreement had no value until Sidney’s death. (Berens Testimony, Nov. 14, 2019 a.m.). Mr. Gorowsky credibly testified that, as of December 18, 2009, the date Sidney’s 2009 estate plan was executed and the 2006 Irrevocable Trust and the 2006 Option Agreement were terminated, the 2006 Option Agreement had a value of zero. (Gorowsky Testimony, Nov. 15, 2019 p.m.). The Court agrees with the analysis of these two experts and concludes that the 2006 Option Agreement had no value until Sidney’s death.

48. Peterka testified credibly that he read the 2006 Option Agreement and concluded, based on its language, that he was not obligated to act on the option until Sidney’s death. (Peterka Testimony, Aug. 1, 2019 a.m.).

#### **John’s 2006 Estate Plan**

49. On May 22, 2016, the same date Sidney executed his estate plan, John also executed several estate planning documents. John’s estate plan consisted of, *inter alia*, (1) John’s Last Will and Testament (Ex. 144); (2) the 2006 JBG Irrevocable Grantor Trust (Ex. 143); and (3) the 2006 JBG Revocable Trust Agreement. (Ex. 145).

50. John’s estate plan was also structured as a CLAT and was structured similarly to Sidney’s. (*Compare* Ex. 830 *with* Ex. 831).

51. Peterka and SDTC are the trustees for the 2006 JBG Irrevocable Trust.

52. John was the sole trustee of the 2006 JBG Revocable Trust.

#### **SAGE & Elmo Park Redemptions**

53. As part of his overall 2006 estate plan, Sidney intended to transfer his ownership

interest in SAGE to John.

54. On February 13, 2006, Peterka hired Management Planning, Inc. (“MPI”) to conduct an appraisal of Sidney’s ownership interest in SAGE and Elmo Park. (Ex. 108).

55. As of May 22, 2006, the ownership structure of SAGE was as follows: 54.42% was owned by SAG-Sage, LLC and 45.58% was owned by JBG-Sage, LLC.

56. John held a 100% ownership interest in JBG-Sage, LLC through June 2006.

57. On June 29, 2006, Nirvana Air, Inc. (“Nirvana”) acquired a 1% ownership interest in SAGE. (Ex. 161). This ownership interest consisted of Class B and C interests, which came entirely from JBG-Sage, LLC’s interest. The Nirvana Purchase Agreement was executed by John. Peterka was not a party to the Nirvana Purchase Agreement. SAG-Sage, LLC’s percentage ownership interest in SAGE did not change as a result of Nirvana’s acquisition.

58. John held a 100% ownership interest in Nirvana through June 2006.

59. MPI issued a final valuation report on December 18, 2006, valuing SAG-Sage’s ownership interest of SAGE at \$6,000,000.00. (Ex. 176). MPI also issued a final valuation report on December 18, 2016, valuing Sidney’s interest in Elmo Park at \$2,000,000.00.

60. In December 2006, Sidney’s ownership interest in SAGE was redeemed. (Ex. 164). The effective date of this redemption is June 30, 2006, one day after Nirvana acquired a 1% ownership interest in SAGE. (Exs. 161, 164). The SAGE Redemption Agreement was executed by Sidney and John Goodman. (Ex. 164). Peterka was not a party to the SAGE Redemption Agreement.

61. Pursuant to the terms of the Redemption Agreement, and in exchange for transferring his shares in SAGE, SAGE distributed to SAG-Sage a 74% ownership interest in Bradley House Apartments, LLC (which was valued at \$5,849,545.00) and a check for

\$150,455.00, to the SAG Revocable Trust. (Ex. 332).

62. Also in December 2006, Sidney's interest in Elmo Park was redeemed. (Ex. 166). The effective date of this redemption is June 30, 2006. (Ex. 166). The Elmo Park Redemption Agreement was executed by John and Sidney Goodman. (Ex. 166). Again, Peterka was not a party to the Elmo Park Redemption.

63. Pursuant to the terms of the Elmo Park Redemption Agreement, and in exchange for transferring Sidney's ownership interest in Elmo Park, SAGE distributed to the SAG Revocable Trust a 55.01% ownership interest in Hopkins Housing LP. (Ex. 332).

64. After these transactions, SAGE's management assets were assigned to TGG, and SAGE's entity interests were assigned to The Goodman Group Properties, LLC ("TGGP").

#### **Sidney's 2009 Estate Plan**

65. Around 2009, Sidney sought to revise his estate plan to prevent Brad from inheriting any portion of Sidney's estate and to provide instead for Brad's grandchildren. While executing his 2009 estate plan, Sidney stated that the reason he was removing Brad from his estate plan was because "Brad has not been taking care of his family, and I thought I should change things to be able to help the family at his expense." (Ex. 381).

66. Peterka testified that he was aware that Sidney was upset with Brad. Peterka believed it was Sidney's intention to remove Brad from Sidney's estate plan. (Peterka Testimony, July 31, 2019 a.m.).

67. Sidney informed Gotlieb of his intention to eliminate Brad from Sidney's estate plan. (Gotlieb Testimony, Nov. 12, 2019 p.m.). Gotlieb discussed Sidney's plan with Bradley Frank, who was then Sidney's estate planning attorney. (Gotlieb Testimony, Nov. 12, 2019 p.m.).

68. On December 18, 2009, in furtherance of his intention to revise his estate plan,

Sidney executed several estate planning documents. Sidney's 2009 estate plan consisted of, *inter alia*, (1) the 2009 SAG Irrevocable Trust (Ex. 376); (2) the Twentieth Amended and Restated Sidney A. Goodman Revocable Trust ("2009 SAG Revocable Trust") (Ex. 377); and (3) the 2009 Option Agreement (Ex. 378); and (4) the Termination of the 2006 Option Agreement. (Ex. 375).

69. The Termination of the 2006 Option Agreement was executed on December 18, 2009 by Peterka. (Ex. 375). The Termination of the 2006 Option Agreement was executed sometime after December 22, 2009 by SDTC. (Ex. 386; Frank Testimony, Nov. 7, 2019 p.m.).

70. Pursuant to Section 6.1 of the 2006 SAG Irrevocable Trust, the trustees then distributed the only asset of the trust—\$7,201.64 in cash—to John. Peterka and SDTC terminated the 2006 SAG Irrevocable Trust.

71. The 2009 SAG Revocable Trust was executed on December 18, 2009 by Sidney and John. (Ex. 377). The 2009 SAG Revocable Trust is similar in structure and function to the 2006 SAG Revocable Trust, but it removes payment to Brad Shapiro from the list of payments permitted under Sections 2.2 and 2.3.

72. The 2009 SAG Irrevocable Trust was executed on December 18, 2009 by Peterka. (Ex. 376). The 2009 SAG Irrevocable Trust was executed sometime after December 22, 2009 by SDTC. (Ex. 386; Frank Testimony, Nov. 7, 2019 p.m.). The 2009 SAG Irrevocable Trust contained provisions regarding Trustee powers and duties substantively similar to the 2006 SAG Irrevocable Trust. (*Compare* Ex. 141 *with* Ex. 376).

73. The 2009 SAG Irrevocable Trust contained substantially different provisions regarding Specific Distributions to the 2006 SAG Irrevocable Trust. Specifically, the 2009 SAG Irrevocable Trust (1) removed the distribution of tax-exempt bonds to Holly; (2) eliminated the \$250,000.00 distribution to Brad's Trust; (3) eliminated the \$1,000,000.00 special distribution to

Millie Egan's Trust; and (4) eliminated the \$1,000,000.00 special distribution to Dorothy's Trust. (Ex. 376).

74. The 2009 Option Agreement was executed on December 18, 2009 by Peterka on behalf of the 2009 SAG Irrevocable Trust, and by Sidney on John on behalf of the 2009 SAG Revocable Trust. The 2009 Option Agreement was executed sometime after December 22, 2009, by SDTC. (Ex. 386; Frank Testimony, Nov. 7, 2019 p.m.).

75. Bradley Frank drafted Sidney's 2009 Estate Planning documents. When he was asked why Sidney wanted to make changes to the irrevocable trust to eliminate the distributions for Holly, Millie Egan, and Dorothy Clemmer, as well as Brad Shapiro, Bradley Frank credibly testified that Sidney told him that Sidney believed he had been generous in his life and had sufficiently provided for those individuals. (Frank Testimony, Nov. 8, 2019 a.m.). Frank further testified credibly that he concluded terminating the 2006 Trust Agreement was permissible because it was in accordance with Sidney's intention, and because the trust was minimally funded. (Frank Testimony, Nov. 8, 2009 a.m.).

#### **Sidney's 2012 Estate Plan**

76. In 2012, Bradley Frank drafted a new, simpler estate plan that omitted the CLAT structure. In lieu of the priority distributions included in his previous plans, under this plan, Sidney would make lifetime payments to the same individuals and add a specific bequest for the SAG Revocable Trust to fund the education of Dorothy Clemmer's granddaughter, Sana Goldberg. Instead of the CLAT, Sidney would grant John an option to purchase any assets held in the SAG Revocable Trust at the time of Sidney's death for fair market value, and would distribute the remaining trust assets to the Goodman Family Operating Foundation.

77. On December 19, 2012, Sidney executed several estate planning documents.



Sidney's 2012 estate plan consisted of, *inter alia*, (1) the Twenty-First Amended and Restated Sidney A. Goodman Revocable Trust ("2012 SAG Revocable Trust") (Ex. 480); and (2) the 2012 Option Agreement (Ex. 482); and (3) the Termination of the 2009 Option Agreement. (Ex. 481).

78. Sidney's estate plan also involved making *inter vivos* distributions to several individuals that were to receive special distributions under Sidney's 2006 and 2009 estate plans. In exchange for these distributions, Sidney required that those individuals release any potential claim to Sidney or John's assets or estates. Sidney offered the following cash payments or forgiveness of debts owed to Sidney or the SAG Revocable Trust:

- a. \$263,000.00 in bonds, cash, and check to Keya Shapiro's Trust (Ex. 460);
- b. \$263,000.00 in bonds, cash, and check to Jay Shapiro's Trust (Ex. 461);
- c. \$157,000.00 of debt forgiveness to Dorothy Clemmer (Ex. 464);
- d. \$362,000.00 of debt forgiveness to Mildred Egan (Ex. 465);
- e. \$250,000.00 of debt forgiveness to Shane Goodman (Ex. 471);
- f. \$250,000.00 of debt forgiveness, \$50,000.00 cash, and a portion of proceeds of the sale of certain real estate to Chad and Jennifer Shapiro (Ex. 472);
- g. \$250,000.00 in bonds and cash to Jack Shapiro's Trust (Ex. 473);
- h. \$250,000.00 in bonds and cash to Georgine Shapiro's Trust (Ex. 474); and
- i. \$250,000.00 in bonds and cash to Holly's Trust (Ex. 476);

Sidney did not offer payments or debt forgiveness, or pursue a release from, Brad Shapiro.

79. In November and December 2012, all Petitioners except Brad signed agreements releasing Sidney, John, and TGG (including TGG's representatives), from claims relating to Sidney and John's estates and assets. (*See* Exs. 460–61, 464–65, 471–74, 476).

80. Peterka was not a party to these releases.

81. Sidney and John executed the 2012 SAG Revocable Trust on December 21, 2012. (Ex. 480). The 2012 SAG Revocable Trust is similar to the 2009 SAG Revocable Trust, but eliminates distributions to a CLAT and provides \$275,000.00 for the education expenses of Sana Goldberg, Dorothy Clemmer's daughter, with the remainder distributed directly to John. (Ex. 480, § 5.1). Peterka was not a party to the 2012 SAG Revocable Trust.

82. On December 18, 2012, John and Sidney, as trustees for the 2009 SAG Revocable Trust, and Peterka and SDTC, as trustees for the 2009 SAG Irrevocable Trust, terminated the 2009 Option Agreement. (Ex. 481). On January 21, 2013, Peterka notified SDTC that under the authority granted to him under Section 13.1 of the 2009 SAG Irrevocable Trust he was terminating the Trust "for reasons of economy of administration" and directing the distribution of its remaining assets to John, the primary beneficiary of the trust. (Ex. 493). Pursuant to Section 6.1 of the 2009 SAG Irrevocable Trust, the trustees then distributed the only asset of the trust—\$5,652.81 in cash—to John.

83. On December 18, 2012, John and Sidney executed the 2012 Option Agreement. (Ex. 482). Unlike the 2006 and 2009 Option Agreement, the 2012 Option Agreement did not involve an irrevocable trust, but rather allowed John the first option to purchase assets held by Sidney's 2012 Revocable Trust upon Sidney's death. (Ex. 482). Peterka was not a party to the 2012 Option Agreement.

### **Litigation**

84. On October 20, 2016, Petitioners interposed a Petition in the SAG Revocable Trust matter ("Trust Litigation"). The operative pleading in the Trust Litigation is the Third Amended Petition, filed on July 19, 2018. (Stip. Facts ¶ 25). The Third Amended Petition requests the Court to grant and establish a constructive trust over assets that were, according to Petitioners,

erroneously or improperly distributed. SDTC, as corporate trustee to the relevant estate documents, is a Respondent in the Trust Litigation.

85. In December 2017, Petitioners commenced a separate action against Peterka (“Peterka Litigation”). The operative pleading in the Peterka Litigation is the Amended Complaint, which was served on May 31, 2018. The Amended Complaint alleges that Peterka breached his fiduciary duties as a trustee and engaged in fraud, and that The Goodman Group (“TGG”) aided and abetted Peterka’s breach of fiduciary duty. (Am. Compl. at 17–25, filed May 31, 2018).

86. The Court consolidated the Trust Litigation and the Peterka Litigation pursuant to the parties’ stipulation on March 26, 2018.

## **CONCLUSIONS OF LAW**

### **Breach of Fiduciary Duties**

87. Petitioners allege that Peterka breached the fiduciary duties he owed them as trustee of the 2006 SAG Irrevocable Trust. Petitioners argue that Peterka should be held strictly liable for these breaches of fiduciary duty. Alternately, Petitioners argue that Peterka’s alleged breaches damaged them.

88. To prevail on a claim for breach of fiduciary duty, a plaintiff must prove four elements: (1) duty; (2) breach; (3) causation; and (4) damages. *TCI business Capital, Inc. v. Five Star American Die Casting, LLC*, 890 N.W.2d 423, 434 (Minn. Ct. App. 2017) (citations omitted); *Chem-Age Indus., Inc. v. Glover*, 652 N.W.2d 756, 772 (S.D. 2002).

### **Scope of Peterka’s Fiduciary Duties**

89. “The existence of a legal duty is a question of law.” *In re Trusts A & B of Divine*, 672 N.W.2 912, 917 (Minn. Ct. App. 2001). Any fiduciary duties owed by Peterka to the

beneficiaries of the 2006 SAG Irrevocable Trust arose when Peterka became trustee on May 22, 2006. The parties agree that Petitioners were the beneficiaries of the 2006 SAG Irrevocable Trust.

90. Basic principles of trust law are well established; they guide the Court. Subject to limited exceptions, the nature and extent of the duties of the trustee are determined by the terms of the trust. Restatement (Second) of Trusts § 164. The terms of the trust manifest the intention of the settlor with respect to the trust. Restatement (Second) of Trusts § 164, cmt. a. Extrinsic evidence is not admissible to contradict or vary the manifestation of intention of the settler where that manifestation is integrated in writing. Restatement (Second) of Trusts § 164, cmt. e. Where the meaning of the writing is uncertain or ambiguous, evidence of the circumstances is admissible to determine its interpretation. *Id.*

#### *Common Law Fiduciary Duties*

91. Several of the fiduciary duties Petitioners argue Peterka owed to them derive from the common law. The Court will rely on Restatement (Second) of Trusts and Restatement (Third) of Trusts for the purposes of defining common law.

92. Petitioners argue that Peterka owed a duty of loyalty to his beneficiaries, and in all things was required to act wholly for the benefit of the 2006 SAG Irrevocable Trust and the beneficiaries of that trust. (Peterka Compl. ¶¶ 71A, 71H). The Restatement (Third) of Trusts defines the duty of loyalty:

- (1) Except as otherwise provided in the terms of the trust, a trustee has a duty to administer the trust solely in the interest of the beneficiaries, or solely in furtherance of its charitable purpose.
- (2) Except in discrete circumstances, the trustee is strictly prohibited from engaging in transactions that involve self-dealing or that otherwise involve or create a conflict between the trustee's fiduciary duties and personal interests.
- (3) Whether acting in a fiduciary or personal capacity, a trustee has a duty in dealing with a beneficiary to deal fairly and to communicate to the beneficiary all material facts the trustee knows or should know in connection with the matter.

Restatement (Third) of Trusts § 78.

93. Petitioners argue that Peterka had a duty to maintain an accounting of his management of all trust property. (Peterka Compl. ¶ 71E). “The trustee is under a duty to the beneficiary to keep and render clear and accurate accounts with respect to the administration of the trust.” Restatement (Second) of Trusts § 172.

94. Petitioners argue that Peterka has a duty to exercise reasonable care, skill and caution in investing and managing trust assets, and a duty to preserve trust assets. (Peterka Compl. ¶¶ 71F, 71I). Trustees have a duty to their beneficiaries in administering the trust “to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property,” and to use “reasonable care and skill to preserve trust property.” Restatement (Second) of Trusts §§ 174, 176

95. Finally, Petitioners argue that Peterka had a duty to bring suits against third party tortfeasors to protect the interests of the Trust for which he served as trustee. (Peterka Compl. ¶ 71J). Trustees have a duty to “take reasonable steps to realize on claims which he holds in trust.” Restatement (Second) of Trusts § 177.

#### *Statutory Fiduciary Duties*

96. Several of the fiduciary duties Petitioners assert derive from South Dakota statutes. For example, Petitioners further argue that Peterka had a duty to act in the “highest good faith.” (Peterka Compl. ¶ 71G). A trustee’s duty to act in good faith to his beneficiaries is codified in South Dakota Code § 55-2-1: “In all matters connected with his trust a trustee is bound to act in the highest good faith toward his beneficiary and may not obtain any advantage therein over the latter by the slightest misrepresentation.”

97. South Dakota Code § 55-2-2 imposes upon the trustee a duty to refrain from self-

dealing:

A trustee may not in any manner use or deal with the trust property for his own profit or for any other purpose unconnected with the trust. If he does so, he may, at the option of the beneficiary, be required to account for all profits thereby made or to pay the value of the use of the trust property, and if he has disposed thereof, to replace it with its fruits or to account for its proceeds with interest.

S.D.C.L. § 55-2-2. “A fiduciary must act with utmost good faith and avoid any act of self-dealing that places [his] personal interest in conflict with [his] obligations to the beneficiaries. *Hein v. Zoss*, 877 N.W.2d 62, 66 (S.D. 2016) (brackets in original) (internal citations omitted).

98. Petitioners argue that Peterka had a duty of loyalty to his beneficiaries. South Dakota Code § 55-2-3 prohibits a Trustee from taking part “in any transaction concerning the trust in which he or anyone for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary... except... [w]hen the instrument creating the trust expressly grants permission to the trustee to buy, sell or lease property for the trust from or to the trust.” S.D.C.L. § 55-2-3(4).

99. South Dakota Code § 55-2-4 imposes upon trustees a duty to refrain from gaining an advantage from beneficiaries: “A trustee may not use the influence which his position gives him to obtain any advantage from his beneficiary.”

100. Petitioners allege that Peterka had a duty not to undertake another trust adverse in nature to the interest of any of his beneficiaries. (Peterka Compl. ¶ 71H). South Dakota Code § 55-2-5 imposes upon the trustee a duty to refrain from undertaking trusteeship of an adverse trust: “No trustee so long as he remains in the trust may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust without the consent of the latter.”

101. South Dakota Trust Code § 55-2-6 imposes upon the trustee a duty to inform beneficiaries of any adverse interest: “If a trustee acquires any interest or becomes charged with

any duty adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof and may be at once removed.”

102. Petitioners allege that Peterka had a duty of full disclosure. (Peterka Compl. ¶ 71D). Petitioners allege that they did not become aware of the 2006 SAG Irrevocable Trust, or that they were beneficiaries of the 2006 SAG Irrevocable Trust, until after John’s death.

103. South Dakota Code § 55-2-13 requires a trustee of an irrevocable trust to notify qualified beneficiaries “of the trust’s existence and of the right of the beneficiary to request a copy of the trust instrument pertaining to the beneficiary’s interest in the trust” within 60 days of the date the trustee accepted trusteeship.<sup>7</sup> This notification requirement is expressly abrogated by Section 13.15 of the 2006 SAG Irrevocable Trust: “The Grantor hereby directs that the Trustees are not required to provide the notice set forth in SDCL § 55-2-13 to qualified beneficiaries.” Accordingly, the Court concludes that Peterka had no duty to inform the beneficiaries of the 2006 SAG Irrevocable Trust of the trust’s existence pursuant to South Dakota Code § 55-2-13.

104. In accordance with the foregoing, the Court concludes that, other than the duty to disclose the existence of the trust under S.D.C.L. § 55-2-13, Peterka owed to his beneficiaries the duties described above when he undertook trusteeship of the SAG 2006 Irrevocable Trust on May 22, 2006.

#### *Breach of Fiduciary Duty*

105. Certain provisions of the Irrevocable Trust Agreements allow Peterka to exercise discretion in administering the Trust. (*See, e.g.*, Ex. 141 § 6.1). Section 14.1 of the 2006 SAG Irrevocable Trust states that “[t]he Trustee shall be liable only if it can be clearly established that the exercise of the Trustee’s discretionary powers was made in bad faith.” This language of

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<sup>7</sup> South Dakota Codified Law § 55-2-13 was amended pursuant to 2020 S.D. Sess. Laws Ch. 206 § 12.

Section 14.1 unambiguously limits fiduciary liability to actions taken in bad faith. Accordingly, where Peterka's actions fell within his discretion under the terms of the trust, the Court will only find a breach of fiduciary duty with a correlative finding of bad faith.

*Independent Trustee*

106. Certain provisions of the Irrevocable Trust Agreements relate only to Independent Trustees. (*See, e.g.*, Ex. 141 §§ 6.1, 13.1). Defendants argue that several actions Peterka took were permitted under the terms of the Irrevocable Trust Agreement that apply to Independent Trustees. Therefore, the Court must determine whether, and at what times, Peterka functioned as an Independent Trustee under the Irrevocable Trust Agreements.

107. Under the terms of the 2006 SAG Irrevocable Trust, Peterka cannot be considered an Independent Trustee unless he was “wholly independent” of Sidney, “as defined by Section 672 of the Internal Revenue Code.” (Ex. 141, § 2.5).

The term “wholly independent” means someone who is not a “related or subordinate party.”

108. The term “wholly independent,” as used in Section 2.5(4) of the 2006 SAG Irrevocable Trust, is an ambiguous term. The terms of a contract are “ambiguous” if they are susceptible to more than one reasonable interpretation. *Staffing Specifix, Inc. v. TempWorks Management Services, Inc.*, 913 N.W.2d 687, 692 (Minn. 2018). The section of the Internal Revenue Code referenced in Section 2.5(4) does not expressly define the term “wholly independent.” 26 U.S.C. § 672.

109. One reasonable interpretation of the term “wholly independent” as used in Section 2.5(4) of the 2006 SAG Irrevocable Trust is that it refers to someone who is not a “related or subordinate party.” Section 672 defines “related or subordinate party” as including “an employee of the grantor... [or] a subordinate employee of a corporation in which the grantor is executive.”



Bill Forsberg, who drafted the 2006 SAG Irrevocable Trust, testified credibly that he intended to define persons not “wholly independent” to mean any person, corporation or entity that is “related or subordinate.” (Forsberg Testimony, Nov. 18, 2019 p.m.).

110. Another reasonable interpretation of the term “wholly independent” as used in Section 2.5(4) of the 2006 SAG Irrevocable Trust is that it refers to persons “not subject to the control by others.” (Pet. Proposed Findings, ¶ 203).

111. The Court adopts the first interpretation, and finds that the term “wholly independent” as used in Section 2.5(4) of the 2006 SAG Irrevocable Trust is that it means someone who is not a “related or subordinate party” as defined in 26 U.S.C. § 672. The Court finds that this is the most appropriate interpretation of this term in that it incorporates Section 672 of the Internal Revenue Code, and based on Mr. Forsberg’s testimony.

Dan Peterka was an Independent Trustee after Sidney’s Redemption out of SAGE.

112. Sidney had an ownership interest in SAGE after Peterka became a trustee of the 2006 SAG Irrevocable Trust. During this time, Peterka was the CEO of SAGE. As an officer of SAGE on May 22, 2006, Peterka was a subordinate employee of a corporation in which the grantor of that trust was an executive. Accordingly, on May 22, 2006, the date he undertook his duties as a Trustee, Peterka was not an Independent Trustee.

113. After Sidney’s ownership interest in SAGE was redeemed, Peterka was no longer a subordinate employee of Sidney. Although Sidney still maintained a presence at SAGE after the redemption, Peterka credibly testified that Sidney had no direction or control over Peterka’s activities at SAGE and had no involvement in setting his compensation after the redemption. (Peterka Testimony, July 31, 2019 p.m.). Petitioners failed to establish that Peterka was a subordinate party under 26 U.S.C. § 672 after the SAGE Redemption. Accordingly, the Court

finds that Peterka became an Independent Trustee after Sidney's ownership interest in SAGE was redeemed.

114. There is a six-month gap between the effective date of the SAGE Redemption and when Sidney actually executed his redemption out of SAGE. In December 2006, after the MPI appraisal of SAGE, Sidney's ownership interest in SAGE was redeemed. The effective date of the SAGE Redemption is June 30, 2006. (Ex. 164). In the six months between the effective date of the redemption and the actual redemption, Sidney retained his ownership interest in SAGE. The Court finds an appropriate date at which Peterka became an Independent Trustee to be the date the SAGE Redemption was actually executed: December 2006, after the MPI appraisal of SAGE.

*Peterka did not breach any fiduciary duties related to the Sage and Elmo Redemptions.*

115. Peterka did not breach any fiduciary duties based on his role with the SAGE and Elmo Park Redemptions. Petitioners allege that Peterka breached his fiduciary duties by enacting and "quarterbacking" the redemption of SAGE and Elmo Park at values he understood to be less than fair market value.

116. The evidence at trial established that Sidney made the decision to implement the SAGE redemption before executing his 2006 estate plan. Peterka engaged MPI to perform an appraisal of SAGE and Elmo Park in February 2006, several months before Sidney executed his 2006 estate plan and Peterka became a trustee of the 2006 SAG Irrevocable Trust. Sidney's intention to transfer SAGE to John was Sidney's goal before he executed the 2006 estate plan, and work was performed on the SAGE and Elmo Park Redemptions months before Peterka assumed any fiduciary duties to Petitioners. (*See, e.g.*, Ex. 108).

117. Petitioners failed to establish that Peterka orchestrated the SAGE and Elmo Park Redemption for his own benefit. Petitioners have leaned heavily on Peterka's deposition testimony

and exhibits in which Peterka used the colloquial term “quarterback” to describe his position in organizing Sidney’s redemption out of SAGE and Elmo Park. Based on the evidence offered at trial, the Court understands that Peterka had an important role in engaging the appraisal agency and conferring with estate planning attorneys and tax attorneys at Sidney behest. Peterka’s actions regarding the SAGE Redemption were conducted at Sidney’s direction, and were not motivated by self-interest.

118. Sidney had no duty to maintain his ownership interest in SAGE or Elmo Park. Petitioners allege that the 2006 Option “legally obliged Sidney and the SAG Revocable Trust to maintain those substantial ownership interests in closely held businesses and make them available to the SAG 2006 Irrevocable Trust for its anticipated exercise.” (Peterka Comp. ¶ 22). There is no legal basis for this assertion, and Sidney was under no such obligation. The 2006 SAG Irrevocable Trust had the option to purchase SAGE upon Sidney’s death if he chose to maintain it as a personal asset.

119. Petitioners failed to establish that Peterka breached any of his duties by allowing the SAGE or Elmo Park Redemptions to occur. Peterka had a duty to the beneficiaries of the 2006 SAG Irrevocable Trust in administering the trust “to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property,” and to use “reasonable care and skill to preserve trust property.” Restatement (Second) of Trusts §§ 174, 176. The only property of the trust was a minimal amount of cash, and the 2006 Option Agreement, which allowed the trust to purchase property in Sidney’s Revocable Trust at his death.

120. Peterka did not breach his duty to use reasonable care and skill to preserve trust property by failing to prevent Sidney from redeeming himself out of SAGE and Elmo Park. The 2006 Option Agreement had no quantifiable value. Mr. Gorowsky credibly testified that, as of

December 18, 2009, the date Sidney's 2009 estate plan was executed and the 2006 Irrevocable Trust and the 2006 Option Agreement were terminated, the 2006 Option Agreement had a value of zero. (Gorowsky Testimony, Nov. 15, 2019 p.m.). Mr. Berens also testified credibly that the 2006 Option Agreement had no value until Sidney's death. (Berens Testimony, Nov. 14, 2019 a.m.). The Court agrees with the analysis of these two experts and concludes that the 2006 Option Agreement had no value throughout the SAGE and Elmo Park Redemption.

121. The crux of Petitioner's argument appears to be that, because Petitioners *could have had* access to any of Sidney's personal assets *when Sidney died*, by operation of the Option, Revocable Trust, and Will, their Trustee owed them a duty to prevent Sidney from devaluing his personal assets and to maintain those assets he already had. But a trustee's duty to exercise reasonable care and skill in the administration of a trust only extends to trust property. (*See* Restatement (Second) of Trusts §§ 174, 176) Sidney's personal assets were not trust property; they were Sidney's assets over which he maintained flexible control.

122. Even assuming the Option could have been assigned a specific value before Sidney's death, Peterka would only have breached his duty if he failed to use reasonable care and skill in preserving the value of the Option. This does not require Peterka to retain independent counsel or to conduct a separate appraisal of SAGE or Elmo Park (which the Trust would have had to pay for). Peterka need only have exercised reasonable care and skill in determining whether the Option would be devalued as a result of the SAGE Redemption. Because Peterka was directly involved in organizing the appraisal of Sidney's ownership interest in SAGE and Elmo Park, the Court finds that he exercised ordinary care and reasonable prudence and was permitted to rely on the MPI valuation of these entities. This is consistent with the rights and duties conferred by the 2006 SAG Irrevocable Trust. (*See* Ex. 141 §§ 15.1(6), 15.10).

123. Furthermore, no trustee of the 2006 SAG Irrevocable Trust would have reason to think the SAGE redemption would devalue the Option because the redemption did not, in and of itself, devalue Sidney's total personal assets. As part of the SAGE redemption and based on the MPI valuation, SAGE distributed to SAG-Sage a 74% ownership interest in Bradley House Apartments, LLC valued at \$5,849,545.00, and a check for \$150,455.00, to the SAG Revocable Trust. (Ex. 332).

124. Petitioners failed to establish that \$6 million was an unreasonable appraisal value for Sidney's interest in SAGE. Petitioners failed to establish that \$2 million was an unreasonable appraisal value for SAG's interest in Elmo Park. Petitioners failed to establish that \$5,849,545.00 was an unreasonable value for Bradley House Apartments. Petitioners failed to establish that a 55.01% ownership interest in Hopkins Housing LP was an unreasonable exchange for Elmo Park.

125. Because Peterka had some knowledge of Sidney's personal finances and the company's finances through his work in organizing this redemption, a breach of his duty would also occur if Peterka had some reason to think that any of the entities involved in the SAGE or Elmo Park transactions were undervalued on the date of the redemption. Petitioners failed to establish that Peterka knew or had reason to think that SAGE, Elmo Park, Bradley House Apartments, or Hopkins House, were undervalued based on the MPI valuation.

126. In summary, Peterka's duty to exercise care in maintaining trust assets only extended to trust property and did not extend to Sidney's personal property. As such, Peterka had no duty to interfere with or refrain from participation in Sidney's Redemption out of SAGE and Elmo Park. Even if Peterka had some duty to determine the effect Sidney's redemption would have on the value of the Option, Peterka did not breach this duty because he had no reason to believe that the valuation of any of the entities involved with the SAGE and Elmo Park

Redemptions was unreasonable. Accordingly, Peterka breached no fiduciary duties related to his “quarterbacking” of the SAGE and Elmo Park redemption.

*Peterka did not breach any fiduciary duties by terminating the 2006 SAG Irrevocable Trust and 2006 Option Agreement.*

127. Petitioners argue that Peterka breached his fiduciary duties by terminating the 2006 SAG Irrevocable Trust and the 2006 Option Agreement.

128. Peterka had authority as a trustee of the 2006 SAG Irrevocable Trust to terminate the 2006 Option Agreement. The value of the 2006 Option Agreement was zero on the date of its termination. (Berens Testimony, Nov. 14, 2019 AM; Gorowsky Testimony, Nov. 15, 2019 p.m.). Accordingly, Peterka did not breach any fiduciary duties by terminating the 2006 Option.

129. Section 13.1 of the 2006 SAG Irrevocable Trust grants the Independent Trustee the power to terminate the Irrevocable Trust “whenever such Independent Trustee deems it advisable for any reason, including but not limited to reasons of economy of administration or for tax reasons.” (Ex. 141 § 13.1). At the time the 2006 Irrevocable Trust was terminated, South Dakota Law provided: “[e]xcept as otherwise provided by the terms of the trust, if the value of trust property of a noncharitable trust is less than fifty thousand dollars, the trustee may terminate the trust.” S.D.C.L. § 55-3-27 (2004). Peterka was an Independent Trustee when Sidney executed his 2009 estate plan and when the 2006 SAG Irrevocable Trust was terminated. Accordingly, Peterka has authority by its terms to terminate the 2006 SAG Irrevocable Trust.

130. Peterka’s involvement was required to terminate the 2006 SAG Irrevocable Trust. Peterka understood that Sidney wished to make alterations to his estate plan. (Peterka Testimony, July 31, 2019 a.m.). The alterations Sidney wished to make to his estate plan included modifications to the Irrevocable Trust. Section 1.3 of the 2006 SAG Irrevocable Trust states: “This

Trust Agreement is irrevocable and the Grantor has no right to change, modify, amend, or revoke any term or provision hereof, or to terminate this Trust Agreement.” (Ex. 141 § 1.3). Based on this provision, Sidney was not able to modify or alter the terms of the 2006 SAG Irrevocable Trust of his own accord. Accordingly, Peterka, as the Individual Trustee, was required to assent to the termination of the 2006 SAG Irrevocable Trust.

131. Sidney changing his estate plan placed Peterka in a precarious position. Peterka had a fiduciary duty of loyalty to the beneficiaries of the 2006 SAG Irrevocable Trust. Peterka understood Sidney’s intention was essentially to modify his Irrevocable Trust, and the method Sidney selected to achieve this was to terminate the 2006 SAG Irrevocable Trust and execute the 2009 SAG Irrevocable Trust. However, the 2009 SAG Irrevocable Trust (1) removed the distribution of tax-exempt bonds to Holly; (2) eliminated the \$250,000.00 distribution to Brad’s Trust; (3) eliminated the \$1,000,000.00 special distribution to Millie Egan’s Trust; and (4) eliminated the \$1,000,000.00 special distribution to Dorothy’s Trust. (Ex. 376).

132. Despite the elimination of these special distributions, the 2006 SAG Irrevocable Trust had no ability to pay these distributions, as the trust was minimally funded and the 2006 Option Agreement had no value. As such, eliminating these distributions from an unfunded trust did not harm the named Petitioners. Because the trust lacked funds to cover the special distributions and there was no harm to the beneficiaries in eliminating these distributions, Peterka did not breach his fiduciary duty by terminating the 2006 Irrevocable Trust and enacting the 2009 Irrevocable Trust. Peterka properly exercised his power to terminate the 2006 SAG Irrevocable Trust under South Dakota Law and Section 13.1 of the Irrevocable Trust, because the trust had less than \$50,000 in funds.

133. In summary, the 2006 Option Agreement had no value on the date the 2006 Option

Agreement and 2006 SAG Irrevocable Trust were terminated. Peterka was aware that Sidney's 2009 estate plan included an updated Irrevocable Trust that eliminated special distributions that were included in the 2006 Irrevocable Trust. Because the 2006 Option Agreement had no value at the time, these eliminated special distributions could not have been paid from the trust *res*. Accordingly, Peterka's termination of the 2006 Option Agreement and the 2006 SAG Irrevocable Trust did not breach any fiduciary duties.

*Peterka did not breach any fiduciary duties by terminating the 2009 SAG Irrevocable Trust and 2009 Option Agreement.*

134. Petitioners argue that Peterka breached his fiduciary duties by terminating the 2009 SAG irrevocable Trust and Option Agreement. This argument fails for reasons similar to the claims concerning termination of the 2006 Estate Plan.

135. Peterka had authority as a trustee of the 2009 SAG Irrevocable Trust to terminate the 2009 Option Agreement. The value of the 2009 Option Agreement was zero on the date of its termination. (*See Berens Testimony*, Nov. 14, 2019 AM; *Gorowsky Testimony*, Nov. 15, 2019 p.m.). Accordingly, Peterka did not breach any fiduciary duties by terminating the 2009 Option Agreement.

136. Section 13.1 of the 2009 SAG Irrevocable Trust is identical to the provision in the 2006 SAG Irrevocable Trust. South Dakota Code § 55-3-27 was also applicable to termination of the 2009 SAG Irrevocable Trust. Peterka was an Independent Trustee when Sidney executed his 2012 estate plan and when the 2009 SAG Irrevocable Trust was terminated. Accordingly, Peterka has authority under the trust to terminate the 2009 SAG Irrevocable Trust.

137. Peterka's involvement was required to terminate the 2009 SAG Irrevocable Trust. Peterka understood that Sidney wished to change his estate plan. The alterations Sidney wished



to make to his estate plan included modifications to the Irrevocable Trust. Section 1.3 of the 2009 SAG Irrevocable Trust states: “This Trust Agreement is irrevocable and the Grantor has no right to change, modify, amend, or revoke any term or provision hereof, or to terminate this Trust Agreement.” (Ex. 141 § 1.3). Based on this provision, Sidney was not able to modify or alter the terms of the 2009 SAG Irrevocable Trust of his own accord. Accordingly, as the Individual Trustee, Peterka’s involvement was required to accomplish the termination of the 2009 SAG Irrevocable Trust.

138. Again, Sidney’s intentions placed Peterka in a potentially problematic position. Peterka had a fiduciary duty of loyalty to the beneficiaries of the 2009 SAG Irrevocable Trust. Peterka owed no fiduciary duties to Sidney Goodman as Grantor of the 2009 SAG Irrevocable Trust. Peterka understood that the 2009 SAG Irrevocable Trust would not be replaced. As such, a number of special distributions were eliminated from Sidney’s estate plan.

139. Despite this revision, the 2009 SAG Irrevocable trust had no ability to pay any distributions that were eliminated as a result of this revised estate plan because the trust was minimally funded and the 2009 Option Agreement had no value. Eliminating these distributions did not harm the named Petitioners. Because the trust did not have sufficient funds to cover the distributions that were eliminated from this estate plan and there was no harm to the beneficiaries in eliminating these distributions, Peterka did not breach his fiduciary duty by terminating the 2009 Irrevocable Trust. Peterka properly exercised his power to terminate the 2009 SAG Irrevocable Trust under South Dakota Law and Section 13.1 of the Irrevocable Trust, because the trust had less than \$50,000 in funds.

140. In summary, the 2009 Option Agreement had no value on the date the 2009 Option Agreement and 2009 SAG Irrevocable Trust were terminated. Peterka knew that Sidney’s 2012

estate plan eliminated distributions that were included in the 2009 Irrevocable Trust. Because the 2009 Option Agreement had no value at the time, these eliminated distributions could not have been paid from the trust *res*. Accordingly, Peterka's termination of the 2009 Option Agreement and the 2009 SAG Irrevocable Trust did not breach any fiduciary duties.

*Peterka did not breach any fiduciary duties by simultaneously serving as Trustee for the 2006*

*SAG Irrevocable Trust and the 2006 JBG Irrevocable Trust.*

141. Petitioners argue that Peterka breached his fiduciary duties by simultaneously serving as the Trustee of the 2006 SAG Irrevocable Trust and the 2006 JBG Irrevocable Trust.

142. The Restatement (Third) of Trusts defines the duty of loyalty:

(1) Except as otherwise provided in the terms of the trust, a trustee has a duty to administer the trust solely in the interest of the beneficiaries, or solely in furtherance of its charitable purpose.

(2) Except in discrete circumstances, the trustee is strictly prohibited from engaging in transactions that involve self-dealing or that otherwise involve or create a conflict between the trustee's fiduciary duties and personal interests.

(3) Whether acting in a fiduciary or personal capacity, a trustee has a duty in dealing with a beneficiary to deal fairly and to communicate to the beneficiary all material facts the trustee knows or should know in connection with the matter.

Restatement (Third) of Trusts § 78. "This duty of loyalty prohibits the trustee from engaging in transactions, *as trustee*, with persons with whom the trustee is closely related." Restatement (Third) of Trusts § 78, cmt. e. "The prohibition also applies to transactions by a trustee, acting in either a fiduciary or personal capacity, with third persons if the transaction would create a reasonably foreseeable risk of future conflict between the trustee's fiduciary duties and personal interests." *Id.*

143. Serving as trustee for two or more trusts does not, in and of itself, breach a trustee's duty of loyalty.

144. Petitioners failed to establish facts sufficient to demonstrate that Peterka breached

a duty of loyalty by serving as trustee for the 2006 SAG Irrevocable Trust and the 2006 JBG Irrevocable Trust. There was no overlap in trust property between the two trusts, and Petitioners failed to establish facts sufficient to prove that Peterka was unable to administer both trusts without violating his duty of loyalty. Accordingly, the Court finds that Peterka did not breach his fiduciary duty of loyalty by simultaneously serving as trustee for the 2006 SAG Irrevocable Trust and the 2006 JBG Irrevocable Trust.

*Peterka did not breach any fiduciary duties by simultaneously serving as Trustee of the 2006 SAG Irrevocable Trust and the 2009 Irrevocable Trust.*

145. Petitioners argue that Peterka breached his fiduciary duties by simultaneously serving as Trustee of the 2006 SAG Irrevocable Trust and the 2009 SAG Irrevocable Trust. This argument fails for reasons similar to the analysis relating to Peterka's service as trustee for the 2006 JBG Irrevocable Trust.

146. Petitioners argue that Peterka breached his fiduciary duties by simultaneously serving as the Trustee of the 2006 SAG Irrevocable Trust and the 2006 JBG Irrevocable Trust.

147. The Restatement (Third) of Trusts defines the duty of loyalty:

(4) Except as otherwise provided in the terms of the trust, a trustee has a duty to administer the trust solely in the interest of the beneficiaries, or solely in furtherance of its charitable purpose.

(5) Except in discrete circumstances, the trustee is strictly prohibited from engaging in transactions that involve self-dealing or that otherwise involve or create a conflict between the trustee's fiduciary duties and personal interests.

(6) Whether acting in a fiduciary or personal capacity, a trustee has a duty in dealing with a beneficiary to deal fairly and to communicate to the beneficiary all material facts the trustee knows or should know in connection with the matter.

Restatement (Third) of Trusts § 78. "This duty of loyalty prohibits the trustee from engaging in transactions, *as trustee*, with persons with whom the trustee is closely related." Restatement (Third) of Trusts § 78, cmt. e. "The prohibition also applies to transactions by a trustee, acting in

either a fiduciary or personal capacity, with third persons if the transaction would create a reasonably foreseeable risk of future conflict between the trustee's fiduciary duties and personal interests." *Id.*

148. As the Court held above, serving as trustee for two or more trusts does not, in and of itself, breach a trustee's duty of loyalty.

149. Petitioners failed to establish facts sufficient to demonstrate that Peterka breached a duty of loyalty by serving as trustee for the 2006 SAG Irrevocable Trust and the 2009 SAG Irrevocable Trust. First, the 2006 SAG Irrevocable Trust and the 2009 SAG Irrevocable Trusts overlapped for a very short period of time. Second, as with the JBG Trust, there was no overlap in trust property between the two trusts. The only assets of the 2006 SAG Irrevocable Trust was a minimal amount of money and the 2006 Option Agreement. The only assets of the 2009 SAG Irrevocable Trust were a minimal amount of money and the 2009 Option Agreement.

150. Finally, the 2006 SAG Irrevocable Trust was part of Sidney's 2006 estate plan. The entirety of the 2006 estate plan, including the 2006 SAG Irrevocable Trust was to be terminated with the execution of the 2009 estate plan. Peterka was aware of Sidney's 2009 estate plan, and knew that the 2006 SAG Irrevocable Trust would be revoked when the 2009 estate plan was executed. When the 2006 SAG Irrevocable Trust was terminated, the trust *res* would be distributed in accordance with the terms of that trust, which is precisely what happened. As such, any overlap between these two trusts is *de minimis* and would not produce any conflict of interest for Peterka in their administration. Accordingly, the Court finds that Peterka did not breach his fiduciary duty of loyalty by simultaneously serving as trustee for the 2006 SAG Irrevocable Trust and the 2006 JBG Irrevocable Trust.

*Peterka did not breach any fiduciary duties related to the 2012 Releases.*

151. The releases that Petitioners executed in 2012 are not the product of any breach of fiduciary duty or fraud. As discussed earlier, Peterka did not have a duty to inform Petitioners of the 2006 and 2009 SAG Irrevocable Trusts. (Ex. 141, 376 § 13.15). Petitioners have not identified, and the Court is not aware of, any duty that would have required Peterka to inform the beneficiaries of the existence of the 2009 SAG Irrevocable Trust in contravention of Section 13.15 of the SAG Irrevocable Trusts. As such, Peterka did not breach any duty related to a trustee's duty to inform Petitioners of the trust's existence.

152. Petitioners failed to establish that the releases were a result of Peterka's conduct. Sidney obtained the releases from Petitioners. Peterka was not a party to the releases. Although Peterka was aware of the releases, he did not induce Petitioners to sign them and he was not necessary to the procurement of these signatures. Petitioners failed to identify, and the Court is not aware of, any duty to inform that would have required Peterka to inform the beneficiaries of the existence of the 2009 SAG Irrevocable Trust, based on Peterka's knowledge that the Grantor was seeking releases from a trust's beneficiaries. Accordingly, Peterka did not breach any fiduciary duties related to the releases.

153. In accordance with the foregoing, because Peterka did not breach any fiduciary duties he owed to Petitioners, Petitioners' claim for breach of fiduciary duty fails and is dismissed.<sup>8</sup>

**Fraud**

154. Violations of South Dakota Code §§ 55-2-1 through 55-2-6 are considered fraud under S.D.C.L. § 55-2-7: "Every violation of the provisions of §§ 55-2-1 to 55-2-6, inclusive, is a fraud against the beneficiary of the trust." Because Peterka did not breach any fiduciary duty owed

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<sup>8</sup> Because the Court decided the issues as set forth in this opinion, it reaches no conclusions regarding causation and damages.

under these statutory provisions, Petitioners' statutory fraud claim fails and is dismissed.

155. Although Petitioners' core fraud claim appears to be statutory, Petitioners also allege fraud pursuant to Minnesota common law. To establish common law fraud, a plaintiff must prove (1) a false representation of a past or existing material fact susceptible of knowledge; (2) made with knowledge of the falsity of the representation or made without knowing whether it was true or false; (3) with the intention to induce action in reliance thereon; (4) that the representation caused action in reliance thereon; and (5) pecuniary damages as a result of the reliance. *U.S. Bank N.A. v. Cold Spring Granite Co.*, 802 N.W.2d 363, 373 (Minn. 2011). Common law fraud may also be established by concealment of the truth. *Id.*

156. Petitioners failed to establish that Peterka made any false representation of a past or present material fact. Under the terms of the trust, Peterka was not required to notify the beneficiaries of the existence of the 2006 or 2009 SAG Irrevocable Trust. Failure to notify the beneficiaries of the trust's existence, when the omission is expressly permitted by the trust, is not a fraudulent concealment of a past or existing material fact.

157. Petitioners failed to establish that Peterka sought to induce action, or that Petitioners took any actions, in relationship to any false representation or concealment purportedly made by Peterka. Accordingly, Petitioners' claim for common law fraud fails and is dismissed.

#### **Aiding and Abetting**

158. Petitioners allege TGG aided and abetted Peterka's tortious conduct. A claim for aiding and abetting the tortious conduct of another includes these elements: (1) the primary tortfeasor must commit a tort that causes injury to the plaintiff; (2) the defendant must know that the primary tortfeasor's conduct constitutes a breach of fiduciary duty; and (3) the defendant must substantially assist or encourage the primary tortfeasor in the achievement of the breach. *Witzman*

*v. Lehrman, Lehrman & Flom*, 601 N.W.2d 179, 187 (Minn. 1999).

159. The first element of Petitioners' aiding and abetting claim requires an underlying tort that causes injury to the Petitioners. The Court found that Peterka did not breach any fiduciary duties owed to the Petitioners as trustee of the 2006 and 2009 SAG Irrevocable Trust. Accordingly, Petitioners' aiding and abetting claim fails and is dismissed.

#### **Attorneys' Fees**

160. Petitioners also request attorney's fees incurred in this matter. Petitioners argue that they are entitled to an award of attorneys' fees "because TGG's tortious conduct forced Plaintiffs into litigation with other defendants." (Petitioners' Proposed Findings at 51).

161. Litigants ordinarily may not recover attorney fees absent a specific contract or statutory authorization. *Osborne v. Chapman*, 574 N.W.2d 64, 68 (Minn. 1998). One exception to this general rule has been recognized by Minnesota law:

One who through the tort of another has been required to act in the protection of his [or her] interests by bringing or defending an action against a third person is entitled to recover reasonable compensation for loss of time, attorney fees and other expenditures thereby suffered or incurred in the earlier action.

*Osborne*, 574 N.W.2d at 68 (quoting Restatement (Second) of Torts § 914(2) (1979)).

162. Because the Court finds Peterka did not breach his fiduciary duties, and that TGG did not aid or abet Peterka's breach of fiduciary duty, an exception to the general rule is not warranted in this case. Petitioners have not identified a contract or statutory authority that would authorize an award of attorneys' fees. Accordingly, Petitioners' attorneys' fees claim fails and is dismissed.

#### **Constructive Trust**

163. Petitioners seek the remedy of a Constructive Trust. A constructive trust is imposed to prevent unjust enrichment. *Wright v. Wright*, 311 N.W.2d 484, 485 (Minn. 1981). A

constructive trust is a “flexible remedy, appropriate where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it.” *Rock v. Hennepin Broadcasting Associates, Inc.*, 359 N.W.2d 735, 739 (Minn. Ct. App. 1984). A constructive trust is necessary when “the property is held by the person to be charged as constructive trustee.” *Rock*, 359 N.W.2d at 739.

164. Petitioners failed to establish that Peterka was unjustly enriched. As trustee of the 2006 and 2009 SAG Irrevocable Trusts, Peterka had control over trust property. This control did not extend to assets that Sidney personally owned, and Peterka cannot be considered a constructive trustee over these assets. Peterka does not own, and never owned, the property sought by Petitioners.

165. Petitioners failed to establish that TGG or any other entity was unjustly enriched as a result of the SAGE and Elmo Park redemptions. Petitioners failed to establish that SAGE, Elmo Park, Hopkins House, and Bradley House Apartments were undervalued at the time of these redemptions. Accordingly, neither TGG nor any other entity was unjustly enriched as a result of the SAGE and Elmo Park redemptions.

### **ORDER**

Based on the foregoing findings of fact and conclusions of law, and upon all the facts, records, and proceedings herein, IT IS HEREBY ORDERED:

1. Judgment shall be entered in favor of Dan Peterka, James Weichert, David Gotlieb, and The Goodman Group, LLC.
2. Judgement of dismissal shall be entered in favor of Respondent South Dakota Trust Company in accordance with the Court’s Order dated December 6, 2019.
3. All relief sought by the Petitions filed by Petitioners in the Estate of John B.



Goodman matter is **DENIED** and the Petitions are **DISMISSED WITH PREJUDICE**.

4. All relief sought by the Third Amended Petition in the Sidney A. Goodman Revocable Trust matter is **DENIED** and the Petition is **DISMISSED WITH PREJUDICE**.

5. All relief sought by Petitioners in the Amended Complaint is **DENIED** and the Amended Complaint is hereby **DISMISSED WITH PREJUDICE**.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

**DATED:** April 27, 2020

**BY THE COURT:**



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Honorable Edward T. Wahl  
Judge of District Court