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 Attorney for Defendants Greenberg Traurig, LLP,
 John and Carol Clemency, Jeffrey and Jacque Verbin,
 and Jennifer M. Dubay

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA

Northern Highlands I, II (Arizona LLC's),
et al.,

Plaintiffs,

v.

Comerica Bank (a federally chartered
 national bank, Detroit, Michigan,
 domiciled), *et al.*,

Defendants.

No. CV 07-00163-TUC-DCB

**MOTION TO DISMISS FIRST
 AMENDED COMPLAINT
 AGAINST DEFENDANT
 GREENBERG TRAURIG, LLP
 WITH PREJUDICE**

(Oral Argument Requested)

Defendant Greenberg Traurig, LLP ("GT") moves the Court for an Order dismissing Plaintiffs' First Amended Complaint against GT **with prejudice** on the following grounds:

1. Pursuant to Rule 8 of the Federal Rules of Civil Procedure, on the basis that Plaintiffs fail to either make a short, plain statement of their claims entitling them to relief against GT or make "simple, concise and direct" allegations;
2. Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, on the basis the Court lacks subject matter jurisdiction over Plaintiffs' claims under the *Rooker-Feldman* doctrine; and

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3. Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, on the basis that Plaintiffs fail to state a claim for which relief may be granted against GT.

Dismissal **with prejudice** is proper since Plaintiffs cannot, in good faith and in compliance with Rule 11 of the Federal Rules of Civil Procedure, amend the First Amended Complaint to allege any facts for which relief may be granted against GT.

GT supports this Motion to Dismiss With Prejudice with the following Memorandum of Points and Authorities, and documents filed in *Stirling Bridge, LLC, et al. v. Quarles & Brady, LLP, et al.*, Maricopa County, Arizona Superior Court Cause No. CV2005-003271 and *Stirling Bridge, LLC, et al. v. Robert and Terri Porter*, Maricopa County, Arizona Superior Court Cause No. CV2005-003272, which are submitted with the Separate Appendix In Support Of Motions To Dismiss Greenberg Traurig, Clemency, Verbin and Dubay **With Prejudice** (“GT App.”) filed simultaneously herewith.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiffs’ frivolous First Amended Complaint asserts claims against at least thirty defendants, including lawyers who have successfully litigated claims on behalf of their clients against one or more of the Plaintiffs in multiple Arizona state court lawsuits over the past four years or so. Ensnared within Plaintiffs’ unmistakable abuse of the judicial process is Greenberg Traurig, LLP (“GT”), which represented only one of the plaintiffs, Stirling Bridge, LLC (“Stirling”) for about four months from November 2002 to March 6, 2003 on matters completely unrelated to the present litigation. Plaintiffs simply have not alleged any conduct by GT that entitles Plaintiffs to any relief against the firm. Nor could Plaintiffs cure the defects of their pleading

1 by amendment. Plaintiffs' claims against GT must, therefore, be dismissed with
2 prejudice.

3 **II. FACTUAL BACKGROUND.**

4 **A. GT's limited representation of its former client, Plaintiff Stirling**
5 **Bridge, LLC.**

6 GT represented Stirling in connection with a handful of discrete corporate
7 matters, including general corporate work, the Drake Generation Facility/Utility, the
8 Biofuel Production Facility and formation of Bob's Big Boy Franchise, L.L.C. The
9 majority of GT's services related to the formation of Bob's Big Boy Franchise, LLC.
10 Although a file was opened, no work was performed or billed with respect to the
11 Drake Cement Facility. None of the matters handled by GT for Stirling is related to
12 any matter at issue in the present lawsuit. Stirling paid GT a modest retainer of
13 \$15,000, and GT performed legal services with respect to these miscellaneous
14 corporate matters over the course of a mere four months from November 2002 to
15 March 6, 2003. Significantly, none of the GT attorneys named as defendants in this
16 action has ever provided legal services to any of the Plaintiffs herein.¹

17 **B. "The Quarles & Brady Litigation."**

18 Plaintiffs herein previously filed on February 23, 2005 in Maricopa County,
19 Arizona Superior Court Cause No. CV2005-003271 a lawsuit against Quarles &
20 Brady, LLP, the law firm that had represented defendant Comerica Bank's
21 predecessor in connection with a credit agreement executed September 10, 2001, and
22 three members of the firm, including John Clemency, for legal malpractice ("the
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25 ¹ GT App., Exhibit F, GT, LLP's Response in Opposition to Motion to Compel
26 Etc. and Request for Attorneys' Fees dated February 6, 2006, Tab 6, Stirling
Bridge Check No. 2524, and Tabs 3 and 7, GT Invoices.

1 *Quarles & Brady* Litigation”).² The plaintiffs alleged Quarles & Brady had
2 simultaneously represented them and Comerica Bank in connection with a
3 commercial transaction between plaintiffs and the bank. Although Quarles & Brady
4 admitted that it had previously represented at least some of the plaintiffs in unrelated
5 matters, the firm asserted that its sole client in the disputed transaction was Comerica
6 Bank, and that the potential conflict has been waived in writing by the plaintiffs.

7 Clemency was not involved in the Comerica transaction. Rather, Clemency
8 served only as litigation counsel to Comerica Bank, first as a partner of Quarles &
9 Brady beginning in February 2003, and then as a shareholder of GT from November
10 2003 to the present. **GT App., Exhibit J, Statement of Facts Supporting John and**
11 **Carol Clemency’s Motion for Summary Judgment, Exhibit 1, Affidavit of John**
12 **Clemency.** Furthermore, Clemency never provided legal services to any of the
13 Plaintiffs. *Id.* Consequently, on October 6, 2006, the Court (Hon. Kenneth L. Fields)
14 entered an Order granting summary judgment for Clemency, stating the following:

15 2. The Court grants Defendants John and Carol Clemency’s
16 Motion for Summary Judgment. There are no disputed issues of
17 material fact precluding entry of summary judgment. The undisputed
18 facts are that:

19 a. John Clemency was an attorney at the law firm of Quarles
20 Brady but was never the attorney handling the plaintiffs’ legal matters at
21 the law firm.

22 b. The plaintiffs consented in writing to Quarles Brady
23 representing the Bank in the financing arrangements between the Bank
24 and plaintiffs.

25 c. The written consent put plaintiffs on notice that the
26 representation in the financing arrangements could be adverse to
plaintiffs.

² See *GT App., Exhibit I, Second Amended Complaint* filed June 5, 2006.

1 There is no basis for a legal malpractice case against opposing
2 counsel here. Mr. Clemency was opposing counsel against the plaintiffs
3 and as such has no attorney-client relationship with plaintiffs for the
4 Comerica Bank financing transactions. *Linder v. Brown & Herrick*, 189
Ariz. 398 (App. 1997), 943 P2d 758.

5 **GT App., Exhibit K, Minute Entry Order dated October 6, 2006.** Judge Fields
6 denied plaintiffs' motion for reconsideration of his October 6, 2006 ruling in a Minute
7 Entry Order dated June 6, 2007, which also granted summary judgment for Quarles &
8 Brady. **Id., Exhibit L, Minute Entry Order dated June 6, 2007.** A proposed form
9 of Final Judgment has been submitted to the Court and is awaiting signature. **Id.,**
10 **Exhibit M, Notice of Lodging Proposed Form of Final Judgment dated June 15,**
11 **2007.**

12 **C. "The Porter Litigation."**

13 GT became a direct target of Plaintiff/Plaintiffs' counsel Grant H. Goodman
14 ("Goodman") when he served a subpoena *duces tecum*³ on GT in December 2005 in
15 connection with an Arizona state court action captioned as *Stirling Bridge, LLC, et al.*
16 *v. Robert and Terri Porter*, Maricopa County, Arizona Superior Court Cause No.
17 CV2005-003272 ("the Porter Litigation"). GT attorney Jennifer M. Dubay
18 ("Dubay") represented the firm with respect to responding to the subpoena *duces*
19 *tecum*, including obtaining an appropriate waiver of privileges and consent to
20 production of documents, producing responsive documents, and opposing the
21 plaintiffs' motion to compel production of further documents filed against GT and
22 other non-parties to the Porter Litigation.⁴ Merton Marks, the Special Discovery

23 ³ **GT App., Exhibit A, Subpoena Duces Tecum issued to GT, LLP dated**
24 **December 28, 2005.**

25 ⁴ **Id., Exhibit B, GT, LLP's Objections to Subpoena Duces Tecum dated January**
26 **12, 2006; Exhibit C, GT, LLP's First Supplemental Response and Objections to**
Subpoena dated January 27, 2006; Exhibit D, GT, LLP's Second Supplemental
Response and Objections to Subpoena Duces Tecum dated February 1, 2006;

1 Master in the *Porter* Litigation and related Goodman lawsuits, denied the plaintiffs'
2 motion to compel on May 16, 2006.⁵ The plaintiffs in the *Porter* Litigation did not
3 seek review of the Special Discovery Master's ruling on the motion to compel
4 pursuant to the Arizona Rules of Procedure for Special Actions.⁶

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6 **III. THE COURT SHOULD DISMISS PLAINTIFFS' FIRST AMENDED
COMPLAINT AGAINST GT WITH PREJUDICE.**

7 **A. The Court should dismiss the First Amended Complaint pursuant
8 to Rule 8 because Plaintiffs fail to make a short, plain statement of
9 their claims, and do not make "simple, concise and direct"
allegations, against GT.**

10 Rule 8(a) of the Federal Rules of Civil Procedure requires that a complaint
11 contain "a short and plain statement of the claim showing that the plaintiff is entitled
12 to relief." Fed.R.Civ.P., Rule 8(a)(2). Rule 8(e)(1) of the Federal Rules of Civil
13 Procedure also requires that each averment of a pleading be "simple, concise and
14 direct." *Id.*, Rule 8(e)(1). Even if a complaint has the factual elements of a cause of
15 action present but scattered throughout the Complaint and not organized into a "short
16 and plain statement of the claim," the Complaint may be dismissed for failure to
17 satisfy Rule 8. *McHenry v. Renne*, 84 F.3d 1172 (9th Cir. 1996).

18 In order to assist litigants to understand the Rule 8 requirement that averments
19 "be simple, concise and direct," Rule 84 of the Federal Rules of Civil Procedure

21 **Exhibit E, Plaintiffs' (Consolidated) Motion to Compel Compliance and
22 Production of Documents Etc. dated January 23, 2006; Exhibit F, GT, LLP's
23 Response in Opposition to Motion to Compel Etc. and Request for Attorneys'
24 Fees dated February 6, 2006; Exhibit G, Plaintiffs' Reply Etc. dated April 12,
25 2006.**

26 ⁵ *Id.*, Exhibit H, Special Master's Discovery Report No. 4 Re Motion to Compel
Etc. dated May 16, 2006.

⁶ *See Ingalls v. Superior Court*, 117 Ariz. 448, 572 P.2d 552 (App. 1997) (discovery
matters are properly entertained in special actions).

1 provides an Appendix of Forms, “intended to indicate the simplicity and brevity of
2 statement which the rules contemplate.” *McHenry*, 84 F.3d at 1177. For example,
3 Form 9 demonstrates the type of statement that makes a short plain statement of a
4 negligence claim:

5 2. On June 1, 1936, in a public highway called Boylston Street, in
6 Boston, Massachusetts, defendant negligently drove a motor vehicle
7 against plaintiff, who was then crossing said highway.

8 3. As a result plaintiff was thrown down and had his leg broken, and
9 was otherwise injured, was prevented from transacting his business,
10 suffered great pain of body and mind, and incurred expenses for medical
11 attention and hospitalization in the sum of one thousand dollars.

12 Fed.R.Civ.P, Rule 84, Form 9. This form of complaint, the Ninth Circuit has
13 explained, “fully sets forth who is being sued, for what relief, and on what theory,
14 with enough detail to guide discovery.” *McHenry*, 84 F.3d at 1177.

15 Plaintiffs’ 54-page First Amended Complaint fails in every respect to satisfy
16 the requirements of Rule 8. Under no circumstances can Plaintiffs’ verbose,
17 incoherent pleading be characterized as simple, concise or direct. Moreover,
18 Plaintiffs have failed to make “a short and plain statement of the claim showing that
19 [they are] entitled to relief” against GT. Fed.R.Civ.P., Rule 8(a)(2). Therefore,
20 dismissal of Plaintiffs’ First Amended Complaint is proper.

21 **B. The Court should dismiss the First Amended Complaint pursuant to**
22 **Rule 12(b)(1) because the Court lacks subject matter jurisdiction**
23 **over Plaintiffs’ claims under the *Rooker-Feldman* doctrine.**

24 Federal courts are courts of limited jurisdiction, and subject matter jurisdiction
25 is a threshold matter that must be established by the plaintiff. *Lujan v. Defenders of*
26 *Wildlife*, 504 U.S. 556, 561 (1992). Challenges to subject matter jurisdiction may be
raised any time, by any party, or by the Court. *See Emrich v. Touche Ross & Co.*,
1190, 1194 n. 2 (9th Cir. 1988). “For motions to dismiss under Rule 12(b)(1), ... the

1 moving party may submit affidavits or other evidence properly before the court It
2 then becomes necessary for the party opposing the motion to present affidavits or any
3 other evidence necessary to satisfy its burden of establishing that the court, in fact,
4 possesses subject matter jurisdiction.” *Ass’n of Am. Med. Colleges v. United States*,
5 217 F.3d 770, 778-79 (9th Cir. 2000).

6 Documents filed in both the *Porter* Litigation and the *Quarles & Brady*
7 Litigation confirm Plaintiffs cannot establish this Court has subject matter jurisdiction
8 over Plaintiffs’ claims against GT. Under the *Rooke r-Feldman* doctrine, federal
9 courts do not have subject matter jurisdiction to conduct appellate review of state
10 court proceedings. *See Oliver v. Long*, 2007 WL 1098527 *7 n. 6 (D.Ariz. April 12,
11 2007); *Domisse v. Napolitano*, 474 F.Supp.2d 1121, 1125 (D.Ariz. 2007). Here,
12 Plaintiffs’ claims are improper appeals of both the Special Discovery Master’s May
13 16, 2006 ruling on plaintiffs’ motion to compel and the Order granting summary
14 judgment for Clemency in the *Quarles & Brady* Litigation on October 6, 2006. The
15 Court lacks jurisdiction to entertain Plaintiffs’ appeals of these state court rulings.

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17 1. **Plaintiffs’ First Amended Complaint is an improper appeal of the**
18 **Special Discovery Master’s May 16, 2006 ruling in the Porter**
Litigation.

19 Plaintiffs here attempt to frame their claims against “The Lawyers”, including
20 their allegation “The Lawyers” allegedly have “knowingly stolen” and “failed to
21 disclose, retain, and protect electronic evidence and specifically email”, as “a classic
22 ‘malpractice’ action,” and alternatively, as claims for violation of the Computer Fraud
23 and Abuse Act, 18 U.S.C. § 1030 *et seq.*, and the Stored Communications Act, 18
24 U.S.C. § 2701 *et seq.* ***See First Amended Complaint, pp. 7-8, 49-51.*** In reality,
25 however, Plaintiffs’ claims against GT are nothing more than Plaintiffs’ attempt to
26 circumvent state review procedures and obtain federal judicial review of the Special

1 Discovery Master's denial of the motion to compel production of documents by GT
2 filed by the plaintiffs in the *Porter* Litigation. This Court lacks subject matter
3 jurisdiction to undertake such review.

4 The plaintiffs in the *Porter* Litigation demanded in their subpoena *duces tecum*
5 that GT produce

6 All documents contained within and constituting plaintiffs' client files;
7 please include all employee and attorney generated documents placed
8 within the client files, or related to the client files, from you, those
9 under your direct control or access, and/or company employees, related
10 to the plaintiffs' client files within your possession, control, or
11 constructive control.

12 **GT App., Exhibit A (emphasis in original).** GT objected to the subpoena *duces*
13 *tecum* on various grounds, but did produce 2,747 pages of documents in response
14 thereto on January 27 and February 1, 2006. **Id., see Exhibits B, C and D.**

15 Notably, the plaintiffs in the *Porter* Litigation filed a motion to compel
16 production of documents against GT (and myriad other non-parties to that suit) before
17 the firm was required to produce any documents responsive to the subpoena *duces*
18 *tecum*. GT successfully opposed the motion to compel. **Id., Exhibit H.** Merton
19 Marks, the Special Discovery Master in the *Porter* Litigation, denied the plaintiffs'
20 motion to compel on May 16, 2006, ruling as follows:

21 The law firm of Greenberg Traurig, LLP ("Greenberg"), is a non-
22 party to this action, but represents Comerica in the consolidated cases.
23 It previously represented Stirling in 2002-2003 in unrelated matters. In
24 2002, Greenberg also represented another party in litigation in which
25 Stirling was a co-defendant and as to which Stirling gave Greenberg a
26 conflict waiver. Greenberg did not represent Comerica at the time
because the foregoing representations of Stirling preceded John
Clemency's withdrawing from Quarles & Brady and joining Greenberg,
bringing with him the representation of Comerica.

1 At the hearing, Greenberg’s counsel, Jennifer Dubay, represented
2 without contradiction that pursuant to the subpoena duces tecum,
3 Greenberg had previously produced to Stirling 2700 pages relating to
4 Greenberg’s above referenced representations of Stirling other than
5 internal practice management records which are privileged. See
6 National Sales & Servive (sic) Co. v. Superior Court, 136 Ariz. 544, 667
7 P.2d 738 (1983) and State Bar of Arizona Ethics Opinion 04-01.

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14 **Order**

15 It is ordered denying Stirling’s Motion to Compel production
16 pursuant to the subpoenas duces tecum and granting Greenberg’s motion
17 to quash the subpoenas served on its custodian of records and
18 information technology department on the grounds that (1) Greenberg
19 has complied with the subpoena duces tecum with respect to the
20 production of Stirling’s client papers, (2) Comerica’s non-privileged
21 documents in Greenberg’s possession have already been produced, and
22 (3) Greenberg’s documents relating to its representation of Comerica in
23 the consolidated cases have already been produced and/or are protected
24 from disclosure by attorney-client and/or work product privileges, ER
25 1.6 and Arizona Ethics Opinion 2000-11.

26 **Id., pp. 5-6.**

 Marks’ May 16, 2006 ruling disposes of each and every alleged impropriety
concerning the representation of clients and production of client materials now
generally asserted against GT and attorneys Jeffrey Verbin, Clemency, and Dubay in
the present action. Specifically, Marks found GT did not simultaneously represent
clients whose interests are/were adverse to each other, and GT produced all client
materials relating to its former representation of Stirling in response to the subpoena
duces tecum. Plaintiffs’ only avenue of relief is through appropriate review
procedures afforded by the State of Arizona, *see Ingalls v. Superior Court, supra*, and
not through the federal courts. Thus, Plaintiffs’ claims against GT must be dismissed
on the basis this Court lacks subject matter jurisdiction over those claims.

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2 **2. Plaintiffs' First Amended Complaint is an improper appeal of the**
3 **summary judgment entered in Clemency's favor in the *Quarles &***
4 ***Brady* Litigation.**

5 In the *Quarles & Brady* Litigation, the plaintiffs alleged the following specific
6 allegations against Clemency:

7 76. Sometime in approximately November 2003 John
8 Clemency left his employment with Q&B and became employed with
9 Greenberg Traurig.

10 77. At the time John Clemency joined Greenberg Traurig,
11 Greenberg Traurig was or had represented the plaintiffs.

12 78. At the time Clemency joined Greenberg Traurig, he
13 brought Imperial/Comerica Bank as a new client to Greenberg Traurig.

14 79. At the time John Clemency joined Greenberg Traurig, he
15 continued his representation of Imperial/Comerica Bank in its claims
16 and actions against Plaintiffs, despite the obvious and adverse conflict of
17 interest.

18 80. After joining Greenberg Traurig, John Clemency engaged
19 in conduct intended to conceal the malfeasance set forth herein; to
20 liquidate Plaintiffs in order to prevent them from being able to pursue
21 claims against defendants; and to mitigate the damages against it of any
22 claims of legal malpractice brought by Imperial/Comerica Bank.

23 81. John Clemency continues through this time to engage in
24 conduct intended to conceal the malfeasance set forth herein; to liquidate
25 Plaintiffs in order to prevent them from being able to pursue claims
26 against defendants; and to mitigate the damages against it of any claims
27 of legal malpractice brought by Imperial/Comerica Bank.

28 **GT. App., Exhibit I.** Having granted summary judgment for Clemency on the basis
29 that no attorney-client relationship between Clemency and Plaintiffs existed, the
30 superior court clearly rejected these allegations as meritless. **Id., Exhibit K.**

31 The only means of review of the superior court's grant of summary judgment
32 the Plaintiffs have is an appeal to the Arizona Court of Appeals once a final judgment
33 is entered in the *Quarles & Brady* Litigation. Plaintiffs instead have attempted to

1 bypass the appropriate state review procedures with their First Amended Complaint.
2 Indeed, in the present action, Plaintiffs allege virtually the same purported misconduct
3 by Clemency in his capacity as litigation counsel for Comerica as they previously
4 alleged in the *Quarles & Brady* Litigation. ***Compare generally First Amended***
5 ***Complaint, pp. 21-29 with GT App., Exhibit I, Second Amended Complaint, ¶¶***
6 ***76-81.***⁷ The Court does not have jurisdiction to review Plaintiffs' claims under the
7 *Rooker-Feldman* doctrine.

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9 **C. The Court should dismiss the First Amended Complaint pursuant**
10 **to Rule 12(b)(6) because Plaintiffs fail to state a claim for which**
11 **relief may be granted against GT.**

12 **1. Standards for dismissal pursuant to Rule 12(b)(6).**

13 A complaint may be dismissed under Rule 12(b)(6) of the Federal Rules of
14 Civil Procedure “based on the lack of a cognizable legal theory or the absence of
15 sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police*
16 *Dep’t.*, 901 F.2d 696, 699 (9th Cir. 1988). When analyzing a complaint for failure to
17 state a claim, all allegations of material fact are taken as true and construed in the
18 light most favorable to the plaintiff. *See Smith v. Jackson*, 84 F.3d 1213, 1217 (9th
19 Cir. 1996). The court may not assume that the plaintiff can prove facts different from
20 those alleged in the complaint. *See Jack Russell Terrier Network of N. Cal. v. Am.*
21 *Kennel Club, Inc.*, 407 F.3d 1027, 1035 (9th Cir. 2005). Similarly, legal conclusions
22 couched as factual allegations are not given a presumption of truthfulness, and
23 “conclusory allegations of law and unwarranted inferences are not sufficient to defeat
24 a motion to dismiss.” *Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1988).

25 Here, Plaintiffs have not alleged, nor could they allege, sufficient facts under
26 any cognizable legal theory against GT. Plaintiffs' First Amended Complaint must

⁷ GT App., Ex. I, Second Amended Complaint filed June 5, 2006.

1 therefore be dismissed against GT with prejudice.

2 **2. Plaintiffs fail to state a legal malpractice claim against GT.**

3 Plaintiffs assert numerous generalized allegations against “The Lawyers”,
4 including a legal malpractice claim at Count Five of the First Amended Complaint.
5 **See First Amended Complaint, pp. 49-50.** As in any action for negligence, a
6 plaintiff in a legal malpractice action must show the following basic elements: duty,
7 breach of duty, causation, and damages. *Glaze v. Larsen*, 207 Ariz. 26, 29, 83 P.3d
8 26, 29 (2004). One claiming legal malpractice must therefore establish (1) the
9 existence of an attorney-client relationship which imposes a duty on the attorney to
10 exercise that degree of skill, care, and knowledge commonly exercised by members of
11 the profession, (2) breach of that duty, (3) that such negligence was a proximate cause
12 of resulting injury, and (4) the fact and extent of the injury. *Phillips v. Clancy*, 152
13 Ariz. 415, 418, 733 P.2d 300, 303 (App. 1986). Here, Plaintiffs have not alleged any
14 facts that state a cognizable legal malpractice claim against GT.

15 Indeed, notwithstanding Plaintiffs’ prolix narrative, Plaintiffs do not allege any
16 facts establishing the existence of an attorney-client relationship between them and
17 GT with respect to any of the matters in dispute or during any relevant time period.
18 Plaintiffs also do not allege any facts establishing the imposition of any duty owed by
19 GT to Plaintiffs to exercise any degree of skill, care, and knowledge commonly
20 exercised by members of the legal profession.⁸ Plaintiffs also do not allege any facts
21 establishing GT breached any duty allegedly owed to Plaintiffs. Finally, Plaintiffs
22 have not alleged any facts establishing any conduct by GT is the proximate cause of
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24 ⁸ In addition, as opposing counsel for Comerica Bank, GT is immune from suit for
25 alleged conduct of its attorneys, including Clemency, in prior litigation matters
26 adverse to any of the Plaintiffs. *Linder v. Brown & Herrick*, 189 Ariz. 398, 405-07,
943 P.2d 758, 766-67 (App. 1998).

1 any alleged injury to Plaintiffs.

2 In sum, Plaintiffs have not alleged any of the elements of *Phillips v. Clancy*
3 necessary to state a claim for legal malpractice against GT.

4 **D. Even if granted leave to amend the First Amended Complaint,**
5 **Plaintiffs cannot state a legal malpractice claim against GT.**

6 Plaintiffs cannot, in good faith and without violating Rule 11 of the Federal
7 Rules of Civil Procedure, amend the First Amended Complaint to allege a cognizable
8 legal malpractice claim against GT.

9 Without converting this Motion to Dismiss to a motion for summary judgment,
10 this Court may take judicial notice of court filings and other matters of public record
11 relevant to the allegations of Plaintiffs' First Amended Complaint. *Catz v. Chalker*,
12 2006 WL 2547304 (D. Ariz. August 31, 2006); *Grabinski v. National Union Fire Ins.*
13 *Co. of Pittsburgh, PA*, 2005 WL 2412784 (D. Ariz. September 23, 2005). Documents
14 filed in the *Porter* Litigation and the *Quarles & Brady* Litigation are directly relevant
15 to Plaintiffs' allegations against GT. These public records confirm Plaintiffs cannot
16 in good faith assert any claim for legal malpractice against GT.

17 Notably, before producing any client documents in the *Porter* Litigation in
18 response to the subpoena *duces tecum*, GT required a written waiver of the attorney-
19 client and work product privileges and consent to production of any documents
20 subject to and protected by such privileges ("Waiver and Consent"). **GT App.,**
21 **Exhibit F, Tab 1, Dubai letter to Goodman dated January 19, 2006.** The Waiver
22 and Consent applied to all GT client files possibly responsive to the subpoena *duces*
23 *tecum*, which included the following files:

| | |
|-----------------|---|
| 24 59110.010100 | Stirling Bridge, LLC/GTI Capital Holdings, LLC, |
| 25 | dba Rockland Materials v. Ames Construction |
| 26 59110.010200 | Stirling Bridge, LLC/Stirling Bridge General |
| | Corporate |

1 59110.010300 Stirling Bridge, LLC/Drake Cement Facility
2 59110.010400 Stirling Bridge, LLC/Drake Generation
 Facility/Utility
3 59110.010500 Stirling Bridge, LLC/Biofuel Production Facility
4 59110.010600 Stirling Bridge, LLC/Bob's Big Boy Franchise,
 L.L.C.

5 **Id.**

6 Although GT's representation was limited to representation of Stirling Bridge,
7 LLC and GTI Capital Holdings, LLC, d/b/a Rockland Materials⁹ during the brief
8 period of October 31, 2002 through May 30, 2003,¹⁰ GT, out of an abundance of
9 caution, requested that Goodman execute the Waiver and Consent not only on their
10 behalf, but also on behalf of Bob's Big Boy of Arizona, LLC; GHG, Inc.; Northern
11 Highlands I, LLC; Northern Highlands II, LLC; West Highland Water & Power,
12 LLC; Triad Commercial Captive Insurance Company; and G.H. Goodman Investment
13 Companies, L.L.C. **Id.** Goodman executed the Waiver and Consent on January 19,
14 2006. **Id.**

15 Importantly, the Waiver and Consent confirms that Goodman and his wife
16 Teri, who are Plaintiffs herein, have never been clients of GT. **Id.** The Waiver and
17 Consent also confirms that none of the Plaintiff entities, excluding Stirling, has ever
18 been a client of GT. **Id.** Under no circumstances, therefore, can these plaintiffs allege
19 the existence of an attorney-client relationship with GT that would entitle them to
20 seek relief for legal malpractice.

21 Moreover, GT's Invoices¹¹, which were both produced in response to the
22 subpoena *duces tecum* and filed with GT's Response in Opposition to Motion to
23 Compel, confirm GT did not perform legal services for or provide legal advice to
24

25 ⁹ GTI Holdings is not a plaintiff in this action.

26 ¹⁰ **Id., Exhibit F, Tabs 3 and 7, GT Invoices.**

¹¹ **Id.**

1 Stirling in connection with any of the disputed matters alleged in the First Amended
2 Complaint. Consequently, Stirling **cannot** establish GT engaged in any conduct that
3 either constitutes a breach of any duty supposedly owed to Stirling or is the proximate
4 cause of any injury allegedly sustained by Stirling.

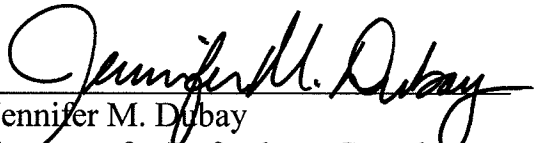
5 The plain fact is that Plaintiffs cannot, in good faith and without violating Rule
6 11 of the Federal Rules of Civil Procedure, amend their First Amended Complaint to
7 allege a cognizable claim of legal malpractice against GT. *Lopez v. Smith*, 203 F.3d
8 1122, 1129-30 (9th Cir. 2000)(no reason to allow amendment where it is clear
9 amendment cannot cure defect); *Domisse v. Napolitano*, 474 F.Supp.2d at 1127
10 (same). Thus, the Court should dismiss Plaintiffs' First Amended Complaint **with**
11 **prejudice.**

12 **IV. CONCLUSION.**

13 Plaintiffs' First Amendment Complaint against GT is procedurally and
14 substantively deficient under Rules 8, 12(b)(1) and 12(b)(6), and cannot be corrected
15 through amendment. Accordingly, GT requests that the Court enter an Order granting
16 this Motion to Dismiss With Prejudice.

17 DATED this 22nd day of June 2007.

18
19 GREENBERG TRAURIG, LLP

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21 By: 
22 Jennifer M. Dubay
23 Attorney for Defendants Greenberg
24 Traurig, LLP, John and Carol Clemency,
25 Jeffrey and Jacque Verbin, and Jennifer
26 M. Dubay

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CERTIFICATE OF SERVICE

I hereby certify that on June ____, 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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