

1 Steven Riess (SBN 100131)
2 Law Offices of Steven Riess
3 456 Montgomery Street, 20th Floor
4 San Francisco, CA 94104
5 (415) 989-1970

6 Attorney for Androvich

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO

9
10 Sally Androvich,
11 Plaintiff,

12 vs.

13 James Walker, Senior Care Advocates, Inc.,
14 Jeff Tochtermann, Josh Arce, Frank Tabacca,
15 James McGee, Secure Inheritance Estate Planning
16 Services, and Does 1 through 20,
17 Defendants.

Case No. CGC 05-448317

Complaint for damages for
1. Elder Financial Abuse
2. Fraud
3. Negligent Misrepresentation

18 **PRELIMINARY ALLEGATIONS**

19 1. At all times mentioned, plaintiff was a natural person over the age of 18 years.

20 2. Defendants James Walker, Jeff Tochtermann, Josh Arce, Frank Tabacca, and James
21 McGee are natural persons. Defendants Senior Care Advocates, Inc. (“SCA”) and Secure
22 Inheritance Estate Planning Services (“SIEPS”) are business entities of unknown form.

23 3. The true names and capacities of defendants sued as Does are unknown, and plaintiff
24 will amend this complaint to show their true names and capacities when this information is
25 ascertained. Each Doe defendant is in some manner responsible for the damages alleged pursuant to
26 each cause of action asserted, either through its own conduct, or vicariously through the conduct of
27 others. All further references in this complaint to any of the named defendants, or to defendants
28 generally, shall include such fictitiously named defendants.

4. At all times mentioned, each defendant was an agent, servant, employee, partner, and

1 joint venturer of each and every other defendant and was acting within the course and scope of this
2 relationship. The conduct of each defendant was ratified by each and every other defendant.

3 5. This court is the proper court in which to bring this action because plaintiff sustained
4 injury within its jurisdiction, and one or more defendants are located within its jurisdiction.

5 **GENERAL ALLEGATIONS**

6 6. Paragraphs 1 through 5 are incorporated by reference.

7 7. Plaintiff was born on May 2, 1932, and was 72 years old at the time of the events
8 alleged in this complaint. Plaintiff lives alone in San Francisco in a single-family dwelling which
9 she owns. Plaintiff is a widow, whose husband died in 1994. Plaintiff is ill with cancer and is
10 currently undergoing chemotherapy.

11 8. Plaintiff is informed and believes, and on that basis alleges, that sometime in late
12 2004, plaintiff was contacted by an unidentified representative of defendants who arranged for a
13 representative of defendants to visit plaintiff at her home.

14 9. Plaintiff is informed and believes, and on that basis alleges, that sometime in late
15 2004, a representative of defendants, visited plaintiff at her home and told plaintiff that defendants
16 assist elders in arranging their assets. He questioned plaintiff and obtained a variety of personal
17 information about her, including information regarding plaintiff's marital status, her health, the
18 ownership of plaintiff's home, the nature and extent of plaintiff's assets, and general information
19 regarding plaintiff's testamentary intent. He obtained from plaintiff the original of plaintiff's will
20 and trust, and after reviewing this information, told plaintiff that she was likely to spend all of her
21 money on health care and that she would then be at risk of losing her home and being
22 institutionalized. He told plaintiff that this could be avoided if she engaged the services of
23 defendants to advise and assist her in arranging her finances.

24 10. Sometime thereafter in late 2004, defendants demanded that plaintiff make various
25 payments to defendants; accordingly, plaintiff delivered checks made payable to defendant SIEPS
26 in the amount of \$1,695 and \$100 made payable to defendant Arce.

27 11. On or about March 3, 2005, defendants again visited plaintiff in her home and
28 presented her with a 46 page document which defendants instructed her to sign. Plaintiff signed the

1 document, and pursuant to defendants' instructions, delivered a check made payable to defendant
2 SCA in the amount of \$15,500. On that same date, defendants presented plaintiff with various
3 documents which altered plaintiff's estate plan and instructed plaintiff to sign these documents.
4 Plaintiff signed these documents and thereby altered her estate plan in a manner inconsistent with
5 her testamentary intent.

6 12. On or about July 21, 2005, plaintiff demanded that the \$15,500 which she had paid
7 to SCA be returned. On or about October 10, 2005, plaintiff received a check from SCA made
8 payable to her in the amount of \$8,337.50. Defendant SCA retained \$7,162.50. A purported
9 accounting accompanying the check claimed that defendants had expended 15.0 hours and charged
10 plaintiff for this time at the rates of \$150 and \$295 per hour. In addition, defendants claimed \$3,750
11 in additional fees. In December 2005, defendants returned to plaintiff two additional checks, in the
12 amounts of \$7,162.50 and \$1,795.

13 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**
14 **(Elder Financial Abuse)**

15 13. Paragraphs 1 through 12 are incorporated by reference.

16 14. Defendants made various representations to plaintiff regarding the possibility and
17 likelihood that plaintiff, as a result of her age, illness, and medical treatment, would lose her home
18 and would become institutionalized and that it was necessary to create various documents to protect
19 plaintiff from loss and harm. They further represented to plaintiff that by paying defendants \$1,695,
20 \$100, and \$15,500, this consequence would be avoided. As a direct result of these representations,
21 plaintiff paid defendants a total of \$17,295. Thereafter, plaintiff demanded the return of these funds.
22 Defendants refused to return these funds, returning instead \$8,337.50 and retaining the balance.
23 After plaintiff secured the services of an attorney, defendants returned checks in the amounts of
24 \$7,162.50 and \$1,795. The services and items provided by defendants to plaintiff, if any, were of no
25 value to plaintiff, or if of any value, were of a value far less than the amount paid. In addition, these
26 services and items were incorrect, improper, and inconsistent with plaintiff's testamentary intent
27 and now require plaintiff to incur additional expenses to remedy these errors. Defendants took,
28 secreted, appropriated, and retained the property of plaintiff, an elder, to a wrongful use within the

1 meaning of Welfare & Institutions Code section 15610.30. Defendants engaged in such conduct
2 either directly, or assisted others in such conduct.

3 15. In engaging in such conduct, defendants intended to defraud plaintiff within the
4 meaning of Welfare & Institutions Code section 15610.30.

5 16. As a direct and proximate cause of defendants' wrongful conduct, plaintiff has been
6 deprived of her property, namely her money, has sustained related damages of loss of income on
7 that money, has incurred attorney fees and costs, and will incur additional expenses for the review
8 and correction of her estate plan which defendants improperly altered.

9 17. In addition to all other remedies provided by law, plaintiff is entitled to recover
10 reasonable attorney fees and costs for financial abuse pursuant to Welfare & Institutions Code
11 section 15657.5.

12 18. Defendants' conduct constituted recklessness, oppression, fraud, and malice in the
13 commission of the financial abuse and plaintiff is entitled to recover damages for the sake of
14 example and by way of punishing defendants for financial abuse pursuant to Welfare & Institutions
15 Code section 15657.5 and Civil Code section 3294.

16 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**
17 **(Fraud)**

18 19. Paragraphs 1 through 17 are incorporated by reference.

19 20. The representations which defendants made to plaintiff regarding the possibility and
20 likelihood that plaintiff, as a result of her age, illness, and medical treatment, would lose her home
21 and would become institutionalized and that it was necessary to create various documents to protect
22 plaintiff from loss and harm and the representations that the services and items provided by
23 defendants were appropriate were false, misleading, and misrepresented both plaintiff's financial
24 needs and defendants' intent.

25 21. The false and misleading statements of defendants were material to plaintiff's
26 decision to pay defendants, and plaintiff relied to her detriment on them by paying defendants a
27 total of \$17,295 and by changing her estate planning documents.

28 22. Defendants knew that these statements were false and misleading and that plaintiff

1 would rely upon them to her detriment and defendants thereby intended to defraud plaintiff.

2 23. As a direct and proximate result of defendants' wrongful conduct, plaintiff suffered
3 damages as alleged herein.

4 24. Defendants' conduct constituted oppression, fraud, and malice and plaintiff is
5 entitled to recover damages for the sake of example and by way of punishing defendants pursuant to
6 Civil Code section 3294.

7
8 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS**
9 **(Negligent Misrepresentation)**

10 25. Paragraphs 1 through 24 are incorporated by reference.

11 26. In providing plaintiff with estate planning and related financial advice, defendants
12 owed plaintiff a duty to provide her with accurate advice which was in plaintiff's best interests.
13 Defendants acted negligently and unreasonably and breached this duty by advising plaintiff to
14 modify her estate planning documents and in creating such documents.

15 27. As a direct and proximate result of defendants' wrongful conduct, plaintiff suffered
16 damages as alleged herein.

17 WHEREFORE, plaintiff prays for damages against defendants, and each of them, as
18 follows:

- 19 a. For compensatory damages according to proof;
- 20 b. For reasonable attorney fees according to proof;
- 21 c. For punitive damages according to proof;
- 22 d. For costs and related expenses according to proof; and
- 23 e. For such further relief as the court may deem just.

24 Dated: _____

Steven Riess
Attorney for plaintiff Androvich