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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SAN FRANCISCO

12  
13 Thomas Wojno and Lael Wojno,

14 Plaintiffs,

15 vs.

16 James Walker, Senior Care Advocates, Inc., and  
17 Does 1 through 20

18 Defendants.

Case No. CGC 06-452336

COMPLAINT FOR

1. Damages for Violation of Consumers' Legal Remedies Act (CC § 1750)
2. Rescission for Violation of Home Solicitation Contract (CC § 1689.5)
3. Damages for Fraud
4. Rescission for Mistake and Fraud (CC § 1689)

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21 **PRELIMINARY ALLEGATIONS**

- 22 1. At all times mentioned, plaintiffs were natural persons over the age of 18 years.
- 23 2. Defendant James Walker is a natural person. Defendant Senior Care Advocates, Inc.  
24 (“SCA”) is a business entity of unknown form.
- 25 3. The true names and capacities of defendants sued as Does are unknown, and  
26 plaintiffs will amend this complaint to show their true names and capacities when this information  
27 is ascertained. Each Doe defendant is in some manner responsible for the damages alleged pursuant  
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1 to each cause of action asserted, either through its own conduct, or vicariously through the conduct  
2 of others. All further references in this complaint to any of the named defendants, or to defendants  
3 generally, shall include such fictitiously named defendants.

4 4. At all times mentioned, each defendant was an agent, servant, employee, partner, and  
5 joint venturer of each and every other defendant and was acting within the course and scope of this  
6 relationship. The conduct of each defendant was ratified by each and every other defendant.

7 5. This court is a proper court in which to bring this action because defendants are  
8 doing business within its jurisdiction pursuant to CC § 1780(c).

9 **GENERAL ALLEGATIONS**

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

11 7. Following radio broadcasts and website advertisements by defendants in which free  
12 evaluations of estate plans were offered to the public, defendants sent their sales representative,  
13 Rich Miller, to visit plaintiffs at their home on January 16, 2006. Miller told plaintiffs that he was a  
14 representative of defendants and proceeded with a detailed sales presentation. Miller told plaintiffs  
15 that defendants offered, among other things, services such as estate planning and asset protection  
16 for the purpose of qualifying plaintiffs for Medi-Cal benefits and by which plaintiffs could avoid  
17 Medi-Cal reimbursement. Miller questioned plaintiffs and obtained a variety of personal  
18 information about them, including information regarding plaintiffs' marital status, health, the  
19 ownership and value of plaintiffs' home, the nature and extent of plaintiffs' assets, and general  
20 information regarding plaintiffs' testamentary intent. He obtained from plaintiffs a copy of their  
21 current estate plan and told plaintiffs that their current estate plan did not adequately protect them.  
22 He engaged in high-pressure sales tactics by inducing plaintiffs into believing that they were at risk  
23 of losing their residence and other assets if they failed to engage the services of defendants. He  
24 misrepresented the value of the services offered by defendants by telling plaintiffs that defendants'  
25 services were worth in excess of \$18,500 when in fact the services were of nominal or of no value.

26 8. Miller presented plaintiffs with a written agreement which provided for the payment  
27 of \$18,500 to defendants. At the urging of Miller, plaintiffs signed the agreement and gave him a  
28 check in the amount of \$18,500.

1 9. By telephone call to Miller of February 17, 2006, plaintiffs cancelled the agreement  
2 and demanded that defendants return the \$18,500. By letter to defendant SCA dated February 23,  
3 2006, plaintiffs reiterated their demand for the return of the money paid.

4 10. By email sent March 22, 2006, defendants provided plaintiffs with an alleged  
5 accounting in which defendants apparently claimed fees earned in the amount of \$9,018.50 and a  
6 “refund due” of only \$9,481.50.

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8 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**  
9 **(Damages for Violation of Consumers’ Legal Remedies Act (CC § 1750))**

10 11. Paragraphs 1 through 10 are incorporated by reference.

11 12. Defendants violated the Consumers’ Legal Remedies Act by engaging in unfair or  
12 deceptive acts or practices by doing the following: (1) using deceptive representations in connection  
13 with their services by, among other things, representing that the services were worth in excess of  
14 \$18,500 when the services were of nominal or no value; (2) representing that the services have  
15 characteristics and benefits which they do not have by misrepresenting the estate planning and  
16 Medi-Cal planning needs of plaintiffs; (3) representing that the services are of a particular standard  
17 or quality when the services are of a different standard or quality; and (4) inserting an  
18 unconscionable provision in the contract.

19 13. As a direct result of defendants’ unfair or deceptive acts or practices, plaintiffs have  
20 been deprived of their money and property and have sustained damages of not less than \$18,500.

21 14. Defendants’ wrongful conduct constituted oppression, fraud, and malice and  
22 plaintiffs are entitled to recover damages for the sake of example and by way of punishing  
23 defendants pursuant to Civil Code section 3294.

24 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**  
25 **(Rescission for Violation of Home Solicitation Contract (CC § 1689.5))**

26 15. Paragraphs 1 through 14 are incorporated by reference.

27 16. The agreement signed by plaintiffs on January 16, 2006 was a home solicitation  
28 contract within the meaning of Civil Code § 1689.5. The agreement failed to contain the mandatory  
statements required by Civil Code § 1689.7 and therefore plaintiffs notices of cancellation of

1 February 17 and 23, 2006, rescinded the agreement.

2 17. Defendants were required to tender to plaintiffs the amount paid within ten days of  
3 cancellation pursuant to Civil Code § 1689.10. Defendants failed to so tender the amount paid.  
4 Moreover, defendants failed to tender to plaintiffs the amount paid within 20 days of cancellation  
5 pursuant to Civil Code § 1689.11 and therefore are entitled to no compensation even if services  
6 were provided.

7 18. The rescission of the agreement entitles plaintiffs to the return of all amounts paid,  
8 namely \$18,500.

9  
10 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS**  
**(Damages for Fraud)**

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

12 20. The representations which defendants made to plaintiffs regarding the nature, value  
13 and appropriateness of the services offered were false and misleading.

14 21. The false and misleading statements of defendants were material to plaintiffs'  
15 decision to sign the agreement and pay defendants \$18,500. Plaintiffs justifiably relied on these  
16 misrepresentations which resulted their paying defendants \$18,500.

17 22. Defendants knew that these statements were false and misleading and that plaintiffs  
18 would rely upon them to their detriment, and defendants thereby intended to defraud plaintiffs.

19 23. As a direct and proximate result of defendants' wrongful conduct, plaintiffs suffered  
20 damages as alleged herein.

21 24. Defendants' conduct constituted oppression, fraud, and malice, and plaintiffs are  
22 entitled to recover damages for the sake of example and by way of punishing defendants pursuant to  
23 Civil Code section 3294.

24  
25 **FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**  
**(Rescission for Mistake and Fraud (CC § 1689))**

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

27 26. Consent to the agreement of January 16, 2006 was not real or free in that it was  
28 obtained solely through the mistakes as herein alleged.

1           27.     The agreement was entered into under material mistakes of fact in that it was  
2 believed by plaintiffs that the services offered by defendants were appropriate for their needs and  
3 were worth in excess of \$18,500. However, at the time of this agreement, it was unknown to  
4 plaintiffs that the services offered were not appropriate for their needs and were not worth \$18,500,  
5 but were only of nominal or no value.

6           28.     Defendants were, or should have been aware, that the services offered were not  
7 appropriate for plaintiffs needs and were not worth \$18,500, but were only of nominal or no value.  
8 Defendants used plaintiffs' mistake to unfairly take advantage of plaintiffs by obtaining \$18,500  
9 while plaintiffs received nominal or no value therefore.

10          29.     Plaintiffs were induced to enter the agreement of January 16, 2006 because of the  
11 mistaken belief that the services offered were appropriate for plaintiffs needs and were worth  
12 \$18,500.

13          30.     As a direct result of these material mistakes of fact, plaintiffs were damaged in that  
14 \$18,500 was paid to defendants.

15          31.     Plaintiffs would not have given apparent consent to the agreement of January 16,  
16 2006, except for this mistaken belief.

17          32.     Plaintiffs seek rescission of the agreement as a result of these material mistakes of  
18 fact and for fraud. Plaintiffs have no other adequate remedy at law and will suffer irreparable harm  
19 if this agreement is not rescinded and if the fees paid are not returned.

20           WHEREFORE, plaintiffs pray for damages against defendants, and each of them, as  
21 follows:

- 22           I.       For the violation of the Consumers' Legal Remedies Act (CC § 1750):
- 23           a.       Actual damages according to proof;
  - 24           b.       For an order enjoining the methods, acts, or practices of defendants;
  - 25           c.       Restitution of the property, namely \$18,500;
  - 26           d.       Punitive damages according to proof; and
  - 27           e.       For attorney's fees, court costs, and litigation expenses according to proof
- 28 pursuant to Civil Code § 1780(d).

- 1 II. For the violation of a Home Solicitation Contract (CC § 1689.5):
- 2 a. Restitution of the property, namely \$18,500.
- 3 III. For Fraud:
- 4 a. Actual damages according to proof;
- 5 b. Punitive damages according to proof.
- 6 IV. Mistake and Fraud (CC § 1689):
- 7 a. Restitution of the property, namely \$18,500.
- 8 V. For such further relief as the court may deem just.

9 Dated: \_\_\_\_\_  
10 \_\_\_\_\_  
11 Steven Riess  
12 Attorney for plaintiffs Wojno

12 **DECLARATION OF VENUE PURSUANT TO CIVIL CODE § 1780(c)**

13 I, Steven Riess, hereby declare:

14 1. I am the attorney for plaintiffs Thomas and Lael Wojno.

15 2. Defendants SCA and Walker maintain a website at  
16 <http://www.seniorcareadvocates.com>. The website promotes the services offered by defendants  
17 SCA and Walker and advertises a weekly radio broadcast entitled “Senior Care Advocates Radio  
18 Show” presented on Sundays at 1:00 p.m. by defendants SCA and Walker. The website indicates  
19 that the radio program is broadcast in the San Francisco Bay Area on KNEW 910 AM and in fact  
20 the radio program is broadcast in San Francisco.

21 3. On January 4, 2006, civil complaint CGC 05-448317 was commenced in the San  
22 Francisco Superior Court, entitled *Sally Androvich vs. James Walker, Senior Care Advocates, Inc.,*  
23 *et al.* The complaint alleges that Androvich resides in San Francisco and on March 3, 2005, entered  
24 into a transaction at her home with defendants for the purchase of financial planning services of the  
25 type promoted and advertised in the radio broadcasts.

26 4. Defendants advertise their services in San Francisco and have entered into at least  
27 one home solicitation contract in San Francisco. Accordingly, defendants do business in San  
28 Francisco within the meaning of Civil Code § 1780(c).

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: \_\_\_\_\_

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Steven Riess