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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SANTA CLARA

11 Santiago Serrata,

12 Plaintiff,

13 vs.

14 Sandra Castro, Michael Reyes, Steve Reyes,
15 Vision Quest 21, Inc., Bic Pho, and Does 1
16 through 20,

17 Defendants.

Case No. 1-06-CV-070364

FIRST AMENDED COMPLAINT FOR:

1. Elder Financial Abuse (W & I § 15610.30
2. Conversion
3. Constructive Trust
4. Fraudulent Conveyance
5. Fraud
6. Negligence

18 **PRELIMINARY ALLEGATIONS**

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

21 2. Defendants Sandra Castro, Steve Reyes, Michael Reyes, and Bic Pho are natural
22 persons. Defendant Vision Quest 21, Inc. (“Century 21”) is a business entity 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.

1 Jr. and Desire, and Steve, all resided with Santiago at the San Jose House. They did not pay rent or
2 otherwise contribute to the upkeep of the residence. In 2004, Santiago's equity in the San Jose
3 House was approximately \$200,000. Around that time, Sandra and Michael began complaining to
4 Santiago that the San Jose House was too small and that their children, Santiago's great-
5 grandchildren, would be happier in a larger and new house in the Manteca area. They repeatedly
6 urged Santiago to sell the San Jose House and buy a larger house in which they might all reside.
7 They told her that with the proceeds of sale from the San Jose House, she could purchase a larger
8 house in Manteca, where housing prices were lower. Sandra and Michael began looking at houses
9 for sale in Manteca. They encouraged the excitement of their children, Santiago's grandchildren,
10 which placed additional coercive pressure on Santiago to sell the San Jose House. In connection
11 with these pressure tactics, Sandra told Santiago that Sandra would be able to handle all aspects of
12 the sales and paperwork through her position as a real estate agent at Century 21. Sandra told
13 Santiago that Century 21 was a large, honest, and credible real estate brokerage and that all of the
14 details of any real estate transaction would be reviewed and approved by Sandra's supervising
15 broker, Bic Pho. Based upon these representations, Santiago finally relented and agreed to sell the
16 San Jose House.

17 11. Soon thereafter, Sandra presented Santiago with an exclusive listing agreement and
18 instructed Santiago to sign it, notwithstanding that Sandra knew that Santiago could not read
19 English. The listing agreement provided for a sales commission of six percent and that Sandra
20 would act as the seller's agent. The San Jose House was offered for sale, an offer was presented,
21 and Sandra negotiated a sales price of \$440,000. Sandra opened an escrow on Santiago's behalf and
22 presented seller's instructions for Santiago's signature. Sandra, Michael, and Steve told Santiago
23 that the proceeds of sale would be used to purchase a new house and that Santiago alone would hold
24 title to it. Plaintiff believes and thereon alleges that Bic Pho and Century 21 were fully aware, and
25 approved of, all of the details of this transaction, including the details of the escrow instructions.
26 Specifically, plaintiff alleges that they knew: (1) that a domestic relationship existed between
27 Sandra and Michael; (2) that Sandra had employed high-pressure tactics to coerce plaintiff's
28 agreement to sell the San Jose House; (3) that plaintiff was subject to manipulation and was

1 vulnerable to exploitation, both because of her age and her inability to speak and read English, her
2 dependency on her grandchildren, and her lack of experience in handling real estate or other
3 financial matters; (4) that plaintiff had signed both the listing agreement, the sales agreement, and
4 the closing documents without being able to read them; (5) that these documents had not been
5 translated into Spanish so that plaintiff might understand what she was signing; (6) that the nature
6 and details of the transaction had been misrepresented to plaintiff; and (7) that the entire net
7 proceeds of sale were being wrongfully diverted from plaintiff to defendants.

8 12. Prior to the close of escrow on the San Jose House, Sandra presented an offer to
9 purchase the property located at 1763 Goldpoppy Street, in Manteca (the “Manteca House”).
10 Plaintiff believes and thereupon alleges that a purchase contract was entered into between
11 Richmond American Homes of California, the seller, and Sandra for the purchase of the Manteca
12 House for a purchase price of \$498,500.

13 13. On May 25, 2004, escrow for the sale of the San Jose House closed. The seller’s
14 escrow instructions prepared by Sandra provided for the distribution of net sales proceeds and
15 included: real estate sales commissions which were shared by Sandra, Bic Pho, Century 21, and
16 others of \$26,400; payment of child support owed by Steve of \$9,972; cash distribution to Michael
17 of \$15,000; cash to Ticor Title for the purchase of the Manteca House of \$90,000; and net proceeds
18 due the seller delivered to Steve of \$24,705.

19 14. On June 25, 2004, escrow for the purchase of the Manteca House closed. Cash from
20 the sale of the San Jose House of not less than \$100,000 was used as a down payment. A first loan
21 in the amount of \$398,604 was obtained by Sandra. Title to the Manteca House was taken by
22 Sandra and Steve, and notwithstanding defendants’ numerous representations, Santiago was not
23 placed on title.

24 15. After the close of escrow on the purchase of the Manteca House, Santiago resided
25 there, together with Sandra, Michael, Steve, and Santiago’s great-grandchildren. In or about April,
26 2006, Santiago moved out. At this point, Santiago was completely without money since all of her
27 equity in the San Jose House had been taken by defendants. Thereafter, Santiago moved to the home
28 of her third grandson, Rene, where she continues to reside.

1 16. By June, 2005, the value of the Manteca House had increased, and Sandra decided to
2 take out some of the equity by refinancing it. On or about June 7, 2005, Sandra obtained a new loan
3 in the amount of \$476,000 and the prior loan of \$398,604 was paid off. In connection with this new
4 loan, a quitclaim deed from Steve was recorded, after which, Sandra alone held title to the Manteca
5 House. A portion of the net proceeds from the new loan were used by Sandra to pay off the debt on
6 her 2003 Ford Expedition in the amount of \$28,119 and to purchase a 2005 BMW.

7
8 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**
9 **(Elder Financial Abuse)**

10 17. Paragraphs 1 through 16 are incorporated by reference.

11 18. Defendants made various misrepresentations to plaintiffs, including but not limited
12 to, that it was both necessary and appropriate to sell the San Jose House and purchase the Manteca
13 House, that the proceeds of sale would be used exclusively to purchase the Manteca House, that
14 Santiago would hold title to the Manteca House, that defendants had reviewed all documents and
15 that the documents properly protected Santiago's interests in the proceeds of sale of the San Jose
16 House and title to the Manteca House. As a direct result of these misrepresentations, Santiago sold
17 the San Jose House and the Manteca House was purchased, and Santiago was thereby deprived of
18 her entire equity of not less than \$197,000. In addition, defendants Bic Pho and Century 21 took
19 plaintiff's property by receiving a portion of the real estate commission paid in connection with the
20 sale of the San Jose House. In doing so, defendants, and each of them, took, secreted, appropriated,
21 and retained the property of Santiago, an elder, to a wrongful use within the meaning of Welfare &
22 Institutions Code section 15610.30. Defendants engaged in such conduct either directly, or assisted
23 others in such conduct. In addition, defendants Bic Pho and Century 21 assisted in the taking of this
24 property by intentionally lending the appearance of legitimacy and propriety to this real estate
25 transaction and by affirmatively misleading plaintiff into believing that she was well-protected and
26 that it was unnecessary for her to have the transaction reviewed by other professionals.

27 19. In engaging in such conduct, defendants, and each of them, intended to defraud
28 Santiago within the meaning of Welfare & Institutions Code section 15610.30.

 20. As a direct and proximate cause of defendants' wrongful conduct, Santiago has

1 sustained damages in an amount of not less than \$197,000.

2 21. In addition to all other remedies provided by law, Santiago is entitled to recover
3 reasonable attorney fees and costs for financial abuse pursuant to Welfare & Institutions Code
4 section 15657.5.

5 22. Defendants' conduct constituted oppression, fraud, and malice in the commission of
6 the financial abuse, and Santiago is entitled to recover damages for the sake of example and by way
7 of punishing defendants for financial abuse pursuant to Civil Code section 3294.

8 23. Santiago is entitled to recover treble damages pursuant to Civil Code § 3345 in an
9 amount not less than \$591,000.

10 **SECOND CAUSE OF ACTION AGAINST DEFENDANTS**
11 **SANDRA, MICHAEL, AND STEVE**
12 **(Conversion)**

13 24. Paragraphs 1 through 23 are incorporated by reference.

14 25. The San Jose House was owned by Santiago and accordingly she had the right to
15 possess it.

16 26. Santiago never entered into any agreement with Sandra, Michael, or Steve by which
17 they were entitled to the proceeds of the sale from the San Jose House. By wrongfully obtaining the
18 signatures of Santiago on various documents, defendants were able to convert the net proceeds of
19 sale of the San Jose House, and thereby deprived Santiago of her rightful ownership and possession
20 of the proceeds of sale from the San Jose House.

21 27. As a direct and proximate cause of defendants' wrongful conduct, Santiago has been
22 deprived of her property, namely the proceeds of sale from the San Jose House in an amount not
23 less than \$197,000.

24 28. Defendants' wrongful conduct constituted oppression, fraud, and malice and
25 Santiago is entitled to recover damages for the sake of example and by way of punishing defendants
26 pursuant to Civil Code section 3294.

27 29. Santiago is entitled to recover treble damages pursuant to Civil Code § 3345 in an
28 amount not less than \$591,000.

1 **THIRD CAUSE OF ACTION AGAINST SANDRA, MICHAEL, AND STEVE**
2 **(Constructive Trust)**

3 30. Paragraphs 1 through 29 are incorporated by reference.

4 31. By engaging in the conduct alleged herein, defendants Sandra, Michael, and Steve
5 wrongfully gained, and continue to detain, Santiago's property, namely the proceeds of sale from
6 the San Jose House.

7 32. Pursuant to Civil Code §§ 2223 and 2224, defendants are involuntary trustees of this
8 property and hold it for the benefit of Santiago.

9 33. Defendants' wrongful conduct constituted oppression, fraud, and malice and
10 Santiago is entitled to recover damages for the sake of example and by way of punishing defendants
11 pursuant to Civil Code section 3294.

12 34. Santiago is entitled to recover treble damages pursuant to Civil Code § 3345 in an
13 amount not less than \$591,000.

14 **FOURTH CAUSE OF ACTION AGAINST SANDRA, MICHAEL, AND STEVE**
15 **(Fraudulent Conveyance)**

16 35. Paragraphs 1 through 34 are incorporated by reference.

17 36. Defendants, and each of them, are debtors within the meaning of CC § 3439.01 *et*
18 *seq.*

19 37. Defendants committed fraudulent transfers pursuant to CC § 3439 *et seq.* by
20 transferring the proceeds of sale from the San Jose House into the Manteca House, by quitclaiming
21 title to the Manteca House from Steve to Sandra, by further encumbering the Manteca House, by
22 removing funds from the Manteca House and by paying off the debt on the 2003 Ford Expedition,
23 and by purchasing the 2005 BMW. Defendants, and each of them, made such transfers with the
24 actual intent to hinder, delay, and defraud plaintiff, a creditor of defendants. In addition, defendants,
25 and each of them made such transfers without receiving a reasonably equivalent value in exchange
26 for the transfer, including but not limited to Steve's transfers of title to the Manteca Property to
27 Sandra without receiving equivalent value in exchange.

28 38. By virtue of defendants' misrepresentations that by signing various documents, title

1 to the Manteca House would be placed in Santiago's name, Santiago is entitled to title and the right
2 to possession of the Manteca House.

3 39. Santiago is entitled to an order avoiding these transfers to the extent necessary to
4 satisfy Santiago's claims; an attachment or other provisional remedies against the Manteca House,
5 the 2003 Ford Expedition, and the 2005 BMW; an injunction against further disposition by
6 defendants of the Manteca House, the 2003 Ford Expedition, and the 2005 BMW, any proceeds of
7 the sale of the San Jose House, the refinance of the Manteca House, or any other assets derived
8 from these sources, and for damages of not less than \$197,000.

9
10 **FIFTH CAUSE OF ACTION AGAINST SANDRA, MICHAEL, AND STEVE**
11 **(Fraud)**

12 40. Paragraphs 1 through 39 are incorporated by reference.

13 41. Defendants, and each of them, misrepresented to Santiago, that the proceeds of sale
14 from the San Jose House would be used to purchase the Manteca House in Santiago's name and that
15 the documents presented by defendants to Santiago properly protected the interests of Santiago.

16 42. The representations of defendants were false, and defendants knew they were false
17 at the time they were made. Defendants intended that Santiago believe the misrepresentations and
18 that she rely upon them.

19 43. Santiago believed that the misrepresentations were true and justifiably relied upon
20 them.

21 44. As a direct and proximate result of defendants' wrongful conduct, Santiago sustained
22 damages in an amount of not less than \$197,000.

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

26 46. Santiago is entitled to recover treble damages pursuant to Civil Code § 3345 in an
27 amount not less than \$591,000.
28

1
2 **SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**
3 **(Negligence)**

4 47. Paragraphs 1 through 46 are incorporated by reference.

5 48. Defendants, and each of them, had a duty to use reasonable care in making these
6 representations and in acting for and on behalf of Santiago. As licensed real estate agents and
7 supervising brokers, Sandra, Century 21, and Bic Pho each had a duty to use reasonable care in
8 these matters and to refrain from wrongful conduct, false statements, and engaging in conduct
9 which would tend to mislead Santiago into believing that her interests were protected in the sale of
10 the San Jose House.

11 49. Defendants, and each of them, breached this duty of care by engaging in the conduct
12 alleged herein. Specifically, defendants Sandra, Michael, and Steve breached this duty by, among
13 other things, engaging in conduct and making representations which led Santiago to believe that her
14 interests were protected when in fact such conduct and representations directly caused her to be
15 divested of her equity in the San Jose House. In addition, defendants Bic Pho and Century 21
16 breached this duty by, among other things, affirmatively representing that the transaction was
17 legitimate and proper and by engaging in conduct and making representations which led Santiago to
18 believe that her interests were protected when in fact such conduct and representations directly
19 caused her to be divested of her equity in the San Jose House.

20 50. As a direct and proximate cause of defendants' wrongful conduct, Santiago has been
21 deprived of her property, namely the proceeds of sale from the San Jose House in an amount not
22 less than \$197,000.

23 WHEREFORE, plaintiff prays for damages against defendants, and each of them, as
24 follows:

- 25 1. Elder Financial Abuse (W & I Code § 15610.30):
 - 26 a. Compensatory damages according to proof;
 - 27 b. Reasonable attorney's fees and costs according to proof;
 - 28 c. Punitive damages according to proof;
 - d. Treble damages pursuant to CC § 3345;

- 1 2. Conversion:
 - 2 a. Compensatory damages according to proof;
 - 3 b. Punitive damages according to proof;
 - 4 c. Treble damages pursuant to CC § 3345;
- 5 3. Constructive Trust (CC § 2223 *et seq.*)
 - 6 a. Judgment determining that defendants are involuntary trustees of the Manteca
7 House and other particular property and hold it for the benefit of Santiago.;
 - 8 b. Punitive damages according to proof;
 - 9 c. Treble damages pursuant to CC § 3345;
- 10 4. Fraudulent Conveyance (CC § 3439 *et seq.*):
 - 11 a. Judgment avoiding the transfers to the extent necessary to satisfy Santiago's
12 claims and determining that Santiago is entitled to title and the right to possession of the Manteca
13 House;
 - 14 b. Compensatory damages according to proof;
 - 15 c. Punitive damages according to proof;
 - 16 d. Treble damages pursuant to CC § 3345;
- 17 5. Fraud:
 - 18 a. Compensatory damages according to proof;
 - 19 b. Punitive damages according to proof;
 - 20 c. Treble damages pursuant to CC § 3345;
- 21 6. Negligence:
 - 22 a. Compensatory damages according to proof;
- 23 7. Interest pursuant to CC § 3287;
- 24 8. Costs pursuant to CCP § 1032; and
- 25 9. For such further relief as the court may deem just.

26 Dated: October 27, 2006

27 Steven Riess
Attorney for plaintiff Serrata

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