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8 Attorney for plaintiffs

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF STANISLAUS

11 Virginia Wylie, by and through her attorney in fact
12 Kenneth Wylie, Kenneth Wylie, trustee of
13 the Wylie Living Trust, Kenneth Wylie, trustee of
14 the Wylie Survivor's Trust,

15 Plaintiffs,

16 vs.

17 Paul Fulfer, Richard Fulfer, Thomas Thorson,
18 Thorson Financial Estate Management and
19 Insurance Services, Inc., and Does 1
20 through 20,

21 Defendants.

Case No. 383525

COMPLAINT FOR:

1. Legal Malpractice
2. Breach of Duty of Good Faith (Ins. Code § 785)
3. Violation of Senior Insurance Sales Practices (Ins. Code § 789.8 *et seq.*)
4. Negligence
5. Fraud
6. Elder Financial Abuse (W & I § 15610.30)

22 **PRELIMINARY ALLEGATIONS**

23 1. At all times mentioned, Edward Wylie and Virginia Wylie were natural persons over
24 the age of 18 years. Edward Wylie died on August 29, 2006. At the time of the filing of this
25 complaint, Virginia is an incompetent person within the meaning of CCP § 372. Kenneth Wylie is
26 the attorney in fact for Virginia Wylie pursuant to Probate Code § 4124. Kenneth Wylie is the son
27 of Edward and Virginia and is the trustee of the Wylie Living Trust and of the Wylie Survivor's
28 Trust. Each plaintiff holds some right, title, and interest in the property which is the subject matter
of this action and accordingly is the real party in interest pursuant to CCP § 367.

1 Trust”). Thereafter, various assets owned by Edward and Virginia were assigned to the Living
2 Trust. One of the assets so assigned was the real property located at 1244 Valeriewood Way,
3 Modesto (“the Duplex”). As a result of Edward’s death on August 29, 2006, some rights, title, and
4 interest in property of the Living Trust, including an interest in the Duplex, transferred to the Wylie
5 Survivor’s Trust (“Survivor’s Trust”).

6 9. In early June, 2005, Edward, assisted by Kenneth, located and read a display
7 advertisement under the heading “Attorneys” in the Modesto SBC Yellow Pages advertising the
8 legal services of defendants Paul Fulfer and Richard Fulfer, doing business as the Law Offices of
9 Fulfer & Fulfer. The advertisement claimed that defendants Fulfer were attorneys engaged in the
10 general practice of law, with an emphasis on probate, estate planning, and elder law. Thereafter,
11 Kenneth telephoned defendants Fulfer and made an appointment.

12 10. On or about June 5, 2005, Edward, accompanied by Kenneth, met with Paul Fulfer at
13 the Modesto office of defendants Fulfer. During this conference, Paul Fulfer was informed that
14 Virginia suffered from Alzheimer’s disease and that it was anticipated that she would soon be
15 institutionalized. Similarly, he was informed that Edward also suffered from several serious and
16 progressive medical conditions and might also soon be institutionalized. On the basis of his claimed
17 expertise in elder law, Paul Fulfer was asked to provide advice regarding Edward’s and Virginia’s
18 eligibility for Medi-Cal benefits. Paul Fulfer inquired about the nature and extent of Edward’s and
19 Virginia’s assets and income and advised that in their present situation, they would be ineligible. He
20 advised that if some of their assets were converted into an annuity, then Virginia would become
21 eligible for Medi-Cal benefits. Paul Fulfer then instructed Edward to meet with defendants Thorson
22 and TFEM (hereafter collectively referred to as “Thorson”) and stated that he always worked with
23 Thorson in connection with the sale of annuities. With Edward and Kenneth still seated in his
24 office, Paul Fulfer then telephoned defendant Thorson and scheduled an appointment for them to
25 meet with Thorson.

26 11. Shortly after the conference with Paul Fulfer, Edward, accompanied by Kenneth, met
27 with Thorson at his Modesto office as arranged by Paul Fulfer. Thorson asked various questions and
28 obtained various information regarding Edward’s and Virginia’s assets. He learned of the Duplex

1 and that it was worth approximately \$500,000. Thorson told them that they would not be eligible for
2 Medi-Cal benefits unless the Duplex were sold and the proceeds invested into an annuity sold by
3 him. Thorson instructed plaintiffs to sell the Duplex and then to: “Come back and see me when the
4 duplex is sold.”

5 12. In conformity with Thorson’s instructions, Edward, assisted by Kenneth, contacted a
6 real estate broker and signed a listing agreement. Thereafter, the Duplex was sold for \$470,000, and
7 on November 22, 2005, escrow closed. From the proceeds of sale, real estate commissions and
8 related expenses totaling \$36,373 were paid.

9 13. In or about December, 2005, Edward, accompanied by Kenneth, again met with
10 Thorson at his Modesto office and informed him that they had carried out his instructions and
11 inquired what should be done next. Thorson instructed them to retain \$56,000 for the purpose of
12 paying capital gains tax on the sale of the Duplex. He then instructed them to purchase an annuity in
13 the single premium amount of \$368,000 from Aviva Life Insurance Company. Thereafter, a check
14 in the amount of \$368,000 was delivered to Thorson and Aviva annuity contract FS499819 (the
15 “Annuity”) was issued. As a result of the sale of the Annuity, Thorson earned a commission in an
16 amount as yet unknown. It is suspected, and thereupon alleged, that Thorson delivered
17 compensation to Paul Fulfer and Richard Fulfer in connection with the commission received from
18 the sale of the Annuity.

19 14. In or about April, 2006, United States and California tax returns for 2005 were
20 prepared for Edward and Virginia. As a result of the sale of the Duplex, the tax returns recognized a
21 capital gain of \$419,927. This capital gain resulted in the payment of \$98,475 in additional taxes.

22 **FIRST CAUSE OF ACTION AGAINST DEFENDANTS FULFER**
23 **(Legal Malpractice)**

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

25 16. Plaintiffs contacted the Law Offices of Fulfer & Fulfer and met and consulted with
26 Paul Fulfer. They requested that Paul Fulfer provide legal advice in connection with various elder
27 law issues, and in particular, with the eligibility of Virginia to receive Medi-Cal benefits. Paul
28 Fulfer provided legal advice, and in doing so, an attorney/client relationship was created.

1 and fair dealing, plaintiffs sustained damages in an amount of not less than \$134,848.

2 25. Defendants Thorsons' wrongful conduct constituted oppression, fraud, and malice
3 and plaintiffs are entitled to recover damages for the sake of example and by way of punishing
4 defendants pursuant to Civil Code § 3294.

5 26. Plaintiffs are entitled to recover treble damages pursuant to Civil Code § 3345 of not
6 less than \$404,544.

7 27. The advice and instructions provided by defendants Thorson constitute the rendering
8 of legal services for which a license is required pursuant to Business & Professions Code § 6000 *et*
9 *seq.*, and defendants Thorson are not so licensed. Accordingly, plaintiffs are entitled to recover
10 treble damages of not less than \$404,544, together with costs, and attorney's fees pursuant to CCP §
11 1029.8.

12
13 **THIRD CAUSE OF ACTION AGAINST THORSON**
(Violation of Senior Insurance Sales Practices – Ins. Code § 789.8 *et seq.*)

14 28. Paragraphs 1 through 27 are incorporated by reference.

15 29. Defendants Thorson owed plaintiffs a duty to provide various written disclosures in
16 connection with the offer to sell the Annuity pursuant to Insurance Code § 789.8 and to refrain from
17 selling plaintiffs such a policy in violation of Insurance Code § 789.9.

18 30. Defendants Thorson breached these duties by failing to provide plaintiffs with the
19 required disclosures and by selling plaintiffs such a policy in violation of Insurance Code § 789.9.

20 31. As a direct result of defendants Thorsons' breach of this duty, plaintiffs sustained
21 damages in an amount of not less than \$134,848.

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

25 33. Plaintiffs are entitled to recover treble damages pursuant to Civil Code § 3345 of not
26 less than \$404,544.

27 34. The advice and instructions provided by defendants Thorson constitute the rendering
28 of legal services for which a license is required pursuant to Business & Professions Code § 6000 *et*

1 *seq.*, and defendants Thorson are not so licensed. Accordingly, plaintiffs are entitled to recover
2 treble damages of not less than \$404,544, together with costs, and attorney's fees pursuant to CCP §
3 1029.8.

4
5 **FOURTH CAUSE OF ACTION AGAINST THORSON**
6 **(Negligence)**

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

8 36. Defendants Thorson owed plaintiffs a duty of reasonable care in advising them as to
9 these transactions.

10 37. Defendants Thorson breached this duty of reasonable care by negligently and
11 unreasonably instructing plaintiffs to sell the Duplex and purchase the Annuity, and by selling
12 plaintiffs the Annuity.

13 38. As a direct result of defendants Thorsons' breach of this duty, plaintiffs sustained
14 damages in an amount of not less than \$134,848.

15 39. The advice and instructions provided by defendants Thorson constitute the rendering
16 of legal services for which a license is required pursuant to Business & Professions Code § 6000 *et*
17 *seq.*, and defendants Thorson are not so licensed. Plaintiffs are entitled to recover treble damages of
18 not less than \$404,544, together with costs, and attorney's fees pursuant to CCP § 1029.8.

19 **FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**
20 **(Fraud)**

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

22 41. The statements and other representations which defendants made to plaintiffs
23 regarding the nature, value, and appropriateness of these transactions were false and misleading.

24 42. The false and misleading statements of defendants were material to plaintiffs'
25 decision to sell the Duplex and purchase the Annuity. Plaintiffs justifiably relied on these
26 misrepresentations, which resulted in the sale of the Duplex and the purchase of the Annuity.

27 43. Defendants knew that these statements were false and misleading and that plaintiffs
28 would rely upon them to their detriment, and defendants thereby intended to defraud plaintiffs.

44. As a direct and proximate result of defendants' wrongful conduct, plaintiffs suffered

1 damages as alleged herein.

2 45. Defendants' conduct constituted oppression, fraud, and malice, and plaintiffs are
3 entitled to recover damages for the sake of example and by way of punishing defendants pursuant to
4 Civil Code § 3294.

5 46. Plaintiffs are entitled to recover treble damages pursuant to Civil Code § 3345.

6 **SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**
7 **(Elder Financial Abuse)**

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

9 48. Defendants made various misrepresentations to plaintiffs, including but not limited
10 to, that it was both necessary and appropriate to sell the Duplex and purchase the Annuity, and as a
11 direct result of these misrepresentations, plaintiffs sold the Duplex and purchased the Annuity. In
12 doing so, defendants took, secreted, appropriated, and retained the property of plaintiffs, elders, to a
13 wrongful use within the meaning of Welfare & Institutions Code § 15610.30. Defendants engaged
14 in such conduct either directly, or assisted others in such conduct.

15 49. In engaging in such conduct, defendants intended to defraud plaintiffs within the
16 meaning of Welfare & Institutions Code § 15610.30.

17 50. As a direct and proximate cause of defendants' wrongful conduct, plaintiffs have
18 sustained damages in an amount of not less than \$134,848.

19 51. In addition to all other remedies provided by law, plaintiffs are entitled to recover
20 reasonable attorney fees and costs for financial abuse pursuant to Welfare & Institutions Code §
21 15657.5.

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

25 53. Plaintiffs are entitled to recover treble damages pursuant to Civil Code § 3345.

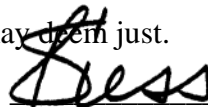
26 WHEREFORE, plaintiffs pray for judgment against defendants as follows:

27 1. Legal Malpractice:

28 a. Compensatory damages according to proof;

- 1 2. Breach of Duty of Good Faith (Ins. Code § 785):
 - 2 a. Compensatory damages according to proof;
 - 3 b. Punitive damages according to proof;
 - 4 c. Treble damages pursuant to CC § 3345;
 - 5 d. Treble damages and attorney's fees pursuant to CCP § 1029.8;
- 6 3. Violation of Senior Insurance Sales Practices (Ins. Code § 798.8 *et seq.*):
 - 7 a. Compensatory damages according to proof;
 - 8 b. Punitive damages according to proof;
 - 9 c. Treble damages pursuant to CC § 3345;
 - 10 d. Treble damages and attorney's fees pursuant to CCP § 1029.8;
- 11 4. Negligence:
 - 12 a. Compensatory damages according to proof;
 - 13 b. Treble damages and attorney's fees pursuant to CCP § 1029.8;
- 14 5. Fraud:
 - 15 a. Compensatory damages according to proof;
 - 16 b. Punitive damages according to proof;
 - 17 c. Treble damages pursuant to CC § 3345;
- 18 6. Elder Financial Abuse (W & I Code § 15610.30):
 - 19 a. Compensatory damages according to proof;
 - 20 b. Reasonable attorney's fees and costs according to proof;
 - 21 c. Punitive damages according to proof;
 - 22 c. Treble damages pursuant to CC § 3345;
- 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: September 13, 2006



27 Steven Riess
28 Attorney for plaintiffs