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8 Attorney for Plaintiff Gonzales

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN JOAQUIN

11 Joan Gonzales Greenspan, attorney-in-fact for
12 Jane Gonzales,

13 Plaintiff,

14 vs.

15 Gary Grey, Merrill Lynch, Pierce, Fenner
16 & Smith, Incorporated, and Does 1 through 20,

17 Defendants.

Case No. CV032939

COMPLAINT FOR:

1. Negligence
2. Breach of Fiduciary Duty
3. Elder Financial Abuse (W & I § 15610.30)

18 **PRELIMINARY ALLEGATIONS**

19 1. At all times mentioned, Joan Gonzales Greenspan and Jane Gonzales were natural
20 persons over the age of 18 years. Joan Gonzales Greenspan is the attorney-in-fact for Jane
21 Gonzales. Plaintiff holds some right, title, and interest in the property which is the subject matter of
22 this action and accordingly is the real party in interest pursuant to CCP § 367.

23 2. Defendant Gary Grey (“Grey”) is a natural person over the age of 18. Defendant
24 Merrill Lynch, Pierce, Fenner & Smith, Incorporated (“ML”) is a business entity of unknown form.
25 Defendants Grey and ML are licensed as securities dealers.

26 3. The true names and capacities of defendants sued as Does are unknown, and plaintiff
27 will amend this complaint to show their true names and capacities when this information is
28

1 ascertained. Each such Doe defendant is in some manner responsible for the damages alleged
2 pursuant to each cause of action asserted, either through its own conduct, or vicariously through the
3 conduct of others. All further references in this complaint to any of the named defendants, or to
4 defendants generally, shall include such Doe defendants.

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

9 5. This court is the proper court in which to bring this action because plaintiff sustained
10 injury within its jurisdiction, events giving rise to this action occurred here, and at least one
11 defendant is located here.

12 **GENERAL ALLEGATIONS**

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

14 7. Plaintiff was born on April 4, 1921 and was at least 84 years old at the time of the
15 events alleged in this complaint. In January, 2005, plaintiff resided in her home at 2213 Franklin
16 Avenue in Stockton, was retired and had very meager income and assets. In January, 2005, plaintiff
17 suffered a stroke and lost the capacity to physically care for herself and lost the mental capacity to
18 appreciate and attend to her financial affairs. By virtue of an existing durable power of attorney,
19 plaintiff's daughter Elizabeth Thompson became plaintiff's attorney-in-fact. In April, 2005, plaintiff
20 became a permanent resident at the Chateau Convalescent Hospital, a skilled nursing facility in
21 Stockton.

22 8. In July, 2005, Elizabeth Thompson made an appointment to meet with defendant
23 Grey, an investment advisor employed by defendant ML. The purpose of the appointment was to
24 obtain financial and investment advice and recommendations from Grey regarding payment of the
25 expenses of plaintiff's care and maintenance. Shortly, thereafter, Elizabeth Thompson met with
26 Grey at defendants' Stockton office. In response to Grey's questions, Elizabeth described plaintiff's
27 assets, income and expenses. Elizabeth inquired whether plaintiff might be eligible for Medi-Cal
28 benefits. Grey told Elizabeth that the amount of plaintiff's assets, particularly the equity in her

1 residence, made her ineligible for Medi-Cal benefits, that in any event, the level of care proved by a
2 skilled nursing facility paid by Medi-Cal was “terrible.” He advised Elizabeth to sell plaintiff’s
3 residence, to open a brokerage account at ML, and to authorize Grey to manage the assets of the
4 account. Elizabeth told Grey that she intended to follow Grey’s advice and the conference
5 concluded.

6 9. In August, 2005, plaintiff residence was offered for sale. On September 21, 2005,
7 escrow for the sale of plaintiff’s house closed. From the sale’s price of \$330,000, the net proceeds
8 of sale amounted to \$281,595. Shortly thereafter, this amount was deposited into plaintiff’s ML
9 account.

10 10. The monthly expense for plaintiff’s care and maintenance at the Chateau
11 Convalescent Hospital where she resided was approximately \$5,000. In addition, plaintiff paid a
12 monthly expense of approximately \$400 for medication.

13 11. On July 7, 2006, Elizabeth suffered a stroke which rendered her physically and
14 mentally disabled and unable to perform her duties as plaintiff’s attorney-in-fact. As a result of
15 Elizabeth’s loss of capacity and pursuant to the terms of plaintiff’s durable power of attorney, Joan
16 Gonzales Greenspan succeeded Elizabeth as attorney-in-fact for plaintiff. Joan began familiarizing
17 herself with the details of plaintiff’s financial situation. In January, 2007, Joan met with an attorney
18 and learned for the first time that prior to selling her residence, plaintiff had been eligible for Medi-
19 Cal benefits and that the level of care for a nursing home resident is largely identical to that for a
20 private payee. She also learned that the sale of plaintiff’s residence had actually caused plaintiff to
21 lose her Medi-Cal eligibility because a residence is characterized as an exempt asset for Medi-Cal
22 purposes. The attorney advised Joan to liquidate the investments in the ML brokerage account,
23 close the account, and purchase a new residence for plaintiff, thus re-establishing plaintiff’s Medi-
24 Cal eligibility.

25 12. Shortly thereafter, Joan took steps to carry out these recommendations. The
26 investments in the ML account were liquidated and the account was closed. On March 20, 2007,
27 escrow closed on the purchase of 1834 Elizabeth Avenue, in Stockton for \$235,000. Expenses of
28 purchase were \$1,797.

1 residents; that the most financially appropriate course was for plaintiff to sell her residence; and that
2 the most financially appropriate course was for plaintiff to deposit the proceeds of sale into a ML
3 account and authorize Grey to manage these funds.

4 21. As a direct result of defendants' breach of their fiduciary duties of the utmost good
5 faith and fidelity, plaintiff sustained damages in an amount of not less than \$125,835.

6 22. Defendants' wrongful conduct constituted oppression, fraud, and malice and plaintiff
7 is entitled to recover damages for the sake of example and by way of punishing defendants pursuant
8 to Civil Code § 3294.

9 23. Plaintiff is entitled to recover treble damages pursuant to Civil Code § 3345.

10 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS**
11 **(Elder Financial Abuse)**

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

13 25. Defendants acted wrongfully and illegally by telling plaintiff, among other things:
14 that plaintiff was not currently eligible for Medi-Cal benefits; that the care provided to residents of
15 skilled nursing facilities whose expenses were paid by Medi-Cal is "terrible" and is substantially
16 inferior to that of private pay residents; that the most financially appropriate course was for plaintiff
17 to sell her residence; and that the most financially appropriate course was for plaintiff to deposit the
18 proceeds of sale into a ML account and authorize Grey to manage these funds. As a direct result of
19 these instructions, defendants were paid fees and commissions and thereby took, secreted,
20 appropriated, and retained the property of plaintiff, an elder, to a wrongful use and with the intent to
21 defraud within the meaning of Welfare & Institutions Code § 15610.30.

22 26. Defendants, and each of them, through these misrepresentations and other conduct in
23 furtherance of their common enterprise, assisted each other in the taking, secreting, appropriating,
24 and retaining of the property of plaintiff, an elder, to a wrongful use and with the intent to defraud
25 within the meaning of Welfare & Institutions Code § 15610.30.

26 27. As a direct and proximate result of defendants' wrongful conduct, plaintiff sustained
27 damages in an amount of not less than \$125,835.

28 28. In addition to all other remedies provided by law, plaintiff is entitled to recover

1 reasonable attorney fees and costs for financial abuse pursuant to Welfare & Institutions Code §
2 15657.5.

3 29. Defendants' conduct constituted oppression, fraud, and malice in the commission of
4 the financial abuse, and plaintiff is entitled to recover damages for the sake of example and by way
5 of punishing defendants for financial abuse pursuant to Civil Code § 3294.

6 30. Plaintiff is entitled to recover treble damages pursuant to Civil Code § 3345.

7 WHEREFORE, plaintiff prays for judgment against defendants as follows:

8 1. Negligence:

9 a. Compensatory damages according to proof;

10 2. Breach of Fiduciary Duty:

11 a. Compensatory damages according to proof;

12 b. Punitive damages according to proof;

13 c. Treble damages pursuant to CC § 3345;

14 3. Elder Financial Abuse (W & I Code § 15610.30):

15 a. Compensatory damages according to proof;

16 b. Reasonable attorney's fees and costs according to proof;

17 c. Punitive damages according to proof;

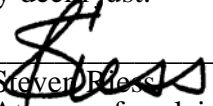
18 c. Treble damages pursuant to CC § 3345;

19 4. Interest pursuant to CC §§ 3287 and 3288;

20 5. Costs pursuant to CCP § 1032; and

21 6. For such further relief as the court may deem just.

22 Dated: June 26, 2007



Steven Riess
Attorney for plaintiff