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8 Attorney for Plaintiff Holthouse

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

11 Leonard Holthouse, trustee of the Fred Holthouse  
12 Revocable Trust, and Leonard Holthouse, Executor  
13 of the Estate of Fred Holthouse,

14 Plaintiffs,

15 vs.

16 Ida Ogden, Life Insurance Company of the  
17 Southwest, and Does 1 through 20,

18 Defendants.

Case No. 07AS02047

FIRST AMENDED COMPLAINT FOR:  
1. Rescission for Void Contract (LSW)  
2. Rescission for Lack of Capacity (LSW)  
3. Fraud (Ogden)  
4. Breach of Fiduciary Duty and Undue  
Influence (Ogden)  
5. Elder Financial Abuse (Ogden)  
6. Negligence (Ogden)

19 PRELIMINARY ALLEGATIONS

20 1. Fred Holthouse (“Decedent”) was born on February 20, 1911 and was at least 92  
21 years old at the time of the events alleged in this complaint. On December 29, 2004, Decedent  
22 created the Fred Holthouse Revocable Trust (“the Trust”) and funded it with various property,  
23 including Life Insurance Company of the Southwest contract 533650X (“the LSW Annuity”). On  
24 August 3, 2006, Decedent died. Leonard Holthouse is the successor trustee of the Trust and  
25 therefore is the real party in interest to one or more of these legal causes pursuant to CCP § 367.  
26 Leonard Holthouse has been, or will soon be, duly appointed executor of the Estate of Fred  
27 Holthouse and therefore is the real party in interest to one or more of these legal causes pursuant to  
28 CCP § 367.



1 progressed significantly, and he required the assistance of a full-time personal attendant. By 2003,  
2 Decedent's dementia had progressed to the point where he became easily confused and disoriented  
3 and lacked the mental competence to understand financial transactions, including such complex  
4 matters as the purchase of annuities.

5 8. In the late 1980's, Decedent had become acquainted with defendant Ida Ogden, a  
6 licensed California life insurance agent and an appointed agent of LSW. Ogden repeatedly met with  
7 Decedent and convinced him to purchase several annuity contracts from her.

8 9. On May 5, 2004, Ogden learned that Decedent had sold a piece of property for which  
9 he had received a large sum of money. She contacted Decedent and attempted to convince Decedent  
10 to purchase yet another annuity from her – the LSW Annuity. Ogden sought to exploit Decedent's  
11 desire to provide testamentary gifts to his grandchildren by advising him that the LSW Annuity was  
12 the best method for making such gifts. Although Decedent obviously lacked understanding of the  
13 transaction and the mental capacity to contract, Ogden was able to obtain Decedent's signature on  
14 one of the lines of the annuity application. (A copy of the LSW Annuity application is attached as  
15 Exhibit A.) This signature (in Section XII – Disclosure Information) ostensibly acknowledged that  
16 Decedent had received a copy of various disclosure materials. However, Ogden failed to obtain  
17 Decedent's signature on the annuity application itself (in Section XI – Signature and Agent  
18 Information). Plaintiff believes, and thereupon alleges, that some time thereafter Ogden forged  
19 Decedent's signature on this line of the annuity application by writing Decedent's name in Section  
20 XI in an attempt to imitate Decedent's signature.

21 10. The LSW Annuity was issued on May 11, 2004 with an initial premium of \$150,000.  
22 The LSW Annuity provides for a term of 56 years and will mature in 2060, when Decedent would  
23 have reached the age of 149. It also provided for a 15 year surrender schedule, commencing at the  
24 penalty rate of 14 percent. Accordingly, the LSW Annuity could not be terminated without a  
25 substantial surrender penalty until Decedent reached the age of 107.

26 11. Decedent maintained a checking account at the River City Bank in Elk Grove.  
27 Because of his dementia and his obvious vulnerability to exploitation, the bank flagged Decedent's  
28 account so that Decedent's checks would be examined for authenticity with particular care. The

1 bank also arranged for Decedent's checkbook and register to be stored in a safe deposit box at the  
2 bank. After forging Decedent's signature on the LSW Annuity application, Ogden instructed  
3 Decedent and his attendant to go to the bank and bring Ogden the checkbook. Ogden realized that  
4 Decedent would not be able to carry this out based solely on her oral instructions, and therefore  
5 Ogden wrote Decedent a note so that Decedent would be able to remember Ogden's instructions. (A  
6 copy of this note is attached as Exhibit B.)

7 12. Decedent delivered his checkbook to Ogden as she had instructed. Ogden wrote out a  
8 check in favor of LSW in the amount of \$150,000 and instructed Decedent to sign the check. On  
9 August 3, 2004, Ogden instructed Decedent to invest an additional \$500,000 in the LSW Annuity.  
10 Again, Ogden wrote out the check and Decedent signed it. (Copies of these checks are attached as  
11 Exhibit C.) The total amount invested in the LSW Annuity was \$650,000.

12 13. As a result of the purchase of the LSW Annuity, Ogden was paid various  
13 commissions in amounts which have not yet been determined.

14 **FIRST CAUSE OF ACTION AGAINST LSW**  
15 **(Rescission for Void Contract)**

16 14. Paragraphs 1 through 13 are incorporated by reference.

17 15. The LSW Annuity was void *ab initio* because Decedent never assented to it. By  
18 forging the signature of Decedent on the LSW Annuity application and by falsely and fraudulently  
19 obtaining Decedent's signatures on the checks used to fund the LSW Annuity, Ogden was able to  
20 appropriate Decedent's money in the amount of \$650,000 and thereby deprived Decedent of his  
21 rightful ownership and possession of it.

22 16. In or about March, 2007, a handwriting expert employed by plaintiff verified that the  
23 signature on the LSW Annuity had been forged. In or about April, 2007, plaintiff informed LSW of  
24 the forgery, offered LSW evidence proving that Decedent had never signed the LSW Annuity  
25 application, and demanded that LSW return the money paid. Notwithstanding plaintiff's offer of  
26 proof, and without any evidence supporting a reasonable belief that the signature on the application  
27 had been made by Decedent, LSW refused, and continues to refuse, to return plaintiff's money.  
28 Accordingly, LSW has adopted and ratified the forgery and other wrongful acts of its agent, Ogden.

1 17. As a direct and proximate cause of the wrongful conduct of Ogden and LSW,  
2 plaintiff has been deprived of his property, namely Decedent's money in the amount of \$650,000.

3 18. As a result of the LSW Annuity being void for lack of assent, plaintiff is entitled to  
4 rescission and the return of the money paid, together with interest thereon.

5 19. The wrongful conduct of Ogden and LSW constitutes oppression, fraud, and malice,  
6 and plaintiff is entitled to recover damages for the sake of example and by way of punishing  
7 defendants pursuant to Civil Code section 3294.

8  
9 **SECOND CAUSE OF ACTION AGAINST LSW**  
**(Rescission for Lack of Capacity)**

10 20. Paragraphs 1 through 19 are incorporated by reference.

11 21. As a result of Decedent's dementia, Decedent was of unsound mind and therefore  
12 lacked the capacity to fully comprehend the significance of the LSW Annuity. Moreover, the  
13 consent of Decedent, if any, to the LSW Annuity was given by mistake, or obtained through duress,  
14 menace, fraud, or undue influence within the meaning of Civil Code section 1689.

15 22. Plaintiff is entitled to rescission of the LSW Annuity and the return of the money  
16 paid, together with interest thereon, pursuant to Civil Code section 39.

17  
18 **THIRD CAUSE OF ACTION AGAINST OGDEN**  
**(Fraud)**

19 23. Paragraphs 1 through 22 are incorporated by reference.

20 24. The statements and other representations which Ogden made to Decedent regarding  
21 the terms, value, suitability, desirability, and appropriateness of the LSW Annuity were false and  
22 misleading.

23 25. The false and misleading statements of Ogden were reasonably material to any  
24 decision to purchase the LSW Annuity and any reliance on these misrepresentations would have  
25 been reasonable.

26 26. Ogden knew that these statements were false and misleading, and Ogden thereby  
27 intended to defraud Decedent.

28 27. As a direct and proximate result of Ogden's wrongful conduct, plaintiff sustained

1 damages in an amount of not less than \$136,004.

2 28. Ogden's conduct constituted oppression, fraud, and malice, and plaintiff is entitled to  
3 recover damages for the sake of example and by way of punishing defendant pursuant to Civil Code  
4 § 3294.

5 29. Plaintiff is entitled to recover treble damages pursuant to Civil Code § 3345. In  
6 addition, the advice and instructions provided by Ogden constitute the rendering of legal services  
7 for which a license is required pursuant to Business & Professions Code § 6000 *et seq.*, and Ogden  
8 is not so licensed. Accordingly, plaintiff is entitled to recover treble damages, together with costs,  
9 and attorney's fees pursuant to CCP § 1029.8.

10 **FOURTH CAUSE OF ACTION AGAINST OGDEN**  
11 **(Breach of Fiduciary Duty and Undue Influence)**

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

13 31. Decedent had known Ogden since the late 1980's. Decedent's wife died and Ogden  
14 befriended Decedent. Over the years, Ogden had various discussions with Decedent regarding  
15 investments, financial planning, and estate planning. She represented to Decedent that she was  
16 providing such advice solely for the basis of helping Decedent with complex financial matters of  
17 which Decedent was wholly ignorant and in which Ogden was an expert. She further represented to  
18 Decedent that she was acting solely in the best interests of Decedent and not in her own interests.  
19 Decedent reasonably believed that Ogden was acting in Decedent's best interests and not in her own  
20 interests. Prior to 2003, Ogden sold Decedent various annuities, representing to Decedent that these  
21 investments were in Decedent's best interests and that he could trust her to put his financial affairs  
22 in order.

23 32. In 2003, Decedent's dementia advanced to the point to where he was occasionally  
24 delusional. In addition, he was hard of hearing, his vision was very poor, he could not read, he had  
25 great difficulty walking, he slept for many hours of the day, and he was physically dependent on the  
26 people around him. This dependency and mental confusion made Decedent extremely vulnerable to  
27 manipulation and exploitation. In April, 2004, Ogden telephoned Janet Prosser, Decedent's  
28 granddaughter, to arrange Prosser's signature on the LSW application. Ogden had selected Prosser

1 to be the annuitant on the LSW annuity, primarily because Prosser was only 39 years old and was  
2 the grandchild who lived closest to San Joaquin County. In this telephone conversation, Ogden  
3 explained to Prosser that she was making certain financial changes on Decedent's behalf which  
4 would ultimately benefit Prosser. Ogden acknowledged that Decedent was sometimes irrational and  
5 irascible, but stated: "He's tough! But I'm tougher!"

6 33. As a result of Decedent's advanced age, lack of education, weakened mental and  
7 physical condition, sickness, dementia, and other incapacities, Decedent was vulnerable to  
8 exploitation and manipulation by Ogden. This vulnerability empowered Ogden to exploit and  
9 manipulate Decedent through sales tactics designed to confuse, alarm, and otherwise unfairly  
10 induce Decedent to purchase defendants' products. This empowerment was solicited and accepted  
11 by Ogden through her interactions and solicitations of Decedent. The vulnerability of Decedent to  
12 exploitation and manipulation resulted in Decedent reposing trust in Ogden and prevented Decedent  
13 from effectively protecting himself from defendants' sales tactics. Pursuant to *Richelle L. v. Roman*  
14 *Catholic Archbishop* (2003) 106 Cal.App.4th 257 and related authority, a confidential relationship  
15 existed between Decedent and Ogden.

16 34. Ogden selected LSW as the insurer with whom to place this annuity. Accordingly,  
17 Ogden was the agent of Decedent and thereby owed Decedent a fiduciary duty of good faith and fair  
18 dealing pursuant to *Eddy v. Sharp* (1988) 199 Cal.App.3d 858.

19 35. As a result of both the confidential and agency relationships between Decedent and  
20 Ogden, Ogden owed Decedent a fiduciary duty of the utmost good faith and fidelity which  
21 prohibited Ogden from profiting or otherwise taking advantage of Decedent pursuant to *Herbert v.*  
22 *Lankershim* (1937) 9 Cal.2d 409.

23 36. Ogden took advantage of Decedent by selling Decedent a wholly unsuitable annuity  
24 and profited from her own conduct by earning commissions on the sale of the annuity and thereby  
25 breached her fiduciary duty of the utmost good faith and fidelity. The existence of these confidential  
26 and agency relationships, together with the profiting of Ogden, raises the presumption that Ogden  
27 exercised undue influence over Decedent pursuant to *Stevens v. Marcos* (1956) 147 Cal.App.2d 357  
28 and places the burden of proof on Ogden pursuant to Evidence Code § 606 to prove that the

1 purchase of the annuities did not result from undue influence.

2 37.

3 As a direct result of Ogden's breach of this fiduciary duty of the utmost good faith and fidelity,  
4 plaintiff sustained damages in an amount of not less than \$136,004.

5 49. Ogden's wrongful conduct constituted oppression, fraud, and malice, and plaintiff is  
6 entitled to recover damages for the sake of example and by way of punishing Ogden pursuant to  
7 Civil Code § 3294.

8 50. Plaintiff is entitled to recover treble damages pursuant to Civil Code § 3345.

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10 **FIFTH CAUSE OF ACTION AGAINST ODGEN**  
11 **(Elder Financial Abuse)**

12 51. Paragraphs 1 through 50 are incorporated by reference.

13 52. Ogden intentionally, and with full knowledge of their falsity, made various  
14 misrepresentations to Decedent, both orally and in writing, including but not limited to statements  
15 likely to deceive Decedent as to the terms, value, suitability, desirability, and appropriateness of the  
16 LSW Annuity. These misrepresentations allowed Ogden to obtain the signature of Decedent on  
17 various documents used for the purchase of the annuities and to obtain the delivery of funds from  
18 Decedent totaling \$650,000, by which Ogden earned commissions. By engaging in this conduct,  
19 Ogden took, secreted, appropriated, and retained the property of Decedent, an elder, to a wrongful  
20 use and with the intent to defraud within the meaning of Welfare & Institutions Code § 15610.30.

21 53. As a direct and proximate result of Ogden's wrongful conduct, plaintiff has sustained  
22 damages in an amount of not less than \$136,004.

23 54. In addition to all other remedies provided by law, plaintiff is entitled to recover  
24 reasonable attorney fees and costs for financial abuse pursuant to Welfare & Institutions Code §  
25 15657.5.

26 55. Ogden's conduct constituted oppression, fraud, and malice in the commission of the  
27 financial abuse, and plaintiff is entitled to recover damages for the sake of example and by way of  
28 punishing Ogden for financial abuse pursuant to Civil Code § 3294.

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

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

4 57. Paragraphs 1 through 56 are incorporated by reference.

5 58. Ogden owed Decedent a duty of reasonable care in advising him as to these  
6 transactions.

7 59. Ogden breached this duty of reasonable care by negligently and unreasonably  
8 making various false statements to Decedent, including but not limited to: making statements likely  
9 to deceive Decedent as to the terms, value, suitability, desirability, and appropriateness of the LSW  
10 Annuity; employing advertising and other promotional devices which misled Decedent as to the  
11 terms, value, suitability, desirability, and appropriateness of the LSW Annuity; and failing to deliver  
12 various written notices and related duties prior to any in-home meeting as required by law.

13 60. Ogden was the appointed agent of LSW and was acting within the course and scope  
14 of her authority when she breached this duty. Accordingly, LSW is vicariously liable for Ogden's  
15 wrongful conduct pursuant to Civil Code § 2338.

16 61. As a direct result of defendants' breach of this duty, plaintiff sustained damages in an  
17 amount of not less than \$136,004.

18 62. The advice and instructions provided by Ogden constitute the rendering of legal  
19 services for which a license is required pursuant to Business & Professions Code § 6000 *et seq.*, and  
20 Ogden is not so licensed. Accordingly, plaintiff is entitled to recover treble damages, together with  
21 costs, and attorney's fees pursuant to CCP § 1029.8.

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

23 1. Rescission for Void Contract (LSW):

24 a. Return of all money paid according to proof, but not less than \$136,004;

25 b. Interest at the legal rate;

26 2. Rescission for Lack of Capacity (LSW):

27 a. Return of all money paid according to proof, but not less than \$136,004;

28 b. Interest at the legal rate;

3. Fraud (all defendants):

- 1 a. Compensatory damages according to proof;
- 2 b. Punitive damages according to proof;
- 3 c. Treble damages pursuant to CC § 3345;
- 4 d. Treble damages and attorney's fees pursuant to CCP § 1029.8;
- 5 4. Violation of Senior Insurance Sales Practices (all defendants):
  - 6 a. Compensatory damages according to proof;
  - 7 b. Punitive damages according to proof;
  - 8 c. Treble damages pursuant to CC § 3345;
- 9 5. Violation of Unfair Competition Law (all defendants.):
  - 10 a. Compensatory damages according to proof;
  - 11 b. Reasonable attorney's fees and costs according to proof;
  - 12 c. Punitive damages according to proof;
  - 13 d. Treble damages pursuant to CC § 3345;
  - 14 e. For preliminary and permanent injunctive relief prohibiting defendants from
  - 15 engaging in further acts of unfair competition;
- 16 6. Breach of Fiduciary Duty and Undue Influence (Ogden):
  - 17 a. Compensatory damages according to proof;
  - 18 b. Punitive damages according to proof;
  - 19 c. Treble damages pursuant to CC § 3345;
- 20 7. Elder Financial Abuse (Ogden):
  - 21 a. Compensatory damages according to proof;
  - 22 b. Reasonable attorney's fees and costs according to proof;
  - 23 c. Punitive damages according to proof;
  - 24 c. Treble damages pursuant to CC § 3345;
- 25 8. Negligence:
  - 26 a. Compensatory damages according to proof;
  - 27 b. Treble damages and attorney's fees pursuant to CCP § 1029.8;
- 28 9. Interest pursuant to CC § 3287;

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10. Costs pursuant to CCP § 1032; and

11. For such further relief as the court may deem just.

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

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Steven Riess  
Attorney for plaintiffs