

1 Steven Riess (SBN 100131)
2 Law Offices of Steven Riess
3 456 Montgomery Street, 20th Floor
4 San Francisco, CA 94104
5 Telephone: (415) 989-1970
6 FAX: (866) 298-6055
7 steve@riesslaw.com

8 Attorney for plaintiff Trusz

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN FRANCISCO**

11 William Trusz and Sharon Trusz,

12 Plaintiffs,

13 vs.

14 James Walker, Senior Care Advocates, Inc.,
15 and Does 1 through 20,

16 Defendants.

Case No. CGC-08-473793

COMPLAINT FOR:

1. Elder Financial Abuse (W & I § 15610.30)
2. Fraud
3. Negligent Misrepresentation
4. Violation of Consumers' Legal Remedies Act (CC § 1750)
5. Violation of Unfair Competition Law (B & P § 17200)

17 **PRELIMINARY ALLEGATIONS**

18 1. At all times mentioned, plaintiffs William Trusz ("William") and Sharon Trusz
19 ("Sharon") were natural persons over the age of 18 years.

20 2. William was born on April 12, 1933, and was 73 years old at the time of the events
21 alleged in this complaint; Sharon was born on August 7, 1940, and was 66 years old at the time of
22 the events alleged in this complaint. Defendant James Walker (Walker) is a natural person.
23 Defendant Senior Care Advocates, Inc. ("SCA") is business entity of unknown form.

24 3. The true names and capacities of defendants sued as Does are unknown, and
25 plaintiffs will amend this complaint to show their true names and capacities when this information
26 is ascertained. Each Doe defendant is in some manner responsible for the damages alleged pursuant
27 to each cause of action asserted, either through its own conduct, or vicariously through the conduct
28 of others. All further references in this complaint to any of the named defendants, or to defendants

1 generally, shall include such fictitiously named defendants.

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

5 5. Defendants are doing business in Alameda County by engaging in the following
6 conduct here: creating, producing, and distributing advertising through radio broadcasts and Internet
7 websites; meeting with prospective and existing customers at their homes; entering into contracts at
8 customers' homes; obtaining payments from customers in their homes; and delivering various
9 written materials and documents to customers in their homes. Accordingly, this court is a proper
10 court in which to bring this action because defendants are doing business within its jurisdiction
11 pursuant to CC § 1780(c).

12 **GENERAL ALLEGATIONS**

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

14 7. William is married to Sharon and together they reside at their home in Fremont. At
15 various times in 2004 and 2005, William and Sharon listened to radio broadcasts of defendants,
16 broadcast from San Francisco. Based on the information broadcast, they were led to believe that
17 their assets were unnecessarily at risk if either or both of them became ill and required long term
18 care but that defendants had the knowledge, experience, and expertise to be able to protect these
19 assets and also to qualify them for Medi-Cal benefits such that if they needed long term care, the
20 government would pay such expenses for them. Based on these claims, William and Sharon
21 contacted defendants and inquired whether defendants would be able to assist them. A
22 representative of defendants assured them that defendants could help and scheduled an appointment.

23 8. On September 11, 2006, William and Sharon met with defendants' representative,
24 Scott Kwidzinski. Plaintiffs were asked to disclose various confidential information, including the
25 nature and extent of their assets and the state of their health. Plaintiffs told defendants'
26 representative that they had extensive real estate holdings, including their home and various income
27 producing properties. They also disclosed the nature and extent of their other assets. Plaintiffs also
28 disclosed that they were both in good health. Defendants' representative advised plaintiffs that they

1 were both greatly at risk and that if either of them should become ill and require long term care, that
2 they would not be entitled to government benefits such as Medi-Cal and that their assets might be
3 wiped-out. Defendants' representative strongly urged plaintiffs to engage defendants' services so as
4 to eliminate these risks and demanded a fee of \$19,975. Whereupon plaintiffs then gave defendants
5 a check in the amount of \$19,975.

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

9 9. Paragraphs 1 through 8 are incorporated by reference.

10 10. Defendants made various representations to plaintiffs that by purchasing the services
11 of defendants, defendants would protect plaintiffs' assets and render them eligible for Medi-Cal
12 benefits. As a direct result of these representations, plaintiffs paid defendants \$19,975. The services
13 and advice offered by defendants to plaintiffs, if any, were of no value to plaintiffs. In engaging in
14 such conduct, defendants took, secreted, appropriated, and retained the property of plaintiffs, elders,
15 to a wrongful use within the meaning of Welfare & Institutions Code § 15610.30. Defendants
16 engaged in such conduct either directly, or assisted others in such conduct.

17 11. In engaging in such conduct, defendants intended to defraud plaintiffs within the
18 meaning of Welfare & Institutions Code § 15610.30.

19 12. As a direct and proximate result of defendants' wrongful conduct, plaintiffs have
20 been deprived of their property, namely \$19,975, and have incurred attorney's fees and costs. As a
21 direct and proximate result of defendants' wrongful conduct, plaintiffs have sustained mental
22 distress, anguish, upset, and anxiety and various physical complaints, medical ailments, and related
23 injuries.

24 13. In addition to all other remedies provided by law, plaintiffs are entitled to recover
25 reasonable attorney's fees and costs for financial abuse pursuant to Welfare & Institutions Code §
26 15657.5.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Fraud)**

15. Paragraphs 1 through 14 are incorporated by reference.

16. The representations which defendants made to plaintiffs regarding their economic status and their Medi-Cal eligibility were false, misleading, and misrepresented both the law, the facts, and defendants' intent.

17. The false and misleading statements of defendants were material to plaintiffs' decision to pay defendants, and plaintiffs relied to their detriment on them by paying defendants \$19,975.

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

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

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

**THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Negligent Misrepresentation)**

21. Paragraphs 1 through 20 are incorporated by reference.

22. In providing plaintiffs with the information alleged herein, defendants owed plaintiffs a duty to provide them with accurate information and recommendations which were in plaintiffs' best interests. Defendants acted negligently and unreasonably and breached this duty by improperly and wrongfully advising plaintiffs and such information and advice was unwarranted and unreasonable.

23. As a direct and proximate result of defendants' wrongful conduct, plaintiff sustained damages as set forth herein.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Violation of Consumers' Legal Remedies Act (CC § 1750))**

24. Paragraphs 1 through 23 are incorporated by reference.

25. Defendants violated the Consumers' Legal Remedies Act by engaging in unfair or deceptive acts or practices by doing the following: (1) using deceptive representations in connection with their services by, among other things, representing that the services were worth \$19,975 when the services were of nominal or no value; (2) representing that the services have characteristics and benefits which they do not have by misrepresenting plaintiffs' Medi-Cal eligibility; (3) representing that the services are of a particular standard or quality when the services are of a different standard or quality; and (4) inserting an unconscionable provision in the contract, namely a price of \$19,975.

26. As a direct result of defendants' unfair or deceptive acts or practices, plaintiffs have been deprived of their money and property and have sustained damages as set forth herein.

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

**FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Violation of Unfair Competition Law – B & P § 17200 et seq.)**

28. Paragraphs 1 through 27 are incorporated by reference.

29. Defendants' conduct as alleged in this complaint constitutes unfair, unlawful, or fraudulent acts or practices within the meaning of Business & Professions Code § 17200 *et seq.*

30. Specifically, defendants engaged in unfair, unlawful, or fraudulent acts or practices by: making statements likely to deceive plaintiffs as to the terms, value, suitability, desirability, and appropriateness of the services offered by defendants; employing advertising and other promotional devices which misled plaintiffs as to the terms, value, suitability, desirability, and appropriateness of the services offered by defendants; and otherwise engaging in unfair, unconscionable, and illegal conduct.

31. As a direct result of defendants' unfair, unlawful, or fraudulent acts or practices, plaintiffs were deprived of their money and property. As a further direct result of defendants' unfair,

1 unlawful, or fraudulent acts or practices, plaintiffs are entitled to restitution.

2 32. Plaintiffs seek injunctive relief against further acts and practices by defendants
3 constituting unfair competition in violation of Business & Professions Code § 17200. The legal
4 remedy of damages is inadequate because recovering damages will not prevent the ongoing harm
5 caused by defendants' continued unfair business practices.

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

7 1. Elder Financial Abuse (W & I Code § 15610.30):

- 8 a. Compensatory damages according to proof;
- 9 b. Reasonable attorney's fees and costs according to proof;
- 10 c. Punitive damages according to proof;
- 11 d. Treble damages pursuant to CC § 3345;

12 2. Fraud:

- 13 a. Compensatory damages according to proof;
- 14 b. Punitive damages according to proof;
- 15 c. Treble damages pursuant to CC § 3345;

16 3. Negligent misrepresentation:

- 17 a. Compensatory damages according to proof;

18 4. Violation of the Consumers' Legal Remedies Act (CC § 1750):

- 19 a. Compensatory damages according to proof;
- 20 b. Punitive damages according to proof;
- 21 c. Treble damages pursuant to CC § 3345;

22 5. Violation of Unlawful Competition Law (B & P § 17200):

- 23 a. Restitution of all amounts delivered to defendants;
- 24 b. Preliminary and permanent injunctive relief prohibiting defendants from
25 engaging in further acts of unfair competition;

- 26 c. Reasonable attorney's fees and costs according to proof;

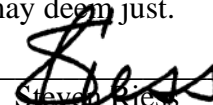
27 6. Interest pursuant to CC §§ 3287 and 3288;

28 7. Costs pursuant to CCP § 1032; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Dated: April 1, 2008



Steven Riess
Attorney for Plaintiff

Law Offices of Steven Riess
456 Montgomery Street, 20th Floor
San Francisco, CA 94104