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ENDORSED

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David H. ... Clerk of the Superior Court  
County of Santa Clara, California

By:           
A. Ilas

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

11 Patricia DeBord,

12 Plaintiff,

13 vs.

14 Will Kostamo, Ray Sowards, David Craft and  
Does 1 through 20,

15 Defendants.

Case No. 108CV121599

COMPLAINT FOR DAMAGES FOR:

1. Elder Financial Abuse
2. Fraud
3. Deceit
4. Negligence
5. Legal Malpractice

BY FAX

17 PRELIMINARY ALLEGATIONS

18 1. Plaintiff Patricia DeBord ("Patricia") was born on July 23 1926 and at the time of the  
19 events alleged in this complaint was at least 76 years old and an elder within the meaning of  
20 Welfare & Institutions Code § 15610.27.

21 2. Defendants Will Kostamo, Ray Sowards, and David Craft are natural persons over  
22 the age of 18.

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

Complaint



1 from his office in Milpitas, a roundtrip of 170 miles. Sowards questioned Patricia about her assets  
2 and her family and reviewed Patricia's will and money market account statement. He reiterated  
3 Kostamo's representation that the will was inadequate and told her that she needed a trust. Kostamo  
4 and Sowards then requested that Patricia provide them with advance payment. Pursuant to their  
5 instructions, Patricia wrote and delivered MBNA check number 1062 drawn payable to "Will  
6 Kostamo" in the amount of \$995 and Wells Fargo check number 3761 drawn in favor of "Ray  
7 Sowards" in the amount of \$100. (Copies of these checks are attached as Exhibit 1.) Sowards  
8 informed Patricia that he would prepare the necessary documents. He told her that her signatures on  
9 the documents would need to be notarized and that for her convenience, he would have the  
10 documents delivered by a notary who would notarize her signatures.

11 11. Prior to March 5, 2003, Patricia received a telephone call from Craft. Craft told her  
12 that he had received the trust documents from Sowards, that he was a notary, and that he would  
13 deliver the documents to Patricia and notarize her signatures. On March 5, 2003, Craft drove from  
14 his home in Rocklin to Yountville, a roundtrip of 184 miles. Craft brought along with him three  
15 documents which required Patricia's notarized signature: a trust, a power of attorney, and an  
16 advance health care directive. The statutory fee for notarizing a signature is \$10; accordingly, Craft  
17 was prohibited from charging Patricia more than \$30 for notarizing these documents. Craft  
18 presented the documents to Patricia and notarized her signature on each document; he did not  
19 charge her a notary fee.

20 12. Both Sowards and Craft are licensed as life agents by the California Department of  
21 Insurance. Sowards (license #0581474) is appointed as a sales agent for 14 life insurance  
22 companies, and Craft (license #0B94046) is appointed for 46 companies. Sowards is licensed by the  
23 State Bar of California as an attorney (SBN #139952); Kostamo and Craft are not attorneys. When  
24 Craft left his home in Rocklin to deliver to Patricia the trust documents, he also brought along with  
25 him an annuity application for National Western Life Insurance Company. After notarizing  
26 Patricia's signatures, he informed Patricia that he was aware that she had in excess of \$100,000 in a  
27 money market account. Craft told her that this was a poor investment and would leave little money  
28 to her children when she died. Craft told her that the best way to protect her children was to invest

1 her money into a deferred annuity from National Western. Since Patricia was very concerned about  
2 being able leave something to her children upon her death, she was greatly affected by Craft's  
3 representations. Craft encouraged Patricia to put all of her money into the annuity, but Patricia said  
4 that she was only willing to put in half. Craft filled out the National Western annuity application  
5 and presented it to Patricia and told her to sign it. (A copy of the application is attached as Exhibit  
6 2.) Pursuant to his instructions, Patricia then gave him MBNA check number 1063 drawn in favor  
7 of "National Western Insur." for \$50,000. (A copy of the check is attached as Exhibit 3.) Craft did  
8 not explain to Patricia that the annuity would essentially lock up her money for the rest of her life,  
9 that it paid a very low rate of return, and that should she need to withdraw her money from the  
10 annuity, she would be required to pay a severe surrender penalty. Craft departed with the  
11 application and the check and shortly thereafter, National Western issued to Patricia deferred  
12 annuity F0598. The annuity had a term of 23 years and was scheduled to mature on March 6, 2026,  
13 when Patricia would be 100 years old. The annuity also provided for a 15 years surrender penalty  
14 schedule, beginning at the rate of 25% for the first six years and then declining incrementally for  
15 another nine years. As a result of the sale of this annuity, Craft was paid a commission. Based on  
16 information and belief, it is hereby alleged that Sowards and Kostamo shared in the commission  
17 paid by National Western to Craft.

18 13. Based on Craft's limited and misleading description of the purpose, value, effect, and  
19 suitability of the annuity, Patricia did not understand that by purchasing the annuity, almost half of  
20 her assets would be locked up in an investment that would be unavailable to her to pay her bills as  
21 she got older. In October, 2007, Patricia fell and fractured her pelvis. During her recuperation, she  
22 temporarily moved to the home of her daughter, Lisa DelBonio, so that Lisa could care for her. In  
23 providing such care, Lisa discovered that Patricia's money was locked up in the National Western  
24 deferred annuity. At that time, Lisa looked at the annuity and surmised that it was entirely  
25 inappropriate for Patricia. She told Patricia that she suspected that Kostamo, Sowards, and Craft had  
26 cheated her and encouraged Patricia to seek legal advice.

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

14. Paragraphs 1 through 13 are incorporated by reference.

15. Defendants, and each of them, made various misrepresentations to Patricia that their services and products were valuable, appropriate, and suitable. Specifically, defendants Kostamo and Sowards misrepresented that Patricia's will was ineffective or otherwise inadequate and that she needed to replace it with a trust. Defendant Craft misrepresented the terms and effect of the annuity, misrepresented its suitability for Patricia, and concealed various material information regarding the terms of the annuity. In engaging in such conduct, defendants took, secreted, appropriated, and retained the property of Patricia, an elder, to a wrongful use within the meaning of Welfare & Institutions Code § 15610.30. Defendants engaged in such conduct either directly, or assisted others in such conduct.

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

17. As a direct and proximate cause of defendants' wrongful conduct, Patricia has been deprived of her property, namely her money, has sustained related damages, and has incurred attorney's fees and costs. As a direct and proximate cause of defendants' wrongful conduct, Patricia sustained mental distress, anguish, upset, and anxiety and various physical complaints, medical ailments, and related injuries.

18. In addition to all other remedies provided by law, Patricia is entitled to recover reasonable attorney's fees and costs for financial abuse pursuant to Welfare & Institutions Code § 15657.5. The misrepresentations and advice provided by Kostamo constitutes the rendering of legal services for which a license is required pursuant to Business & Professions Code § 6000 *et seq.*, and Kostamo is not so licensed.

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





1 result of the questions asked by Patricia and the corresponding responses given, Sowards had a duty  
2 to meet the standard of care of specialists in the field of estate planning and elder law sufficient to  
3 competently advise Patricia.

4 38. Sowards breached these standards of care by advising Patricia that her will was  
5 ineffective or otherwise inadequate and by advising her to replace it with a trust, and by instructing  
6 Craft, a life agent to deliver the trust documents and thereby placing Craft in a position to sell  
7 Patricia the National Western annuity.

8 39. As a direct result of defendants Sowards's breach of these duties, Patricia sustained  
9 damages in an amount alleged herein.

10 WHEREFORE, plaintiff prays for relief as follows:

11 1. Elder Financial Abuse:

- 12 a. Compensatory damages according to proof;
- 13 b. Reasonable attorney's fees and costs according to proof;
- 14 c. Punitive damages according to proof;
- 15 c. Treble damages pursuant to CC § 3345;

16 2. Fraud:

- 17 a. Compensatory damages according to proof;
- 18 b. Punitive damages according to proof;
- 19 c. Treble damages pursuant to CC § 3345;
- 20 d. Reasonable attorney's fees and costs according to proof against Kostamo;

21 3. Deceit:

- 22 a. Compensatory damages according to proof;
- 23 b. Punitive damages according to proof;
- 24 c. Treble damages pursuant to CC § 3345;
- 25 d. Reasonable attorney's fees and costs according to proof against Kostamo;

26 4. Negligence:

- 27 a. Compensatory damages according to proof;
- 28 b. Treble damages and attorney's fees pursuant to CCP § 1029.8;

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- c. Reasonable attorney's fees and costs according to proof against Kostamo;
- 5. Legal Malpractice:
  - a. Compensatory damages according to proof;
- 7. Interest pursuant to CC § 3287;
- 8. Costs pursuant to CCP § 1032; and
- 9. For such further relief as the court may deem just.

Dated: September 2, 2008

  
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Steven Riess  
Attorney for Plaintiff