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THE CASE HAS BEEN ASSIGNED TO
JUDGE CARTER F. HOLLY IN
DEPARTMENT 42 FOR ALL PURPOSES,
INCLUDING TRIAL

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN JOAQUIN**

11 Bella Fogel,

12 Plaintiff,

13 vs.

14 Phyllis Klein, Dawn Baker, Impact Net
Worth, LLC, Impact Holdings, Inc. and Does 1
15 through 20,

16 Defendants.

Case No. 39-2008-00192593-CU-FR-STK

- COMPLAINT FOR DAMAGES FOR:**
1. **Elder Financial Abuse**
2. **Fraud**
3. **Deceit**
4. **Negligence**
5. **Breach of Fiduciary Duty**

BY FAX

18 **PRELIMINARY ALLEGATIONS**

19 1. Plaintiff Bella Fogel ("Bella") was born on January 29, 1921, and at the time of the
20 events alleged in this complaint was at least 82 years old and an elder within the meaning of
21 Welfare & Institutions Code § 15610.27.

22 2. Defendants Phyllis Klein and Dawn Baker are natural persons over the age of 18.
23 Defendants Impact Net Worth, LLC and Impact Holdings, Inc. (collectively referred to as "Impact")
24 are business entities of unknown form.

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

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1 conduct of others. All further references in this complaint to any of the named defendants, or to
2 defendants generally, shall include such Doe defendants.

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

7 5. This court is the proper court in which to bring this action because the events
8 occurred here and at least one defendant is located here or has its principal place of business here.

9 **GENERAL ALLEGATIONS**

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

11 7. In 2003, Bella was 82 years old. At that time, she moved from her home into
12 O'Connor Woods, a multi-level retirement facility in Stockton offering independent living, assisted
13 living, skilled nursing, and rehabilitation care. From 2003 to 2006, Bella lived in the independent
14 living section; however by 2006, her physical condition deteriorated such that she was transferred to
15 the assisted living section. O'Connor Woods provides Bella with a private room, meals, and
16 assistance with the tasks of daily living.

17 8. In 2003, Bella owned assets totaling approximately \$180,000. These assets were
18 invested in various conservative investments, such as money market funds, certificates of deposit,
19 and some shares of stock of several large corporations. Her monthly income consisted of
20 approximately \$1,000 from her investments and \$960 from social security. Her monthly expenses
21 amounted to approximately \$2,700, of which her rent at O'Connor Woods was \$2,100. The shortfall
22 between Bella's expenses and her income was paid from the principal of her assets.

23 9. Sometime in 2003, Bella's neighbor at O'Connor Woods introduced her to defendant
24 Klein. Klein promotes herself as offering "Financial Solutions For All Ages & Stages of Life" but
25 claims to be particularly qualified to advise elders and claims to be a "Certified Senior Advisor –
26 CA Lic. #0735475." In fact, the State of California does not license or certify persons as "Senior
27 Advisors" and the number referenced is actually Klein's license to sell life insurance products. (A
28 copy of Klein's business card is attached as Exhibit 1.) Klein is also licensed by the California

1 Department of Real Estate as a salesperson (license #01819976) and by the United States Securities
2 and Exchange Commission as a broker (license #2263541). Following her introduction, Klein met
3 with Bella at O'Connor Woods and informed Bella that she was a financial advisor with special
4 training and expertise in advising elders. Klein told Bella that she could help Bella improve the
5 safety and return of her investments. Klein questioned Bella about the specifics of Bella's assets and
6 income for the purpose of selling Bella one or more investments by which Klein would earn
7 commissions. Klein learned about Bella's assets, that Bella was on a fixed income, that Bella's
8 expenses exceeded her income, and that it was vitally important to Bella that she preserve her
9 principal so that it would be available to pay the difference between her expenses and income. On
10 July 30, 2003, after several such meetings all of which occurred at O'Connor Woods, Klein sold
11 Bella a deferred annuity issued by John Hancock. The premium on the deferred annuity was
12 \$10,000.

13 10. At various times between July and December 2003, Klein returned to O'Connor
14 Woods to meet with Bella and propose various additional investments. In particular, Klein
15 repeatedly recommended that Bella purchase a Vacation Interval Ownership (the "Time-share") for
16 a purported condominium development in the Dominican Republic. Klein represented that the
17 investment would pay a return of eight percent per year, far higher than the return Bella was then
18 earning, and was safe, prudent, and suitable to Bella's circumstances. Klein further represented that
19 Bella could terminate the investment at anytime and the principal would then be returned. On
20 December 14, 2004, Bella relented and agreed to purchase the Time-share. Klein obtained from
21 Bella a check in the amount of \$75,000. (A copy of the check is attached as Exhibit 2, and a copy of
22 the purchase agreement is attached as Exhibit 3.)

23 11. From January 2004 to December 2007, Bella received quarterly income payments on
24 the Time-share. Thereafter, all income payments stopped. In 2008, Bella informed Klein that she
25 required the return of the Time-share principal because she needed the money to pay the difference
26 between her income and expenses. After several months of stalling, Klein finally informed Bella
27 that the Time-share was in financial difficulty and that the money would not then be returned.
28 Despite Bella's repeated demands, the money has not been returned and no further interest

1 payments have been paid.

2 12. Klein is licensed as a real estate salesperson by the California Department of Real
3 Estate. Her employing broker is defendant Dawn Baker (license #00944800), whose affiliated
4 licensed corporation is defendant Impact Holdings, Inc. (license #01813857). Baker is the
5 designated officer of Impact Holdings, Inc. Plaintiff is informed and believes and thereon alleges
6 that Impact Holdings, Inc. is the agent, servant, and employee of Impact Net Worth, LLC.

7 13. Plaintiff is informed and believes and thereon alleges that in selling the Time-share
8 to Bella and obtaining her payment of \$75,000, Klein discussed all aspects of this transaction with
9 defendants Baker, Impact Holdings, Inc. and Impact Net Worth, LLC and that each defendant
10 reviewed, approved, and accepted the transaction. Plaintiff further alleges that defendants, and each
11 of them, received a pecuniary or other benefit from the transaction.

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

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

15 15. Defendants, and each of them, made various misrepresentations to Bella that the
16 purchase of their services and products, namely the annuity and the Time-share, were valuable,
17 appropriate, and suitable and thereby obtained payment from Bella in the total amount of \$85,000.
18 In engaging in such conduct, defendants took, secreted, appropriated, and retained the property of
19 Bella, an elder, to a wrongful use within the meaning of Welfare & Institutions Code § 15610.30.
20 Defendants engaged in such conduct either directly, or assisted others in such conduct.

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

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

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

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

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

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

8 20. Paragraphs 1 through 21 are incorporated by reference.

9 21. The representations which defendants made to Bella regarding the terms, value,
10 appropriateness, and suitability of their services and products were false, misleading, and
11 misrepresented both the law, the facts, and defendants' intent.

12 22. The false and misleading statements of defendants were material to Bella's decision
13 to pay defendants, and Bella relied to her detriment on them by paying money to defendants.

14 23. Defendants knew that these statements were false and misleading and that Bella
15 would rely upon them to her detriment, and defendants thereby intended to defraud Bella.

16 24. As a direct and proximate result of defendants' wrongful conduct, Bella suffered
17 damages as alleged herein.

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

21 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS**
22 **(Deceit)**

23 26. Paragraphs 1 through 25 are incorporated by reference.

24 27. The representations which defendants made to Bella regarding the terms, value,
25 appropriateness, and suitability of their services and products were false, misleading, and
26 misrepresented both the law, the facts, and defendants' intent.

27 28. Defendants asserted these representations as facts although they had no reasonable
28 grounds for believing them to be true.

1 29. Defendants willfully deceived Bella with the intent to induce her to alter her position
2 to her injury and harm.

3 30. As a direct and proximate result of defendants' wrongful conduct, Bella suffered
4 damages as alleged herein.

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

8
9 **FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**
10 **(Negligence)**

11 32. Paragraphs 1 through 31 are incorporated by reference.

12 33. In providing Bella with the advice, suggestions, and recommendations alleged,
13 defendants owed Bella a duty to provide her with accurate information and recommendations which
14 were in Bella's best interests. Defendants acted negligently and unreasonably and breached this
15 duty by advising Bella to purchase their services and products when doing so was unwarranted and
16 unreasonable.

17 34. As a direct and proximate result of defendants' wrongful conduct, Bella sustained
18 damages as set forth herein.

19 **FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**
20 **(Breach of Fiduciary Duty)**

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

22 36. Defendants represented themselves to Bella as "Certified Senior Advisors," licensed
23 as real estate salesperson, securities brokers, and insurance agents, and as such, owed Bella a
24 fiduciary duty of utmost good faith and fidelity.

25 37. As a result of Bella's advanced age, lack of education, weakened mental and
26 physical condition, sickness and other incapacities, Bella was vulnerable to exploitation and
27 manipulation by defendants. This vulnerability empowered defendants to exploit and manipulate
28 Bella through sales tactics designed to confuse, alarm, and otherwise unfairly induce Bella to
purchase defendants' services and products. This empowerment was solicited and accepted by

1 defendants through their sales tactics. The vulnerability of Bella to exploitation and manipulation
2 resulted in Bella reposing trust in defendants and prevented Bella from effectively protecting herself
3 from defendants' sales tactics. Accordingly, a confidential relationship existed between Bella and
4 defendants. As a result of the confidential relationship between Bella and defendants, defendants
5 owed Bella a fiduciary duty of the utmost good faith and fidelity which prohibited defendants from
6 profiting or otherwise taking advantage of Bella.

7 38. Defendants took advantage of Bella and profited from defendants' conduct by
8 earning commissions and other monies on the sale of their services and products and thereby
9 breached their fiduciary duty of the utmost good faith and fidelity. The existence of defendants'
10 fiduciary duty, together with the profiting of defendants, raises the presumption that defendants
11 exercised undue influence over Bella and places the burden of proof on defendants to prove that
12 these sales did not result from undue influence.

13 39. As a direct result of defendants' breach of this fiduciary duty of the utmost good
14 faith and fidelity, Bella sustained damages as alleged herein.

15 40. Defendants' wrongful conduct constituted oppression, fraud, and malice and Bella is
16 entitled to recover damages for the sake of example and by way of punishing defendants pursuant to
17 Civil Code § 3294.

18 41. Plaintiffs are entitled to recover treble damages pursuant to Civil Code § 3345.

19 WHEREFORE, plaintiff prays for damages as follows:

20 1. Elder Financial Abuse:

- 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 2. Fraud:

- 26 a. Compensatory damages according to proof;
- 27 b. Punitive damages according to proof;
- 28 c. Treble damages pursuant to CC § 3345;

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- 3. Deceit:
 - a. Compensatory damages according to proof;
 - b. Punitive damages according to proof;
 - c. Treble damages pursuant to CC § 3345;
- 4. Negligence:
 - a. Compensatory damages according to proof;
- 5. Breach of fiduciary duty:
 - a. Compensatory damages according to proof;
 - b. Punitive damages according to proof;
 - c. Treble damages pursuant to CC § 3345;
- 6. Interest pursuant to CC § 3287;
- 7. Costs pursuant to CCP § 1032; and
- 8. For such further relief as the court may deem just.

Dated: September 3, 2008



Steven Riess
Attorney for Plaintiff