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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SANTA CLARA**

11 Charles Loffland and Donna Loffland

12 Plaintiffs,

13 vs.

14 Richard Holody, David Sherr, Advanced Estate
15 Planning Consultants, Inc., XXXX,
16 Legacy Marketing Group, XXXX, XXXX,
17 XXXX & XXXX, XXXX and Does 1
18 through 20,

19 Defendants.

Case No. XXXXXXXXX

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR:**

1. Elder Financial Abuse I
2. Fraud I
3. Deceit I
4. Negligence I
5. Breach of Fiduciary Duty I
6. Elder Financial Abuse II
7. Fraud II
8. Deceit II
9. Negligence II
10. Breach of Fiduciary Duty II
11. Unfair Competition

20 **THE PREDATORY ENTERPRISE**

21 1. Defendants Richard Holody, David Sherr, XXXX, and XXXX are natural persons
22 over the age of 18. Defendants Advanced Estate Planning Consultants, Inc. (“AEPC”), XXXX
23 (“XXXX”), Legacy Marketing Group (“Legacy”), XXXX & XXXX, and XXXX are business
24 entities of unknown form.

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

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 3. Defendants Holody, Sherr, AEPC, XXXX, XXXX, and XXXX (collectively referred
4 to as the “Predatory Enterprise”) conceived, organized, and operated an enterprise which exploits
5 California elders by selling them valueless or nearly valueless services at exorbitant prices and
6 unneeded products through fear tactics, pressure sales, and the misrepresentation and omission of
7 material facts. Defendants’ enterprise is based upon a classic predatory business plan, namely:

8 (a) *Target seniors* through mass-mailings and flyers posted at senior centers and other
9 locations where seniors tend to gather by soliciting them to in-person sales events disguised as “free
10 seminars” and “free informational workshops” on issues of interest to seniors, such as estate
11 planning, long term care, and retirement planning.

12 (b) *Scare seniors* who attend sales events with false, exaggerated, and misleading data,
13 information, and anecdotes on the likelihood of long term illness, disability, institutionalization,
14 impoverishment, and their likely inability to provide for loved-ones or to preserve assets to leave to
15 their heirs.

16 (c) *Entice seniors* with claims of complex and little known planning solutions and
17 investments by which seniors can supposedly avoid personal and financial catastrophe.

18 (d) *Reassure seniors* that defendants have many years of experience by which they have
19 developed rare expertise, are licensed attorneys, are otherwise licensed as experts, have successfully
20 helped thousands of seniors, and are recognized as experts in the subject matter.

21 (e) *Conceal from seniors* that defendants are licensed life insurance agents whose
22 purpose is to sell seniors annuities.

23 (f) *Obtain from seniors* personal contact information through the guise of a
24 questionnaire purporting to evaluate defendants’ presentation and by which seniors may request
25 additional information.

26 (g) *Schedule private interrogations of seniors* at which individualized sales pitches can
27 be made and the assets of seniors ascertained.

28 (h) *Discover seniors’ assets* through the guise of assessing their eligibility for Medi-Cal

1 benefits and assessing their estate planning needs.

2 (i) *Sell seniors valueless, nearly valueless, and unneeded Medi-Cal pre-qualification*
3 *services* at exorbitant prices by misrepresenting both the seniors' needs and the services provided
4 and by pressuring seniors with claims that it is critical that they begin such services immediately
5 and by offering a discounted price if seniors buy now.

6 (j) *Sell seniors annuities* by misrepresenting the seniors' needs for such products, the
7 consequences of terminating existing investments, the terms of the proposed annuities, and by
8 misrepresenting and concealing various material facts about the transaction.

9 4. The Predatory Enterprise is a joint venture consisting of the association of Holody,
10 Sherr, AEPC, XXXX, XXXX, and XXXX, who have combined their property, skill, and knowledge
11 to carry out this business enterprise for profit. An agreement between these parties exists under
12 which they have a community of interest and joint interests in this common business undertaking
13 and which involves the agreement that profits and losses will be shared and that these parties will
14 have joint control over the enterprise.

15 5. The Predatory Enterprise is conducted in the following manner. Defendants XXXX
16 and XXXX provided legal services, advice, and resources (such as clerical support, meeting rooms,
17 and written materials) both individually and through their law firm XXXX and XXXX. Defendants
18 XXXX and XXXX incorporated and operated XXXX through which they provide logistical
19 support, advertising, and mass-mailings which target seniors. Defendant Holody is licensed by the
20 California Department of Insurance as a life agent (license 0373904) and by the Securities and
21 Exchange Commission as a registered representative (license 249126) and is thereby licensed to
22 provide investment advice and sell various investment products. Defendant Sherr is licensed by the
23 California Department of Insurance as a life agent (license 0B96672) and by the Securities and
24 Exchange Commission as a registered representative (license 2367918) and is thereby licensed to
25 provide investment advice and sell various investment products. Defendants Holody and Sherr
26 incorporated and operated AEPC, through which they sell valueless or nearly valueless Medi-Cal
27 pre-qualification services. Holody and Sherr sell annuities by misrepresenting the terms and
28 appropriateness of the annuities and by concealing various material facts about the transaction.

1 Revenue collected by XXXX is divided equally between XXXX and XXXX. XXXX's share of this
2 revenue is then disbursed equally between Holody and Sherr. XXXX's share of this revenue is then
3 disbursed equally between XXXX and XXXX. For calendar year 2008, the revenue collected by
4 XXXX exceeded \$1 million.

5 6. XXXX, XXXX, and XXXX are incorporators, officers, directors, and shareholders
6 of XXXX. As such, these defendants share a unity of interest, and XXXX, XXXX, and XXXX have
7 treated XXXX as their alter ego rather than as a separate entity. Moreover, upholding the corporate
8 entity of XXXX and allowing XXXX, XXXX, and XXXX to avoid personal liability for XXXX's
9 debts and liability would sanction a fraud and promote an injustice. The following factors, among
10 others, establish the alter ego liability of XXXX, XXXX, and XXXX for the conduct of XXXX:

- 11 (a) XXXX, XXXX, XXXX, and XXXX acted in bad faith.
- 12 (b) XXXX, XXXX, and XXXX intended to obtain the benefits of contracts but avoid
13 personal liability by using XXXX as a shield.
- 14 (c) XXXX, XXXX, and XXXX diverted assets from XXXX to themselves to the
15 detriment of potential creditors.
- 16 (d) XXXX, XXXX, and XXXX dominated the conduct and operation of XXXX.
- 17 (e) XXXX, XXXX, XXXX, and XXXX used the same offices, business locations, and
18 employees.
- 19 (f) XXXX, XXXX, XXXX, and XXXX employed the same attorney.
- 20 (g) XXXX, XXXX, and XXXX used XXXX to procure funds for themselves.
- 21 (h) XXXX, XXXX, and XXXX failed to adequately capitalize XXXX.
- 22 (i) There would be an inequitable result if XXXX's corporate veil is not pierced.

23 7. Holody and Sherr are incorporators, officers, directors, and shareholders of AEPC.
24 As such, these defendants share a unity of interest, and Holody and Sherr have treated AEPC as
25 their alter ego rather than as a separate entity. Moreover, upholding the corporate entity of AEPC
26 and allowing Holody and Sherr to avoid personal liability for AEPC's debts and liability would
27 sanction a fraud and promote an injustice. The following factors, among others, establish the alter
28 ego liability of Holody and Sherr for the conduct of AEPC:

- 1 (a) Holody, Sherr, and AEPC acted in bad faith.
- 2 (b) Holody and Sherr intended to obtain the benefits of contracts but avoid personal
- 3 liability by using AEPC as a shield.
- 4 (c) Holody and Sherr diverted assets from AEPC to themselves to the detriment of
- 5 potential creditors.
- 6 (d) Holody and Sherr dominated the conduct and operation of AEPC.
- 7 (e) Holody, Sherr, and AEPC used the same offices, business locations, and employees.
- 8 (f) Holody, Sherr, and AEPC employed the same attorney.
- 9 (g) Holody and Sherr used AEPC to procure funds for themselves.
- 10 (h) Holody and Sherr failed to adequately capitalize AEPC.
- 11 (i) There would be an inequitable result if AEPC's corporate veil is not pierced.

12 8. At all times mentioned, each defendant was an agent, servant, employee, partner, and

13 joint venturer of each and every other defendant and was acting within the course and scope of this

14 relationship. The conduct of each defendant was authorized and ratified by each and every other

15 defendant.

16 9. This court is the proper court in which to bring this action because at least one

17 defendant resides here and/or the principal place of business of at least one defendant is located

18 here.

19 **CHARLES AND DONNA LOFFLAND**

20 10. Plaintiff Charles Loffland ("Charles") was born on September 9, 1939 and at the

21 time of the events alleged in this complaint was at least 69 years old and an elder within the

22 meaning of Welfare & Institutions Code § 15610.27. Plaintiff Donna Loffland ("Donna") was born

23 on March 31, 1940 and at the time of the events alleged in this complaint was at least 68 years old

24 and an elder within the meaning of Welfare & Institutions Code § 15610.27.

25 11. In August 2007, Charles and Donna were retired and resided at their home in

26 Porterville, California, were in reasonably good health, and they had sufficient income and assets to

27 support themselves. Charles and Donna received an unsolicited invitation from the Predatory

28 Enterprise soliciting them to attend an in-person sales event disguised as a "free informative

1 workshop” in Visalia by which they might protect themselves from exhausting their assets as a
2 result of illness and institutionalization. The solicitation was signed by XXXX, XXXX, and XXXX
3 and claimed that they were the “pre-eminent estate planning law firm in Central and Southern
4 California” and invited recipients to contact them for estate planning services. The solicitation also
5 announced that presentations would be given by Richard Holody and David Sherr and claimed that
6 over the past 40 years, they had established themselves as leaders “in the area of asset preservation
7 and protection from creditors specific to long-term healthcare costs.” Charles called the telephone
8 number on the solicitation, which was the telephone number of XXXX’s Fresno office, and
9 “reserved” seats at the sales event for Donna and himself.

10 12. On August 29, 2007, Charles and Donna drove from their home in Porterville to the
11 Marriott Hotel in Visalia where they attended the in-person sales event offered by the Predatory
12 Enterprise. The sales event was conducted by XXXX, XXXX, Holody, and Sherr and each
13 addressed the audience of approximately 40 seniors who attended the event. Written materials were
14 distributed to audience members. At the presentation, written and oral misrepresentations were
15 made regarding the Medi-Cal pre-qualification services offered by the Predatory Enterprise. These
16 misrepresentations included, but are not limited to, the following:

- 17 (a) That the vast majority of Americans over the age of 65 will need long-term care.
- 18 (b) That approximately half of seniors who need long-term care spend an average of 2-
19 1/2 years in a nursing home.
- 20 (c) That long-term care is exorbitantly expensive.
- 21 (d) That many elders lose their homes because of the high cost of nursing home care.
- 22 (e) That a consequence of private pay is that the well-spouse is likely to completely
23 deplete the family’s resources and end up on welfare.
- 24 (f) That little-known government programs exist that will pay for long-term care.
- 25 (g) That these programs are staffed with uninformed workers and are plagued with high
26 turnover, in some cases as high as 100% per year.
- 27 (h) That the government workers do not want seniors to know about these programs.
- 28 (i) That Medi-Cal will pay for all costs of long-term care.

- 1 (j) That Medi-Cal is an entitlement program just like Social Security.
- 2 (k) That Medi-Cal benefits are available to everyone.
- 3 (l) That you can have income of \$300,000 or more and still receive Medi-Cal benefits.
- 4 (m) That spend-down consists of privately paying for health care costs.
- 5 (n) That you don't have to spend down to qualify for Medi-Cal benefits.
- 6 (o) That some Individual Retirement Accounts are not exempt assets.
- 7 (p) That an applicant's share of cost can be eliminated.
- 8 (q) That Medi-Cal covers durable goods and therapy.
- 9 (r) That Medi-Cal provides for a 36 month look back period.
- 10 (s) That there are over a dozen complex forms associated with applying for Medi-Cal
- 11 benefits.
- 12 (t) That there are various state agencies with whom an applicant must communicate.
- 13 (u) That the Medi-Cal application process is complex, confusing, time-consuming, and
- 14 beyond the capability of most seniors.
- 15 (v) That a detailed understanding of the nuances of Medi-Cal regulations is required in
- 16 order to obtain benefits.
- 17 (w) That Medi-Cal is considered the "Gold Standard" for nursing home care.
- 18 (x) That Medi-Cal eligibility must be established early and well before an applicant
- 19 anticipates admission to a nursing facility.

20 13. At the conclusion of the presentation, audience members were asked to provide their

21 contact information. Charles and Donna completed the questionnaire and returned it to XXXX, who

22 then scheduled a private interview for the next day.

23 14. On August 30, 2007, Charles and Donna again drove from their home in Porterville

24 to the Marriott Hotel in Visalia. There they met privately with Holody. Holody reiterated the

25 various misrepresentations described above and described how some nursing homes were terrible

26 and that it was very important how one paid for them. He described how Medi-Cal long-term care

27 assured the best nursing home care available. Holody told them that without his help, plaintiffs were

28 likely to exhaust their assets and lose their home. He said that if he were to help plaintiffs, that

1 plaintiffs must disclose the nature and amount of all of their assets as well as provide him with other
2 confidential information. In response to his entreaties, plaintiffs disclosed various confidential
3 information to Holody. Holody then told plaintiffs that the cost of the Medi-Cal pre-qualification
4 services was \$13,888. Holody instructed plaintiffs to pay \$10,416 now and the balance later. He
5 said that this was a reduced price and that later the price would increase. He told plaintiffs that if
6 they purchased the services immediately that they would receive the reduced price. Plaintiffs then
7 delivered to Holody a check made payable to AEPC for \$10,416.

8 15. Plaintiffs' check to AEPC was cashed and half of the payment was delivered to
9 XXXX. Of the funds retained by XXXX, half was paid to Holody and half was paid to Sherr. Of the
10 funds delivered to XXXX, half was paid to XXXX and half was paid to XXXX.

11 16. Some months later, Holody telephoned plaintiffs. He told plaintiffs that he had a rare
12 promotional opportunity that was being offered only to people who had signed up for the service.
13 Holody made an appointment for plaintiffs to meet him at the Holiday Inn in Visalia. He told
14 plaintiffs to bring various documents with them, include those relating to their existing Allianz
15 annuities.

16 17. On the scheduled day, plaintiffs drove from their home in Porterville to Visalia. They
17 went to the Holiday Inn and met with Holody. Plaintiffs gave Holody the Allianz papers which
18 Holody reviewed. Holody made, among other things, the following misrepresentations and
19 omissions of material facts:

20 (a) Holody said that the Allianz investments were very poor and that his investment, the
21 Investors Insurance Corporation ("IIC") annuity, was much better.

22 (b) Holody never told plaintiffs that they would pay a penalty for surrendering the
23 Allianz annuities and that the Allianz annuities contained a ratchet provision, which if held to its
24 anniversary, would pay a higher return.

25 (c) Holody never told plaintiffs that he would receive a commission for selling plaintiffs
26 the IIC annuity.

27 (d) Holody never told plaintiffs that plaintiffs could not get their money out of the IIC
28 annuity for ten years without paying a penalty beginning at 18 percent.

1 (e) Holody never told plaintiffs that the larger his sales commission, the larger and
2 longer the surrender penalty to plaintiffs.

3 (f) Holody never told plaintiffs that other annuities existed with terms superior to the
4 IIC annuity but which paid a lower sales commission and therefore charged a lower surrender
5 penalty and for a shorter period.

6 (g) Holody never told plaintiffs that they were purchasing a flexible premium annuity
7 even though the IIC annuity was being purchased with a single premium.

8 18. Holody presented plaintiffs with documents which he instructed them to sign. These
9 documents were instructions to surrender the Allianz annuities and to buy the IIC annuity.
10 Thereafter, the Allianz annuities were surrendered at a loss of approximately \$50,000 and the IIC
11 annuity issued for a single premium of \$253,997.37. As a result of the sale of the IIC annuity,
12 Holody was paid a commission.

13
14 **FIRST CAUSE OF ACTION**
(Elder Financial Abuse I – Medi-Cal Pre-qualification)

15 19. Paragraphs 1 through 18 are incorporated by reference.

16 20. The Predatory Enterprise, either directly or through its joint venturers, made various
17 misrepresentations to plaintiffs that their services and products were valuable, appropriate, suitable,
18 and necessary. Specifically, the Predatory Enterprise misrepresented the nature and characteristics
19 of Medi-Cal benefits and plaintiffs' eligibility, the value of the services and advice, and plaintiffs'
20 needs for these services. As a result of these misrepresentations, plaintiffs paid the Predatory
21 Enterprise \$10,416. In engaging in this conduct, the Predatory Enterprise took, secreted,
22 appropriated, and retained the property of plaintiffs, elders, to a wrongful use within the meaning of
23 Welfare & Institutions Code § 15610.30. The Predatory Enterprise engaged in such conduct either
24 directly, or assisted others in such conduct.

25 21. In engaging in this conduct, the Predatory Enterprise intended to defraud plaintiffs
26 within the meaning of Welfare & Institutions Code § 15610.30.

27 22. As a direct and proximate result of the Predatory Enterprise's wrongful conduct,
28 plaintiffs have been deprived of their property, namely their money and other valuable property,

1 have sustained related damages, and have incurred attorney's fees and costs. As a direct and
2 proximate result of this wrongful conduct, plaintiffs sustained mental distress, anguish, upset, and
3 anxiety and various physical complaints, medical ailments, and related injuries.

4 23. In addition to all other remedies provided by law, plaintiffs are entitled to recover
5 reasonable attorney's fees and costs for financial abuse pursuant to Welfare & Institutions Code §
6 15657.5. The misrepresentations and advice provided by defendants Holody, Sherr, and AEPC
7 constitutes the rendering of legal services for which a license is required pursuant to Business &
8 Professions Code § 6000 *et seq.*, and Holody, Sherr, and AEPC are not so licensed.

9 24. The conduct of the Predatory Enterprise constituted oppression, fraud, and malice in
10 the commission of the financial abuse, and plaintiffs are entitled to recover damages for the sake of
11 example and by way of punishing them for financial abuse pursuant to Civil Code § 3294.

12
13 **SECOND CAUSE OF ACTION**
(Fraud I – Medi-Cal Pre-qualification)

14 25. Paragraphs 1 through 24 are incorporated by reference.

15 26. The representations which the Predatory Enterprise made to plaintiffs regarding the
16 terms, value, appropriateness, and suitability of their services and products were false, misleading,
17 and misrepresented the law, the facts, and the intent of the Predatory Enterprise. Plaintiffs allege
18 fraud with the following particularity:

19 (a) How: Orally and in writing

20 (b) When: On or about August 29 and 30, 2007

21 (c) Where: The Visalia Marriott Hotel, 300 South Court Street, Visalia,
22 California

23 (d) To Whom: Charles and Donna Loffland

24 (e) What: The Predatory Enterprise misrepresented the nature and
25 characteristics of Medi-Cal benefits and plaintiffs' eligibility for such benefits, the value of the
26 services and advice offered by the Predatory Enterprise, and plaintiffs' needs for such services and
27 that the services were worth \$10,416 or any amount.

28 27. The false and misleading statements of the Predatory Enterprise were material to

1 plaintiffs' decision to deliver their property to them, and plaintiffs relied to their detriment on them
2 by paying the Predatory Enterprise money.

3 28. The Predatory Enterprise knew that these statements were false and misleading and
4 that plaintiffs would rely upon them to their detriment, and they thereby intended to defraud
5 plaintiffs.

6 29. As a direct and proximate result of this wrongful conduct, plaintiffs suffered
7 damages as alleged herein. The misrepresentations and advice provided constitutes the rendering of
8 legal services for which a license is required pursuant to Business & Professions Code § 6000 *et*
9 *seq.*, and Holody, Sherr, and AEPC are not so licensed.

10 30. This conduct constituted oppression, fraud, and malice, and plaintiffs are entitled to
11 recover damages for the sake of example and by way of punishing defendants pursuant to Civil
12 Code § 3294.

13
14 **THIRD CAUSE OF ACTION**
(Deceit I – Medi-Cal Pre-qualification)

15 31. Paragraphs 1 through 30 are incorporated by reference.

16 32. The representations that the Predatory Enterprise made to plaintiffs regarding the
17 terms, value, appropriateness, and suitability of their services and products were false, misleading,
18 and misrepresented the law, the facts, and defendants' intent.

19 33. The Predatory Enterprise asserted these representations as facts although they had no
20 reasonable grounds for believing them to be true.

21 34. The Predatory Enterprise willfully deceived plaintiffs with the intent to induce them
22 to alter their position to their injury and harm.

23 35. As a direct and proximate result of the Predatory Enterprise's wrongful conduct,
24 plaintiffs suffered damages as alleged herein. The misrepresentations and advice provided
25 constitutes the rendering of legal services for which a license is required pursuant to Business &
26 Professions Code § 6000 *et seq.*, and Holody, Sherr, and AEPC are not so licensed.

27 36. This conduct constituted oppression, fraud, and malice, and plaintiffs are entitled to
28 recover damages for the sake of example and by way of punishing defendants pursuant to Civil

1 Code § 3294.

2
3 **FOURTH CAUSE OF ACTION**
(Negligence I – Medi-Cal Pre-qualification)

4 37. Paragraphs 1 through 36 are incorporated by reference.

5 38. In providing plaintiffs with the advice, suggestions, and recommendations alleged
6 herein, the Predatory Enterprise owed plaintiffs a duty to provide them with accurate information
7 and recommendations which were in plaintiffs’ best interests. The Predatory Enterprise acted
8 negligently and unreasonably and breached this duty by advising plaintiffs to purchase their services
9 and products when doing so was unwarranted and unreasonable.

10 39. As a direct and proximate result of the Predatory Enterprise’s wrongful conduct,
11 plaintiffs sustained damages as set forth herein. The misrepresentations and advice provided
12 constitutes the rendering of legal services for which a license is required pursuant to Business &
13 Professions Code § 6000 *et seq.*, and Holody, Sherr, and AEPC are not so licensed.

14
15 **FIFTH CAUSE OF ACTION**
(Breach of Fiduciary Duty I – Medi-Cal Pre-qualification)

16 40. Paragraphs 1 through 39 are incorporated by reference.

17 41. The Predatory Enterprise represented to plaintiffs that plaintiffs faced complex issues
18 and challenges regarding their economic future, particularly with regard to assets, investments,
19 estate planning, tax planning, long-term care planning, and the role annuities played in such matters.
20 The Predatory Enterprise further represented that plaintiffs lacked sufficient knowledge, experience,
21 and expertise with regard to such matters which prevented them from making appropriate and
22 suitable decisions. The Predatory Enterprise further represented that they possessed special
23 knowledge, experience, and expertise with regard to such financial matters, and various other
24 matters of importance to plaintiffs in planning their economic future, and that the Predatory
25 Enterprise would provide plaintiffs with appropriate and suitable advice and recommendations.
26 Based upon these representations of superior knowledge, experience, and expertise, plaintiffs
27 reposed trust and confidence in the Predatory Enterprise that the advice and recommendations
28 provided would be in plaintiffs’ best interests. As a result of this conduct, a confidential relationship

1 existed between plaintiffs and the Predatory Enterprise by which they owed plaintiffs a fiduciary
2 duty.

3 42. The Predatory Enterprise breached this fiduciary duty by providing plaintiffs with
4 false, erroneous, and misleading advice and recommendations, by failing to disclose the nature and
5 amount of the commissions and other fees which they would receive, and by advising plaintiffs to
6 make investments which were not suitable or in their best interests but by which the Predatory
7 Enterprise profited at the expense of plaintiffs.

8 43. As a direct and proximate result of the Predatory Enterprise's wrongful conduct,
9 plaintiffs sustained damages as set forth herein. The misrepresentations and advice provided
10 constitutes the rendering of legal services for which a license is required pursuant to Business &
11 Professions Code § 6000 *et seq.*, and Holody, Sherr, and AEPC are not so licensed.

12 44. The Predatory Enterprise's conduct constituted oppression, fraud, and malice, and
13 plaintiffs are entitled to recover damages for the sake of example and by way of punishing them
14 pursuant to Civil Code § 3294.

15
16 **SIXTH CAUSE OF ACTION**
(Elder Financial Abuse II – Sale of Annuity)

17 45. Paragraphs 1 through 44 are incorporated by reference.

18 46. As a licensed life agent engaged in the selling of annuities and related life products,
19 Holody was an agent, servant, employee, and joint venturer of Legacy. As a result of this
20 relationship, Legacy had a duty to supervise Holody and review and approve all activities involving
21 the sale of investment products. In addition, Holody and Legacy owed plaintiffs a duty of honesty,
22 good faith and fair dealing pursuant to Insurance Code § 785.

23 47. As a licensed registered representative engaged in the selling of annuities and related
24 products, Holody was an agent, servant, employee, and joint venturer of XXXX. As a result of this
25 relationship, XXXX had a duty to supervise Holody and review and approve all activities involving
26 the sale of investment products. In addition, XXXX and XXXX owed plaintiffs a duty of honesty,
27 good faith and fair dealing pursuant to Insurance Code § 785.

28 48. XXXX, Legacy, and XXXX (collectively referred to as “the Annuity Enterprise”),

1 made various misrepresentations to plaintiffs regarding the value and consequences of selling
2 plaintiffs' Allianz investments and the value, appropriateness, and cost of purchasing the IIC
3 annuity as set forth above. As a result of these misrepresentations, plaintiffs incurred a loss on the
4 sale of the Allianz annuities of approximately \$50,000 and a loss and related harm in connection
5 with the purchase of the IIC annuity. In engaging in this conduct, the Annuity Enterprise took,
6 secreted, appropriated, and retained the property of plaintiffs, elders, to a wrongful use within the
7 meaning of Welfare & Institutions Code § 15610.30. The Annuity Enterprise engaged in such
8 conduct either directly, or assisted others in such conduct.

9 49. In engaging in such conduct, the Annuity Enterprise intended to defraud plaintiffs
10 within the meaning of Welfare & Institutions Code § 15610.30.

11 50. As a direct and proximate result of the Annuity Enterprise's wrongful conduct,
12 plaintiffs have been deprived of their property, namely their money and other valuable property,
13 have sustained related damages, and have incurred attorney's fees and costs. As a direct and
14 proximate result of this wrongful conduct, plaintiffs sustained mental distress, anguish, upset, and
15 anxiety and various physical complaints, medical ailments, and related injuries.

16 51. In addition to all other remedies provided by law, plaintiffs are entitled to recover
17 reasonable attorney's fees and costs for financial abuse pursuant to Welfare & Institutions Code §
18 15657.5.

19 52. The conduct of the Annuity Enterprise constituted oppression, fraud, and malice in
20 the commission of the financial abuse, and plaintiffs are entitled to recover damages for the sake of
21 example and by way of punishing them for financial abuse pursuant to Civil Code § 3294.

22
23 **SEVENTH CAUSE OF ACTION**
(Fraud II – Sale of Annuity)

24 53. Paragraphs 1 through 52 are incorporated by reference.

25 54. The representations which the Annuity Enterprise made to plaintiffs regarding the
26 value and consequences of selling plaintiffs' Allianz investments and the value, appropriateness,
27 and cost of purchasing the IIC annuity were false, misleading, and misrepresented the law, the facts,
28 and the intent of the Annuity Enterprise. Plaintiffs allege fraud with the following particularity:

- 1 (a) How: Orally
- 2 (b) When: In August 2008
- 3 (c) Where: The Visalia Holiday Inn, 9000 Airport Drive, Visalia,
- 4 California
- 5 (d) To Whom: Charles and Donna Loffland
- 6 (e) What: The Annuity Enterprise misrepresented the value and
- 7 consequences of selling plaintiffs' Allianz investments and the value, appropriateness, and cost of
- 8 purchasing the IIC annuity as set forth above.

9 55. The false and misleading statements of the Annuity Enterprise were material to
10 plaintiffs' decision to deliver their property to them, and plaintiffs relied to their detriment on them
11 by paying the Annuity Enterprise money.

12 56. The Annuity Enterprise knew that these statements were false and misleading and
13 that plaintiffs would rely upon them to their detriment, and they thereby intended to defraud
14 plaintiffs.

15 57. As a direct and proximate result of this wrongful conduct, plaintiffs suffered
16 damages as alleged herein.

17 58. This conduct constituted oppression, fraud, and malice, and plaintiffs are entitled to
18 recover damages for the sake of example and by way of punishing defendants pursuant to Civil
19 Code § 3294.

20 **EIGHTH CAUSE OF ACTION**
21 **(Deceit II – Sale of Annuity)**

22 59. Paragraphs 1 through 58 are incorporated by reference.

23 60. The representations that the Annuity Enterprise made to plaintiffs regarding the
24 value and consequences of selling plaintiffs' Allianz investments and the value, appropriateness,
25 and cost of purchasing the IIC annuity were false, misleading, and misrepresented the law, the facts,
26 and the intent of the Annuity Enterprise.

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

1 Enterprise would provide plaintiffs with appropriate and suitable advice and recommendations.
2 Based upon these representations of superior knowledge, experience, and expertise, plaintiffs
3 reposed trust and confidence in the Annuity Enterprise that the advice and recommendations
4 provided would be in plaintiffs' best interests. As a result of this conduct, a confidential relationship
5 existed between plaintiffs and the Annuity Enterprise thereby owed plaintiffs a fiduciary duty.

6 70. The Annuity Enterprise breached this fiduciary duty by providing plaintiffs with
7 false, erroneous, and misleading advice and recommendations, by failing to disclose the nature and
8 amount of the commissions and other fees which they would receive, and by advising plaintiffs to
9 make investments which were not suitable or in their best interests but by which the Annuity
10 Enterprise profited at the expense of plaintiffs.

11 71. The Annuity Enterprise's conduct constituted oppression, fraud, and malice, and
12 plaintiffs are entitled to recover damages for the sake of example and by way of punishing them
13 pursuant to Civil Code § 3294.

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

16 72. Paragraphs 1 through 71 are incorporated by reference.

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

19 74. Specifically, defendants engaged in unfair, unlawful, or fraudulent acts or practices
20 by making statements likely to deceive plaintiffs as to the terms, value, suitability, desirability, and
21 appropriateness of the services and products offered by defendants and otherwise engaging in
22 unfair, unconscionable, and illegal conduct.

23 75. As a direct result of defendants' unfair, unlawful, or fraudulent acts or practices,
24 plaintiffs were deprived of their money and property. As a further direct result of defendants' unfair,
25 unlawful, or fraudulent acts or practices, plaintiffs are entitled to restitution.

26 76. Plaintiffs seek injunctive relief against further acts and practices by defendants
27 constituting unfair competition in violation of Business & Professions Code § 17200. The legal
28 remedy of damages is inadequate because recovering damages will not prevent the ongoing harm

1 caused by defendants' continued unfair business practices.

2 WHEREFORE, plaintiffs pray for relief as follows:

3 1. Elder Financial Abuse I:

- 4 a. Compensatory damages according to proof;
- 5 b. Reasonable attorney's fees and costs according to proof;
- 6 c. Punitive damages according to proof;
- 7 c. Treble damages pursuant to CC § 3345;

8 2. Fraud I:

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

13 3. Deceit I:

- 14 a. Compensatory damages according to proof;
- 15 b. Punitive damages according to proof;
- 16 c. Treble damages pursuant to CC § 3345;
- 17 d. Reasonable attorney's fees and costs according to proof against XXXX;

18 4. Negligence I:

- 19 a. Compensatory damages according to proof;
- 20 b. Treble damages and attorney's fees pursuant to CCP § 1029.8;
- 21 c. Reasonable attorney's fees and costs according to proof against XXXX;

22 5. Breach of fiduciary duty I:

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

27 6. Elder Financial Abuse II:

- 28 a. Compensatory damages according to proof;

- 1 b. Reasonable attorney’s fees and costs according to proof;
- 2 c. Punitive damages according to proof;
- 3 c. Treble damages pursuant to CC § 3345;
- 4 7. Fraud II:
- 5 a. Compensatory damages according to proof;
- 6 b. Punitive damages according to proof;
- 7 c. Treble damages pursuant to CC § 3345;
- 8 d. Reasonable attorney’s fees and costs according to proof against XXXX;
- 9 8. Deceit II:
- 10 a. Compensatory damages according to proof;
- 11 b. Punitive damages according to proof;
- 12 c. Treble damages pursuant to CC § 3345;
- 13 d. Reasonable attorney’s fees and costs according to proof against XXXX;
- 14 9. Negligence II:
- 15 a. Compensatory damages according to proof;
- 16 b. Treble damages and attorney’s fees pursuant to CCP § 1029.8;
- 17 c. Reasonable attorney’s fees and costs according to proof against XXXX;
- 18 10. Breach of fiduciary duty II:
- 19 a. Compensatory damages according to proof;
- 20 b. Punitive damages according to proof;
- 21 c. Treble damages pursuant to CC § 3345;
- 22 d. Reasonable attorney’s fees and costs;
- 23 11. Violation of Unlawful Competition Law (B & P § 17200):
- 24 a. Restitution of all amounts delivered to defendants;
- 25 b. Preliminary and permanent injunctive relief prohibiting defendants from
- 26 engaging in further acts of unfair competition;
- 27 c. Reasonable attorney’s fees and costs according to proof;
- 28 12. Interest pursuant to CC § 3287;

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- 13. Costs pursuant to CCP § 1032; and
- 14. For such further relief as the court may deem just.

Dated: November 30, 2009

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