

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) 287-4039
6 FAX: (866) 298-6055
7 steve@riesslaw.com

8 Attorney for plaintiff Elizabeth Adler,
9 Conservator

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN FRANCISCO**

13 Elizabeth Adler, Conservator of the Person
14 and Estate of Marc Arsenault,

15 Plaintiff,

16 vs.

17 Eduardo Marcelino, Marc Rohrer,
18 Scott Williams, CitiCorp Investment
19 Services, Inc., CitiCorp Insurance Agency
20 of California, Citigroup Life Insurance Agency,
21 LLC, CitiCorp Life Agency, LLC,
22 Citigroup, Inc., Allstate Life Insurance
23 Company, and Does 1 through 20,

24 Defendants.

25 Conservatorship of the Person and Estate of
26 Marc Arsenault,

27 Conservatee, PCN-07-290196

28 In the Matter of the Marc
Arsenault Trust,

PCN-07-290296

Case No. CGC-09-495267

COMPLAINT FOR:

1. Elder Financial Abuse I
2. Elder Financial Abuse II
3. Breach of fiduciary duty
4. Negligence
5. Recovery of property (Probate Code § 850)
6. Wrongful Taking (Probate Code § 859)

PRELIMINARY ALLEGATIONS

1
2 Elizabeth Adler, Conservator of the Person and Estate of Marc Arsenault, Conservatee,
3 hereby alleges:

4 1. On June 29, 2007, this court appointed Elizabeth Adler temporary conservator of the
5 person and estate of Marc Arsenault, and thereafter letters of temporary conservatorship issued. On
6 August 9, 2007, this court ordered that The Marc Arsenault Trust dated May 8, 1997 be brought
7 under continuing court supervision. On September 20, 2007, this court appointed Adler probate
8 conservator of the person and estate of Arsenault, and thereafter letters of conservatorship issued.
9 From that date to the present, Adler has been and is the duly appointed conservator of the person
10 and estate of Arsenault, successor trustee of the Arsenault trust, and is fully authorized to bring this
11 action. On June 29, 2009, this court authorized Adler to employ Steven Riess in connection with the
12 sale of various investments to Marc Arsenault. All references in this action to Marc shall refer to
13 either Marc Arsenault individually, or Adler acting on his behalf in her capacity as conservator.

14 2. Defendants Eduardo Marcelino, Marc Rohrer, and Scott Williams are natural persons
15 over the age of 18. Defendants CitiCorp Investment Services, Inc., CitiCorp Insurance Agency of
16 California, Citigroup Life Insurance Agency, LLC, CitiCorp Life Agency, LLC, and Citigroup, Inc.,
17 (collectively referred to as “Citigroup”) and Allstate Life Insurance Company (“Allstate”) are
18 business entities of unknown form.

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

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

1 approximately \$480,000. These assets were held primarily in cash and consisted of certificates of
2 deposit and savings accounts.

3 **MARC'S DEMENTIA AND LACK OF CAPACITY**

4 9. On August 30, 2007, at the urging of Adult Protective Services of the City and
5 County of San Francisco, the Probate Department of the San Francisco Superior Court determined
6 that Marc suffered from dementia and lacked the ability to care for himself and his property and
7 ordered this conservatorship. On October 9, 2007, Marc was relocated from his apartment to a
8 licensed residential care facility with the capacity to care for his special needs.

9 10. Marc's dementia is documented in medical records as far back as August 14, 2004.
10 At that time, Juan C. Larach, M.D., a staff physician at Kaiser Permanente, first noted that Marc
11 appeared depressed, exhibited impaired memory, was unaware of the medications he was taking,
12 lacked normal energy, and exhibited symptoms of dementia. It is medically probable that Marc
13 suffered from dementia for a number of years prior to it first being documented in 2004. From
14 August 14, 2004 until he was conserved in August 2007, Marc was periodically seen at Kaiser for
15 various orthopedic complaints. Nevertheless, his chart notes are replete with secondary observations
16 about his deteriorating cognitive function.

17 11. During this same period, Marc was the victim of at least three predatory exploitative
18 assaults by strangers. On July 7, 2006, October 19, 2006, and on June 19, 2007, Marc was accosted
19 by strangers who took Marc to his bank so that he might withdraw funds. In one incident, Marc
20 withdrew \$66,000; it is unclear whether all or only some of this money was delivered to this
21 predator. On at least one occasion, the bank teller became suspicious and called the police. The
22 predator left the scene before the police arrived. During this period, Marc also "lent" \$50,000 to the
23 manager of his apartment building. This loan was unsecured and improperly documented but these
24 funds have now been recovered.

25 12. For many years, Marc and Adele did all of their banking at the CitiBank branch
26 located at 1801 Van Ness Avenue in San Francisco. As a result of Marc's frequent visits and
27 friendly nature, he became quite familiar with the CitiBank tellers. Located inside the CitiBank
28 branch are life agents and registered representatives who work for the affiliated Citigroup financial

1 services companies. To the unsophisticated and unwary customer, this sales force appears to be
2 merely an extension of CitiBank's banking operation. From May 1999 until October 2006,
3 Citigroup agents sold Marc and Adele at least seven separate insurance products. The combined
4 premiums for these products exceeded \$470,000 and consisted of five fixed and variable annuities
5 and two single premium life policies.

6 **THE MAY 29, 1999 FIXED AIG ANNUITY SALE**

7 13. In May 1999, Marc visited the CitiBank branch and was directed to agent Eduardo
8 Marcelino. Notwithstanding Marc's meager income, advanced age, developing medical problems,
9 lack of dependents, and obvious lack of sophistication, Mr. Marcelino convinced Marc that he
10 should purchase an AIG non-qualified flexible premium deferred fixed annuity for a premium of
11 \$80,000 and with a five year surrender penalty schedule. On May 29, 1999, AIG issued annuity
12 contract JC211735.

13 **THE JANUARY 3, 2005 VARIABLE ALLSTATE ANNUITY ROLLOVER**

14 14. In August 2004, Dr. Larach had begun documenting Marc's dementia. Six months
15 later in January 2005, Marc again visited his CitiBank branch. This time, Marc was directed to Marc
16 Rohrer, another life agent employed by Citigroup. Rohrer convinced Marc that he should surrender
17 the AIG annuity purchased in 1999 and exchange it for an Allstate Life Insurance Company non-
18 qualified flexible premium deferred variable annuity with a ten year term which would mature when
19 Marc was 91 years old. The premium for this annuity was also \$80,000. On January 3, 2005,
20 Allstate issued annuity contract ALL0143575.

21 **THE NOVEMBER 9, 2005 ALLSTATE LIFE INSURANCE SALE**

22 15. On November 9, 2005, Marc met with both Marcelino and Scott Williams, another
23 agent at the CitiBank branch. They convinced Marc that his wife, Adele, should buy a life insurance
24 policy for a premium of \$5,000. On November 18, 2005, Allstate issued policy GA18316315.

25 **THE DECEMBER 12, 2005 FIXED ALLSTATE ANNUITY SALE**

26 16. In December, 2005, Marc again visited the CitiBank branch where he again spoke
27 with Williams. Williams convinced Marc to purchase yet another annuity from Allstate Insurance.
28 This annuity was a non-qualified flexible premium fixed deferred annuity which would mature on

1 January 24, 2022, when Marc would be 98 years old. The premium for this fourth product was
2 \$60,405.94. On December 12, 2005, Allstate issued annuity contract GA00163560.

3 **THE ADELE ARSENAULT ALLSTATE ANNUITY**

4 17. On July 3, 2006, Adele died. Prior to her death, Citigroup had sold Adele an Allstate
5 annuity as well. As a result of Adele's death, Marc received a payment of \$144,535. Had Adele's
6 assets been invested otherwise, Marc would have received this money tax free; however, because
7 this money had been invested in an annuity and Marc was the beneficiary, Marc was required to pay
8 tax at ordinary income rates on \$44,535 of this payment.

9 **THE OCTOBER 12, 2006 FIXED AIG ANNUITY**

10 18. In October, 2006 – after a catatonic episode, at least three incidents of predatory
11 elder abuse assaults, and more than two years of documented dementia – Marc again visited the
12 branch. He was greeted by Williams who convinced Marc to buy yet a sixth product, another
13 annuity from AIG Insurance Company. This annuity was a non-qualified flexible premium fixed
14 deferred annuity which would mature on January 24, 2028, when Marc would be 104 years old. The
15 premium for this annuity was \$220,000. On October 12, 2006, AIG issued annuity contract
16 1ET01541.

17 **THE OCTOBER 12, 2006 ALLSTATE LIFE INSURANCE SALE**

18 19. At that same visit, Williams convinced Marc to also purchase a seventh product, an
19 Allstate Insurance Company single payment life insurance policy for \$10,000. In other words, Marc
20 was sold a life insurance policy which paid benefits upon his death notwithstanding that his wife
21 had already predeceased him, that he had limited resources, that he at times could not remember his
22 own age or the names of his relatives, that he had no children or dependents, and that his closest
23 relatives were an elderly sister and three distant relatives who lived in Quebec and were in no way
24 in need of such minimal insurance protection. On October 12, 2006, Allstate issued policy
25 GA20853493.

26 **THE CURRENTLY IN-FORCE INSURANCE PRODUCTS**

27 20. From January 5, 2005 to October 12, 2006, a period of only 22 months, Citigroup
28 agents sold Marc six insurance products for a combined premium of \$419,941. These premiums

1 represented 87 percent of Marc's total estate of \$480,000. Several of the products sold to Marc and
2 his wife have been surrendered or terminated on Adele's death. The following insurance products
3 are currently in-force:

Product	Date of purchase	Purchase price	Current surrender value
Allstate ALL0143575	January 3, 2005	\$80,000	\$62,290
Allstate ALLGA00163560	December 12, 2005	\$60,405.94	\$66,462
Allstate GA20853493	October 12, 2006	\$10,000	No cash value

7 **NEUROPSYCHOLOGICAL ASSESSMENT**

8 21. In July and August, 2009, Dr. Erika Falk, Psy.D., director of Geriatric Assessment
9 and Psychological Services, Institute on Aging, conducted a detailed neuropsychological
10 assessment of Marc. In a detailed written report, Dr. Falk concluded that during the period January
11 3, 2005 through October 12, 2006, Marc lacked the ability to understand and appreciate the rights,
12 duties, and responsibilities, the probable consequences to Marc and others, and the significant risks,
13 benefits, and reasonable alternatives of purchasing the insurance products sold to him by Citigroup
14 agents. Moreover, Dr. Falk concluded that during that same period, Marc was of unsound mind.

15 **MARC'S DEMAND TO CITIGROUP AND ALLSTATE FOR THE** 16 **RETURN OF HIS PROPERTY**

17 22. By letter dated October 27, 2009, Marc notified Citigroup and Allstate of the
18 wrongful circumstances under which each of the annuities were sold and Marc's lack of capacity at
19 the times of sale. Accompanying the letter was a copy of Dr. Falk's report. The letter alerted
20 Citigroup and Allstate to their obligations to return Marc's property upon demand pursuant to
21 Welfare & Institutions Code § 15657.6 and demanded the immediate return of the property.

22 23. By letter dated November 25, 2009, Allstate refused to return Marc's property.

23 24. By letter dated November 30, 2009, Citigroup refused to return Marc's property.

24 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS** 25 **(Elder Financial Abuse I)**

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

27 26. Marc was born on January 23, 1924 and at the time of the events alleged in this
28

1 complaint was at least 80 years old, a resident of California, and an elder within the meaning of
2 Welfare & Institutions Code § 15610.27.

3 27. Defendant Marcelino is a licensed life agent (license number 0C11719) and a
4 registered representative (CRD license number 3070926) engaged in the business of selling
5 annuities and related life products in California. Defendant Rohrer is a licensed life agent (license
6 number 0D11688) and a registered representative (CRD license number 4223870) engaged in the
7 business of selling annuities and related life products in California. Defendant Williams is a
8 licensed life agent (license number 0C07631) and a registered representative (CRD license number
9 2889617) engaged in the business of selling annuities and related life products in California.
10 Citigroup and its various affiliates are or were licensed by the State of California to sell annuities
11 and related life products in California under the following licenses: 0800853, 0B01347, 0G56746,
12 0452155, and 0E97564. Allstate is licensed by the State of California to sell annuities and related
13 life products in California under license 0D58559. Pursuant to Insurance Code § 785, defendants
14 owed Marc a duty of honesty, good faith, and fair dealing.

15 28. Marcelino, Rohrer, and Williams made various misrepresentations to Marc regarding
16 the value, consequences, and costs of purchasing the various insurance products described above.
17 The particulars of these misrepresentations were:

- 18 (a) How: Orally
19 (b) When: In or about December 2004, October 2005, November 2005, and
20 September 2006 as described above.
21 (c) Where: 1801 Van Ness Avenue, San Francisco, California
22 (d) To Whom: Marc Arsenault
23 (e) What: Defendants wrongfully took Marc's property and intended to defraud
24 him by concealing that they would receive compensation for the sale of these products, concealing
25 the amount of the compensation they would receive, concealing that the higher the compensation to
26 defendants the larger the surrender penalties which would be imposed upon Marc, and concealing
27 that other investments existed with similar or more favorable terms but with lower compensation
28 rates to defendants. Defendants wrongfully took Marc's property and intended to defraud him by

1 misrepresenting that the transactions were appropriate and suitable for his situation and acted
2 dishonestly, in bad faith, and unfairly. Defendants wrongfully took Marc's property and intended to
3 defraud him by acting in furtherance of their own personal gain and at Marc's expense and thereby
4 breached their fiduciary duty to Marc.

5 29. As a result of this wrongful conduct, Marc incurred economic harm and losses. In
6 engaging in this wrongful conduct, defendants took, secreted, appropriated, obtained, and retained
7 the property of Marc, an elder, to a wrongful use within the meaning of Welfare & Institutions Code
8 § 15610.30 and has thereby incurred attorney's fees and costs. As a direct and proximate result of
9 this wrongful conduct, Marc sustained mental distress, anguish, upset, and anxiety and various
10 physical complaints, medical ailments, and related injuries.

11 30. In engaging in such conduct, defendants intended to defraud Marc within the
12 meaning of Welfare & Institutions Code § 15610.30.

13 31. Citigroup and Allstate were the employers and principals of defendants Marcelino,
14 Rohrer, and Williams and/or provided them with offices, signage, forms, documents, and the
15 apparent authority to act on their behalf. The conduct of defendants Marcelino, Rohrer, and
16 Williams occurred within the course and scope of their employment with Citigroup and Allstate. In
17 addition, Citigroup and Allstate were notified of the fraudulent, deceitful, and otherwise wrongful
18 conduct of Marcelino, Rohrer, and Williams by which Citigroup and Allstate obtained possession of
19 Marc's property. Notwithstanding full knowledge of these circumstances and the demand for its
20 return, Citigroup and Allstate refused to return the property and retained it for their own use and
21 benefit. Accordingly, Citigroup and Allstate ratified and adopted the wrongful conduct of
22 Marcelino, Rohrer, and Williams and are thereby vicariously liable for this wrongful conduct.

23 32. Citigroup and Allstate assisted in the wrongful taking of Marc's property pursuant to
24 Welfare & Institutions Code § 15610.30.

25 33. In addition to all other remedies provided by law, Marc is entitled to recover
26 reasonable attorney's fees and costs for financial abuse pursuant to Welfare & Institutions Code §
27 15657.5.

28 34. The conduct of defendants constituted oppression, fraud, and malice in the

1 commission of the financial abuse, and Marc is entitled to recover damages for the sake of example
2 and by way of punishing them for financial abuse pursuant to Civil Code § 3294.

3
4 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**
(Elder Financial Abuse II)

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

6 36. From January 3, 2005 through October 12, 2006, Marc suffered from dementia and
7 lacked the ability to understand and appreciate the rights, duties, and responsibilities, the probable
8 consequences to him and others, and the significant risks, benefits, and reasonable alternatives of
9 purchasing the insurance products sold to him by defendants. During this same period, Marc was of
10 unsound mind and was substantially unable to manage his financial resources and resist fraud and
11 undue influence.

12 37. On October 27, 2009, Marc demanded that Citigroup and Allstate return his
13 property, namely his money, that had been taken from him while he lacked capacity and was of
14 unsound mind, pursuant to Welfare & Institutions Code § 15657.6. On or about November 25,
15 2009, Allstate refused to return Marc's property. On or about November 30, 2009, Citigroup
16 refused to return Marc's property.

17 38. As a direct and proximate result of this refusal, Marc sustained economic harm,
18 mental distress, anguish, upset, and anxiety and various physical complaints, medical ailments, and
19 related injuries, and incurred attorney's fees and costs.

20 39. In addition to all other remedies provided by law, Marc is entitled to recover
21 reasonable attorney's fees and costs for financial abuse pursuant to Welfare & Institutions Code §
22 15657.6.

23 40. The conduct of defendants constituted oppression, fraud, and malice in the
24 commission of the financial abuse, and Marc is entitled to recover damages for the sake of example
25 and by way of punishing them for financial abuse pursuant to Civil Code § 3294.

26
27 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS**
(Breach of fiduciary duty)

28 41. Paragraphs 1 through 40 are incorporated by reference.

- 1 c. Reasonable attorney's fees and costs according to proof;
- 2 d. Punitive damages according to proof;
- 3 e. Treble damages pursuant to CC § 3345;
- 4 3. Probate Code § 850:
 - 5 a. Recovery of the property taken;
 - 6 b. Compensatory damages according to proof;
 - 7 c. Punitive damages according to proof;
 - 8 d. Treble damages pursuant to CC § 3345;
- 9 4. Probate Code § 859:
 - 10 a. Recovery of the property taken;
 - 11 b. Twice the value of the property taken;
 - 12 c. Reasonable attorney's fees and costs according to proof;
- 13 5. Interest pursuant to CC § 3287;
- 14 6. Costs pursuant to CCP § 1032; and
- 15 7. For such further relief as the court may deem just.

16 Dated: December 16, 2009



17 Steven Riess
18 Attorney for Elizabeth Adler,
19 Conservator of the Person
20 and Estate of Marc Arsenault
21
22
23
24
25
26
27
28