

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

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

CLERK OF SUPERIOR COURT
SANDIEGO COUNTY, CALIFORNIA
2010 JAN 19 PM 5:35

5 Attorney for plaintiff Maraccini

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO – NORTH COUNTY**

11 Michael Maraccini, conservator of the person
12 and estate of Vesta Maraccini,

13 Plaintiff,

14 vs.

15 Jack Vasconcellos, Jaclyn Investment Group,
16 and Does 1 through 20,

17 Defendants.

Case No. 37-2010-00050411-CU-NP-NC

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

18 Related probate matter:

19 Conservatorship of the person and estate of
20 Vesta Maraccini,

37-2009-00150241-PR-CP-ROA48

BY FAX

22 **PRELIMINARY ALLEGATIONS**

23 Michael Maraccini, Conservator of the Person and Estate of Vesta Maraccini, Conservatee,
24 hereby alleges:

25 1. On July 23, 2009, this court appointed Michael Maraccini (“Michael”) conservator
26 of the person and estate of Vesta Maraccini (“Vesta”), and thereafter letters of conservatorship
27 issued. From that date to the present, Michael has been and is the duly appointed conservator of the
28 person and estate of Vesta. On December 31, 2009, this court authorized Michael to employ Steven

1 Riess as litigation counsel for the purpose of seeking recovery of funds wrongfully taken and other
2 related damages in connection with events which occurred during the period 1999 through 2007.

3 2. Defendant Jack Vasconcellos is a natural person over the age of 18. Defendant
4 Jaclyn Investment Group is a business entity of unknown form.

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

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

15 5. This action for elder financial abuse and related counts is brought in this court
16 pursuant to Welfare & Institutions Code § 15657.3. This court is the proper court in which to bring
17 this action because the events giving rise to these causes of action occurred here and the
18 conservatorship of Vesta is located here.

19 **VESTA'S PERSONAL BACKGROUND**

20 6. Vesta was born on October 17, 1920 in Greenville, Texas. During the depression, her
21 parents moved with their three children to California and found work picking fruit. They followed
22 the fruit crops for several years, and Vesta was only able to attend school sporadically as the family
23 moved from town to town following the crops. Vesta's father was eventually able to open a small
24 family-run restaurant in Calipatria, California. However several years later, her parents divorced,
25 and her father returned to Texas and had no further contact with the children. Vesta attended high
26 school in Calipatria but dropped out in her senior year when she became pregnant; she never
27 returned to school. In 1939, Vesta gave birth to her son, Dale Greer. She was briefly married to
28 Dale's father, but they divorced soon after Dale was born.

1 7. Following Dale's birth, Vesta worked at a local department store until she remarried
2 in 1947. Her new husband, Jim Lawson, was killed in a car accident just two years after they were
3 married. Jim had never changed the beneficiary of his life insurance from his sister to Vesta, so
4 when he died Vesta was left with almost nothing. She was forced to return to work at the
5 department store in order to support herself and her son.

6 8. In 1958, Vesta married Mike Maraccini. Mike was a successful farmer in Calipatria
7 and had a son – also named Michael – from a previous marriage. Mike died unexpectedly in
8 December, 1970. Vesta was not capable of managing Mike's large farming operation and relied
9 heavily on the employees who remained on after Mike's death. In 1975, Vesta sold the farm. With
10 proceeds from Mike's life insurance policies and the sale of the farm, Vesta was then worth
11 approximately \$1.5 million. Vesta then relocated to Valley Center, California. She purchased a
12 large property so that her mother, brother, sister and brother-in-law could live with her. All of these
13 family members are now deceased.

14 9. After inheriting Mike's estate, Vesta became a target of manipulation and
15 exploitation. Soon after Mike died, Vesta co-signed a large crop loan for an acquaintance who then
16 defaulted on the loan. She became romantically involved with a man, made him foreman of the
17 farm, and purchased him a new and expensive pickup truck. He disappeared in the middle of the
18 night and took the truck with him. Vesta made loans to anyone who had a tale of woe; these loans
19 were seldom repaid. For some time, Vesta made monthly donations to 10 or 12 religious
20 organizations that solicited money on television or through mass mailings. The donations often
21 totaled as much as \$20,000 a year. As she aged, Vesta would often make imprudent purchases of
22 items advertised on QVC and similar programs. She also sold several properties for considerably
23 less than market value. Similarly, she would rent property below market, and her investments
24 typically brought her little or no return.

25 10. Beginning in the early 1990's, Vesta's vision began to deteriorate. In 1995, she was
26 diagnosed with macular degeneration and cataracts and was declared legally blind. For the next
27 several years, Dale began to visit regularly to bring groceries and write out checks to pay Vesta's
28 monthly bills. When Dale was unavailable, Vesta would have laborers and others to whom she

1 owed money write out their own checks. Vesta would then sign the checks by having the payee
2 place a ruler on the signature line and using it as a guide. Vesta could not see well enough to count
3 money and she was becoming increasingly confused so that she began to hand envelopes of cash to
4 payees so they could count out their own pay. In 2006, Vesta and Dale had a disagreement, and
5 Dale stopped visiting his mother. Vesta then had various people help her write checks until 2007
6 when defendant Jack Vasconcellos took over that task.

7 11. In February of 2008, Vesta became very ill, and a friend was finally able to
8 convince her to visit a doctor. The doctor found that Vesta was suffering from dementia and at 88
9 pounds was severely under-weight. Attempts were made to involve Dale in her care but he refused
10 to help. Although Vesta's stepson, Michael, lived in Reno, he agreed to help and began visiting
11 Vesta once or twice a month and to arrange for her care. Home care became unsustainable, and in
12 April 2009, Michael arranged to have Vesta moved into an Alzheimer's care facility. On July 23,
13 2009, Michael was appointed conservator of Vesta's person and estate. In reviewing Vesta's
14 financial records, Michael first became aware of the wrongful conduct of defendants as alleged
15 herein.

16 **THE WRONGFUL CONDUCT OF VASCONCELLOS**

17 12. Vesta's mother, Erma, first introduced Vesta to defendant Vasconcellos. Erma had
18 met Vasconcellos through her activities in her church. Vasconcellos is a licensed life agent
19 (California Department of Insurance license 0825078) and was also engaged in conduct under the
20 fictitious business name of Jaelyn Investment Group ("Jaelyn"). Although this fictitious business
21 name was officially abandoned in 2001, Vasconcellos continued to use and maintain a bank account
22 in this fictitious name.

23 13. Over the years, Vasconcellos sold Vesta various insurance products, including a
24 deferred annuity in 1994 with the Harvest Life Insurance Company for an initial premium of
25 \$100,000. He also sold her several long term care policies of questionable value.

26 14. On or about April 2, 1999, Vasconcellos received check number 1619 from Vesta
27 drawn payable to "Jack Vasconcellos and Lynn Vasconcellos" in the amount of \$7,000. The memo
28 on the check states: "3 Month Loan." (A true and correct copy of the check is attached as Exhibit 1.)

1 Vasconcellos cashed the check but failed to return any portion of it.

2 15. On November 12, 2001, Vasconcellos received \$15,000 from Vesta and on
3 December 10, 2001, Vasconcellos received an additional \$10,000 from Vesta. These payments were
4 for the purchase of a \$25,000 annuity ostensibly issued by “Cova Premier Advisor,” contract
5 number C570094254CA. Shortly thereafter, Vasconcellos delivered to Vesta a seven page
6 document purporting to be the annuity contract. No such insurance company actually exists and the
7 transaction was a fabrication created by Vasconcellos for the purpose of defrauding Vesta. The
8 seven page annuity contract delivered to Vesta was created by Vasconcellos for the purpose of
9 tricking Vesta.

10 16. On or about January 25, 2007, Vasconcellos received check number 3953 from
11 Vesta drawn payable to “Jaclyn Investment Group” in the amount of \$79,000. The check was
12 written by Vasconcellos and signed by Vesta. (A true and correct copy of the check is attached as
13 Exhibit 2.) Vasconcellos cashed the check. On March 14, 2009, Michael questioned Vasconcellos
14 about this check. Vasconcellos initially told Michael that the money had been used to purchase an
15 annuity. However when pressed for further details, Vasconcellos acknowledged that the money had
16 not been used to purchase an annuity, was paid to him personally, and stated that he would return
17 the funds forthwith. Vasconcellos failed to return any portion of this money.

18
19 **FIRST CAUSE OF ACTION**
(Elder Financial Abuse I)

20 17. Paragraphs 1 through 16 are incorporated by reference.

21 18. In engaging in the conduct described above, defendants, either directly or through
22 their representatives, took, secreted, appropriated, and retained the property of plaintiff, an elders, to
23 a wrongful use within the meaning of Welfare & Institutions Code § 15610.30. Defendants engaged
24 in such conduct either directly, or assisted others in such conduct.

25 19. In engaging in such conduct, defendants intended to defraud plaintiff within the
26 meaning of Welfare & Institutions Code § 15610.30.

27 20. As a direct and proximate cause of defendants’ wrongful conduct, plaintiff has been
28 deprived of her property, namely her money and other valuable property, has sustained related

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

4 21. In addition to all other remedies provided by law, plaintiff is entitled to recover
5 reasonable attorney's fees and costs for financial abuse pursuant to Welfare & Institutions Code §
6 15657.5.

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

10 **SECOND CAUSE OF ACTION**
11 **(Elder Financial Abuse II)**

12 23. Paragraphs 1 through 22 are incorporated by reference.

13 24. From at least 1999 through the present, Vesta suffered from dementia and lacked the
14 ability to understand and appreciate the rights, duties, and responsibilities, the probable
15 consequences to him and others, and the significant risks, benefits, and reasonable alternatives of
16 delivering her property to Vasconcellos. During this same period, Vesta was of unsound mind and
17 was substantially unable to manage her financial resources and resist fraud and undue influence.

18 25. On or about March 14, 2009, Michael demanded that defendants return Vesta's
19 property, namely her money, that had been taken from her while she lacked capacity and was of
20 unsound mind, pursuant to Welfare & Institutions Code § 15657.6. Defendants failed to return this
21 property, and continue to withhold it.

22 26. As a direct and proximate result of this refusal, Vesta sustained economic harm,
23 mental distress, anguish, upset, and anxiety and various physical complaints, medical ailments, and
24 related injuries, and incurred attorney's fees and costs.

25 27. In addition to all other remedies provided by law, Vesta is entitled to recover
26 reasonable attorney's fees and costs for financial abuse pursuant to Welfare & Institutions Code §
27 15657.6.

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

1 commission of the financial abuse, and Vesta 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 **THIRD CAUSE OF ACTION AGAINST**
5 **(Fraud)**

6 29. Paragraphs 1 through 28 are incorporated by reference.

7 30. The representations which defendants made to plaintiff regarding the circumstances
8 under which defendant took possession of plaintiff's money were false, misleading, and
9 misrepresented the law, the facts, and defendants' intent. Plaintiff alleges fraud with the following
10 particularity:

11 (a) How: Orally and in writing by by Jack Vasconcellos

12 (b) When: On or about: April 2, 1999, November 12, 2001, December
13 10, 2001, and January 25, 2007

14 (c) Where: 14946 Fruitvale Road, Valley Center, CA

15 (d) To Whom: Vesta Maraccini

16 (e) What: Defendants misrepresented that the money delivered by
17 plaintiff would be returned and misrepresented that it would be used to purchase annuities and other
18 investments for plaintiff.

19 31. The false and misleading statements of defendants were material to plaintiff's
20 decision to deliver her property to defendants, and plaintiff relied to her detriment on them by
21 paying defendants money.

22 32. Defendants knew that these statements were false and misleading and that plaintiff
23 would rely upon them to her detriment, and defendants thereby intended to defraud plaintiff.

24 33. As a direct and proximate result of defendants' wrongful conduct, plaintiff suffered
25 damages as alleged herein.

26 34. Defendants' conduct constituted oppression, fraud, and malice, and plaintiff is
27 entitled to recover damages for the sake of example and by way of punishing defendants pursuant to
28 Civil Code § 3294.

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**FOURTH CAUSE OF ACTION
(Deceit)**

35. Paragraphs 1 through 34 are incorporated by reference.

36. The representations which defendants made to plaintiff regarding the circumstances under which defendants took plaintiff's money were false, misleading, and misrepresented the law, the facts, and defendants' intent.

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

38. Defendants willfully deceived plaintiff with the intent to induce her to alter her position to her injury and harm.

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

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

**FIFTH CAUSE OF ACTION
(Negligence)**

41. Paragraphs 1 through 40 are incorporated by reference.

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

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

**SIXTH CAUSE OF ACTION
(Breach of Fiduciary Duty)**

44. Paragraphs 1 through 43 are incorporated by reference.

1 45. Defendants represented to plaintiff that plaintiff faced complex issues and challenges
2 regarding her economic future, particularly with regard to assets, investments, estate planning, tax
3 planning, long-term care planning, and the role annuities played in such matters. Defendants further
4 represented that plaintiff lacked sufficient knowledge, experience, and expertise with regard to such
5 matters which prevented her from making appropriate and suitable decisions. Defendants further
6 represented that they possessed special knowledge, experience, and expertise with regard to such
7 financial matters, and various other matters of importance to plaintiff in planning her economic
8 future, and that defendants would provide plaintiff with appropriate and suitable advice and
9 recommendations. Based upon these representations of superior knowledge, experience, and
10 expertise, plaintiff reposed trust and confidence in defendants that the advice and recommendations
11 provided would be in plaintiff's best interests. As a result of this conduct, a confidential relationship
12 existed between plaintiff and defendants thereby owed plaintiff a fiduciary duty.

13 46. Defendants breached this fiduciary duty by providing plaintiff with false, erroneous,
14 and misleading advice and recommendations, by failing to disclose that they would personally
15 profit from the transaction at plaintiff's expense, and by advising plaintiff to make investments
16 which were not suitable or in her best interests but by which defendants profited at the expense of
17 plaintiffs.

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

21 WHEREFORE, plaintiffs pray for relief as follows:

- 22 1. Elder Financial Abuse I:
 - 23 a. Compensatory damages according to proof;
 - 24 b. Reasonable attorney's fees and costs according to proof;
 - 25 c. Punitive damages according to proof;
 - 26 c. Treble damages pursuant to CC § 3345;
- 27 2. 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 3. Fraud:
 - 5 a. Compensatory damages according to proof;
 - 6 b. Punitive damages according to proof;
 - 7 c. Treble damages pursuant to CC § 3345;
- 8 4. Deceit:
 - 9 a. Compensatory damages according to proof;
 - 10 b. Punitive damages according to proof;
 - 11 c. Treble damages pursuant to CC § 3345;
- 12 5. Negligence:
 - 13 a. Compensatory damages according to proof;
- 14 6. Breach of fiduciary duty:
 - 15 a. Compensatory damages according to proof;
 - 16 b. Punitive damages according to proof;
 - 17 c. Treble damages pursuant to CC § 3345;
 - 18 d. Reasonable attorney's fees and costs
- 19 7. Interest pursuant to CC § 3287;
- 20 8. Costs pursuant to CCP § 1032; and
- 21 9. For such further relief as the court may deem just.

22 Dated: January 19, 2010

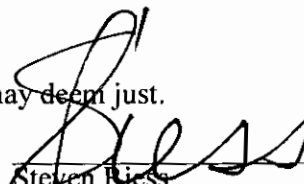

23 Steven Riess
24 Attorney for Plaintiffs

Exhibit 1

VESTA LEE MARACCINI
PH. 749-0116
14946 FRUITVALE RD.
VALLEY CENTER, CA 92082

90-3210/1222

1614

DATE April 2, '99

PAY TO THE
ORDER OF

Jack & Lynn Vasconcellos
Seven Thousand and No/100

\$ 7,000⁰⁰
DOLLARS



CALIFORNIA BANK & TRUST

VALLEY CENTER OFFICE
29124 VALLEY CENTER RD., VALLEY CENTER, CALIFORNIA 92082

MEMO

3 month loan

Vesta Lee Maraccini

⑆ 122232109⑆ 1614⑆ 284262916⑆

⑆0000700000⑆

⑆122000496⑆
UNION BANCAL, WA NPSC
ENTRY PK 91755 04/02/99
1323307740

Jack & Lynn Vasconcellos

⑆ 2 1 6 2 4 3 0 ⑆

Exhibit 2

VESTA LEE MARACCINI
14946 FRUITVALE RD. 780-749-0118
VALLEY CENTER, CA 92082

3953

Date 1/25/2007

99-3210/1222
228

Pay to the Order of: JACKLYN INVESTMENT GROUP + \$ 79,000.00

SEVENTY NINE THOUSAND DOLLARS AND NO/100 Dollars



CALIFORNIA BANK TRUST
VALLEY CENTER OFFICE
2129 VALLEY CENTER RD., VALLEY CENTER, CALIFORNIA 92082
CITY CENTER 1 800-808-6088 www.cbtrust.com

For:

Vesta Lee Maraccini

⑆ 22232 ⑆ 09 ⑆ 3953 ⑆ ⑆ 28 ⑆ 26 29 ⑆ 6 ⑆

⑆ 0007900000 ⑆

3953 1/29/2007 0038018794 \$79,000.00

⑆ 04 015 16 0038018794 20070129

UNION BANK OF CALIFORNIA
MEMPHIS, CA 92584-9082
FOR DEPOSIT ONLY
JACKLYN INVESTMENT GROUP
615018794

35976

UNION BANK OF CALIFORNIA
MEMPHIS, CA 92584-9082
FOR DEPOSIT ONLY
JACKLYN INVESTMENT GROUP
615018794

PAY TO THE ORDER OF
UNION BANK OF CALIFORNIA
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615018794