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

11 Helen McLaughlin, Anne McLaughlin, and
12 William Owen,

13 Plaintiffs,

14 vs.

15 Richard Holody, David Sherr, Mike Ebrahimi,
16 Advanced Estate Planning Consultants, Inc.,
17 XXXX, and Does 1through 20,

18 Defendants.

Case No.

COMPLAINT FOR:

1. Violation of Consumers Legal Remedy Act
2. Elder Financial Abuse
3. Breach of Fiduciary Duty

19 **PRELIMINARY ALLEGATIONS**

20 1. Defendants Richard Holody and David Sherr are natural persons over the age of 18.
21 Defendant Advanced Estate Planning Consultants, Inc. ("AEPC"), and XXXX are business entities
22 of unknown form.

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

1 defendants generally, shall include such Doe defendants.

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

6 4. This court is the proper court in which to bring this action because at least one
7 defendant resides here and/or the principal place of business of at least one defendant is located
8 here.

9 **GENERAL ALLEGATIONS**

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

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

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

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

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

28 (e) *Conceal from seniors* that defendants are licensed life insurance agents whose

1 purpose is to sell seniors annuities.

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

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

7 (h) *Discover seniors’ assets* through the guise of assessing their eligibility for Medi-Cal
8 benefits and assessing their estate planning needs.

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

13 (j) *Sell seniors annuities* by misrepresenting the seniors’ needs for such products, the
14 consequences of terminating existing investments, the terms of the proposed annuities, and by
15 misrepresenting and concealing various material facts about the transaction.

16 6. The Predatory Enterprise is a joint venture consisting of the association of Holody,
17 Sherr, Ebrahimi, AEPC, and BPG, who have combined their property, skill, and knowledge to carry
18 out this business enterprise for profit. An agreement between these parties exists under which they
19 have a community of interest and joint interests in this common business undertaking and which
20 involves the agreement that profits and losses will be shared and that these parties will have joint
21 control over the enterprise.

22 7. The Predatory Enterprise is conducted in the following manner. Defendants provide
23 logistical support, advertising, and mass-mailings which target seniors by inviting them to “free
24 informational workshops.” Defendant Holody is licensed by the California Department of Insurance
25 as a life agent (license 0373904) and by the Securities and Exchange Commission as a registered
26 representative (license 249126) and is thereby licensed to provide investment advice and sell
27 various investment products. Defendant Sherr is licensed by the California Department of Insurance
28 as a life agent (license 0B96672) and by the Securities and Exchange Commission as a registered

1 representative (license 2367918) and is thereby licensed to provide investment advice and sell
2 various investment products. Defendant Ebrahimi is licensed by the California Department of
3 Insurance as a life agent (license OC07060) and is thereby licensed to provide investment advice and
4 sell various investment products. Defendants Holody and Sherr incorporated and operated AEPC,
5 through which they sell valueless or nearly valueless Medi-Cal pre-qualification services. Holody,
6 Sherr, and Ebrahimi sell annuities by misrepresenting the terms and appropriateness of the annuities
7 and by concealing various material facts about the transaction. Revenue collected by defendants is
8 divided equally between the members of the Predatory Enterprise. For calendar year 2008, the
9 revenue collected exceeded \$1 million.

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

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

27 9. MFSC is a broker-dealer licensed by the Securities and Exchange Commission, and
28 Holody is a registered representative employed by and registered with MFSC. Accordingly, MFSC

1 had an affirmative duty to supervise the conduct of Holody and to review transactions proposed and
2 secured by Holody in the furtherance of their business activities.

3 **Helen McLaughlin**

4 10. Plaintiff Helen McLaughlin (“Helen”) was born on January 30, 1916 and at the time
5 of the events alleged in this complaint was at least 87 years old and an elder within the meaning of
6 Welfare & Institutions Code § 15610.27.

7 11. On June 29, 2003, Helen’s husband died. During the period immediately following
8 her husband’s death, Helen was extremely vulnerable to exploitation as Helen’s husband had
9 handled the couple’s financial affairs, and Helen was inexperienced and unsophisticated with regard
10 to finances and was emotionally distraught as a result of the recent death of her husband.

11 12. Several months after her husband’s death, Helen saw a written announcement posted
12 on the bulletin board at the community center of the homeowner’s association where she resided.
13 The announcement solicited attendance at a “free informational workshop” in connection with long-
14 term care planning. The workshop, which was actually an in-person sales event, was offered by the
15 Predatory Enterprise.

16 13. In or about August, 2003, Helen attended the in-person sales event offered by the
17 Predatory Enterprise. The sales event was conducted by Holody, Sherr, and Ebrahimi, and each
18 addressed the audience of seniors who attended the event. Written materials were distributed to
19 audience members. At the presentation, written and oral misrepresentations were made regarding
20 the Medi-Cal pre-qualification services offered by the Predatory Enterprise. These
21 misrepresentations included, but are not limited to, the following:

- 22 (a) That the vast majority of Americans over the age of 65 will need long-term care.
23 (b) That approximately half of seniors who need long-term care spend an average of 2-
24 1/2 years in a nursing home.
25 (c) That long-term care is exorbitantly expensive.
26 (d) That many elders lose their homes because of the high cost of nursing home care.
27 (e) That a consequence of private pay is that the well-spouse is likely to completely
28 deplete the family’s resources and end up on welfare.

- 1 (f) That little-known government programs exist that will pay for long-term care.
- 2 (g) That these programs are staffed with uninformed workers and are plagued with high
3 turnover, in some cases as high as 100% per year.
- 4 (h) That the government workers do not want seniors to know about these programs.
- 5 (i) That Medi-Cal will pay for all costs of long-term care.
- 6 (j) That Medi-Cal is an entitlement program just like Social Security.
- 7 (k) That Medi-Cal benefits are available to everyone.
- 8 (l) That you can have income of \$300,000 or more and still receive Medi-Cal benefits.
- 9 (m) That spend-down consists of privately paying for health care costs.
- 10 (n) That you don't have to spend down to qualify for Medi-Cal benefits.
- 11 (o) That some Individual Retirement Accounts are not exempt assets.
- 12 (p) That an applicant's share of cost can be eliminated.
- 13 (q) That Medi-Cal covers durable goods and therapy.
- 14 (r) That Medi-Cal provides for a 36 month look back period.
- 15 (s) That there are over a dozen complex forms associated with applying for Medi-Cal
16 benefits.
- 17 (t) That there are various state agencies with whom an applicant must communicate.
- 18 (u) That the Medi-Cal application process is complex, confusing, time-consuming, and
19 beyond the capability of most seniors.
- 20 (v) That a detailed understanding of the nuances of Medi-Cal regulations is required in
21 order to obtain benefits.
- 22 (w) That Medi-Cal is considered the "Gold Standard" for nursing home care.
- 23 (x) That Medi-Cal eligibility must be established early and well before an applicant
24 anticipates admission to a nursing facility.
- 25 14. At the conclusion of the presentation, audience members were asked to provide their
26 contact information. Helen completed the questionnaire and returned it to defendants, who then
27 scheduled a private follow-up sales event in Helen's home.

28 15. On or about August 12, 2003, defendants came to Helen's home to meet privately

1 with her. They reiterated the various misrepresentations described above and described how some
2 nursing homes were terrible and that it was very important how one paid for them. They described
3 how Medi-Cal long-term care assured the best nursing home care available. They told Helen that
4 without their help and expertise, she was likely to exhaust her assets and lose her home. They said
5 that if they were to help Helen, that she must disclose the nature and amount of all of her assets as
6 well as provide them with other confidential information. Defendants succeeded in obtaining
7 Helen's acquiescence, and she delivered her World Savings check number 1499 drawn in favor of
8 Richard Holody in the amount of \$15,000. Helen's check was cashed and the money was divided
9 between the members of the Predatory Enterprise.

10 16. On or about September 10, 2003, defendants returned to Helen's residence for the
11 purpose of selling her a long-term Allianz deferred annuity. In pitching the annuity, defendants
12 made, among other things, the following misrepresentations and omissions of material facts:

13 (a) Defendants said that Helen's investments were inappropriate and poor and that their
14 investment was much better.

15 (b) Defendants never told Helen that they would receive a commission for selling Helen
16 the annuity.

17 (c) Defendants never told Helen that in order to receive the benefits of the annuity, she
18 could not remove her money for 20 years and that if she needed to remove her money sooner that
19 she would pay a surrender penalty of not less than 12.5 percent. Defendants never told Helen that
20 her actuarial life expectancy was only 5.79 years.

21 (d) Defendants never told Helen that the larger the sales commission defendants were
22 paid, the larger and longer the surrender penalty to Helen.

23 (e) Defendants never told Helen that other annuities existed with terms superior to the
24 Allianz annuity but which paid a lower sales commission and therefore charged a lower surrender
25 penalty and for a shorter period.

26 (f) Defendants never told Helen that she was purchasing a flexible premium annuity
27 even though the Allianz annuity was being purchased with a single premium.

28 17. Defendants presented Helen with purchase documents and instructed her to sign

1 them. They also instructed Helen to give them a check for \$120,000 for the purchase of the Allianz
2 annuity. As a result of the sale of the Allianz annuity, defendants were paid a commission.

3 18. On or about October 6, 2003, defendants returned to Helen's residence to again sell
4 her an annuity. They reiterated the misrepresentations described above. As a result of this second
5 sales effort, Helen purchased another Allianz annuity in the amount of \$65,000 and defendants were
6 paid a second commission.

7 19. On or about April 11, 2005, defendants returned to Helen's residence to again sell
8 Helen another annuity. They reiterated the misrepresentations described above. As a result of this
9 third sales effort, Helen purchased an American National Insurance Company annuity in the amount
10 of \$65,000 and defendants were paid a third commission.

11 20. On or about July 22, 2009, defendants again returned to Helen's residence to seek to
12 again sell her another annuity. All of the misrepresentations made earlier were reiterated. As a result
13 of this fourth sales effort, Helen added \$30,000 to the American National Insurance Company
14 annuity and defendants were paid a fourth commission.

15 21. The surrender penalty periods on all of the annuities sold by defendants to Helen
16 greatly exceeded Helen's life expectancy.

17 22. Helen is currently 94 years old. As a result of defendants' conduct, Helen has tied up
18 a total of \$280,000 in illiquid annuities; this represents 52 percent of Helen's total liquid net worth.

19 **Anne McLaughlin**

20 23. Plaintiff Anne McLaughlin ("Anne") was born on May 27, 1952 and is currently 57
21 years old.

22 24. On or about July 22, 2009, Anne was present when defendants visited Helen at her
23 residence for the purpose of selling her a fourth annuity. Defendants sought to sell Anne their Medi-
24 Cal pre-qualification services by making various misrepresentations regarding her need for such
25 services. These misrepresentations included those described above in connection with defendants'
26 sale of their services to Helen. As a result of defendants' misrepresentations, Anne purchased
27 defendants' Medi-Cal pre-qualification services by delivering Wachovia Bank check number 2519
28 drawn in favor of Richard Holody in the amount of \$5,850. The check was cashed and the money

1 was divided between the members of the Predatory Enterprise.

2 **William Owen**

3 25. Plaintiff William Owen (“Bill”) was born on July 17, 1931 and is currently 78 years
4 old, and at the time of the events alleged in this complaint was an elder within the meaning of
5 Welfare & Institutions Code § 15610.27. Bill is married to Janet Owen, who suffers from
6 Alzheimer’s Disease.

7 26. In 2006, Bill attended an in-person sales event disguised as a “free educational
8 workshop” presented by the Predatory Enterprise. The sales event was conducted by Holody and
9 Sherr, and each addressed the audience of seniors who attended the event. Written materials were
10 distributed to audience members. At the presentation, written and oral misrepresentations were
11 made regarding the Medi-Cal pre-qualification services offered by the Predatory Enterprise as
12 described above. At the conclusion of the presentation, audience members were asked to provide
13 their contact information. Bill completed the questionnaire and returned it to defendants, who then
14 scheduled a private follow-up sales event in Bill’s home.

15 27. On or about November 29, 2006, defendants came to Bill’s home to meet privately
16 with him. They reiterated the various misrepresentations described above. They told Bill that
17 without their help and expertise, he was likely to exhaust his assets and lose his home. Defendants
18 succeeded in obtaining Bill’s acquiescence, and he delivered his Bank of America check number
19 3039 drawn in favor of AEPC, Inc. in the amount of \$9,206. Bill’s check was cashed and the money
20 was divided between the members of the Predatory Enterprise.

21 28. On or about August 17, 2009, Holody returned to Bill’s home and informed Bill that
22 in order for defendants to provide Bill and Janet with assistance in obtaining Medi-Cal benefits, Bill
23 must pay defendants an additional \$3,069. Accordingly, Bill delivered his Washington Mutual
24 check number 1434 drawn in favor of Richard Holody in the amount of \$3,069. Bill’s check was
25 cashed and the money was divided between the members of the Predatory Enterprise.

26 **FIRST CAUSE OF ACTION AGAINST HOLODY, SHERR, EBRAHIMI, AND AEPC**
27 **(Violation of CLRA)**

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

1 defendants' wrongful conduct, plaintiffs sustained mental distress, anguish, upset, and anxiety and
2 various physical complaints, medical ailments, and related injuries.

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

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

11 **THIRD CAUSE OF ACTION AGAINST HOLODY, SHERR, EBRAHIMI, AND AEPC**
12 **(Breach of Fiduciary Duty)**

13 38. Paragraphs 1 through 37 are incorporated by reference.

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

27 40. Defendants breached this fiduciary duty by providing plaintiffs with false, erroneous,
28 and misleading advice and recommendations, by failing to disclose the nature and amount of the

1 commissions and other fees which they would receive, and by advising plaintiffs to make
2 investments which were not suitable or in their best interests but by which defendants profited at the
3 expense of plaintiffs.

4 41. Defendants' conduct constituted oppression, fraud, and malice, and plaintiffs are
5 entitled to recover damages for the sake of example and by way of punishing defendants pursuant to
6 Civil Code § 3294.

7 WHEREFORE, plaintiffs pray for relief as follows:

8 1. Violation of Consumers Legal Remedies Act:

- 9 a. Actual damages according to proof;
- 10 b. An order enjoining the methods, acts, or practices;
- 11 c. Restitution of property;
- 12 d. Reasonable attorney's fees and costs according to proof;
- 13 e. Punitive damages according to proof;
- 14 f. Civil penalties of up to \$5,000;
- 15 g. Treble damages pursuant to CC § 3345;

16 2. Elder Financial Abuse:

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

21 3. Breach of fiduciary duty:

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

26 4. Interest pursuant to CC § 3287;

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

Dated: _____

Steven Riess
Attorney for Plaintiffs