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DAVID J. ...
By _____
JANCAVCA

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

1100V181371

11 James Korbel,
12 Plaintiff,

13 vs.

14 William Landers, Jae Landers, Whitehorse
15 Financial and Insurance Services, Appaloosa
16 Insurance Services Inc. Pension Planners
17 Securities, Inc., and Does 1 through 20,
18 Defendants.

Case No.

COMPLAINT FOR DAMAGES FOR:

- 1. Elder Financial Abuse I
- 2. Fraud
- 3. Deceit
- 4. Negligence I
- 5. Breach of Fiduciary Duty
- 6. Negligence II
- 7. Elder Financial Abuse II

BY FAX

19 PRELIMINARY ALLEGATIONS

20 1. Plaintiff James Korbel ("James") was born on September 27, 1938 and at the time of
21 the events alleged in this complaint was at least 66 years old and an elder within the meaning of
22 Welfare & Institutions Code § 15610.27.

23 2. Defendants William Landers and Jae Landers are natural persons over the age of 18.
24 Defendants Whitehorse Financial and Insurance Services ("Whitehorse"), Appaloosa Insurance
25 Services, Inc. ("Appaloosa"), and Pension Planners Securities, Inc. ("PPSI") are business entities of
26 unknown form.

27 3. The true names and capacities of defendants sued as Does are unknown, and plaintiff
28 will amend this complaint to show their true names and capacities when this information is

1 In 1989, James's father died and James inherited free-and-clear the house in San Jose where he now
2 resides.

3
4 **WILLIAM LANDERS AND JAE LANDERS ARE
THE ALTER EGO OF WHITEHORSE AND APPALOOSA**

5 8. Plaintiff believes and thereon alleges that William Landers and Jae Landers are
6 incorporators, officers, directors, and shareholders of Whitehorse and Appaloosa. As such, these
7 defendants share a unity of interest, and William Landers and Jae Landers have treated Whitehorse
8 and Appaloosa as their alter ego rather than as a separate entity. Moreover, upholding the separate
9 entity of Whitehorse and Appaloosa and allowing William Landers and Jae Landers to avoid
10 personal liability for the debts and liability of Whitehorse and Appaloosa would sanction a fraud
11 and promote an injustice. The following factors, among others, establish the alter ego liability of
12 William Landers and Jae Landers for the conduct of Whitehorse and Appaloosa:

13 (a) William Landers, Jae Landers, Whitehorse, and Appaloosa acted in bad faith.

14 (b) William Landers and Jae Landers intended to obtain the benefits of contracts but
15 avoid personal liability by using Whitehorse and Appaloosa as a shield.

16 (c) William Landers and Jae Landers diverted assets from Whitehorse and Appaloosa to
17 themselves to the detriment of potential creditors.

18 (d) William Landers and Jae Landers dominated the conduct and operation of
19 Whitehorse and Appaloosa.

20 (e) William Landers, Jae Landers, Whitehorse, and Appaloosa used the same offices,
21 business locations, and employees.

22 (f) William Landers, Jae Landers, Whitehorse, and Appaloosa employed the same
23 attorney.

24 (g) William Landers and Jae Landers used Whitehorse and Appaloosa to procure funds
25 for themselves.

26 (h) William Landers and Jae Landers failed to adequately capitalize Whitehorse and
27 Appaloosa.

28

1 (i) There would be an inequitable result if the separate entity veil of Whitehorse and
2 Appaloosa are not pierced.

3 **HISTORY OF DEFENDANTS' EXPLOITATION OF PLAINTIFF**

4 9. Sometime in or after 1999, James received an unsolicited advertisement in the mail
5 from defendants inviting James to a "free dinner informational workshop" on the topic of retirement
6 planning and investing for seniors. James responded to the solicitation and attended this event,
7 which was actually a sales presentation disguised as an "informational workshop." The event was
8 attended primarily by elders and an oral presentation was conducted by William Landers. William
9 Landers touted his expertise and experience in retirement planning and other issues of importance to
10 seniors. He claimed that he was a specialist in "asset preservation" for seniors, stressed that his
11 strategies emphasized safety and income, and claimed that the results he had obtained demonstrated
12 his expertise. He stated that such investment strategies were complex and arcane and beyond the
13 knowledge, skill, and experience of most seniors. He reassured seniors that he would faithfully
14 advise them so that they might avoid "catastrophic" losses and protect their retirement futures.

15 10. At the conclusion of the presentation, audience members were asked to provide their
16 contact information. James provided this information and a private interview was thereafter
17 scheduled. Shortly thereafter, James met with William Landers in private. William Landers
18 reiterated the various representations described above. William Landers said that if he were to help
19 James, that James must disclose the nature and amount of his assets as well as provide him with
20 other confidential information. In response to his entreaties, James disclosed various confidential
21 information to William Landers.

22 11. From 2001 to 2009, defendants sold James five deferred annuities, four issued by
23 Midland National Life Insurance Company and one issued by North American Life Insurance. The
24 amount paid for these deferred annuities exceeded \$170,000. Defendants earned commissions on
25 each of these sales.

26 12. Sometime in 2004, William Landers contacted James and informed James of an
27 investment opportunity offered by Diversified Management Group ("the Investment") that William
28 Landers touted as being exceptionally well-suited to James's needs. He claimed that the investment

1 paid an annual return of 10 percent and that the principal would not be at-risk, and was guaranteed,
2 secure, and absolutely would be returned at the end of five years. He claimed that the investment
3 was a great opportunity and encouraged James to invest in it. James told William that his advice
4 was appealing but that he did not have sufficient liquid assets available for such an investment.

5 13. James had previously confided in William Landers that he owned his home free-and-
6 clear. William Landers told James that the equity James owned in his home was "sitting idle," was
7 therefore unproductive, and could be put to much better use in the Investment recommended by
8 William Landers. James expressed concern that he had insufficient income to pay the monthly costs
9 of a loan against his home, but William Landers overcame this concern by representing that the
10 annual income from the investment would exceed all loan expenses and that the excess would then
11 supplement James's income. William Landers repeatedly urged James to obtain the loan so as to
12 make this investment. James finally relented and William Landers then referred James to a
13 mortgage broker who arranged a loan that produced net proceeds of approximately \$300,000. At
14 this time, it is unknown whether William Landers received compensation for facilitating this loan.

15 14. In December, 2004, William Landers presented various documents to James
16 regarding the Investment and instructed James to complete and sign the documents. With the
17 guidance of William Landers, James completed the documents and signed them. He then gave
18 William Landers a check for \$299,057.64. Far from being safe, prudent, and guaranteed, the
19 investment was actually a highly speculative restricted stock subscription agreement, which was
20 highly illiquid and might only be converted to preferred stock of questionable value at the end of
21 five years. Regulation D of the Securities and Exchange Act of 1933 require that this type of
22 restricted stock subscription be sold only to accredited investors or to qualified investors whose
23 assets and investment experience exceed specified minimums. Plaintiff was neither an accredited
24 investor nor did his experience or assets exceed the required minimums. Plaintiff believes and
25 thereon alleges that defendants were paid commissions and other compensation as a result of selling
26 the Investment to James.

27 15. From January 2005 to June 2008, plaintiff received quarterly payments amounting to
28 a 10 percent return on the amount he had paid. In September 2008, the payments were reduced to

1 four percent. In December 2009, quarterly payments ceased altogether. Thereafter, James received
2 notice that the issuer of the Investment had been forced into receivership and would liquidate its
3 assets. In December 2009, the assets of the issuer were liquidated, and James received a payout on
4 his investment of \$59,811. Accordingly, the investment resulted in a loss of principal of \$239,247.

5 16. As a result of the reduction and then cessation of interest payments on the
6 Investment, plaintiff was unable to continue making loan payments. In early 2009, defendants
7 recommended to plaintiff that he obtain a reverse mortgage with sufficient loan proceeds to pay off
8 the forward loan. As plaintiff was seriously alarmed about a default on the forward loan, he
9 followed defendants' advice by contacting a reverse mortgage broker recommended by defendants.
10 In April 2009, plaintiff obtained a reverse mortgage and paid off the forward mortgage. Not only
11 did plaintiff incur additional and substantial loan fees on the reverse mortgage, but he experienced,
12 and continues to experience, the rapid decline of his equity in his home. At this time, it is unknown
13 whether defendants received compensation for facilitating the reverse mortgage.

14 **FIRST CAUSE OF ACTION WILLIAM LANDERS, JAE LANDERS,
15 WHITEHORSE, AND APPALOOSA
16 (Elder Financial Abuse I)**

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

18 18. Defendants William Landers, Jae Landers, Whitehorse, and Appaloosa made various
19 misrepresentations to plaintiff that their services and products were valuable, appropriate, suitable,
20 and necessary. Specifically, defendants misrepresented the nature and characteristics of the
21 Investment by representing that it was safe, prudent, guaranteed, appropriate and suitable, and that
22 James was a qualified investor; in fact, the Investment was highly speculative, risky, unsafe,
23 imprudent, inappropriate and unsuitable, and James was not a qualified investor. Plaintiff believes
24 and thereon alleges that these defendants were paid commissions and other compensation as a result
25 of selling the Investment to James. In engaging in this conduct, these defendants took, secreted,
26 appropriated, and retained the property of plaintiff, an elder, to a wrongful use within the meaning
27 of Welfare & Institutions Code § 15610.30. These defendants engaged in such conduct either
28 directly, or assisted others in such conduct.

19. In engaging in this conduct, these defendants intended to defraud plaintiff within the

1 meaning of Welfare & Institutions Code § 15610.30.

2 20. As a direct and proximate result of these defendants' wrongful conduct, plaintiff has
3 been deprived of his property, namely his money and other valuable property, has sustained related
4 damages, and has incurred attorney's fees and costs. As a direct and proximate result of this
5 wrongful conduct, plaintiff sustained mental distress, anguish, upset, and anxiety and various
6 physical complaints, medical ailments, and related injuries.

7 21. In addition to all other remedies provided by law, plaintiff is entitled to recover
8 reasonable attorney's fees and costs for financial abuse pursuant to Welfare & Institutions Code §
9 15657.5.

10 22. The conduct of these defendants constituted oppression, fraud, and malice in the
11 commission of the financial abuse, and plaintiff is entitled to recover damages for the sake of
12 example and by way of punishing them for financial abuse pursuant to Civil Code § 3294.

13 23. Plaintiff is entitled to recover up to three times the damages assessed pursuant to
14 Civil Code § 3345.

15 **SECOND CAUSE OF ACTION AGAINST WILLIAM LANDERS,**
16 **JAE LANDERS, WHITEHORSE, AND APPALOOSA**
17 **(Fraud)**

18 24. Paragraphs 1 through 23 are incorporated by reference.

19 25. The representations which defendants William Landers, Jae Landers, Whitehorse,
20 and Appaloosa made to plaintiff regarding the terms, value, appropriateness, and suitability of the
21 Investment were false, misleading, and misrepresented the facts and the intent of these defendants.

22 Plaintiff alleges fraud with the following particularity:

- 23 (a) How: Orally and in writing
24 (b) When: In or about September through December 2004
25 (c) Where: 2134 Ellen Avenue, San Jose, California
26 (d) To Whom: James Korbel
27 (e) What: These defendants misrepresented the nature and characteristics

28 of the Investment, its safety, prudence, appropriateness, suitability, and plaintiff's qualifications to
purchase such an investment as described above.

1 26. The false and misleading statements of these defendants were material to plaintiff's
2 decision to deliver his money to them, and plaintiff relied to his detriment on them by paying these
3 defendants money.

4 27. These defendants knew that these statements were false and misleading and that
5 plaintiff would rely upon them to his detriment, and they thereby intended to defraud plaintiff.

6 28. As a direct and proximate result of this wrongful conduct, plaintiff suffered damages
7 as alleged herein.

8 29. This conduct constituted oppression, fraud, and malice, and plaintiff is entitled to
9 recover damages for the sake of example and by way of punishing these defendants pursuant to
10 Civil Code § 3294.

11 30. Plaintiff is entitled to recover up to three times the damages assessed pursuant to
12 Civil Code § 3345.

13 **THIRD CAUSE OF ACTION AGAINST WILLIAM LANDERS,
14 JAE LANDERS, WHITEHORSE, AND APPALOOSA
15 (Deceit)**

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

17 32. The representations that defendants William Landers, Jae Landers, Whitehorse, and
18 Appaloosa made to plaintiff regarding the terms, value, appropriateness, and suitability of their
19 services and products were false, misleading, and misrepresented the facts and defendants' intent.

20 33. These defendants asserted these representations as facts although they had no
21 reasonable grounds for believing them to be true.

22 34. These defendants willfully deceived plaintiff with the intent to induce him to alter his
23 position to his injury and harm.

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

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

 37. Plaintiff is entitled to recover up to three times the damages assessed pursuant to

1 Civil Code § 3345.

2 **FOURTH CAUSE OF ACTION AGAINST WILLIAM LANDERS,**
3 **JAE LANDERS, WHITEHORSE, AND APPALOOSA**
4 **(Negligence I)**

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

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

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

13 **FIFTH CAUSE OF ACTION AGAINST WILLIAM LANDERS,**
14 **JAE LANDERS, WHITEHORSE, AND APPALOOSA**
15 **(Breach of Fiduciary Duty)**

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

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

43. Defendants breached this fiduciary duty by providing plaintiff with false, erroneous,
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 plaintiff to make
2 investments which were not suitable or in his best interests but by which defendants profited at the
3 expense of plaintiff.

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

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

9
10 **SIXTH CAUSE OF ACTION AGAINST PPSI**
(Negligence II)

11 46. Paragraphs 1 through 45 are incorporated by reference.

12 47. As licensees engaged in the selling of securities and other investment products,
13 defendants William Landers, Jae Landers, Whitehorse, and Appaloosa were agents, servants,
14 employees, and joint venturers of licensee PPSI. As a result of this relationship, PPSI had a duty to
15 supervise defendants and review and approve all activities involving the sale of investment products
16 such as that sold to plaintiff. In addition, defendants and PPSI owed plaintiff a duty of honesty,
17 good faith and fair dealing.

18 48. PPSI breached its duties of care by failing to properly train, supervise, monitor, review,
19 and approve the sales activities of defendants William Landers, Jae Landers, Whitehorse, and
20 Appaloosa. As a proximate result of PPSI's breach, plaintiff has sustained damages, including but
21 not limited to the loss on the Investment of approximately \$240,000.

22
23 **SEVENTH CAUSE OF ACTION AGAINST PPSI**
(Elder Financial Abuse II)

24 49. Paragraphs 1 through 48 are incorporated by reference.

25 50. PPSI actively assisted and aided and abetted defendants William Landers, Jae
26 Landers, Whitehorse, and Appaloosa take, secrete, appropriate, and retain the property of plaintiff,
27 an elder, to a wrongful use within the meaning of Welfare & Institutions Code § 15610.30.

28 51. As a direct and proximate result of PPSI's wrongful conduct, plaintiff has been

1 deprived of his property, namely his money and other valuable property, has sustained related
2 damages, and has incurred attorney's fees and costs. As a direct and proximate result of this
3 wrongful conduct, plaintiff sustained mental distress, anguish, upset, and anxiety and various
4 physical complaints, medical ailments, and related injuries.

5 52. In addition to all other remedies provided by law, plaintiff is entitled to recover
6 reasonable attorney's fees and costs for financial abuse pursuant to Welfare & Institutions Code §
7 15657.5.

8 53. The conduct of these defendants constituted oppression, fraud, and malice in the
9 commission of the financial abuse, and plaintiff is entitled to recover damages for the sake of
10 example and by way of punishing them for financial abuse pursuant to Civil Code § 3294.

11 54. Plaintiff is entitled to recover up to three times the damages assessed pursuant to
12 Civil Code § 3345.

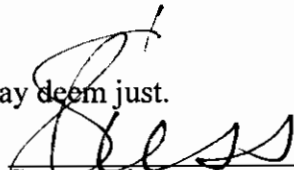
13 WHEREFORE, plaintiff prays for relief as follows:

- 14 1. Elder Financial Abuse I:
 - 15 a. Compensatory damages according to proof;
 - 16 b. Reasonable attorney's fees and costs according to proof;
 - 17 c. Punitive damages according to proof;
 - 18 c. Treble damages pursuant to CC § 3345;
- 19 2. Fraud:
 - 20 a. Compensatory damages according to proof;
 - 21 b. Punitive damages according to proof;
 - 22 c. Treble damages pursuant to CC § 3345;
- 23 3. Deceit:
 - 24 a. Compensatory damages according to proof;
 - 25 b. Punitive damages according to proof;
 - 26 c. Treble damages pursuant to CC § 3345;
- 27 4. Negligence I:
 - 28 a. Compensatory damages according to proof;

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- b. Treble damages and attorney's fees pursuant to CCP § 1029.8;
- 5. Breach of fiduciary duty:
 - a. Compensatory damages according to proof;
 - b. Punitive damages according to proof;
 - c. Treble damages pursuant to CC § 3345;
 - d. Reasonable attorney's fees and costs;
- 6. Negligence II:
 - a. Compensatory damages according to proof;
 - b. Treble damages and attorney's fees pursuant to CCP § 1029.8;
- 7. Elder Financial Abuse II:
 - a. Compensatory damages according to proof;
 - b. Reasonable attorney's fees and costs according to proof;
 - c. Punitive damages according to proof;
 - c. Treble damages pursuant to CC § 3345;
- 8. Interest pursuant to CC § 3287;
- 9. Costs pursuant to CCP § 1032; and
- 10. For such further relief as the court may deem just.

Dated: Aug. 27, 2010



Steven Riess
Attorney for Plaintiff Korbel