

ACCESS TO JUSTICE CONFERENCE

October 30, 2013

CASE SUMMARIES

A meritorious legal claim for elder financial abuse is one based on facts likely to result in a civil judgment, that is, a court determination that the plaintiff is entitled to recover from the defendant. However, a viable claim for elder financial abuse is a claim for which the filing of a lawsuit is justified. In other words, a meritorious claim is not always a viable claim. For example, an elder may be exploited for \$1,000 and therefore have a meritorious claim for financial abuse. However, the claim may not be viable because the costs of pursuing a lawsuit do not justify the amount likely to be recovered. Similarly, an elder may be exploited for \$100,000 and therefore have a meritorious claim for financial abuse. However, the claim may not be viable because the wrongdoer no longer has any money and the costs of pursuing a lawsuit do not justify the amount likely to be recovered.

The following documents describe four actual litigated cases involving elder financial abuse. Two of the cases concluded with successful outcomes and two concluded with unsuccessful outcomes. All of the cases were meritorious; however, only two were viable.

These four cases will be reviewed and discussed at the conference; please read this material prior to the start of the conference.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Santiago Serrata,

Plaintiff,

vs.

Sandra Castro, Michael Reyes, Steve Reyes,
Vision Quest 21, Inc., Bic Pho, and Does 1
through 20,

Defendants.

Case No. 1-06-CV-070364

**MEDIATION BRIEF OF PLAINTIFF
SANTIAGA SERRATA**

Mediator: Alex Saldamando
Date: February 27, 2007
Time: 10:00 a.m.

1. Statement of Facts.

This is an action for the tragic elder financial abuse of an elderly widowed woman by her grandsons – and one grandson’s girlfriend – who stole her entire life savings by tricking her into selling her home and taking all of the proceeds of sale. The plaintiff is now essentially destitute and lives as a guest in the home of a third grandson.

Plaintiff Santiago Serrata was born in San Luis Potosi, Mexico on July 26, 1926. In 1942, she immigrated to San Benito, Texas, where she met Desiderio Serrata. In 1957, Santiago and Desiderio married. In 1961, Santiago and Desiderio moved to San Jose, California. During their marriage, Desiderio worked as a clerk in a hardware store and in other retail sales positions; Santiago worked as a cook in a restaurant. Santiago had four children: Ramona was born in 1945

1 and her twin sister died at childbirth; a second daughter was born in 1950 and died at the age of one;
2 a son was born in 1954 and died at the age of 19. By 1965, Santiago and Desiderio were able to save
3 enough money to purchase a modest single family dwelling, located at 1483 Mount Lassen Drive, in
4 San Jose (the "San Jose House"), for \$15,500. Their sole surviving child, Ramona, became an adult
5 and had three children of her own: Rene Reyes, Steve Reyes, and Michael Reyes. In 1985,
6 Desiderio died; thereafter, title to the San Jose House was held in Santiago's name alone. In 1993,
7 Ramona died. With the death of her husband and only surviving child, Santiago's immediate family
8 consisted only of her three grandsons. Santiago speaks only Spanish and is dependent on her
9 grandsons for tasks requiring the ability to speak and read English.

10 All three grandsons grew up in the San Jose House, and after becoming adults, each has
11 lived there from time-to-time. Rene, the oldest, is now married, has two children, owns a home in
12 Fremont, and works as a handyman. Steve works at an auto parts store, and has one child, Vanessa;
13 since 1993, Steve and Vanessa resided with Santiago at the San Jose House. Michael is employed as
14 a truck driver for a beer distributor in Milpitas. From 1993 to 1995, Michael also lived at the San
15 Jose House. In 1995, he moved out and began cohabitating with Sandra Castro, with whom he has
16 had two children. Sandra is a licensed real estate agent and worked for a Century 21 realty office in
17 San Jose owned by defendants Vision Quest 21, Inc. and Bic Pho. Rene, Steve, Michael, and Sandra
18 are all fluent in English and Spanish. From time-to-time, all of them have assisted Santiago with
19 various tasks requiring English.

20 By 1995, the San Jose House had appreciated substantially in value. Sandra, the only person
21 in the family with any knowledge and experience with real estate, recognized this. Beginning with
22 her involvement with Michael and the family, a series of loans against the San Jose House began
23 draining the equity which had accumulated. In 1995, a bank loan was obtained in the approximate
24 amount of \$115,000. Steve, the grandson who was then living at the San Jose, was placed on title.
25 All of the loan and related documents were in English, which Santiago could not read. Santiago
26 signed the various documents after being instructed to do so. It is unclear what happened to the
27 proceeds of that loan. In 2001, a second loan in the amount of \$195,000 was obtained. A portion of
28 these loan proceeds were used to pay off the balance on the previous loan; again, it is unclear what

1 happened to the balance. In 2003, yet a third loan was obtained, this one in the amount of \$245,000.
2 Again, the previous loan was paid off and the balance used for unknown purposes. (In addition to
3 the encumbrances on the San Jose House, Steve obtained several credit cards in Santiago's name on
4 which he incurred charges; these cards are now in default with an unpaid balance of \$13,228, and
5 the credit card issuers are currently pursuing Santiago for payment.) As of 2004, the house had a
6 market value of \$440,000, with an outstanding encumbrance of approximately \$245,000.
7 Accordingly at that time, Santiago still had equity in the house of approximately \$200,000. As she
8 had no other funds, this equity represented the remaining portion of Santiago's entire life savings.

9 In 2004, Sandra and Michael began urging Santiago to sell the San Jose House and to
10 purchase a new and larger house in Manteca. They told her that they would then all be able to live
11 together and that Santiago would be able to see her great-grandchildren more often. Sandra and
12 Michael began looking at houses for sale in Manteca, and they encouraged the excitement of their
13 children, who also urged Santiago to sell the San Jose House. In connection with these pressure
14 tactics, Sandra told Santiago that Sandra would be able to handle all aspects of the sale and
15 paperwork through her position as a real estate agent at Century 21. Sandra reassured Santiago that
16 Century 21 was a large, honest, and credible real estate brokerage and that all of the details of the
17 transaction would be reviewed and approved by Sandra's supervising broker, Bic Pho. Santiago was
18 concerned about leaving the house and community where she had lived for more than 40 years but
19 finally relented to their pressure and agreed to sell the San Jose House.

20 In April, 2004, Sandra presented Santiago with an exclusive listing agreement and instructed
21 Santiago to sign it, notwithstanding that Sandra knew that Santiago could not read English. The
22 listing agreement provided for a sales commission of six percent and that Sandra would act as the
23 seller's agent and that Century 21 would be the selling broker. The San Jose House was offered for
24 sale, an offer was presented, and Sandra negotiated a sales price of \$440,000. Sandra opened an
25 escrow on Santiago's behalf and instructed the escrow officer to prepare seller's escrow instructions
26 according to terms dictated by Sandra. Sandra then presented these seller's instructions to Santiago
27 for signature. Sandra, Michael, and Steve all told Santiago that the net proceeds of sale of the San
28 Jose House would be used to purchase the Manteca House and that Santiago alone would own it.

1 Prior to the close of escrow on the San Jose House, Sandra presented an offer to purchase
2 the property located at 1763 Goldpoppy Street, in Manteca (the "Manteca House"). The offer was
3 made in the names of Sandra and Steve, with a purchase price of \$498,500. Apparently, Steve was
4 made a purchaser of the property because his name was still on title to the San Jose House and thus
5 had the ability to prevent the closing on the San Jose House. On May 25, 2004, escrow for the sale
6 of the San Jose House closed. The seller's escrow instructions, drafted by Sandra, provided for the
7 following disbursement of the net proceeds of sale:

| Payee | Amount |
|---|-----------|
| Real estate commissions | \$26,400 |
| Escrow fees, title charges, related expenses of sale, and other charges | \$44,334 |
| Payoff of encumbrance | \$243,363 |
| Child support payments due from Steve to Santa Clara County | \$5,903 |
| Cash to Michael | \$15,000 |
| Cash to Rene | \$15,000 |
| Cash to escrow on the purchase of the Manteca House | \$90,000 |
| Total purchase price | \$440,000 |

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15 On June 25, 2004, escrow for the purchase of the Manteca House closed. A loan in the
16 amount of \$398,604 was obtained by Sandra and was issued in the names of Sandra and Steve; the
17 balance of the purchase price of \$100,000 was paid with the cash proceeds from the sale of the San
18 Jose House. Title to the Manteca House was taken by Sandra and Steve, and notwithstanding
19 defendants' numerous assurances, Santiago was not placed on title.

20 After the close of escrow on the Manteca House, Santiago resided there for a short time,
21 together with Sandra, Michael, their children, and Steve (the Manteca House has six bedrooms, four
22 baths, and a three car garage). On May 24, 2005, Sandra paid off Steve, who quitclaimed his
23 interest in the Manteca House to Sandra; thereafter, Sandra alone held title to the property. On June
24 7, 2005, Sandra refinanced the Manteca House with a loan of \$476,000 and paid off the prior loan
25 of \$398,604. From the net proceeds, Sandra and Michael paid off the debt on Sandra's 2003 Ford
26 Expedition in the amount of \$28,000, purchased a new BMW, and a Harley-Davidson motorcycle,
27 and removed other cash. Santiago now lives as a guest in the Fremont home of Rene and his family.
28 The \$15,000 disbursed to Rene from the close of escrow on the San Jose House, together with

1 interest, has now been returned to Santiago.

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Nelda Myers,

Plaintiff,

vs.

Ferne Van Deusen, James Pinkerton,
And Does 1 through 20,

Defendants.

Case No. CGC-10-503228

**MEDIATION BRIEF OF PLAINTIFF
NELDA MYERS**

Date: April 19, 2011

Time: 2:30 PM

Dept: 306

1. Statement of facts.

Plaintiff Nelda Myers (Nelda) was born on September 23, 1925 and is currently 85 years old. Defendant Ferne Van Deusen (Ferne) is Nelda's niece and a resident of Tucson, Arizona; defendant James Pinkerton (James) is Nelda nephew and is a resident of Los Gatos. Nelda has resided in San Francisco since 1943. From 1943 until 1984, Nelda was employed by AT&T. Initially she was employed as a clerk, and thereafter was promoted to Manager in the General Administration Department. From 1964 until January 2008, Nelda resided continuously at 2291 Stockton Street, Apartment 206, in San Francisco, located at the corner of Stockton and Northpoint Streets, at Fisherman's Wharf two blocks above The Embarcadero. Nelda moved into this apartment one year after the building was constructed and resided continuously in the same one bedroom garden apartment with a private patio, landscaping, and a pool for 44 years. Her building enjoyed views of the Bay and was safe and conveniently located. Nelda knew most of her neighbors in the

1 building and had long-time acquaintances in the immediate neighborhood. Many years ago, her
2 apartment became subject to rent control and as of January 2008, Nelda paid rent of only \$890 per
3 month. Over the 44 years that Nelda lived in this apartment, she accumulated furniture, household
4 appliances, clothing, jewelry, a computer, and various other household effects. She also collected
5 artwork, which while not having great economic value, was of substantial sentimental value to her.
6 For example, one painting was purchased in the late 1940's for \$250 and was a gift from a close
7 friend; another painting was purchased by Nelda in Mexico City while there on vacation. The
8 apartment also contained all of Nelda's financial documents and other personal papers, including
9 her stock certificates, US savings bonds, and bank records.

10 On October 5, 2000, Nelda executed a springing power of attorney that nominated defendant
11 Ferne, as attorney-in-fact. Paragraph two of the power of attorney provided that the power conferred
12 shall become effective upon the delivery of a written and signed opinion by a licensed physician
13 that Nelda was physically or mentally incapable of managing her finances. It further provides that
14 upon delivery of a subsequent writing from a physician that Nelda no longer was so disabled, that
15 the power conferred would terminate. Paragraph four prohibits the agent from using any of Nelda's
16 assets for the agent's own uses. Around that same time, Nelda executed an Advance Health Care
17 Directive (Power of Attorney for Health Care) in which she nominated defendant James as attorney-
18 in-fact.

19 On January 12, 2008, Nelda suffered a stroke. She was taken by ambulance from her
20 apartment to California Pacific Medical Center in San Francisco. Nelda remained in the hospital for
21 a number of days, and on January 25, 2008, Cleon Yee, M.D. wrote a letter to the effect that Nelda
22 was sufficiently impaired that she could not then manage her financial affairs. Ferne was notified of
23 Nelda's stroke and travelled from her home in Tucson to San Francisco. Under the previously
24 executed power of attorney, Ferne took possession of Nelda's assets. She presented copies of the
25 power of attorney to Patelco Credit Union and Wells Fargo Bank where Nelda had accounts and
26 Ferne had her own name added to these accounts. Ferne then proceeded to physically remove the
27 stock certificates, jewelry, and other personal property from Nelda's apartment. Ferne contacted the
28 Social Security Administration and directed that Nelda's monthly benefits be paid to an account

1 opened solely in Ferne's name. James arranged for Nelda to be transported to Belmont Village, an
2 assisted living facility in San Jose; the monthly expense at Belmont Village was approximately
3 \$4,500. James instructed the administration at Belmont Village that under no circumstances was
4 Nelda to be permitted to leave the facility unless accompanied by James or with James's explicit
5 permission. Ferne terminated Nelda's lease on her apartment and disposed of Nelda's household
6 furnishings, clothing, kitchen appliances, computer, artwork, and personal papers. Ferne shipped
7 various personal property to Ferne's home in Tucson, and thereafter "gifted" this property to
8 various family members. Ferne contacted the Salvation Army and asked that they haul away
9 Nelda's remaining property. All other remaining property was then hauled away as rubbish and
10 discarded. Ferne contacted the United States Postal Service and directed that Nelda's mail be
11 forwarded to Ferne's residence in Tucson. Ferne removed money from Nelda's bank accounts and
12 deposited the stock certificates in various unidentified brokerage accounts. James assisted Ferne and
13 participated in accomplishing the removal, disbursal, and disposal of Nelda's property.

14 During the months following her stroke and while residing at Belmont Village, Nelda
15 struggled to recover her lost independence. Nelda repeatedly contacted Ferne and James and told
16 them that she did not need or want to stay at Belmont Village and that she wished to return to her
17 apartment in San Francisco and resume her former life. Nelda insisted that her apartment not be
18 abandoned. Ferne and James told Nelda that her apartment had been given to someone else, that all
19 of her household furnishings had been discarded, that her jewelry, art work, computer, and other
20 possessions had been given away, and that her previous life was over. Ferne told Nelda that her
21 doctors had determined that Nelda was a "psycho" and incapable of caring for herself and that she
22 would have to accept permanently living in an institution and with Ferne controlling her affairs.
23 Ferne and James told Nelda that if she caused problems that they would arrange a conservatorship
24 and that Nelda would then be placed in an institution that she might find even less to her liking.

25 Despite these threats, Nelda continued her efforts to recover control of her life. She
26 attempted to recruit the assistance of the personnel at Belmont Village but was unsuccessful
27 because of the explicit instructions given by James. In summer, 2008, approximately six months
28 after her stroke, Nelda contacted Michael Handlos, the San Francisco attorney who had previously

1 drafted her estate planning documents. Nelda explained her predicament and Mr. Handlos agreed to
2 assist her. On September 29, 2008, Mr. Handlos contacted Dr. Joshua Rassen, M.D., Nelda's
3 internist for more than 22 years, and asked him to evaluate Nelda's mental and physical ability to
4 manage her financial affairs. On October 1, 2008, Dr. Rassen examined Nelda. By letter dated
5 October 22, 2008, Dr. Rassen stated:

6 "Her normal mental status is that of [a] bright, alert, direct, and articulate individual. . . . The
7 patient appears to be very clear and oriented at this time. I really could not detect any
8 indication of significant dementia. . . . I feel that Ms. Myers exhibited her usual clarity of
thought and appeared to be, to my best assessment, physically and mentally capable of
managing her finances at this time."

9 During the summer of 2008, Nelda had repeatedly requested, demanded, and pleaded with
10 Ferne and James to allow her to leave the confines of Belmont Village and return to her home in
11 San Francisco. They ignored Nelda's requests and Nelda felt imprisoned, distraught, and extremely
12 frustrated. In October, 2008, Ferne picked Nelda up in San Jose and drove her to San Francisco.
13 When they arrived in San Francisco, Ferne announced for the first time that she and James were
14 transferring Nelda to a new assisted living facility on Sutter Street called Coventry Park. The
15 monthly expense of Coventry Park was \$4,600. Nelda was extremely dissatisfied with this
16 arrangement but acquiesced because it at least allowed her to return to San Francisco.

17 By letter dated November 11, 2008, Mr. Handlos forwarded a copy of Dr. Rassen's letter to
18 Ferne and reminded Ferne that the power of attorney under which she had previously acted
19 provided for the termination of the agent's authority upon delivery of an opinion signed by a
20 licensed physician that Nelda was capable of managing her financial affairs. In this letter, Mr.
21 Handlos also demanded that Ferne deliver an accounting and report her acts under the power of
22 attorney. On November 17, 2008, Nelda wrote to Ferne and demanded that her property be returned
23 to her. On November 22, 2008, Nelda executed a Notice of Revocation of Durable Power of
24 Attorney, drafted by Mr. Handlos and expressly revoked any and all authority which had been given
25 to Ferne. By letter dated November 26, 2008, Ferne responded to Mr. Handlos and informed him
26 that Ferne did not accept the opinion of Dr. Rassen and that she would not return Nelda's assets
27 unless Mr. Handlos travelled to Arizona to meet with Ferne. Ferne's letter states:

28 "I will turn over Aunt Nelda's assets only after I have met with you personally – in Tucson –

1 and seen your documentation, including the financial agreement entered into between you
2 and Aunt Nelda to the handling of her financial affairs. I am not prepared to turn over Aunt
3 Nelda's assets to a stranger until I see documents authenticating your authority and
4 accountability."

5 In December, 2008, Mr. Handlos became critically ill, and soon thereafter, died. In January,
6 2009, Nelda contacted Neal McGettigan, an attorney and associate of Mr. Handlos. Mr. McGettigan
7 agreed to continue assisting Nelda. On February 12, 2009, Mr. McGettigan wrote to Ferne and
8 reiterated earlier demands that Ferne return Nelda's property and deliver an accounting. Ferne
9 persisted in her refusal to return Nelda's property and again ignored the demands for an accounting.

10 Soon after Nelda moved into Coventry Park, she realized that she was not receiving any
11 mail. She learned that Ferne had informed the US Postal Service that all mail sent to Nelda at this
12 new address should be forwarded to Ferne in Tucson. Ferne would open the mail addressed to
13 Nelda and would occasionally forward selected contents to the management at Coventry Park with
14 instruction that it be delivered to Nelda. When Nelda realized that Ferne was intercepting her mail,
15 Nelda notified the US Postal Service that mail addressed to her should be delivered to her and not to
16 Ferne. For a short time, mail was delivered directly to Nelda, but once again, Ferne directed the US
17 Postal Service to forward Nelda's mail to Ferne. Nelda again contacted the US Postal Service to re-
18 establish her mail delivery; again, Ferne had Nelda's mail forwarded to Tucson. Finally, in
19 desperation, Nelda opened a post office box at a private postal service facility so that she could
20 directly communicate by mail with her attorney and others without those communications being
21 intercepted by Ferne.

22 On September 22, 2009 and without Nelda's knowledge or approval and in direct violation
23 of the terms of the power of attorney – which in any event had been terminated a year earlier –
24 Ferne electronically transferred \$19,000 from Nelda's Wells Fargo account to an account owned
25 and used solely by Ferne. Two days later, on September 24, 2009, Ferne electronically transferred
26 an additional \$21,000 from Nelda's account to Ferne's account.

27 In December 2009, Ferne stopped paying the rent at Coventry Park. At this point, Nelda was
28 left with approximately \$5,000 in her bank accounts; her monthly Social Security and pension
income was still being automatically deposited in accounts controlled by Ferne, and her various

1 expenses were becoming overdue. In January 2010, Adult Protective Services of the City and
2 County of San Francisco referred Nelda to a local bar referral panel that in turn referred her to
3 attorney Steven Riess.

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

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

Plaintiff,

vs.

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

Defendants.

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

PLAINTIFF'S TRIAL BRIEF

**Trial date: March 4, 2011
Dept: N-30**

Related probate matter:

Conservatorship of the person and estate of
Vesta Maraccini,

37-2009-00150241-PR-CP-ROA48

1. Summary of facts.

Plaintiff Vesta Maraccini was born on October 17, 1920 in Greenville, Texas; she is currently 90 years old, suffers from advanced stage Alzheimer's disease, and resides at a secured-perimeter facility. As a child during the depression, her parents moved with their three children to California and found work picking fruit. They followed the fruit crops for several years, and Vesta was only able to attend school sporadically as the family moved from town to town following the crops. Vesta's father was eventually able to open a small family-run restaurant in Calipatria,

1 California. However several years later, her parents divorced, and her father returned to Texas and
2 had no further contact with the children. Vesta briefly attended high school in Calipatria but
3 dropped out in her senior year when she became pregnant; she never returned to school. In 1939,
4 Vesta gave birth to her son, Dale Greer. She was briefly married to Dale's father, but they divorced
5 soon after Dale was born.

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

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

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

1 Beginning in the early 1990's, Vesta's vision began to deteriorate. In 1995, she was
2 diagnosed with macular degeneration and cataracts and was declared legally blind. For the next
3 several years, Dale began to visit regularly to bring groceries and write out checks to pay Vesta's
4 monthly bills. When Dale was unavailable, Vesta would have laborers and others to whom she
5 owed money write out their own checks. Vesta would then sign the checks by having the payee
6 place a ruler on the signature line and using it as a guide. Vesta could not see well enough to count
7 money and she was becoming increasingly confused so that she began to hand envelopes of cash to
8 payees so they could count out their own pay. In 2006, Vesta and Dale had a disagreement, and
9 Dale stopped visiting his mother. Vesta then had various people help her write checks until 2007
10 when defendant Jack Vasconcellos took over the task.

11 Since approximately 2000 when Vesta was 80 years old, her living situation steadily
12 declined. Her home became dilapidated and was overrun by feral cats and dogs. At one time, she
13 kept a pack of seven dogs around her house, and a large number of cats. One particularly large and
14 mean cat was locked into a bedroom and not allowed to leave. The carpet in that bedroom, as well
15 as throughout the house, was soaked with urine and feces. People who entered the house were
16 assaulted by the smell.

17 In February of 2008, Vesta became very ill, and a neighbor was finally able to convince her
18 to visit a doctor. The doctor found that Vesta was suffering from dementia and at 88 pounds was
19 severely under-weight. Attempts were made to involve Dale in her care but he refused to help.
20 Although Vesta's stepson, Michael, lived in Reno, he agreed to help and began visiting Vesta once
21 or twice a month and to arrange for her care. Home care became unsustainable, and in April 2009,
22 Michael arranged to have Vesta moved into a secured-perimeter Alzheimer's care facility. On July
23 23, 2009, Michael was appointed conservator of Vesta's person and estate. In reviewing Vesta's
24 financial records, Michael first became aware of the wrongful taking of Vesta's money by
25 defendant Vasconcellos, the conduct which forms the basis of this lawsuit.

26 Vesta's mother, Erma, first introduced Vesta to defendant Vasconcellos. Erma had met
27 Vasconcellos through her activities in her church. Vasconcellos is a former licensed life agent
28 (California Department of Insurance license 0825078) and former licensed stock broker (FINRA

1 license number CRD# 2749202). From time to time he would also engage in business under the
2 fictitious business name of Jaclyn Investment Group (“Jaclyn”); the fictitious business name was
3 officially abandoned in 2001. At one point, Vasconcellos incorporated Jaclyn but it was suspended
4 in 2005. Notwithstanding the abandonment and dissolution of this entity, Vasconcellos continued to
5 use the business name and continued to maintain a bank account in its name. By order filed June 7,
6 2010, this court ruled that any liability of Jaclyn shall be imposed jointly and severally on
7 Vasconcellos.

8 In 2008, Vasconcello’s stock broker’s license was revoked and he was barred from
9 association with any securities dealer based upon findings that he had wrongfully taken
10 approximately \$128,000 from several of his customers as annuity premiums, deposited the money
11 into his own bank account, and had created fictitious annuity documents that he gave to his
12 customers to conceal his taking of their money. The findings also included that Vasconcellos failed
13 to respond to FINRA requests for information or documents and to appear for an on-the-record
14 interview. (FINRA Case #2007011325401.)

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

18 On or about April 2, 1999, Vasconcellos received check number 1619 from Vesta in the
19 amount of \$7,000. The memo on the check states: “3 Month Loan.” (A true and correct copy of the
20 check is attached to the complaint as Exhibit 1.) Vasconcellos cashed the check. Because Vesta’s
21 bank no longer retains records from this time, plaintiff is unable to determine if any portion of this
22 money was repaid.

23 On November 12, 2001, Vasconcellos received \$15,000 from Vesta and on December 10,
24 2001, Vasconcellos received an additional \$10,000 from Vesta. These payments were purportedly
25 for the purchase of a \$25,000 annuity issued by “Cova Premier Advisor,” contract number
26 C570094254CA. Shortly thereafter, Vasconcellos delivered to Vesta a seven page document
27 purporting to be the annuity contract. No such annuity contract exists and the transaction was a
28 fabrication created by Vasconcellos for the purpose of defrauding Vesta. However, plaintiff

1 acknowledges that the \$25,000 received by Vasconcellos has now been returned.

2 On or about January 25, 2007, Vasconcellos received check number 3953 from Vesta in the
3 amount of \$79,000. The check was written by Vasconcellos and signed by Vesta. (A true and
4 correct copy of the check is attached to the complaint as Exhibit 2.) Vasconcellos made the check
5 payable to "Jaclyn Investment Group" even though that fictitious business name had been
6 abandoned in 2001 and the corporation had been dissolved in 2005. Vasconcellos cashed the check
7 and spent the money for his personal use.

8 On March 14, 2009, Michael Maraccini discovered that Vasconcellos had been writing
9 Vesta's checks and had sold her various questionable investments; he also discovered the cancelled
10 check for \$79,000 to Jaclyn. He questioned Vasconcellos about these transactions. Vasconcellos
11 initially told Michael that the \$79,000 had been used to purchase an annuity for Vesta. However
12 later when pressed for further details, Vasconcellos acknowledged that the money had not been used
13 to purchase an annuity, had been used by him personally, and stated that he would return the funds.
14 However, Vasconcellos never returned any portion of this money.

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ENDORSED
FILED
San Francisco County Superior Court

SFP 26 2012

CLERK OF THE COURT
BY: DEBORAH STEPPE
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

C G C - 12 - 524703

Orlando Clark, MD,

Plaintiff,

vs.

Verna Eberhardt, Brenda Spann, Laura Williams,
and Does 1 through 20,

Defendants.

Case No.

VERIFIED COMPLAINT FOR:

1. Elder Financial Abuse
2. Breach of Fiduciary Duty

PRELIMINARY ALLEGATIONS

1. Defendants Verna Eberhardt ("Eberhardt"), Brenda Spann ("Spann"), and Laura Williams ("Williams") are natural persons over the age of 18 years.

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

3. At all times mentioned, each defendant was an agent, servant, employee, partner, and joint venturer of each and every other defendant and was acting within the course and scope of this

Verified Complaint

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

2 4. This court is a proper court in which to bring this action because the wrongful
3 conduct of each defendant occurred here.

4 **GENERAL ALLEGATIONS**

5 5. Plaintiff Orlando Clark, MD was born on March 18, 1922 in Chattanooga,
6 Tennessee, the second of six children. In 1943, Dr. Clark graduated from Tuskegee Institute in
7 Tuskegee, Alabama and was awarded a Bachelor's Degree in elementary education. In 1943, Dr.
8 Clark enlisted in the United States Army, quickly rising to the rank of Staff Sergeant. In December
9 1944, he served on active duty in the Ardennes Offensive (known as the Battle of the Bulge) and
10 was awarded two Bronze Stars for bravery and meritorious service. Following World War II, Dr.
11 Clark attended Howard University in Washington D.C. and graduated magna cum laude. Dr. Clark
12 was then commissioned as an officer in the United States Public Health Service and in 1952
13 received his medical degree from Howard University. He rose to the rank of Colonel and was
14 named Chief of Ambulatory Services, specializing in internal medicine. In 1974, Dr. Clark was
15 honorably discharged and retired from the United States Public Health Service and was then named
16 Director of the International Medical Center in San Francisco. He held this position until his
17 retirement in 2004 at the age of 82.

18 6. For many years, Dr. Clark lived alone at 18 Jade Place in San Francisco, a single
19 family residence that he had purchased in 1978. At the time of his retirement in 2004, his health was
20 reasonably good, although he had been diagnosed with Parkinson's Disease. Thereafter, the disease
21 rapidly and progressively affected his mobility, speech, and ability to care for himself.

22 7. Dr. Clark's youngest brother and sole surviving sibling is Harold Clark, a resident of
23 Michigan. Harold Clark has three adult daughters, defendant Verna Eberhardt, defendant Brenda
24 Spann, and defendant Laura Williams. Thus Eberhardt, Spann, and Williams are Dr. Clark's nieces.

25 8. By 2007, Dr. Clark's symptoms had progressed such that he was no longer able to
26 effectively care for himself. Accordingly in 2007, Eberhardt traveled from Michigan to San
27 Francisco for the purpose of assisting Dr. Clark. Eberhardt resided in Dr. Clark's home and
28 provided him with custodial care, including but not limited to the following activities: shopped for

1 groceries; prepared meals; attended to his personal needs; made beds; retrieved mail; opened mail;
2 organized mail; assisted with correspondence; assisted him in getting to and from the bathroom;
3 helped him into bed; fixed his hair; cleaned his bedroom; did laundry; washed his face and hands;
4 helped organize and administer medications; assisted with miscellaneous household chores; assisted
5 with care of the garden and house; and facilitated the payment of bills. As a result of providing
6 these and other similar services and assistance, Eberhardt was a care custodian for Dr. Clark within
7 the meaning of Welfare & Institutions Code § 15610.17. In acknowledgment of the assistance
8 provided by Eberhardt from 2007 until July 2010, Dr. Clark made various cash payments to
9 Eberhardt.

10 9. Dr. Clark owned various investments and accounts but maintained his primary
11 checking account at CitiBank (account number 524203270). When Eberhardt moved into Dr.
12 Clark's home, she began to screen his mail and thereby limit his access to various investment
13 account statements and notices. Thus Dr. Clark was unaware when investments matured, and the
14 proceeds of these investments were deposited into his checking account at CitiBank rather than
15 being reinvested as had previously occurred. Accordingly, the balance in the CitiBank account
16 became quite high. Although Dr. Clark owned a computer, he never became proficient in its use and
17 never used it for on-line banking. After Eberhardt began caring for Dr. Clark, she would accompany
18 him to a CitiBank branch and assist him with cash withdrawals through an ATM. Through the use
19 of the ATM, Eberhardt learned Dr. Clark's personal identification number for his CitiBank account.

20 10. In spring, 2010, Eberhardt decided to return to Michigan for several months.
21 Accordingly, Eberhardt's sister, defendant Spann, travelled from Michigan to San Francisco to take
22 over the custodial activities performed by Eberhardt. Spann resided in Dr. Clark's home and
23 provided him with custodial care, including but not limited to the following activities: shopped for
24 groceries; prepared meals; attended to his personal needs; made beds; retrieved mail; opened mail;
25 organized mail; assisted with correspondence; assisted him in getting to and from the bathroom;
26 helped him into bed; fixed his hair; cleaned his bedroom; did laundry; washed his face and hands;
27 helped organize and administer medications; assisted with miscellaneous household chores; assisted
28 with care of the garden and house; and facilitated the payment of bills. As a result of providing

1 these and other similar services and assistance, Spann was a care custodian for Dr. Clark within the
2 meaning of Welfare & Institutions Code § 15610.17. In acknowledgment of the assistance provided
3 by Spann in 2010, Dr. Clark made cash payments to Spann.

4 11. From March 24 to September 7, 2010, Eberhardt, Spann, and Williams, and each of
5 them, initiated 23 unauthorized transfers out of Dr. Clark's CitiBank checking account; these
6 transfers were payable to Eberhardt, Spann, Williams, and their father Harold Clark and totaled
7 \$427,500. (Attached as Exhibit 1 is a summary of these transfers. Attached as Exhibit 2 are true and
8 correct copies of CitiBank account statements and endorsed checks showing these transfers.) Other
9 than the \$1,000 ATM cash withdrawal on July 26, 2010, all of these transactions were
10 accomplished by computer initiated transfer request. The 11 transactions for \$10,000 were initiated
11 by computer check requests and are the maximum amount permitted for such an online transaction.
12 The six transactions for \$50,000 were initiated by computer wire-transfer requests and are the
13 maximum amount permitted for this type of online transfer. All of these transfers were
14 accomplished by Eberhardt, Spann, and Williams by computer using Dr. Clark's personal account
15 information and without his knowledge or consent. Had defendants requested authorization to
16 transfer these amounts, Dr. Clark would have refused.

17 12. Robert Fleming has resided at 25 Jade Place in San Francisco since 1977; Fleming
18 has been Dr. Clark's neighbor and friend for more than 30 years. Over the years, Dr. Clark and
19 Fleming regularly visited each other on numerous occasions. Each entrusted the other with keys to
20 their homes. However as Dr. Clark became increasingly impaired, the frequency of these visits
21 decreased. In October 2007 and at Dr. Clark's request, Fleming and Fleming's partner, John
22 Hampel, witnessed Dr. Clark's will at Dr. Clark's residence.

23 13. At the time Eberhardt assumed custodial care of Dr. Clark in 2007, Fleming typically
24 saw, telephoned, or visited Dr. Clark about once per month. However soon after Eberhardt's arrival,
25 Eberhardt began limiting Dr. Clark's availability for such visits. On repeated occasions, Fleming
26 would come to Dr. Clark's door and ask to see Dr. Clark. On these occasions, Eberhardt would
27 refuse Fleming's request to visit, giving explanations such as Dr. Clark was not feeling well enough
28 for visitors, that he was resting in bed, that he was sleeping, or that he would not recognize Fleming.

1 Fleming became increasingly concerned about Dr. Clark's well-being and isolation but was
2 reluctant to intrude on the internal family affairs of his neighbor.

3 14. On July 14, 2010, Dr. Clark was transported by ambulance to the University of
4 California Hospital in San Francisco. He was there examined and it was determined that he was
5 extremely malnourished, weighing less than 100 pounds, was very weak, was depressed, and was
6 suffering from advanced symptoms of Parkinson's Disease. Dr. Clark was then admitted to the
7 hospital as an in-patient. On July 16, 2010, Dr. Clark was referred by his attending physician to
8 Brent Davis, staff chaplain, and thereafter Patrick Marsh, staff social worker. Both noted that Dr.
9 Clark told them that his nieces were doing things to accelerate his demise, such as stopping Meals
10 on Wheels without consulting him, reducing his caloric in-take, screening his telephone calls, and
11 isolating him from his friends and acquaintances. He also told them that while he had given
12 defendants money, that they were taking additional amounts from him without his permission. The
13 matter was then reported to Adult Protective Services.

14 15. On July 17, 2010, Dr. Clark was discharged from University of California Hospital-
15 Mt. Zion and was transferred to the Jewish Home of San Francisco. He resided there until August
16 23, 2010, when he was transferred to a board and care facility in San Bruno, Christina's Care
17 Homes. When learning of Dr. Clark's whereabouts, Fleming visited him at the board and care
18 facility, where Dr. Clark told Fleming that Eberhardt and Spann had isolated him in his bedroom,
19 had not allowed others to visit him, and that he had not gotten enough to eat. Dr. Clark told Fleming
20 he suspected his nieces were taking money from his account without his permission. Dr. Clark
21 asked Fleming if he would be willing to serve as his power of attorney. After further discussion and
22 serious consideration, Fleming agreed to serve as Dr. Clark's power of attorney.

23 16. On September 20, 2010, Dr. Clark met with his attorney, Shaun Carberry, at the
24 board and care facility in San Bruno for the purpose of executing a durable power of attorney
25 appointing Robert Fleming as Clark's attorney-in-fact, and those papers were signed and notarized
26 on September 20, 2010. Also at that time, Clark explained to Carberry his concern that a substantial
27 amount of money had been wrongfully taken from him by Eberhardt, Spann, and Williams, and that
28 he wished to make a new will. Carberry agreed to work with him on developing a new will, a

1 process that was later concluded on November 19, 2010.

2
3 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**

4 **(Elder Financial Abuse)**

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

6 18. From March 24 to September 7, 2010, defendants Eberhardt, Spann, and Williams,
7 and each of them, initiated transfers of money from Dr. Clark's CitiBank account in various
8 amounts totaling \$427,500. All of these transfers occurred without the knowledge or permission of
9 Dr. Clark. The taking of this money constitutes the taking of property of an elder for a wrongful use
10 and with the intent to defraud within the meaning of Welfare & Institutions Code § 15610.30.
11 Defendants engaged in such conduct either directly, or assisted others in such conduct.

12 19. Williams both actively engaged and participated in the transfer of money from Dr.
13 Clark's CitiBank account to defendants and assisted Eberhardt and Spann in accomplishing these
14 transfers. Such conduct constitutes the taking of property of an elder, or the assisting in such taking,
15 for a wrongful use and with the intent to defraud within the meaning of Welfare & Institutions Code
16 § 15610.30.

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

22 21. In addition to all other remedies provided by law, plaintiffs are entitled to recover
23 reasonable attorney's fees and costs for financial abuse pursuant to Welfare & Institutions Code §
24 15657.5.

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