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11 **IN THE UNITED STATES DISTRICT COURT**
 12 **FOR THE DISTRICT OF ARIZONA**

13 HELGA MALLET, an adult individual,
 14
 15 Plaintiff,

Case No.:

16 vs.

COMPLAINT

17 GERD ZIMMERMANN and JANE DOE
 18 ZIMMERMANN, husband and wife;
 19 ZIMMERMANN, NIELSEN &
 20 COLLEAGUES, an Arizona professional
 21 limited liability corporation; THE SUN
 22 VALLEY GROUP, INC., an Arizona
 23 corporation; ALISA GRAY and JOHN
 24 DOE GRAY, wife and husband; GRAY &
 25 FASSOLD, P.C., an Arizona professional
 26 corporation; PETER FRENETTE and
 HEATHER FRENETTE, husband and
 wife; SOUTHWEST FIDUCIARY, INC.,
 an Arizona corporation; CHARLES M.
 DYER and JANE DOE DYER, husband
 and wife; KHALIL SAIGH and JANE
 DOE SAIGH, husband and wife; DYER
 & FERRIS, LLC, an Arizona limited
 liability corporation; GREGORY
 DOVICO and PEGGY DOVICO, husband
 and wife; DOE
 INDIVIDUALS/ENTITIES I - XX,

- (1) Federal RICO Claim: 18 U.S.C. §§ 1961, 1962 *et seq.*
- (2) Civil Rights (Private Parties) Violations Under 42 U.S.C. § 1983
- (3) Arizona Racketeering Act (“AzRac”) A.R.S. § 13-2314.04(A); 13-2310
- (4) Breach of Fiduciary Duty/Malpractice
- (5) Violations of A.R.S. § 46-456 (Adult Protective Services Act/Vulnerable Adult - “APSA”)
- (6) Consumer Fraud, A.R.S. § 44-1521/44-1522(A) *et seq.*

Defendants.

JURY TRIAL DEMANDED

1 Plaintiff Helga Mallet (“Helga”), for her Complaint against Defendants, and
2 each of them, alleges as follows:

3 **SUMMARY OF COMPLAINT**

4 1. This case arises from systemic abuses in the Arizona probate system by
5 a group of corporate entities, individuals and licensed professionals who, over the
6 course of a couple of years, colluded for the common benefit of their association-in-
7 fact enterprise (the “Enterprise” or “Syndicate”). This conduct is still engaged in by
8 the Syndicate exploiting vulnerable adults who have significant net worth by: (1)
9 having them (vulnerable adults) involuntarily declared incapacitated or incompetent;
10 (2) getting members of the Enterprise placed in positions of authority, power and
11 control over these vulnerable adults and their assets, as court-appointed attorneys,
12 guardians, conservators, fiduciaries, physicians, etc.; (3) then, working in concert to
13 siphon off the victims’ cash and assets in payment of inflated and predatory fees to
14 the participants in the Enterprise or their agents, employees or affiliated persons or
15 entities; and (4) ultimately abandoning their victims once their trust accounts and
16 other assets have been dissipated.

17 2. This exploitative scheme has continued unabated. Judges and
18 commissioners tasked with overseeing the probate process have simply “rubber
19 stamped” the actions of the participants in the Enterprise. Meaningful objections are
20 not made to one another’s requests for approval of outrageously inflated fees charged
21 their victims. The Syndicate uses threats and intimidation to keep “outsiders” from
22 looking too closely at their activities through threats of “legal action” or effective
23 extortion.

24 3. Through this Enterprise, Defendants, jointly and severally, violated
25 Federal RICO and Arizona Racketeering laws through a scheme and artifice to
26 defraud and financially exploit vulnerable adults like Ms. Mallet by, among other

1 things, depriving them of their right to honest services as defined in A.R.S. § 13-
2 2310(E), obtaining benefits by means of false or fraudulent pretenses in violation of
3 A.R.S. § 13-2310(A) and using their victims' assets to benefit themselves in violation
4 of A.R.S. § 46-456(a). Defendants have violated Ms. Mallet's constitutional rights to,
5 among other things, a life and liberty, property and due process, and have knowingly
6 breached their fiduciary duties and committed professional malpractice with the
7 singular intent to enrich the Syndicate, and themselves, at the expense of vulnerable
8 adults like Ms. Mallet and the taxpayers of Arizona.

9 4. Accordingly, Plaintiff is seeking and is entitled to recover treble
10 damages, costs, attorneys' fees, and punitive damages in an amount sufficient to
11 properly punish Defendants' conduct and deter Defendants and others similarly
12 situated from engaging in such conduct in the future.

13 **JURISDICTION AND VENUE**

14 5. This Court has federal question jurisdiction under the Constitution,
15 laws, or treaties of the United States pursuant to 28 U.S.C. § 1331, and, to the extent
16 asserted, supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

17 6. Claims arising under 42 U.S.C. § 1983 are governed under state law for
18 purposes of the statute of limitations. The statute of limitations, however, for accrual
19 purposes, is controlled by federal law. This includes equitable tolling and/or tolling
20 of the statute for fraudulent concealment. Subject matter jurisdiction exists under 28
21 U.S.C. §1343(a)(4).

22 7. This Court has federal question jurisdiction over this cause of action,
23 *sua sponte*, under principles enunciated in *In re Intermagnetics America, Inc.*, 926
24 F.2d 912 (9th Cir. 1991); *Landis Revin Neutraceuticals v. Arthur Medical*, 2007 WL
25 397144 (E.D.Cal.); *Dixon v. C.I.R.*, 316 F.2d 1041 (9th Cir. 2003); *U.S. v. Arias-*
26

1 *Villaneuva*, 998 F.2d 1491 (9th Cir, 1993); 18 U.S.C. §1621(1) (fraud on the Court, by
2 officers of the Court).

3 8. Venue is proper under 28 U.S.C. §1391, together with statute specific
4 venue provisions applicable to the counts enumerated below, including, but not
5 limited to violations under 42 U.S.C. §1983.

6 **PARTIES**

7 9. Plaintiff Helga Mallet (hereinafter referred to as “Plaintiff,” “Mallet” or
8 “Plaintiff Mallet”) is an adult resident of the State of Arizona within the County of
9 Maricopa.

10 10. Plaintiff Mallet is the beneficiary of the Helga Mallet Trust first dated
11 January 18, 1995 and the Helga Mallet Trust first dated May 25, 2007 (the “Mallet
12 Trusts”).¹

13 11. Plaintiff Mallet is also, ironically, the protected person pursuant to *In re*
14 *The Matter of the Guardianship and Conservatorship for Helga Mallet*, Maricopa
15 County Superior Court Probate Case No. PB2008-000488 (the “Probate Case”).

16 12. Defendant Gerd Zimmermann (hereinafter referred to as “Defendant
17 Zimmermann” or “Zimmermann”) is a licensed attorney in the State of Arizona and in
18 Germany and is a resident of Arizona. (Zimmermann specializes in “offshore” asset
19 foreign depositories).

20 13. Defendant Jane Doe Zimmermann is a fictitiously named Defendant
21 whose identity will be supplemented when known.

22 14. During all relevant times hereto, Defendants Gerd Zimmermann and
23 Jane Doe Zimmermann (hereinafter collectively referred to as “Defendants
24 Zimmermann”) were husband and wife, and Defendant Zimmermann was acting for,
25 and in furtherance of, his marital community.

26 ¹ The “Mallet Trusts” includes any and all trusts and/or accounts owned by Mallet at all times relevant to this Complaint.

1 15. Defendant Zimmermann, Nielsen & Colleagues (hereinafter referred to
2 as “Defendant ZNC”) is an Arizona Professional Limited Liability Corporation
3 authorized to do business as a law firm in Arizona.

4 16. At all relevant times hereto, Defendant Zimmermann was a managing
5 partner of Defendant ZNC.

6 17. Defendant The Sun Valley Group, Inc. (“Sun Valley” or “SVG”) is an
7 Arizona corporation, incorporated since 1997, that is authorized to do business as a
8 licensed fiduciary in the State of Arizona and has its principal place of operation in
9 Maricopa County, Arizona.

10 18. Defendant Alisa Gray (hereinafter referred to as “Defendant Gray” or
11 “Gray”) is a licensed attorney in the State of Arizona and is a resident of Arizona.
12 Defendant Gray served as legal counsel for Defendant Sun Valley in the Probate
13 Case.

14 19. Defendant John Doe Gray is a fictitiously named Defendant whose true
15 identity will be supplemented when known.

16 20. During all relevant times hereto, Defendants Alisa Gray and John Doe
17 Gray (hereinafter collectively referred to as “Defendants Gray”) were wife and
18 husband, and Defendant Gray was acting for, and in furtherance of, her marital
19 community.

20 21. Defendant Gray & Fassold, P.C. (hereinafter referred to as “Defendant
21 G&F” or “G&F”) is an Arizona professional corporation authorized to do business as
22 a law firm in Arizona.

23 22. Defendant Gray, at all relevant times hereto, was a managing partner of
24 Defendant G&F.

1 23. At all relevant times hereto, Defendant Peter Frenette (hereinafter
2 referred to as “Defendant Frenette” or “Frenette”) was a director and/or officer of
3 Defendant Sun Valley and a resident of Arizona

4 24. Defendant Heather Frenette, at all relevant times hereto, was a director
5 and/or officer of Defendant Sun Valley and a resident of Arizona.

6 25. At all relevant times hereto, Defendant Peter Frenette and Defendant
7 Heather Frenette (hereinafter collectively referred to as “Defendants Frenettes” or
8 “the Frenettes”) were husband and wife acting for, and in furtherance of, the marital
9 community.

10 26. Defendant Southwest Fiduciary, Inc. (hereinafter referred to as
11 “Defendant SFI” or “SFI”) is an Arizona corporation authorized to do business as a
12 licensed fiduciary in Arizona.

13 27. Defendant Charles M. Dyer (hereinafter referred to as “Defendant
14 Dyer” or “Dyer”) is a licensed attorney in the State of Arizona and a resident of
15 Arizona. Defendant Dyer served as legal counsel for Defendant SFI in the Probate
16 Case referenced above.

17 28. Defendant Jane Doe Dyer is a fictitiously named Defendant whose true
18 identity will be supplemented when known.

19 29. During all relevant times hereto, Defendants Charles M. Dyer and Jane
20 Doe Dyer (hereinafter collectively referred to as “Defendants Dyer”) were husband
21 and wife, and Defendant Dyer was acting for, and in furtherance of, his marital
22 community.

23 30. Khalil Saigh (hereinafter referred to as “Defendant Saigh” or “Saigh”) is
24 a licensed attorney in the State of Arizona and a resident of Arizona. Defendant Saigh
25 served as legal counsel for Defendant SFI in the Probate Case referenced above.
26

1 31. Defendant Jane Doe Saigh is a fictitiously named Defendant whose true
2 identity will be supplemented when known.

3 32. During all relevant times hereto, Defendants Khalil Saigh and Jane Doe
4 Saigh (hereinafter collectively referred to as “Defendants Saigh”) were husband and
5 wife, and Defendant Saigh was acting for, and in furtherance of, his marital
6 community.

7 33. Defendant Dyer & Ferris, LLC (hereinafter referred to as “Defendant
8 D&F” or “D&F”) is an Arizona professional corporation authorized to do business as
9 a law firm in Arizona.

10 34. Defendants Saigh and Dyer, at all relevant times hereto, were employed
11 by or members/partners of Defendant D&F.

12 35. Defendant Gregory Dovico was, at all relevant times hereto, a director
13 and/or officer of Defendant SFI.

14 36. Defendant Peggy Dovico was, at all relevant times hereto, a director
15 and/or officer of Defendant SFI.

16 37. Defendant Gregory Dovico and Defendant Peggy Dovico (hereinafter
17 collectively referred to as “Defendants Dovico” or “the Dovicos”) were husband and
18 wife acting for, and in furtherance of, the marital community.

19 38. The fictitiously named Defendants in the caption to the Complaint are
20 individuals and entities who, on information and belief, committed acts or omissions
21 or caused events to occur that resulted in injury or damage to Ms. Mallet. Once the
22 identity of these Defendants is discovered this Complaint shall be amended
23 accordingly.

24 39. All named Defendants are interrelated, interdependent, and are jointly
25 and severally liable.

26

1 Financial Data for Helga Mallet for the period of February 2008 through April 2009,
2 Bates numbers OC000001-56, attached hereto.)²

3 46. The SFI Defendants then proceeded to spend virtually every penny of
4 the \$100,000.00 they had taken from Helga's A.G. Edwards account while doing
5 nothing to protect her other assets.

6 47. Throughout the months of May and June of 2008, Zimmermann made
7 large withdrawals from the A.G. Edwards account, including a withdrawal of
8 \$1,000.00 on June 5, 2008, \$60,000.00 on June 10, 2008, and \$75,000.00 on June 18,
9 2008.

10 48. Those funds were converted by Zimmermann and the Defendants
11 without Plaintiff's knowledge.

12 49. In June 2008, Defendant Zimmermann then liquidated over \$350,000.00
13 of securities to cover a negative margin balance, created by Zimmermann, which at
14 the beginning of June was over \$500,000.00. This liquidation of securities occurred
15 without regard to historically low market conditions resulting in additional thousands
16 of dollars of losses to the Mallet Trusts.

17 50. By the end of June 2008, six months after Defendant Zimmermann's
18 and SFI's representation commenced, the Mallet Trusts had been depleted to just
19 under \$390,000.00, from over \$1,000,000.00 six months prior. This is over
20 \$100,000.00 per month.

21 51. On September 12, 2008, the probate court appointed SVG as Temporary
22 Conservator for Plaintiff Mallet and the Mallet Trusts. (See Exhibit 2, Order
23 Appointing Temporary Guardian dated September 12, 2008, from Probate Case No.

24 _____
25 ² All documents or exhibits referenced throughout this complaint are incorporated by
26 reference and made a part hereto. The Court is requested to take judicial notice
pursuant to FRE 201. "OC" stands for Original Complaint for the bates range.

1 PB2008-000488 appointing SVG as Temporary Conservator, Bates numbers
2 OC000057-60, attached hereto).

3 52. Defendant Zimmermann recommended SVG to the probate court for
4 this position. (See Exhibit 3, the Petition for Permanent Application for Guardian
5 dated September 12, 12, 2008, from Probate Case No. PB2008-000488
6 recommending SVG as Temporary Conservator, Bates numbers OC000061-65,
7 attached hereto).

8 53. On December 10, 2008, Defendant Zimmermann withdrew as Trustee
9 for the Mallet Trusts, and SVG took over the role as Trustee. (See Exhibit 4, the
10 Order Appointing Successor Trustee dated December 10, 2008, from Probate Case
11 No. PB2008-000488 appointing SVG as Trustee, Bates numbers OC000066-69,
12 attached hereto).

13 54. During this period of January through November 2008, the Mallet
14 Trusts also incurred losses in the form of margin interest charges in excess of
15 \$20,000. (See Exhibit 1).

16 55. During the year of 2008, Plaintiff Mallet's estate was completely wiped
17 out. The portfolio was totally depleted of all funds with a balance of negative
18 <\$1.76>. (See Exhibit 1).

19 56. All transfers made from the Mallet Trusts during the year of 2008 were
20 made under the stewardship of all named Defendants.

21 57. Following 2008, Helga's additional assets, including several pieces of
22 real estate, among other things, were mismanaged by Defendants.

23 58. Plaintiff Mallet owned real estate in four states, including California,
24 Arizona, Colorado and Nevada. These properties were part of her estate and were
25 looked over by Helga's fiduciaries. Some, if not all, of these properties were
26 deliberately under-valued for quick-sale liquidation.

1 59. Moreover, no mortgage payments were made on any of these properties
2 for prolonged periods of time.

3 60. Plaintiff Mallet's personal belongings were also sold without notice or
4 approval. Defendants went so far as to sell Helga's photo albums, photographs and
5 personal memorabilia for financial gain.

6 61. Defendant SVG was appointed limited guardian of Plaintiff Mallet on
7 March 4, 2009. (See Exhibit 5, the Letters of Conservator for an Adult dated March
8 4, 2009, from Probate Case No. PB2008-000488 appointing SVG as limited guardian,
9 Bates numbers OC000070-71, attached hereto).

10 62. Under Defendant SVG's stewardship, Plaintiff Mallet was placed in a
11 medical facility and held to a strict pharmaceutical regime against her will. Helga
12 wanted to stay at her own personal residence. Instead, Defendants wasted Helga's
13 assets by requiring her to stay in a medical facility.

14 63. During that time, Plaintiff Mallet received no reports regarding her
15 finances, was not consulted with regard to the disposition of her personal property or
16 the administration of her estate, and was inhibited in her efforts to retrieve her
17 personal property from her personal residence.

18 64. Defendants, and each of them, were also aware of an IRS tax lien that
19 was placed upon Helga's estate. Instead of taking any steps to resolve the tax issue in
20 favor of either Plaintiff Mallet or the IRS, Defendants, and each of them, continued to
21 liquidate Helga's assets to pay themselves, while leaving the IRS holding the bag.

22 65. This resulted in continuing interest and penalties, causing further
23 detriment to the Mallet Trusts.

24 66. Plaintiff Mallet, who is approaching 77 years of age, has been
25 essentially stripped of all financial worth. This exploitation occurred under the
26

1 supervision and direction of estate fiduciaries, with approval by the Maricopa County
2 Superior Court.

3 67. Defendants, and each of them, owed a duty to Plaintiff Mallet to ensure
4 that the Mallet Trusts were maintained and protected from financial exploitation.
5 Instead, Defendants diverted funds for their own pecuniary gain, leaving Plaintiff
6 Mallet penniless.

7 68. The combined operations of Defendants SFI and SVG, through insider
8 directors and officers, the Frenettes and the Dovicos, along with Defendant attorneys
9 Zimmermann, Saigh, Dyer and Gray, constituted a distinct Enterprise within the
10 meaning of the racketeering statutes, 18 U.S.C. § 1961, *et seq.*, and A.R.S. § 13-
11 2314.04(A), *et seq.* That Enterprise was functionally distinct, and existed
12 continuously from at least January 2008.

13 69. Also see *Griffin v. McNiff*, 744 F. Supp. 1237, 1244-1251 (S.D.N.Y.
14 1990) (finding that plaintiffs pled with sufficient particularity where claims were
15 made under the RICO statute, against lawyers, accountants, and their respective firms,
16 who were in charge of preparing private placement memoranda for the sale of
17 securities.); *Maxwell v. Southwest Nat'l Bank*, 593 F. Supp. 250 (D. Kan. 1984)
18 (where lawyers, banks and their officers, conspired to induce the decedent to execute
19 a will that left her estate to strangers. The court found that plaintiff successfully pled
20 the RICO claim. In that case, the court emphasized that “[c]ongress did not want to
21 reduce RICO’s potency by imposing a burden of proof that would be difficult or
22 impossible to meet.”).

23 70. The operation of that Enterprise, actively, directly and proximately
24 caused damage to Plaintiff Mallet in the amount of at least \$1,000,000.00. trebled to
25 at least \$3,000,000.00.
26

1 **COUNT I**

2 **FEDERAL RICO CLAIM UNDER 18 U.S.C. §§ 1961, 1962 *et seq.***

3 **(ALL DEFENDANTS)**

4 71. Plaintiff incorporates each and every allegation contained in the above
5 paragraphs of this Complaint as though fully set forth herein.

6 72. The federal RICO statutes create a private cause of action. *Sybersound*
7 *Records, Inc. v. UAV Corp.*, 517 F.3d 1137, 1146-1147 (9th Cir. 2008) citing 18
8 U.S.C. § 1964(c). Racketeering means, in part, any act, “including any preparatory or
9 completed offense” and includes knowingly executing or attempting to execute a
10 scheme reasonably calculated to deceive persons of ordinary intelligence.³

11 73. A "scheme to defraud" under 18 U.S.C. § 1341 is measured by a
12 nontechnical standard.⁴ Direct proof of willful intent is not necessary and may be
13 inferred from activities of parties involved.⁵

14 74. Defendant’s each had fiduciary duties and ethical obligations toward
15 Ms. Mallet, which they intentionally violated for their own financial benefit,
16 rendering Helga a ward of the State, at federal/state taxpayer expense.

17 75. Defendants’ conduct is a scheme to obtain money, funds or other
18 property under the custody or control of a financial institution, by means of false or
19 fraudulent pretenses, representations, or promises in violation of 18 U.S.C. §1344. For
20 the purpose of executing the scheme, Defendants placed in post offices or authorized
21 depositories for mail, matters or things to be sent or delivered by the Postal Service or
22 other private or commercial interstate carriers in violation of 18 U.S.C. § 1341.

23 _____
24 ³ *Cleveland v. U.S.*, 531 U.S. 12, 121 S. Ct. 365 (2000); *U.S. v. Bohonus*, 628 F.2d
1167, 1172 (9th Cir. 1980).

25 ⁴ *U.S. v. Kincaid*, 556 F.3d 923 (9th Cir. 2009); *U.S. v. Selby*, 557 F.3d 968 (9th Cir.
2009).

26 ⁵ *United States v Reid*, 533 F2d 1255 (DC Cir. 1976); *Gusow v United States* 347 F2d
755 (10th Cir. 1965).

1 Defendants transmitted or caused to be transmitted by means of wire communication
2 in interstate or foreign commerce, writings, signs, signals, pictures, or sounds for the
3 purpose of executing such scheme or artifice in violation of 18 U.S.C. § 1343.

4 76. Defendants' acts as described in this Complaint occurred from early
5 2008 until the present and constitute a pattern of racketeering activity under 18 U.S.C.
6 §§ 1961, 1962. Disclosure of this conduct occurred, at the earliest, by late February
7 2009.

8 77. Defendants' pattern of racketeering activity was committed in
9 furtherance of an association-in-fact enterprise involving each of the Defendants, their
10 employees, agents and attorneys. (the "Enterprise").⁶

11 78. Defendants and each of them violated 18 U.S.C. § 1962(a) by receiving
12 income derived, directly or indirectly, from a pattern of activity by using or investing,
13 directly or indirectly, any part of such income, or the proceeds of such income, in the
14 establishment or operation of the Enterprise and its beneficiaries - the Defendants.

15 79. Defendants and each of them violated 18 U.S.C. §§ 1961, 1962(b) *et*
16 *seq.*, by acquiring or maintaining, directly or indirectly, an interest in or control of the
17 Enterprise.

18 ⁶ See generally, *United States v. Bagaric*, 706 F.2d 42, 56 (2d Cir. 1983), *cert. denied*,
19 464 U.S. 840 (1983) ("it is logical to characterize any associative group in terms of
20 what it does, rather than by abstract analysis of its structure."); accord *In re Gas*
21 *Reclamation, Inc. Securities Litigation*, 659 F. Supp. 493, 516 (D.N.Y. 1987); *POM*
22 *Wonderful LLC v. Purely Juice, Inc.*, 2009 U.S. App. LEXIS 28478, 7-8 (9th Cir. Dec.
23 28, 2009) (finding that a corporate officer is liable for torts he personally commits, and
24 he/she "cannot 'hide' behind the corporation where he is an actual participant in the
25 tort."); *In Walter v. Drayson*, 538 F. 3d 1244, 1244, 1249 (9th Cir. 2008) (finding that
26 "[o]ne can be 'part' of an Enterprise without having a role in its management and
operation"); *Living Designs Inc., v. E.I DuPont*, 431 F.3d 353 (9th cir. 2005) (finding
that attorneys employed by DuPont formed an enterprise as defined under the RICO
statutes for misrepresenting and/or spoliating evidence, and/or in the failure to disclose
in judicial proceedings documents material to the fair and impartial administration of
justice.).

1 80. Defendants and each of them was/is employed by or associated with the
2 Enterprise and violated 18 U.S.C. § 1962(c) by conducting or participating, directly,
3 as set forth in this Complaint, in the conduct of the Enterprise's affairs through a
4 pattern of racketeering activity, as detailed above and below.

5 81. Defendants and each of them violated 18 U.S.C. § 1962(d) by
6 conspiring to violate the provisions of subsection (a), (b), or (c) of 18 U.S.C. § 1962.

7 82. In the present case, Defendants depleted virtually all of Plaintiff's assets
8 for their own financial gain, over a ten-month period, exceeding \$100,000.00 a month
9 in ill-gotten gains. Each transfer, mailing, billing, or Court Order induced by
10 Defendants, constitute separate "predicate acts" in satisfaction of 18 U.S.C. §§ 1961 -
11 1962 *et.seq.*

12 83. Transferring, concealing, and dissolving in excess of \$1,000,000.00 in
13 assets through a scheme run by Zimmermann, SFI, Sun Valley and their attorneys,
14 administered by the fiduciaries and accountants, rubber-stamped by the probate court,
15 clearly qualifies as a "scheme or artifice to defraud."

16 84. Plaintiff has been injured in her business and/or property by reason of
17 Defendants' violations of section 18 U.S.C. § 1962, in an amount to be determined at
18 trial, and she is entitled to recover threefold the damages she sustained as well as the
19 costs of this suit, including a reasonable attorneys' fee.

20 WHEREFORE, Plaintiff, having fully pled her claim against Defendants under
21 Count I, respectfully requests that this Court enter Judgment in favor of Plaintiff and
22 against all Defendants, individually, jointly and severally and against their respective
23 marital communities, if any, as follows:

- 24 A. Awarding Plaintiff all allowable damages resulting from Defendants
25 RICO violations;
- 26 B. Awarding treble damages pursuant to 18 U.S.C. § 1964(c);

- 1 C. Awarding Plaintiff's costs and reasonable attorneys' fees pursuant to 18
2 U.S.C. § 1964(c);
- 3 D. Awarding punitive or exemplary damages in an amount sufficient to
4 deter these Defendants or others similarly situated from engaging in the
5 racketeering conduct alleged in this Complaint;⁷ and
- 6 E. Such other or further relief as the Court deems just and proper under the
7 circumstances.

8 COUNT II

9 **CIVIL RIGHTS (PRIVATE PARTIES) VIOLATIONS UNDER**

10 **42 U.S.C. §1983**

11 **(ALL DEFENDANTS)**

12 85. Plaintiff Mallet incorporates each and every allegation contained in the
13 foregoing paragraphs as though fully set forth herein.

14 86. Professional licensees, such as Defendants, are liable for violations of
15 42 USCS § 1983. (See generally *Kimes v. Stone*, 84 F.3d 1121 (9th Cir. 1996)
16 (finding that the Supremacy Clause "prohibited application of state's litigation
17 privilege bar to 42 USCS § 1983 action against attorneys".))

18 87. The Defendants and the Enterprise acted under color of state law, using:
19 (1) named individual Defendants' law licenses and/or other professional licenses; (2)
20 through the avenues for conducting business provided by the Arizona Corporation
21 Commission, licensed through the Arizona State Supreme Court (all Defendants) and

22 ⁷ See A.R.S. § 13-2314 (allowing punitive damages for racketeering, constructive trusts
23 and fraud); *Rhue v. Dawson*, 173 Ariz. 220, 841 P.2d 215 (App. 1992) (finding that
24 Arizona law allows for punitive damages in a breach of fiduciary duty where the
25 defendant's conduct reaches the requisite level of culpability.); also see *Western Coach*
26 *Corp. v. Vaughn*, 9 Ariz. App. 336, 339, 452 P.2d 117, 120 (App. 1969) (allowing
punitive damages for acts of corporate employees when committed in furtherance of
employer's interest); *Hyatt Regency Phoenix Hotel Co. v. Winston*, 907 P.2d 506 (App.
1995).

1 the Arizona Department of Financial Institutions or other State and Federal agencies;
2 and (3) regarding the probate functions and jurisdiction of the Superior Court in
3 Maricopa County, to unilaterally deprive Ms. Mallet of her constitutional right to her
4 liberty, property and due process rights by restricting her movements, stripping her
5 cash, assets, and private property interests to improperly obtain financial gain under
6 false pretense.

7 88. Private actor liability requires one of the following: “(1) public function;
8 (2) joint action; (3) governmental compulsion or coercion; and (4) governmental
9 nexus.” *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826 (9th Cir. 1999); *Lee*
10 *v. Katz*, 276 F.3d 550, 554 (9th Cir. 2002).

11 89. Satisfaction of any one of the foregoing tests is sufficient to find state
12 action. *Lee, supra*, at 276 F.3d at 554.

13 90. Once Defendants and the Enterprise, through the attorneys and other
14 licensees as officers of the court, fiduciaries and/or court-appointed actors who
15 participated in the Enterprise, sought to act without legal authority, or in excess of
16 authority granted to them through the Courts, the acts of these individuals crossed the
17 line from private enterprise to outright fraud and private party liability in the
18 procurement of judicial orders in contempt of 42 U.S.C. §1983.

19 91. A professional license together with a court appointment is not a vehicle
20 for immunizing the license holder or appointee from its prohibited use.

21 92. Defendants have acted with the intent to hinder, obstruct and/or evade
22 culpability for their prohibited joint conduct under color of state law.⁸

23 ⁸ In *Lugar v. Edmondson*, 457 U.S. 922 at 924, 102 S.Ct. 2744, 73 L. Ed. 2d 482, the
24 Court held that the private defendants who had initiated the attachment process could be
25 liable as state actors for “participating in the deprivation”: “Invoking the aid of state
26 officials to take advantage of state-created attachment procedures” made the private
defendants “*willful participants in joint activity with the State or its agents.*” *Id. at 942.*
See Lugar, 457 U.S. at 941 (“We have consistently held that private party joint
participation with state officials in the seizure of private property is sufficient to
characterize the party as a ‘state actor.’”); *see also Dennis v. Sparks*, 449 U.S. 24, 27-

1 93. Defendants have misused the state courts by generally simulating
2 process to mask their own misconduct and were all willful participants in a joint
3 activity with the State or its agents.

4 94. Defendants unilaterally deprived Plaintiff of her liberty and property in
5 violation of her constitutional due process rights by squandering and disbursing cash
6 and assets of the Mallet Trusts under color of state law and abusing their positions as
7 fiduciaries and/or as licensed professionals to improperly obtain financial gain to the
8 detriment—and ultimately, the financial ruin—of Ms. Mallet.

9 95. Ms. Mallet has been damaged by reason of Defendants' violations of
10 section 42 U.S.C. § 1983, in an amount to be determined at trial.

11 WHEREFORE, Plaintiff, having fully pled her claim against Defendants under
12 Count II, respectfully requests that this Court enter Judgment in favor of Plaintiff and
13 against all Defendants, individually, jointly and severally and against their respective
14 marital communities, if any, as follows:

15 A. Awarding Plaintiff all allowable statutory damages resulting from
16 Defendants' violations of Ms. Mallet's constitutional rights;

17 B. Awarding punitive or exemplary damages in an amount sufficient to
18 deter these Defendants or others similarly situated from violating the civil rights of
19 vulnerable adults; and
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21

22 28, 66 L.Ed. 2d 185, 101 S. Ct. 183 (1980) (“Private persons, jointly engaged with state
23 officials in the challenged action are action... ‘under color’ of law for purposes of
24 §1983 actions.”); States v. Price, 383 U.S. 787, 794, 16.L Ed. 2d 267, 86 S. Ct. 1152
25 (“private persons, jointly engaged with state officials in the prohibited action, are acting
26 “under color” of law for purposes of this statute to act “under color” of law does not
require that the accused be an officer of the State. It is enough that he is a willful
participant in joint activity with the State or its agents.”); Fonda v. Gray, 707 F.2d
435,437 (9th Cir. 1983) (“A private party may be considered to have acted under color
of state law when it engages in a conspiracy or acts in concert with state agents to
deprive one’s constitutional rights.”).

1 C. Such other or further relief as the Court deems just and proper under the
2 circumstances.

3 **COUNT III**

4 **ARIZONA RACKETEERING ACT (“AzRac”) A.R.S. § 13-2314.04(A); 13-2310**
5 **(ALL DEFENDANTS)**

6 96. Plaintiff incorporates all above paragraphs of this Complaint as if fully
7 set forth herein.

8 97. Under Arizona law, “[a]ny person who pursuant to a scheme or artifice
9 to defraud knowingly obtains any benefit by means of false or fraudulent pretenses,
10 representations, promises or material omissions is guilty of a class 2 felony.” A.R.S.
11 § 13-2310(A). “As used in the foregoing section, a “scheme or artifice to defraud”
12 includes a scheme or artifice to deprive a person of the intangible right of honest
13 services.” A.R.S. § 13-2310(E).

14 98. One who engages in such a scheme or artifice to defraud is guilty of
15 engaging in racketeering under A.R.S. § 13-2301 and can be held civilly liable
16 pursuant to A.R.S. § 13-2314.04 by anyone who was victimized by that person’s
17 pattern of racketeering or unlawful activity.

18 99. Here, as set forth in detail in this Complaint, Defendants all knowingly
19 obtained a benefit—in the form of fees paid from Helga’s assets—by means of
20 numerous false and fraudulent pretenses, representations, promises or material
21 omissions.

22 100. As a result, of this pattern of unlawful acts by Defendants, Ms. Mallet
23 suffered reasonably foreseeable financial damages and the loss of virtually all of her
24 assets.

25 WHEREFORE, Plaintiff, having fully pled her claim against Defendants under
26 Count III, respectfully requests that this Court enter Judgment in favor of Plaintiff and

1 against all Defendants, individually, jointly and severally and against their respective
2 marital communities, if any, as follows:

3 A. Awarding Plaintiff all allowable damages resulting from Defendants'
4 pattern of unlawful activity, pursuant to A.R.S. § 13-2314.04;

5 B. Awarding treble damages pursuant to subsection A of that same statute;

6 C. Awarding Plaintiff's costs and reasonable attorneys' fees pursuant to
7 that same subsection;

8 D. Awarding punitive or exemplary damages in an amount sufficient to
9 deter these Defendants or others similarly situated from engaging in the racketeering
10 conduct alleged in this Complaint; and

11 E. Such other or further relief as the Court deems just and proper under the
12 circumstances.

13 **COUNT IV**

14 **BREACH OF FIDUCIARY DUTY/LEGAL MALPRACTICE**

15 101. Plaintiff Mallet incorporates each and every allegation contained in the
16 foregoing paragraphs as though fully set forth herein.

17 102. The duty owed to Plaintiff Mallet by Defendant Attorneys
18 Zimmermann, Dyer, Saigh, Gray and Defendant law firms G&F and D&F is defined
19 under Arizona law. *See, Paradigm Ins. Co. v. Langerman Law Offices, P.A.*, 200
20 Ariz. 146, 24 P.3d 593, 201 (2001); *See also, Associated Aviation Underwriters v.*
21 *Wood*, 209 Ariz. 137, 98 P.3d 572 (App. 2004).

22 103. Evidence that Plaintiff Mallet was invited to rely on Defendant
23 Attorneys' legal services and representations subjects Defendant Attorneys and law
24 firms to liability. *See generally, Kremser v. Quarles & Brady, L.L.P.*, 201 Ariz. 413,
25 418 (Ct. App. 2001); *Cf. Chalpin v. Snyder*, 220 Ariz. 413 (Ct. App. 2008).

26

1 104. As Trustees for Plaintiff Mallet, Defendant Zimmermann and later SVG
2 had the duty to ensure that the Mallet Trusts were maintained and protected from
3 financial exploitation or waste and that the trust assets were used solely for Helga's
4 benefit. This did not happen.

5 105. The attorneys and law firms for Defendants SVG and SFI, as well as
6 SFI and SVG, the Dovicos and the Frenettes, all owed fiduciary duties owed to
7 Plaintiff Mallet, which included the duty to ensure that the Mallet Trusts were
8 maintained and protected from financial exploitation or waste.

9 106. Defendants breached their professional and fiduciary duties to Helga by,
10 among other things:

- 11 • Allowing or causing waste of the trust assets.
- 12 • Failing to prevent unnecessary and rapid depletion of the trust assets. (100K
13 per month)
- 14 • Failing to obtain fair market value for trust assets sold by Defendants.
- 15 • Charging for unreasonable, unnecessary and duplicative fees for services
16 performed allegedly on behalf of Plaintiff Mallet.
- 17 • Failing to take any steps to mitigate or eliminate the I.R.S. lien against
18 Helga, preferencing payment to enrich themselves at taxpayer expense.
- 19 • Failing to establish, implement and monitor a viable estate plan for Ms.
20 Mallet.

21 107. These individual and collective breaches of fiduciary and professional
22 duties by Defendants have caused foreseeable damage to Plaintiff in amounts to be
23 proven at trial.

24 WHEREFORE, Plaintiff, having fully pled her claims against Defendants
25 under Count IV, respectfully requests that this Court enter judgment in favor of
26

1 trustee” and to use Ms. Mallet’s assets “solely for her benefit” and not for their own
2 benefit. *Id.*

3 112. Defendants knowingly violated A.R.S. § 46-456 by, among other
4 things:

- 5 • Engaging in repeated acts of self-dealing;
- 6 • Overcharging;
- 7 • Billing for unnecessary services or services that did not benefit Ms.
8 Mallet; and
- 9 • Failing to protect Ms. Mallet’s assets.

10 113. As a direct and proximate result of Defendants’ violations of the APSA,
11 Ms. Mallet suffered foreseeable damages in an amount to be proven at trial.

12 114. Defendants’ individual and collective violations of their statutory duties
13 to Ms. Mallet under the APSA were done willfully or with reckless indifference to
14 Plaintiff’s rights and the damage those actions would inflict on her. Therefore,
15 Plaintiff is entitling to an award of punitive damages against Defendants.

16 WHEREFORE, Plaintiff, having fully pled her claims against the Defendants
17 under Count Five, respectfully requests that this Court enter judgment in favor of
18 Plaintiff and against Defendants, individually, jointly and severally and against their
19 respective marital communities, if any, as follows:

- 20 A. Awarding Plaintiff all allowable actual damages resulting from
21 Defendants’ violations of A.R.S. § 46-456;
- 22 B. Awarding Plaintiff treble the amount the amount of her actual damages
23 pursuant to A.R.S. § 46-456;
- 24 C. Awarding punitive or exemplary damages in an amount sufficient to
25 deter these Defendants or others similarly situated from engaging in the
26 conduct alleged in Count V; and

1 D. Such other or further relief as the Court deems just and proper under the
2 circumstances.

3 **COUNT VI**

4 **CONSUMER FRAUD, A.R.S. §§ 44-1521/44/1522(A) *et seq.***

5 **(All Defendants)**

6 115. Plaintiff incorporates all other paragraphs of this Complaint as if fully
7 set forth herein.

8 116. Under Arizona's Consumer Fraud statutes, the "use or employment by
9 any person of any deception, deceptive act or practice, fraud, false pretense, false
10 promise, misrepresentation, or concealment, suppression or omission of any material
11 fact with intent that others rely upon such concealment, suppression or omission, in
12 connection with the sale or advertisement of any [services] whether or not any person
13 has in fact been misled, deceived or damaged thereby, is declared to be an unlawful
14 practice."

15 117. By engaging in the conduct described in this Complaint, Defendants,
16 and each of them, are guilty of unlawful practices under A.R.S. § 44-1522(A) with
17 regard to efforts to obtain payment for services that did not benefit Ms. Mallet, were
18 unnecessary or duplicative, or for which Defendants grossly overcharged and
19 overbilled.

20 118. As a direct and proximate result of Defendants' violations of the
21 Consumer Fraud Act, Ms. Mallet suffered foreseeable damages in an amount to be
22 proved at trial.

23 119. Defendants' individual and collective violations of the Consumer Fraud
24 Act were done willfully or with reckless indifference to Ms. Mallet's rights and the
25 damage, those actions would inflict on her. Therefore, Ms. Mallet is entitling to an
26 award of punitive damages against Defendants.

1 WHEREFORE, Plaintiff, having fully pled her claims against the Defendants
2 under Count VI, respectfully requests that this Court enter judgment in favor of
3 Plaintiff and against Defendants, individually, jointly and severally and against their
4 respective marital communities, if any, as follows:

- 5 A. Awarding Plaintiff all allowable actual and statutory damages
6 resulting from Defendants' unlawful acts;
- 7 B. Awarding punitive or exemplary damages in an amount sufficient
8 to deter these Defendants or others similarly situated from engaging
9 in the conduct alleged in Count VI; and
- 10 C. Such other or further relief as the Court deems just and proper
11 under the circumstances.

12 120. This Complaint must be construed in its entirety, and should be
13 considered as a unified whole. All paragraphs are reincorporated by this reference.

14 **JURY DEMAND**

15
16 Plaintiff demands a trial by jury for all issues so triable.

17
18 RESPECTFULLY SUBMITTED this 26th day of January 2010.

19 **GOODMAN P.A.**

20 By s/ Grant H. Goodman (AzSBN 9463)
21 Grant H. Goodman (SBN: 009463)

22 **GOODMAN P.A.**

23 **Anchor Centre West**
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CERTIFICATION BY COUNSEL

Pursuant to A.R.S. § 12-2602, the undersigned certifies that no expert opinion testimony is necessary to prove the standard of care breached by the licensed professional Defendants in the foregoing Complaint or to prove their liability for breaching that standard.

GOODMAN P.A.

By s/ Grant H. Goodman
Grant H. Goodman (SBN: 009463)
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CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2010, I electronically transmitted the above pleading to the Clerk’s Office using the CM/ECF filing system.

I also certify that I caused a copy of the foregoing to be mailed via certified mail to the following:

John J. Tuchi
Interim United States Attorney
United States Attorney’s Office
Two Renaissance Square
40 N. Central, Ste. 1200
Phoenix, AZ 85004-4408

Terry Goddard, Attorney General
Office of the Attorney General of the State of Arizona
1275 W. Washington
Phoenix, AZ 85007

s/ Grant H. Goodman (AzSBN 9463)

VERIFICATION

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STATE OF ARIZONA)
)
County of Maricopa)

Helga Mallet and/or GOODMAN P.A. in the above-entitled action affirm that the contents of the attached Complaint are true, correct and faithful to the evidentiary record. This verification is knowingly submitted under penalty of perjury. The factual averments of this Complaint are from official and public records. Documents of record have been incorporated by reference into this Complaint as substantive proof of the facts and allegations contained herein. Submittal of this Complaint to the U.S. Attorney’s Office, and the Arizona Attorney Generals’ Office is required by law.

DATED this 26th day of January 2010.

Helga Mallet

GOODMAN P.A.

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