

ROBERT S. ARNS (SB # 65071)
JONATHAN E. DAVIS (SB# 191346)
STEVEN R. WEINMANN (SB# 190956)
THE ARNS LAW FIRM
515 Folsom Street, 3rd Floor
San Francisco, CA 94105
Tel: (415) 495-7800
Fax: (415) 495-7888

KATHRYN A. STEBNER (SB #121088)
SARAH COLBY (SB #194475)
STEBNER AND ASSOCIATES
870 Market Street, Suite 1212
San Francisco, CA 94102
Tel: (415) 362-9800
Fax: (415) 362-9801

UCS

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David H. Yamasaki
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Clark Sakai

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

110CV166736

EDWARD ERLEWINE, on his own behalf and
on behalf of others similarly situated,

Plaintiff,

CASE NO.

**CLASS ACTION COMPLAINT
FOR DAMAGES AND
INJUNCTIVE RELIEF**

vs.

1. Negligence
2. Elder Financial Abuse (Cal. W&I Code § 15610.30, *et seq.*)
3. Consumer Legal Remedies Act (Cal. Civ. Code § 1770, *et seq.*)
4. Unfair Competition Law (Cal. B&P Code § 17200, *et seq.*)

RICHARD HOLODY, DAVID SHERR,
ADVANCED ESTATE PLANNING
CONSULTANTS, INC.; and DOES 1
THROUGH 100,

BY FAX

Defendants.

I. INTRODUCTION

1. Plaintiff Edward Erlewine ("Plaintiff") brings this complaint on behalf of himself and all other California residents similarly situated.

2. For more than four years, defendants have been using high-pressure sales tactics and

1 preying on the fears of Mr. Ericwinc and similarly situated California seniors to convince each of them
2 to pay in excess of \$10,000 for a worthless or nearly worthless service. Defendants fraudulently told
3 these seniors that Defendants could "pre-qualify" them for Medi-Cal benefits that would pay for any
4 future stay at a long-term care facility. Further, defendants are not licensed to practice law in the State
5 of California, but they purport to provide seniors with estate planning and legal advice regarding
6 government benefits. Defendants have violated Cal. Business and Professions Code §§ 6125, 6126, and
7 6400 by engaging in the unauthorized practice of law.

8 3. As part of their sales pitch, defendants purposefully misrepresented the average person's
9 need for long-term care, the type of care covered by Medi-Cal benefits, and their ability to "pre-qualify"
10 these seniors for the benefits. In fact, it is not possible to pre-qualify an individual for Medi-Cal
11 benefits, and in most cases these seniors either already qualified without defendants' assistance or would
12 never have qualified without spending down significant portions of their assets.

13 4. As the direct result of the defendants' unfair, unlawful and fraudulent business practices,
14 plaintiff EDWARD ERLEWINE and the other members of the putative class suffered actual pecuniary
15 harm in the form of lost payments made to the defendants, and unreasonable fees paid to defendants for
16 services which were either worthless or worth far less than what they paid.

17 5. Plaintiff brings this action on behalf of himself and all other individuals who paid
18 defendants an advance fee based on their representation that they could in the future qualify said
19 individuals for Medi-Cal/Medicaid benefits for long-term care. Plaintiff alleges causes of action for
20 Elder Financial Abuse, Unfair Competition Law (Business & Professions Code § 17200 et seq.),
21 Negligence, and Violations of the Consumer Legal Remedies Act (Civil Code §1770 et seq.).

22 II. THE PARTIES

23 6. Plaintiff EDWARD ERLEWINE, was at all times relevant a resident of the State of
24 California and an "elder" as defined by the Cal. W&I Code § 15610.27, in that he was over 65 years of
25 age during the relevant time period.

26 7. The Class sought to be represented (the "Class") is defined as follows:

27 All individuals who, while residing in the State of California, paid Advanced
28 Estate Planning Consultants, Inc., Richard Holody, and/or David Sherr an

1 advance fee for the service of "pre-qualification" or future qualification for
2 Medi-Cal/Medicaid benefits for long-term care in the State of California at any
3 time for a period of four years before the date of filing of the original complaint
4 in this action up to the present. The Class does not include: (a) any officers,
5 directors or employees of the defendants; (b) any judge assigned to hear this
6 case (or spouse or family member of any assigned judge); (c) any juror selected
7 to hear this case.

8 A. Plaintiff Elder Subclass: Any members of the class identified above, who were
9 over the age of 65 at the time of purchase.

10 8. Defendant Richard Holody ("HOLODY") is, and at all times mentioned herein was, an
11 individual residing in San Jose, California, in the County of Santa Clara. HOLODY is the President and
12 owner of Defendant Advanced Estate Planning Consultants, Inc.

13 9. Defendant David Sherr ("SHERR") is, and at all times mentioned herein was, an
14 individual residing in California. SHERR is an owner and the Chief Strategist of Defendant Advanced
15 Estate Planning Consultants, Inc.

16 10. Advanced Estate Planning Consultants, Inc ("AEPC") is a corporation organized and
17 existing under the laws of the State of California with its principal place of business in San Jose,
18 California. It is owned and operated by individual defendants HOLODY and SHERR.

19 11. Defendants HOLODY, SHERR and AEPC are collectively referred to herein as
20 "DEFENDANTS."

21 12. Doe Defendants: Plaintiff is ignorant of the true names and capacities of defendants sued
22 herein as DOES 1-100, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff
23 will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is
24 informed and believes and thereon alleges that each of the fictitiously named defendants is responsible
25 in some manner for the occurrences herein alleged, that they all participated in the scheme and
26 conspiracy herein alleged, and that plaintiff's injuries were proximately caused thereby.

27 13. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned
28 each of the defendants was the partner, joint venturer, agent, and employee of each of the remaining

1 defendants, and in doing the things herein alleged, was acting within the course and scope of such
2 partnership, joint venture, agency and employment and with the permission and consent of each other
3 defendant.

4 14. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned
5 each of the defendants was the co-conspirator of each of the remaining defendants and in doing the
6 things herein alleged was acting in furtherance of the conspiracy.

7 **III. JURISDICTION AND VENUE**

8 15. This Court has jurisdiction under Code of Civil Procedure § 410.10. Plaintiff's damages
9 exceed the jurisdictional minimum of this Court.

10 16. Venue is also proper in Santa Clara County under Civil Code § 1780(d), because
11 DEFENDANTS reside in and have their principal place of business in Santa Clara County.

12 **IV. FACTUAL ALLEGATIONS**

13 17. In early 2008, Edward Erlwine and his wife, Mary, were invited to a free "entitlement-
14 planning workshop" hosted by a law firm which specializes in estate planning.

15 18. On March 20, 2008, Mr. and Mrs. Erlwine attended the "seminar" at a hotel in Visalia,
16 California. It was actually a high-pressure sales pitch by HOLODY, SIERR and AEPC to convince the
17 seniors in attendance that they should purchase "entitlement planning" services from AEPC.

18 19. The seniors were provided a "coursebook" which included many misrepresentations and
19 material omissions regarding long-term care and governmental benefits. These statements were
20 repeated during the high-pressure sales presentation. During the presentation and in the coursebook
21 materials, DEFENDANTS told the seniors that they had developed a "fool-proof" method to qualify
22 seniors for long-term care benefits while protecting their assets from "spend down" and reimbursement
23 liens. They told Plaintiffs they could "pre-qualify" them for Medi-Cal benefits to pay for long term
24 care. Defendants preyed on the seniors' fears about long-term care and their finances by providing false
25 statistics about the likelihood that they would end up in a nursing facility and for how long.
26 DEFENDANTS purposefully lumped together all "long-term care," omitting the fact that most facilities
27 the general public associates with that term are not paid for by governmental benefits. DEFENDANTS
28 told Plaintiffs that if they failed to take advantage of the unique "entitlement-planning" services

1 DEFENDANTS offered, they would be unable to afford their inevitable stay in a long-term care
2 institution without impoverishing themselves, their spouses and their heirs.

3 20. Finally, although neither IOLODY nor SIERR are attorneys, the workshop was hosted
4 by a law firm and the course materials contained information about SIERR's attendance at law school
5 and experience in the U.S. Attorneys' Office, leading attendees to believe that SIERR was an attorney
6 and/or that ALPC's work had been reviewed or approved by attorneys at the law firm. In fact,
7 DEFENDANTS were and are engaged in the unauthorized practice of law.

8 21. After the presentation, the attendees were invited to individual counseling sessions during
9 which they were again subjected to high-pressure sales tactics. Defendants SIERR and IOLODY
10 insisted that plaintiffs could not afford not to purchase DEFENDANTS' entitlement-planning product
11 and should write out a check and sign the contract immediately. Plaintiff Erlewine witnessed that
12 almost all, if not all, of the approximately 20 persons who attended the workshop were convinced to pay
13 the fee and purchase the service. Plaintiff is informed and believes and therefore alleges that
14 DEFENDANTS have traveled and continue to travel throughout California providing these "workshops"
15 to hundreds if not thousands of seniors, advising them and indeed pressuring them to pay for Medi-Cal
16 "pre-qualification." They promise to represent these seniors in their cases before the County eligibility
17 workers with an expert strategy that will result in 100% coverage.

18 22. On or about March 20, 2008, DEFENDANTS convinced Mr. Erlewine and his wife to
19 sign a contract with them (the "Contract") and pay an upfront fee of \$11,166 with the expectation that
20 when one or both of the Erlewines needed to enter long-term care, they would merely pay
21 DEFENDANTS an additional \$3,722 and DEFENDANTS would insure that they received Medi-Cal
22 benefits to pay for their care, without any out-of-pocket cost to the Erlewines and minimal, if any, spend
23 down of their assets.

24 23. Although the amounts of the payments varied slightly, Plaintiff Erlewine is informed and
25 believes and thereon alleges that DEFENDANTS charged all plaintiffs this same upfront fee in the
26 amount of approximately \$9,000-\$12,000.

27 24. This fee is unreasonable in that it is exorbitant and disproportionate to the services
28 performed. As an initial matter, it is impossible to "pre-qualify" anyone for Medi-Cal benefits, and

1 therefore plaintiffs paid for a service that DEFENDANTS could not perform. Plaintiff Erlewine is
2 informed and believes and thereon alleges that most, if not all, of the individuals who purchased the
3 product either already qualified for Medi-Cal benefits without DEFENDANTS' assistance or would
4 never qualify without spending down significant portions of their assets. Plaintiff ERLEWINE is
5 informed and believes and thereon alleges that for those individuals for whom estate planning would
6 provide some asset protection, the fee charged by DEFENDANTS—who are not attorneys—was more
7 than four times what an estate planning attorney would charge for the same service.

8 **V. DEFENDANTS' MISREPRESENTATIONS**

9 25. DEFENDANTS made substantial and material misrepresentations during their
10 presentation, in their written materials, including but not limited to the following:

11 a) That DEFENDANTS "have developed a fool-proof method to minimize your 'spend-
12 down' risks while at the same time protecting your assets from reimbursement liens."

13 b) That Medi-Cal is an "entitlement" such as Medicare; in fact, it is instead a "needs-
14 based" program only available to those who meet certain financial criteria.

15 c) That "Entitlement Planning is basically asset preservation. Many middle-income
16 families have lost their homes and life savings to the high cost of nursing home care. But with
17 Entitlement Planning, those families could have preserved their major assets and had their nursing home
18 bills paid for by Medi-Cal."

19 d) That California seniors and their spouses "do not have to use any of [their]
20 resources, such as savings, before entitlements pay for all of the costs of a nursing facility."

21 e) That "The skilled nursing home program [of Medi-Cal] is the one that you have
22 spent your entire life working for and paying into. That means that everyone is entitled to receive
23 benefits for skilled care to pay for all of their Skilled Nursing Home Care Costs."

24 f) "Perhaps President Clinton stated it best, by being the first politician to
25 acknowledge that Medi-Cal or Medicaid benefits are a person's entitlement for long term health care. In
26 reality, skilled care benefits are no different than a person's entitlement to Social Security. But few
27 people understand that this entitlement can be obtained by literally everyone, by proper estate planning,
28 regardless of a person's estate value or monthly income."

1 g) That a viable option in planning for long-term care is "pre-qualifying for
 2 Entitlement Benefits. This is accomplished by shifting or protecting a families [sic] assets from spend-
 3 down. Spend-down is a term that refers to privately paying for health care costs until the estate value
 4 reaches the State's qualification level."

5 h) That "depending on the situation, most improper transfers [of assets] which
 6 violate the 36 month [look-back] rule can indeed be corrected, and in most cases, within the month of
 7 application."

8 26. DEFENDANTS are committing the unlicensed practice of law, and violating California's
 9 Legal Document Assistant Law (Business and Professions Code §6400 et seq.) by providing the
 10 "Entitlement Planning Workshop Coursebook," which provides legal advice by:

- 11 a. Providing a "Medi-Cal Qualification Summary" listing exempt and non-exempt assets;
- 12 b. Stating things such as "it is perfectly legal for people to shelter their assets, including giving
 13 cash gifts to their children, and then later seek government help for nursing home care."
- 14 c. "Most people, as well as many attorneys, understand that most states have a 'look back'
 15 period, consisting of 36 months (in California) and longer periods in other states. **However,**
 16 **what most professionals fail to understand is that if the strategic planning is properly**
 17 **performed, there is in effect NO "look back period.** Herein lies the central importance of
 18 hiring a qualified expert in long-term care benefits. These professionals know and
 19 understand the proper way to protect these assets without creating a period of ineligibility or
 20 penalties.'" (emphasis in original).
- 21 d. The workshop materials cite SHERR's attendance of University of the Pacific, McGeorge
 22 School of Law and his work at the U.S. Attorney's office. They refer to his experience "as a
 23 consumer advocatc."
- 24 e. The Coursebook also states, "By using proven methods to structure your assets based upon
 25 our research of volumes of Federal and State regulations, communication with State officials,
 26 and literally thousands of client cases, we have developed a fool-proof method to minimize
 27 your 'spend-down' risks while at the same time protecting your assets from reimbursement
 28 liens."

1 f. In discussing a "real life example," DEFENDANTS wrote of a woman who would have to
2 deplete her assets by \$150,000 before Medi-Cal would cover her nursing care stay. "In
3 desperation she contacted a referral service that suggested she contact an expert in Medi-Cal
4 planning and referred her to us. We took the case, provided her with a strategy to protect her
5 assets from 'spend down' and even obtained a reimbursement for the previous monies used
6 to pay for the long term care facility. Each and every step in our strategy was provided with
7 exhibits, to the County Eligibility Worker."

8 27. DEFENDANTS preyed upon the fears and concerns of the seniors present with
9 statements such as:

10 a) "Medicare will only pay for up to the first 100 days of a Nursing Home stay, and in
11 most cases it pays for only the first 20 days." (emphasis in original).

12 b) "You must ask yourself: 'If I do not plan, who will it hurt the most?' 'How much will it
13 cost if I don't plan?' And, 'How much do I really care about my loved ones and our financial security?'"

14 c) "Currently, 60% of all Americans over the age of 65 need long-term care . . . that's every 6
15 in 10 people."

16 d) "For those over 65 there is a 41% chance they will spend an average of 2.5 years in a
17 nursing home."

18 c) "While California enacted regulations to force County eligibility workers to notify people
19 that they did not have to spend down all their assets in order to qualify for Entitlement benefits, they
20 rarely do. We have yet to talk to an eligibility worker who would explain how assets could be protected
21 or even disclose the rules."

22 28. DEFENDANTS violated and failed to comply with the Legal Document Assistants' Law,
23 Business and Professions Code §6400 et seq., by offering and/or providing assistance in legal matters
24 without registering as legal document assistants, failing to include the required information including
25 registration numbers on all documents provided, and assisting in the selection and filling out of forms in
26 connection with legal matters. DEFENDANTS also provided information as to the law which was not
27 in the nature of general legal resources, but rather specific advice as to how to handle planning for estate
28 or medical issues.

1 29. In asserting that one can qualify for Medi-Cal or other government assistance without
2 spending down assets and that in most cases of asset-transfer, there is no "look-back" period,
3 DEFENDANTS are providing legal advice and engaging in the unlicensed practice of law.

4 30. The Contract which Plaintiff and his wife Mary signed expressly states that "Client
5 understands that AEPC is a professional consulting group engaged in assisting clients in qualifying for
6 Medi-Cal benefits."

7 31. The Contract with AEPC, which upon information and belief is the same contract used
8 by the other Class members, contains further misrepresentations and omissions, including a failure to
9 disclose that neither AEPC nor any of the other defendants are capable of "pre-qualifying" anyone to
10 receive Medi-Cal.

11 32. The Contract further states and promises that AEPC will "provide Client with a written
12 strategy outlining the necessary tasks which will need to be completed in order to qualify for Medi-Cal
13 eligibility," and that "AEPC will assist Client by providing strategies for proper gifting and proper
14 transfers of assets as well as protecting and or minimizing the real property of the primary residence
15 from a reimbursement lien." These statements constitute an offer and promise to provide legal advice.

16 33. AEPC in the Contract also promises to complete Medi-Cal forms and "Authorized
17 Representative" forms, "conversion of non-exempt burial contracts to irrevocable status," and review of
18 various investments, all of which constitute the promise to provide legal advice and/or legal document
19 assistant work.

20 34. AEPC also promises to "assist the attorney in the completion of the following legal
21 documents for the person in need of care:

22 --Durable Power of Attorney for Finances, with Medi-Cal language

23 --Durable Power of Attorney for Health Care, (If ill person is not in a Skilled Nursing Facility)

24 --Gift Deeds

25 --Gift Declarations

26 --Personal Rights of Occupancy

27 --Completion of forms for Medi-Cal Protected Vehicles

28 35. The offers to "assist the attorney" make it plain that AEPC and the other DEFENDANTS

1 are promising to and/or are practicing law, and/or are providing services which must but do not comply
2 with the LDA law.

3 36. The Contract was signed by defendant IOLODY on behalf of AEPC.

4 37. Despite entering into the Contract, DEFENDANTS have done nothing to provide any
5 such "written strategies" in nearly two years since the date the Contract was signed in March of 2008.
6 The only time DEFENDANTS have communicated with ERIEWINE since the transaction occurred
7 was to try to convince him to use his retirement funds to purchase an annuity from them.

8 38. With their many representations as to seniors over the age of 65, and given the nature of
9 the products and services being offered, DEFENDANTS knew or should have known that their conduct
10 would result in the loss or encumbrance of a primary residence, principal employment, or source of
11 income; substantial loss of property set aside for retirement, or for personal or family care and
12 maintenance; or substantial loss of payments received under a pension or retirement plan or a
13 government benefits program, or assets essential to the health or welfare of the senior citizen or disabled
14 person.

15 39. DEFENDANTS also knew or should have know that one or more senior citizens or
16 disabled persons subjected to their tactics, are substantially more vulnerable than other members of the
17 public to the defendant's conduct because of age, poor health or infirmity, impaired understanding,
18 restricted mobility, or disability. The Class members, in purchasing the DEFENDANTS' overpriced and
19 essentially worthless services, actually suffered substantial economic damage resulting from the
20 defendant's conduct.

21 40. DEFENDANTS purported to offer services that had characteristics, uses, and benefits
22 which they did not, namely that they would "pre-qualify" persons for Medi-Cal benefits. Since such
23 pre-qualification does not exist under California law, the members of the Class were sold something in
24 violation of the Consumer Legal Remedies Act, Civil Code section 1770 et seq., and the Unfair
25 Competition Law, Business and Professions Code section 17200 et seq.

26 41. At no time did DEFENDANTS state, and at all times in the context of their other
27 statements including the Contract and the Coursebook, omitted to state that there is no such thing as
28 "pre-qualifying" for Medi-Cal under California law. DEFENDANTS' failure to so state, along with

1 their other misrepresentations, was negligent and/or intentional.

2 **VI. CLASS ACTION ALLEGATIONS**

3 42. Ascertainable Class. The proposed class is ascertainable. The litigation of the
4 questions of fact and law involved in this action will resolve the rights of all members of the class and
5 hence will have binding effect on all class members. These class members can be readily identified
6 from residency computer files of the defendants and other means readily available to the defendants, and
7 thus to the plaintiffs, through minimally intrusive discovery.

8 43. Community of Interest. The proposed class has a well-defined community of interest in
9 establishing the questions of fact and law to be litigated. The common questions of law and fact
10 predominate with respect to the liability issues, relief issues, and anticipated affirmative defenses. The
11 named Plaintiff has claims typical of those of the other class members. The named plaintiff has
12 purchased goods and/or services from the DEFENDANTS, in response to the same representations,
13 actions, and inducements made by the DEFENDANTS. The named plaintiff has retained counsel
14 experienced in the litigation of class action and elder abuse issues, and will adequately represent the
15 Class' interest. There are no conflicts of interest between Plaintiff and the other members of the Class.

16 44. The myriad of questions of law and fact common to the Class include, but are not limited
17 to, the following:

- 18 a. Whether DEFENDANTS systematically misled plaintiffs, through a common scheme
19 including false and misleading statements, to believe that DEFENDANTS could "pre-
20 qualify" them for Medi-Cal benefits.
- 21 b. Whether plaintiffs would have purchased these services at all or paid such a high price for
22 them if they had known that it was impossible to "pre-qualify" for Medi-Cal benefits.
- 23 c. Whether plaintiffs would have purchased these services at all or paid such a high price for
24 them if DEFENDANTS had not presented them with false "facts" regarding the likelihood
25 that they would end up in a skilled nursing facility and the length of an average stay in such
26 a facility.
- 27 d. Whether the fee charged for DEFENDANTS' services is unreasonable as defined under
28 Cal. Civ. Code § 1770(a) (24).

- 1 e. Whether plaintiffs would have purchased these services at all or paid such a high price for
2 them if DEFENDANTS had disclosed the fact that Medi-Cal does not pay for all "long-
3 term care," and that stays in residential care facilities for the elderly and assisted living
4 facilities are all paid by private funds, not Medi-Cal.
- 5 f. Whether plaintiffs would have purchased these services at all or paid such a high price for
6 them if DEFENDANTS had disclosed the fact that the majority of them either already
7 qualified for Medi-Cal without DEFENDANTS' assistance, or would never qualify for
8 Medi-Cal without spending down vast amounts of their savings.
- 9 g. Whether DEFENDANTS were engaged in the unauthorized and illegal practice of law
10 without a license within the State of California.
- 11 h. Whether DEFENDANTS have violated the Legal Document Assistant Law, Business and
12 Professions Code §6400, by providing assistance in legal matters.
- 13 i. Whether DEFENDANTS targeted seniors and preyed upon their fears and concerns about
14 their health and finances to convince them to purchase services that were worthless or of
15 little worth for an exorbitant sum.

16 45. Without limitation, as a result of DEFENDANTS' conduct alleged herein, the named
17 plaintiffs and the members of the Class have all sustained pecuniary loss in an ascertainable amount to
18 be proven at the time of trial. The named plaintiffs will fairly and adequately represent and protect the
19 interests of the Class in that: there are no conflicts between their interests and the interests of other
20 class members; this action is not collusive; the claims of the named plaintiffs are typical, they are
21 zealously committed to the litigation, and they have retained counsel with the necessary resources to
22 litigate this action; and Class counsel has the experience and ability required to prosecute this case as a
23 class action.

24 - 46. Numerosity. The Class is so numerous that joinder of all members is impracticable.
25 Within the last four years and through the actions of defendants, plaintiff is informed and believes that
26 hundreds of plaintiffs have attended the "free entitlement-planning seminars" and been induced by
27 DEFENDANTS' oral misrepresentations and "course materials" to purchase the product that is the
28 subject of this class action. The class is numerous. Plaintiff alleges on information and belief that the
class members number more than two hundred (200), possibly many more than that. Joinder of all

1 class members is impracticable due to the relatively small monetary recovery for each class member in
2 comparison to the costs associated with separate litigation.

3 47. Superiority of Class Adjudication. The certification of a class in this action is
4 superior to litigating a multitude of cases by members of the putative class. Class adjudication will
5 conserve judicial resources and will avoid the possibility of inconsistent rulings. Finally, equity
6 dictates that all persons who stand to benefit from the relief sought herein should be subject to the
7 lawsuit and hence subject to an order spreading the costs of the litigation among the class members in
8 relationship to the benefits received.

9 **FIRST CAUSE OF ACTION**

10 **Against All Defendants**

11 **(Negligence)**

12 48. All of the foregoing paragraphs are re-alleged and incorporated herein by this reference.

13 49. In advising Plaintiff Erlewine and other similarly situated seniors regarding
14 entitlement-planning, defendants undertook to act as their advisors and as such, owed a duty to act
15 reasonably in all matters. Defendants breached such duties by negligently making misrepresentations,
16 negligently advising unsuitable and worthless products, negligently advising that plaintiffs pay an
17 unreasonable fee for their products, and taking the other actions alleged herein in a negligent manner.

18 50. Such breaches proximately caused plaintiffs' damages.

19 Wherefore, plaintiff prays for judgment against defendants, and each of them as set forth
20 below.

21 **SECOND CAUSE OF ACTION**

22 **Against All Defendants**

23 **(Elder Financial Abuse, W&I Code §§15610.30 et seq.)**

24 51. All of the foregoing paragraphs are re-alleged and incorporated herein by this
25 reference.

26 52. Defendants, and each of them, took and assisted in the taking of the real and personal
27 property of Plaintiff Erlewine and of the members of the putative class. Defendants, and each of them,
28 took and/or obtained property for a wrongful use or with intent to defraud, and/or assisted in the taking
and/or obtaining of the real and personal property of plaintiffs for a wrongful use or with intend to
defraud. Defendants, and each of them, knew or should have known that their conduct was likely to

1 be harmful to plaintiffs. As a result of the conduct of Defendants, and each of them, plaintiffs suffered
2 financial harm. The conduct of defendants, and each of them, constitutes financial abuse of an elder
3 under Welfare & Inst. Code § 15610.30.

4 Wherefore, plaintiffs pray judgment against defendants, and each of them as set forth below.

5
6 **THIRD CAUSE OF ACTION**

7 **Against All Defendants**

8 **(Violation of the Consumer Legal Remedies Act, Civil Code §1770 et seq.)**

9 53. All of the foregoing paragraphs are realleged and incorporated herein by this reference.

10 54. The defendants' actions as herein alleged constitute unfair and deceptive practices in
11 violation of the Consumer Legal Remedies Act, Civ. Code § 1770, *et seq.* Defendants represent that
12 their services have characteristics, uses, and benefits that they do not; represent that the contract
13 seniors enter into with them confer rights and remedies which they do not; represent that seniors will
14 receive an economic benefit, when that benefit is contingent upon many factors that will occur
15 subsequent to the transaction; and charge and receive an unreasonable fee to prepare, aid and advise
16 seniors in the procurement, maintenance, or securing of public social services.

17 55. Defendants' misrepresentations are intended to result, did and do result in the sale of
18 their products and services to Plaintiff Erlewine and other similarly situated individuals.

19 56. Plaintiffs therefore seek declaratory and injunctive relief from the Court in the form of
20 a declaration that Defendants' business model is unlawful and an order prohibiting Defendants from
21 engaging in the unauthorized practice of law, from representing that they can and will pre-qualify
22 seniors for Medi-Cal benefits, and from charging seniors fees in the expectation that they will in the
23 future perform these services.

24 57. Plaintiff has executed and files the Declaration in Lieu of Affidavit of Venue in
25 compliance with Civil Code §1780(d) attached as Exhibit 1 hereto.

26 58. Wherefore, Plaintiff prays judgment against defendants, and each of them as set forth
27 below.

28 ////

////

FOURTH CAUSE OF ACTION
Against All Defendants
(Unfair Competition Law, B&P Code § 17200)

59. All of the foregoing paragraphs are re-alleged and incorporated herein by this reference.

60. The defendants' actions as herein alleged were unfair business practices and a violation of Bus. & Prof. Code § 17200 ("UCL") as Plaintiff Erlewine and similarly situated individuals were likely to be deceived and harmed and were actually deceived and harmed by such practices. If defendants, and each of them, are not enjoined from the wrongful actions set forth herein, other similarly situated individuals will be defrauded, given bad financial advice, and sold unsuitable products.

61. Defendants' actions in offering and/or providing advice as to legal issues such as estate planning and qualification for benefits constitutes the unauthorized practice of law.

62. Defendants' actions in violation of the CLRA and Elder Abuse laws also constitute violations of the UCL.

63. Defendants' actions in violation of the LIDA law also constitute violations of the UCL.

64. Wherefore, Plaintiff prays judgment against defendants, and each of them as set forth below.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays judgment against defendants, and each of them, as follows:

Under Negligence:

- 1. For special damages according to proof;
- 2. For punitive damages;
- 3. For pre-judgment and post-judgment interest as allowed by law;
- 4. For all other relief the Court deems just and proper.

Under Elder Financial Abuse (Cal. W&I Code § 15610.30, *et seq.*):

- 1. For monetary damages according to proof;
- 2. For punitive damages;
- 3. For reasonable attorneys' fees;

- 1 4. For pre-judgment and post-judgment interest as allowed by law;
- 2 5. For costs of suit incurred herein, including expert costs;
- 3 6. For enhanced remedies under W&I Code § 15657.5;
- 4 7. For treble penalties under Civ. Code Section §3345.

5 Under the CLRA, Civil Code section 1770 *et seq.*:

- 6 1. For injunctive relief;
- 7 2. For attorneys' fees and costs.

8 Under Business and Professions Code §17200 *et seq.*:

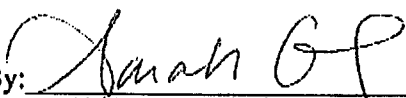
- 9 1. For restitution;
- 10 2. For disgorgement of profits, including interest and fees received from the transactions;
- 11 3. For injunctive relief;
- 12 4. For treble penalties under Civ. Code Section §3345;
- 13 5. For attorneys' fees and costs pursuant to Civil Code §1021.5.

14 **JURY TRIAL DEMANDED**

15 Plaintiff demands a jury trial on all issue so triable.

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17 Dated: March 17, 2010

STEBNER AND ASSOCIATES

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19 By: 
 20 KATHRYN A. STEBNER
 SARAH COLBY
 STEBNER & ASSOCIATES
 870 Market Street, Suite 1212
 San Francisco, CA 94102
 Tel: (415) 362-9800
 Fax: (415) 362-9801

21
22
23 ROBERT S. ARNS
 24 JONATHAN E. DAVIS
 STEVEN R. WEINMANN
 25 THE ARNS LAW FIRM
 515 Folsom Street, 3rd Floor
 26 San Francisco, CA 94105
 Tel: (415) 495-7800
 27 Fax: (415) 495-7888

28 Attorneys for Plaintiffs