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13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 LOS ANGELES COUNTY SUPERIOR COURT

16
17 JAMES PAUL BRAYBROOK, an individual
18 and on behalf of his individual retirement
19 account,

19 Plaintiffs,

20 v.

21 MINNESOTA LIFE INSURANCE
22 COMPANY, a Minnesota corporation;
23 AARON R. ANDREW, an individual;
24 PARAMOUNT FINANCIAL SERVICES,
INC. dba LIVE ABUNDANT, a Utah
corporation; and DOES 1-10,

25 Defendants.

CASE NO.:

PLAINTIFF'S COMPLAINT FOR:

1. **PROFESSIONAL NEGLIGENCE**
2. **NEGLIGENT MISREPRESENTATION**
3. **BREACH OF FIDUCIARY DUTY**
4. **CAL. FINANCIAL ELDER ABUSE**
5. **VIOLATIONS OF CALIFORNIA BUS. & PROF. CODE §17200, ET SEQ.**

DEMAND FOR JURY TRIAL

1 Plaintiff James Paul Braybrook (“Plaintiff”) allege as follows:

2 **I. SUMMARY OF CLAIMS**

3 **II. PARTIES**

4 1. Plaintiff is, and at all times relevant was, residing in the State of California in Los
5 Angeles County, California. Plaintiff asserts his rights under the California’s financial elder
6 abuse statute because he was a legally disabled California resident during all relevant times, and
7 he turned 65 years old in 2014, a date preceding a substantial part of the misconduct occurred as
8 set forth herein.

9 2. Plaintiff’s permanent disability was sustained while serving in the United States
10 Navy. He was honorably discharged and is a proud military and Vietnam veteran. After his
11 military service ended due to his disability, he continued to work as a civilian for thirty years for
12 the United States Navy. He retired in 2011.

13 3. Defendant Minnesota Life Insurance Company (“Minnesota”) is a Minnesota
14 corporation with its principal place of business in St. Paul, Minnesota. It is, and at all relevant
15 times was, licensed in the State of California to offer and sell life insurance products. Minnesota
16 is, and at all times relevant was, not registered or licensed with the Financial Industry Regulatory
17 Authority (“FINRA”) or the United States Securities and Exchange Commission (“SEC”) to offer
18 or sell securities to California citizens.

19 4. Defendant Aaron R. Andrew (“Andrew”) is a Utah citizen residing in Salt Lake
20 City, Utah. He maintains a permanent office in the State of California, yet, and all relevant times,
21 he was not licensed in the State of California to offer and sell life insurance and annuities. None
22 of Andrew’s communications with Plaintiff contained a California Department of Insurance
23 license number. Also, he is, and at all times relevant was, not registered or licensed with FINRA
24 or the SEC to offer or sell securities to California citizens.

25 5. Paramount Financial Services, Inc., d/b/a Live Abundant (“Live Abundant”), a
26 Utah corporation, is a financial services firm with its principal place of business in Salt Lake City,
27 Utah. It maintains a permanent office in the State of California and is, and at all relevant times
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1 was, licensed in the State of California to offer and sell life insurance and annuities. At the time
2 of the filing of this action, Live Abundant was not licensed with the State of California
3 Department of Business Oversight (“DBO”) to conduct business with California citizens. At all
4 relevant times to this action, Live Abundant was also not licensed with FINRA or the SEC to
5 offer or to sell securities to California citizens.

6 6. The California Department of Insurance does not currently list Live Abundant as
7 an appointed agent with Minnesota and it does not appear to be authorized to transact Minnesota
8 insurance business with California citizens.

9 7. Nonparty Defendant GoldStar Trust Company (“GoldStar”) is a self-directed
10 individual retirement account (“IRA”) custodian, trustee, and escrow/paying agent headquartered
11 in Canyon, Texas. GoldStar is not named as a Defendant in this action.

12 8. At all times relevant to this action, Andrew was an authorized and appointed agent
13 with Minnesota and authorized to transact Minnesota insurance business. At all times relevant to
14 this action, he was also an authorized agent for Live Abundant, which was owned and operated
15 by Andrew’s father, Doug Andrew, and an authorized agent for GoldStar, which took custody of
16 Andrew’s clients qualified assets in furtherance of Defendants’ insurance and investment scheme.

17 9. Minnesota processed Andrew’s insurance applications for a California resident
18 even though Andrew was not licensed to offer or sell insurance in the State of California.

19 10. Plaintiffs are unaware of the true names and capacities, whether individual,
20 corporate, agent, representative, or otherwise, of the Defendants named herein as DOES 1
21 through 10 and therefore sue such Defendants by such fictitious names. Plaintiff is informed and
22 believes and thereon alleges that Does 1 through 10 are persons, corporations, partnership, or
23 other entities that were agents of Defendants, or have directed, approved, committed, colluded
24 with Defendants to commit, participated in, or added and abetted the acts and transactions alleged
25 in this complaint. Each is therefore liable for the acts alleged in this complaint. The true names,
26 capacities, and/or roles of Does 1-10 are unknown to Plaintiff, and Plaintiff will amend this
27 complaint when their true names, capacities, and roles are known.
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1 11. Plaintiff alleges, on information and belief, that, at all material times herein
2 mentioned, each Defendant was the agent, principal, servant, representative, employer, employee,
3 joint venturer, co-conspirator, partner, parent, subsidiary, affiliate and/or alter ego of each and
4 every other Defendant and, in doing the things hereinafter alleged, was acting within the course
5 and/or scope of such authority as the agent, principal, servant, representative, employer,
6 employee, joint venturer, co-conspirator, partner (of any kind), parent, subsidiary, affiliate, and/or
7 alter ego with the authority and consent of the remaining co-Defendants except where otherwise
8 specifically described.

9 12. Plaintiffs are informed and believe, and on that basis, allege that Defendants
10 conspired to and did commit the inequitable, tortious and/or unlawful acts herein alleged in
11 furtherance of their conspiracy to accomplish their unlawful purposes. Defendants, and each of
12 them, caused injury to Plaintiffs.

13 **III. JURISDICTION AND VENUE**

14 13. Jurisdiction and venue are proper in this Court under California Code of Civil
15 Procedure §§ 395(a), 395.5, *et. seq.* because a substantial part of the events or omissions giving
16 rise to the claim occurred in this County in that the relationships and conduct at issue in this case
17 were entered into with and affected Plaintiff, a resident of this County.

18 14. Defendants are subject to jurisdiction and venue in this County because they
19 engaged in professional activities with Plaintiff in this County. Their professional activities
20 required licensing and registration with the State of California under the corporations and
21 insurance codes, yet Andrew and Live Abundant were not certificated nor authorized to conduct
22 business with California citizens. Jurisdiction and venue are proper against them in this County.

23 **IV. OPERATIVE FACTS**

24 15. At the onset of the professional relationship in 2010 and 2011, Plaintiff informed
25 Defendants that: he was a retired, disabled United States veteran and also retired as a long-time
26 civilian employee working for the United States Navy; he relied on his government pension for
27 his living and personal expenses; most of his liquid assets were tax-deferred in qualified
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1 investment vehicles; he has no spouse and no heirs. He derived his annual income from his
2 pension and his retirement income, which was approximately \$60,000 annul. He has no heirs and
3 nearly all his liquid assets are in tax-deferred vehicles. Consequently, Plaintiff had no need for a
4 life insurance policy. Defendants recommendation that Plaintiff purchase a life insurance policy
5 for the death benefit, to defer taxes and as an investment vehicle, was unlawful.

6 16. Plaintiff heard Andrew on a radio broadcast in Southern California discussing
7 financial and retirement advice. Plaintiff was impressed with Andrew and telephoned him for an
8 appointment.

9 17. Andrew hosted a meeting with Plaintiff in 2010 at Andrew and Live Abundant's
10 professional office space nearby Plaintiff's residence in Southern California. Andrew presented
11 Plaintiff with marketing materials designed to create trust and confidence. The materials
12 described Andrew and Live Abundant as a "Wealth Architect", a fictitious title intended to denote
13 wealth-building expertise and to encourage the customer's trust and confidence as a fiduciary.
14 Andrew's Live Abundant materials described the services with alluring buzz words such as:
15 "True Asset Optimization", "Live Abundant", "Optimize Assets", "Redefine Retirement" and
16 "Generate Authentic Wealth". The Live Abundant motto on communications stated: "We exist to
17 lend ourselves, our families, and our clients to a more abundant life." These lures were designed
18 to instill trust and confidence with customers like Plaintiff. None of the materials Andrew
19 presented to Plaintiff disclosed his California insurance license number – because he had none.

20 18. Plaintiff trusted Andrew, acting for the Defendants, because he presented himself
21 in a false light to be a knowledgeable, consummate professional and acting in Plaintiff's best
22 interests.

23 19. In 2010, Andrew examined Plaintiff's financial portfolio, including his investment
24 portfolio and interviewed him to purportedly understand his needs to make recommendations.
25 Upon examining Plaintiff's financial profile, Andrew, acting for the Defendants, warned Plaintiff
26 that his investments were too risky, invested in under-performing investments and incurred
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1 excessive fees. Defendants advised Plaintiff to sell his investment assets, to purchase a life
2 insurance policy and to rollover his qualified assets to GoldStar for investment management.

3 20. Defendants, including Andrew, did not inform Plaintiff that the advice violated
4 California insurance laws, among other laws and rules, because they were not licensed or
5 certificated to advise Plaintiff about his investment portfolio or rolling it over to another entity.

6 21. Defendants also did not inform Plaintiff that a life insurance policy was not
7 advisable for his needs: his investment funds were already qualified in tax-deferred vehicles; he
8 was elderly and living on a fixed budget without expendable funds to pay the premiums; he had
9 no spouse or heir with which a death benefit was needed; and he did not request life insurance or
10 a death benefit. Also, Plaintiff's government pension contained a death benefit provision already.

11 22. Defendants knew, or should have known, at the time of the recommendations that
12 Plaintiff was a poor candidate for a life insurance policy, yet they recommended it to him in
13 violation of California insurance laws, among other laws and rules.

14 23. The application submitted to Minnesota by Defendants Andrew and Live
15 Abundant requested the Eclipsed Indexed Life Policy, a flexible premium universal life policy
16 with indexed features, with a death benefit of \$902,000 and annual premiums of \$71,900.
17 Defendants inaccurately prepared the paperwork, but Minnesota or Live Abundant processed it
18 anyway. For instance, Defendants falsely checked the box "no" that Plaintiff does not have any
19 life insurance in force. Yet, his government pension with the death benefit for \$60,000 was
20 disclosed in the same application.

21 24. Defendants Minnesota, Live Abundant and Andrew did not inquire about
22 Plaintiff's liquid net worth, annual income or source or ability to pay the premiums. The
23 application did not prominently disclose the surrender schedule.

24 25. Defendants sold Plaintiff the Eclipsed Indexed Life Policy, a flexible premium
25 universal life policy with indexed features, on June 24, 2010. Plaintiff had never before owned a
26 similar complex policy and was unaware of its existence until it was strongly recommended by
27 Defendants through Andrew. Andrew, Live Abundant and Minnesota never fully presented this
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1 complex policy to Plaintiff in an easily understandable manner. The discovery in the case may
2 uncover other marketing and sales practice violations by Defendants.

3 26. The indexed annuity Defendants ultimately sold him disclosed the death benefit as
4 \$720,000 and the annual premiums as \$57,413.31. Both the premiums and death benefit were
5 less than the application amount of \$902,000 and \$71,900, respectively, even though both
6 proposed premiums were unaffordable to him and both proposed death benefits were unneeded.

7 27. Defendants, via Andrew, Live Abundant and Minnesota, guaranteed Plaintiff that
8 he could receive the entire \$720,000 death benefit (up to 75%) during his lifetime by enrolling in
9 the accelerated benefit agreement. Plaintiff followed this advice and signed up for this program
10 on March 18, 2010.

11 28. Prior to purchasing the life insurance policy, Plaintiff informed Defendants,
12 through their agent Andrew, that he intended to fund the premiums with qualified tax-deferred
13 assets and did not need a death benefit for any heirs. These facts, had they been viewed under
14 industry standard sales practice rules and guidelines, would have ruled out this life insurance
15 policy as a lawful recommendation to Plaintiff.

16 29. From the onset, Plaintiff did not need and could not afford this policy, which are
17 all facts the Defendants, through Andrew, had actual knowledge about. He paid the year one
18 premium with most of his small inheritance that he earmarked for his emergency needs. He did
19 not pay the year two premium because it was unaffordable. He short-paid the year three premium
20 with \$20,000 from his qualified retirement account. He could not afford the years four and five
21 annual premiums at all. None of these events raised any red flags or concerns with Defendants.
22 Defendants, via Andrew, urged Plaintiff to catch-up with the missed premiums or it would
23 negatively affect his accumulation value, surrender value and death benefit, three terms that were
24 unfamiliar to Plaintiff and remained unfamiliar to him after receiving Andrew's directives.

25 30. Based on Defendants' recommendation, Plaintiff used qualified funds from his
26 IRA totaling \$124,000 to pay premiums in year six and he paid \$24,000 in premiums for years
27 seven to nine to maintain his life insurance policy. All these premiums were sourced from his
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1 qualified retirement account, a fact he disclosed to Defendants, via Andrew, who failed to modify
2 their recommendations upon learning these facts. The fact that Defendants via Andrew did not
3 protest or question Plaintiff paying premiums with tax-deferred assets was improper and
4 unlawful.

5 31. By 2015, the life insurance policy was at risk of cancellation because Defendants,
6 via Andrew, exhausted most of Plaintiff's qualified and nonqualified liquid assets. Defendants
7 were compelled to provide a written supplemental illustration to Plaintiff on September 16, 2015.
8 The supplemental illustration directed Plaintiff to borrow money from the life insurance policy,
9 with interest accruing, to cover the premiums so that the policy would not be cancelled. These
10 loans would drive down the death benefit and surrender value. These warnings were not
11 previously, properly disclosed to Plaintiff.

12 32. After substantially impairing Plaintiff's liquid net worth, retirement savings and
13 financial well-being with the life insurance policy, in September 2015, Defendants, acting
14 through Andrew, convinced Plaintiff to liquidate his investments in a tax-deferred IRA and to roll
15 over his assets to GoldStar for investment management. At the time, Plaintiff was over 65 years
16 old.

17 33. Defendants, via Andrew and Live Abundant, recommended that Plaintiff follow
18 their "Structured Cash Flows" strategy, which was described as a "unique financial vehicle that
19 provides a predictable stream of income with a specific rate of return over a specified time
20 period." This presentation was false and misleading because it was not a "predictable" source of
21 income for a specific rate of return. It was a high-risk, illiquid scheme concocted by Defendants
22 to generate excessive fees and to lock-up investors' retirement capital.

23 34. Notably, Plaintiff disclosed to Defendants on its account application that he was a
24 California citizen, 66 years old, an elder under California law. Yet, Defendants, collectively, did
25 not possess the appropriate licenses or certificates to offer, recommend or sell this strategy and
26 accompanying investment plan to Plaintiff.

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1 35. Also, in September 2015, Defendants, via Andrew and Live Abundant,
2 recommended that Plaintiff purchase structured interests in Future Income Payments (“FIP”) as a
3 structured transaction to fund the life insurance premiums. Defendants’ recommended purchase
4 exhausted the remainder of Plaintiff’s qualified and nonqualified liquid assets.

5 36. Defendants did not inform Plaintiff that FIP was a high-risk transaction involving
6 an unregistered investment that was not approved by the DBO or the SEC. Defendants did not
7 inform Plaintiff that this structured income stream was a sales practice violation for an elderly,
8 disabled veteran living on a fixed budget.

9 37. Defendants never informed or warned Plaintiff that FIP had a history of preying on
10 senior citizens, disabled veterans and retirees living on fixed pension or income streams.

11 38. Defendants also failed to inform Plaintiff that before the time Defendants were
12 recommending FIP to Plaintiff, FIP was being investigated by regulators in New York,
13 California, Massachusetts, Iowa, Washington, North Carolina, and the Consumer Financial
14 Protection Bureau due to predatory lending practices.

15 39. Plaintiff followed Defendants’ recommendation to purchase FIP interests with all
16 his qualified tax-deferred funds. The Purchase Agreement was signed by Plaintiff and Defendant
17 Andrew, for himself and as “agent” for Live Abundant and Minnesota, on September 22, 2015 at
18 their professional office space in Irvine, California. By 2015, Andrew had regularly and
19 consistently communicated with Plaintiff as an authorized agent for Live Abundant and
20 Minnesota and this FIP Purchase Agreement was presented, recommended and sold to Plaintiff in
21 the same manner as the prior investments including the life insurance policy.

22 40. On or about December 21, 2015, the IRA, bearing account number XXXX9350,
23 purchased \$170,000.00 in FIP. This purchased consumed Plaintiff’s near-entire IRA. It was an
24 unlawful, concentrated and illiquid investment in a high-risk, non-qualified asset.

25 41. Plaintiff was unaware and uninformed, from the onset of his relationship with
26 Defendants, that rolling over his government retirement account to the IRA incurred tax
27 obligations, penalties and deprived him of the government’s safe, low-cost, conflict-free
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1 management. Plaintiff was unaware and uninformed by Defendants that using his tax-deferred
2 funds with IRA to fund the life insurance policy and FIP incurred tax obligations and penalties.
3 Defendants never warned Plaintiff of these risks or about these unlawful recommendations and
4 unlawful transactions.

5 42. The IRA account carried the FIP interests on its periodic account statements and
6 reflected the account representative as “Paramount Financial Services Aaron Andrew” with his
7 email address as “aaron@liveabundant”. Live Abundant and Andrew were not licensed to serve
8 as Plaintiff’s account representative on the IRA account. The periodic account statements
9 reflected the FIP on the statements with Live Abundant and Andrew as the representative. Live
10 Abundant and Andrew (and others) managed the IRA account for Plaintiff including the receipt
11 of interest income from FIP and processing Plaintiffs’ income taxes on the purchase and sales, as
12 reflected them on the periodic account statements. FIPs transactions through Plaintiff’s IRA
13 account would not have occurred without Live Abundant and Andrew’s active involvement, in
14 addition to others. They acted without the requisite licenses to buy, sell and manage investments
15 for an elderly consumer; using qualified funds to purchase nonqualified investments for an elderly
16 consumer; buying uncertificated, unregistered investments; receiving income from the unlawful
17 investments and reporting income taxes.

18 43. In February 2016, Plaintiff received closing documents from FIP via Defendants’
19 agents Andrew and Live Abundant. The Closing Documents reminded Plaintiff of Defendants’
20 “Structured Case Flows” strategy as a “... unique financial vehicle that provides a predictable
21 stream of income with a specific rate of return over a specific time period.” Defendants urged
22 Plaintiff that the structured strategy was a reliable program to fully fund the life insurance policy
23 in just five years: “... 5-year design and integrates very well with a Maximum Funded insurance
24 policy.” These marketing materials were false and misleading lures to sell unaffordable and
25 unneeded life insurance and investments to Plaintiff.

26 44. In or about 2017, FIP collapsed and so too did the viability of the life insurance
27 policy. Nearly all of Plaintiffs’ liquid assets are locked-up in these investments.
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1 45. Defendants blamed Plaintiff and others for the erosion of Plaintiff's retirement
2 assets, which were false and misleading statements. Defendants via Live Abundant and Andrew
3 introduced their lawyer to Plaintiff to pursue FIP. Plaintiff trusted Defendants and followed this
4 recommendation. But, this lawyer's representation and advice was an undisclosed conflict of
5 interest. On information and belief, he was selected by Defendants via Live Abundant and
6 Andrew and his scope of engagement was, by their design, limited to pursuing FIP and not to
7 investigate or share any investigation findings about Defendants' malfeasance. This advice – both
8 the legal advice and Defendants' recommendation and endorsement of this lawyer and his scope
9 of representation –was presented in a misleading and false manner and furthered the financial
10 elder abuse and other causes of action that Plaintiff asserts against the Defendants.

11 46. Plaintiff had no actual notice and did not discover potential misconduct until 2018
12 when he first lost trust and confidence in the Defendants and began his inquiries questioning their
13 advice, diligence and recommendations. Until that time, he relied on them as his financial experts
14 and fiduciaries and diligently followed their recommendations.

15
16 **PUNITIVE DAMAGES, TREBLE DAMAGES AND BURDEN-SHIFTING**

17 47. Defendants' engaged in malice, oppression, or fraud pursuant to California Civil
18 Code §3294. Further, the individual employees of the corporate entity Defendants who
19 committed these wrongful acts and omissions were either officers, directors, or managing agents
20 of such Defendants or such Defendants authorized their employees misconduct or subsequently
21 adopted or approved their wrongful conduct such that such Defendants are liable for punitive
22 damages based on their employees' conduct.

23 48. Defendants were persons "engaged in the business of advising others for
24 compensation as to the advisability of purchasing, holding or selling property for investment and
25 who represent[ed]" themselves to be experts but failed to perform with "the due care and skill
26 reasonably to be expected of a person who is such an expert." California Civil Code §3372.
27 Defendants' advice and recommendations in this action was part of their strategy to sell life
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1 insurance and other products as investment vehicles. Defendants violated California Civil Code §
2 3372, which is a burden-shifting statute that they must prove they met the standard of care for
3 similar experts.

4 49. Defendants engaged in unlawful conduct under California Civil Code §3345 and
5 Code of Civ. Proc. §1029.8, involving a senior citizen or disabled person residing in California.
6 The remedy for a finding under this statute includes a fine, civil penalty or penalty or other
7 remedy up to three times greater than authorized by the statute or the amount awarded by the trier
8 of fact.

9 50. Defendants' misconduct constituted undue influence over Plaintiff under
10 California Civil Code §1575 and Welfare & Institutions Code §15610.70 as set forth in this
11 action.

12 51. These allegations and prayer for relief are pled for every cause of action below for
13 which these remedies may be applicable.

14
15 **FIRST CAUSE OF ACTION**

16 **(PROFESSIONAL NEGLIGENCE AGAINST**

17 **ALL DEFENDANTS AND DOES 1 TO 4)**

18 52. Plaintiff incorporates by reference all preceding and subsequent paragraphs as
19 though fully set forth herein.

20 53. Plaintiff alleges that Defendants, and each of them, owed the Plaintiff the duty of
21 care applicable to similar professionals and professional entities. The standard of care applicable
22 may be heightened because Defendants held themselves out as experts in insurance, wealth
23 accumulation, financial planning and structuring to maximize assets and to reduce tax
24 impairments and penalties. For instance, Defendants represented to Plaintiff that he: needed to
25 liquidate his IRA assets and transfer them elsewhere; needed to purchase the life insurance policy
26 and FIP; would be able to afford the premiums from onset and, later, through structured cash
27 income involving FIP; and could predictably expect to receive the FIP income stream as well as
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1 the \$720,000 benefit from the accelerated benefit agreement in the life insurance policy. They
2 neglected to properly disclose all the tax impairments, consequences and liabilities of these
3 transactions. All the advice, recommendations and conduct in this action is actionable.

4 54. Plaintiff alleges that Defendants, and each of them, breached their duties of care.

5 55. Defendant's breach of their respective duties of care proximately caused him
6 emotion and financial harm and said harm was a substantial factor in causing Plaintiff's harm,
7 including his expectation of the proposed insurance death benefit under the accelerated benefits
8 agreement of \$720,000 and the other remedies in the prayer for relief.

9
10 **SECOND CAUSE OF ACTION**

11 **(NEGLIGENT MISREPRESENTATION AGAINST**

12 **ALL DEFENDANTS AND DOES 1 TO 4)**

13 56. Plaintiff incorporates by reference all preceding and subsequent paragraphs as
14 though fully set forth herein.

15 57. Plaintiff is informed and believes, and based thereon, allege that Defendants and
16 each of them, made negligent misrepresentations to Plaintiff, as set forth above. For instance,
17 Defendants represented to Plaintiff that he: needed to liquidate his IRA assets and transfer them
18 elsewhere; needed to purchase the life insurance policy and FIP; would be able to afford the
19 premiums from onset and, later, through structured cash income involving FIP; and could
20 predictably expect to receive the FIP income stream as well as the \$720,000 benefit from the
21 accelerated benefit agreement in the life insurance policy. They neglected to properly disclose all
22 the tax impairments, consequences and liabilities of these transactions. All the advice,
23 recommendations and conduct in this action is actionable.

24 58. Defendants had no reasonable grounds for believing the representations were true
25 based on Plaintiff's disclosed financial profile and Defendants' expertise in the field.

26 59. Defendants intended that Plaintiff rely on their advice and knew that he was a
27 disabled and retired veteran, living on a fixed budget in retirement and that his liquid assets were
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1 irreplaceable. They also knew his age and that he was an elderly California citizen during a
2 significant part of the relevant time period.

3 60. Defendant's breach of their respective duties of care proximately caused him
4 emotional and financial harm and said harm was a substantial factor in causing Plaintiff's harm,
5 including his expectation of the proposed insurance death benefit under the accelerated benefits
6 agreement of \$720,000 and the other remedies in the prayer for relief.

7
8 **THIRD CAUSE OF ACTION**
9 **(BREACH OF FIDUCIARY DUTY AGAINST**
10 **ALL DEFENDANTS AND DOES 3 TO 6)**

11 61. Plaintiff incorporates by reference all preceding and subsequent paragraphs as
12 though fully set forth herein.

13 62. Defendants held themselves out as financial experts in insurance, wealth
14 accumulation, financial management and in investment allocation. All the acts conducted by
15 Andrew were on behalf of himself, Live Abundant and Minnesota as their authorized and
16 appointed agent. Defendants created a special relationship with Plaintiff, a retired, disabled and
17 (at times) an elderly individual by offering him expert advice regarding his IRA portfolio
18 allocation, selling these positions and repurposing his IRA proceeds and other liquid assets to buy
19 life insurance and FIP as investments through a complicated structured finance program endorsed
20 by the Defendants. The duties the Defendants undertook created the fiduciary duty and they
21 assumed the role as Plaintiff's fiduciaries.

22 63. Defendants breached their fiduciary duties by engaging in all acts discussed
23 herein. Defendants put their own interests ahead of Plaintiff's, took action and made
24 recommendations for their own gain at Plaintiff's expense and disregarded his best interests to
25 recommend insurance, investments and a financial wealth plan that did not (and could not) meet
26 his needs.

1 64. Defendants concealed material facts from Plaintiff and misled him and deceived
2 him in all the acts discussed herein. Defendants did not perform proper due diligence or a proper
3 investigation into the life insurance policy, the structured income stream, FIP and their overall
4 financial planning advice as they should have.

5 65. Defendant's breach proximately caused him emotional and financial harm and said
6 harm was a substantial factor in causing Plaintiff's harm, including his expectation of the
7 proposed insurance death benefit under the accelerated benefits agreement of \$720,000 and the
8 other remedies in the prayer for relief.

9
10 **FOURTH CAUSE OF ACTION**
11 **(CALIFORNIA FINANCIAL ELDER ABUSE**
12 **AGAINST ALL DEFENDANTS AND DOES 1 TO 6)**

13 66. Plaintiff incorporates by reference all preceding and subsequent paragraphs as
14 though fully set forth herein.

15 67. Plaintiff asserts his rights under the California's financial elder abuse statute
16 because he was a legally disabled California resident during all relevant times. Also, he turned 65
17 years old in 2014 a date preceding a substantial part of the misconduct occurred as set forth
18 herein.

19 68. Defendants, and each of them, are liable to Plaintiff, and each of them, because
20 they violated California's financial elder abuse statute: (i) takes, secretes, appropriates, obtains or
21 retains, any interest in any real or personal property, for a wrongful use, or with intent to defraud
22 or both; or (ii) assists in doing any of the above described acts; or (iii) does any of the above
23 described acts through undue influence.

24 69. A conclusive presumption of financial abuse exists under Cal. *Welf. & Inst. Code* §
25 15610.30(b) because Defendants, and each of them, knew or should have known that their
26 malfeasance was likely to be harmful to this legally disabled, retired senior citizen.
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1 70. Defendants and their co-conspirators and aiders and abettors exerted duress, fraud,
2 menace, coercion and undue influence over Plaintiff at the time of these wrongful takings.

3 71. Plaintiff seeks attorneys' fees and costs of suit under Cal. *Welf. & Inst. Code* §§
4 15657.5(a). Plaintiff seeks pain and suffering damages under Cal. *Civ. Code* § 3333.2 and Cal.
5 *Welf. & Inst. Code* §15657.5(b)(1).

6 72. Plaintiff seeks punitive and exemplary damages and trebled damages under Cal.
7 *Civ. Code* §§ 3345, 3294 and other applicable statutes.

8
9 **FIFTH CAUSE OF ACTION**
10 **(VIOLATIONS OF CALIFORNIA BUS. & PROF. CODE §17200, ET SEQ.**
11 **AGAINST ALL DEFENDANTS AND DOES 1 TO 6)**

12 73. Plaintiff incorporates by reference all preceding and subsequent paragraphs as
13 though fully set forth herein.

14 74. Plaintiff suffered an injury and lost money or property as a result of such unfair
15 competition and false advertising.

16 75. Defendants engaged in unlawful, unfair or fraudulent business practices and
17 advertising as set forth in this action. These practices and advertising were made to other persons
18 and entities, not just Plaintiff. In addition to the allegations set forth above, Defendants' scheme,
19 conduct and practices to offer and sell insurance products, FIP and legal recovery services was
20 directed to other customers without proper disclosures or licensure. Defendants also encouraged,
21 solicited, knew or should have known that other customers sourced life insurance premiums and
22 FIP payments from qualified funds or retirement vehicles. Defendants also directed to other
23 customers the advice and recommendations that incurred tax penalties and tax impairments
24 involving qualified funds. Defendants also directed to other customers their structured cash flow
25 strategy. Defendants also engaged in professional activities that they were not licensed or
26 certificated to conduct with other customers within and outside of the State of California.
27 Plaintiff intends to conduct discovery of these acts to further prove it.

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1 76. On information and belief, Andrew was not licensed to offer or sell insurance in
2 the State of California. On information and belief, Minnesota transacted the life insurance policy
3 with Plaintiff, a California resident, with an insurance agent not licensed in the State of
4 California. Andrew and Live Abundant advertised their services in a radio broadcast in Southern
5 California even though Andrew was not licensed in California and did not disclose his lack of
6 licensure. Plaintiff alleges that Defendants conducted these acts with other customers within and
7 outside of the State of California and he intends to conduct discovery to further prove it.

8 77. The agreements and transactions between Defendants and Plaintiff are void and
9 Plaintiff is entitled to rescission of all the transactions, plus prejudgment interest, among other
10 remedies set forth in the prayer. Plaintiff is also entitled to restitution relief from Defendants,
11 including the return of all fees, commissions and charges for the services or products at issue.
12 Plaintiff is also entitled to civil penalties in an amount to be decided by the Court.

13 78. Plaintiff is entitled to reasonable attorneys’ fees under any statute or law providing
14 such entitlement, including California Corporations Code §25501.5(b), California Code of Civil
15 Procedure §1029.8 and California Business & Professionals Code §16240.

16 79. Plaintiff is entitled to an order or judgment prohibiting Defendants from
17 conducting any insurance or securities business transactions with a State of California resident
18 without proper licensures. Plaintiff is entitled to an order or judgment from advertising any
19 insurance or securities business with a State of California resident without proper licensure.

20
21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them:

- 23 1. Statutory damages, including rescission of all the transactions;
- 24 2. Expectation/consequential damages of \$720,000 or an amount according to proof;
- 25 3. Special and general damages in an amount according to proof;
- 26 4. Unjust enrichment in an amount according to proof;


- 1 5. Treble damages under Code of Civ. Proc. §1029.8, Civil Code §3345 and Wel. &
- 2 Inst. Code §15657.5;
- 3 6. Attorneys' fees and costs of suit under any statute or law providing such
- 4 entitlement, including Corp. Code § 25501.5(b), Wel. & Inst. Code § 15657.5(a), Code of Civ.
- 5 Proc. § 1029.8 and Bus. & Prof. Code § 16240;
- 6 7. For pre-judgment interest on all damages at the maximum legal rate;
- 7 8. For punitive and exemplary damages in a sum sufficient to punish defendants, and
- 8 deter future repetitions of said or similar conduct;
- 9 9. Restitution relief from Defendants, including the return of all fees, commissions
- 10 and charges for the services or products at issue;
- 11 10. Civil penalties in an amount to be decided by the Court; and
- 12 11. For such other further relief as the court may deem just and proper.
- 13
- 14

JURY DEMAND

Plaintiff demands trial by jury as to all issues so triable in this action.

REIF LAW GROUP, P.C.

Dated: October 4, 2018

By:  _____
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 Marc S. Ehrlich
 Ohia A. Amadi

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