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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF AMADOR, UNLIMITED JURISDICTION DISTRICT

HELEN P.

Plaintiff(s),

vs.

KATHERINE M., aka KATHERINE aka  
KATHERINE; DOES 1-20

Defendants.

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CASE NO.

**COMPLAINT**

- 1. FINANCIAL ELDER ABUSE**
- 2. FRAUD AND CONCEALMENT**
- 3. CONSTRUCTIVE FRAUD**
- 4. NEGLIGENCE**
- 5. RECISSION**
- 6. BREACH OF CONTRACT**
- 7. CONVERSION**
- 8. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
- 9. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

**JURY TRIAL DEMANDED**

Plaintiff alleges as follows:

**JURISDICTION AND VENUE**

1. Plaintiff brings this action to redress violations of California statute and common law.

The amount in controversy exceeds the jurisdictional minimum of this Court.

2. Plaintiff alleges that the relevant acts and omissions occurred in Amador County.

**PARTIES**

3. Plaintiff Helen P. PLAINTIFF (hereinafter “Plaintiff” or “PLAINTIFF”) is an individual over the age of 65 years and a resident of the town of Fiddletown, County of Amador.

4. Defendant Katherine M. DEFENDANT, aka Katherine DEFENDANT Aka Katherine DEFENDANT (hereinafter “Defendant” or “DEFENDANT”) is an individual over the age of 18 years and at all relevant times referenced herein, was a resident of the town of Fiddletown, County of Amador. Plaintiff is informed and believes and thereon alleges that Defendant is currently a resident of the City of Santa Rosa, County of Sonoma.

5. The true names, capacities, whether individual, corporate, associate, government, or otherwise, of Defendants DOE ONE through DOE TWENTY inclusive, are unknown to Plaintiff, who therefore sues said defendants by such fictitious names pursuant to section 474 of the California Code of Civil Procedure and prays leave of court to amend this complaint to set forth their true names and capacities when the same have been ascertained.

6. Plaintiff is informed and believes, and thereon alleges, that defendants and each of them at all times herein mentioned, were negligently, statutorily and/ or strictly liable in some manner for the events and happenings herein alleged, and that they were the agents and employees of each of their co-defendants, and in doing the things hereinafter alleged were acting within the course and scope of said agency and employment and with knowledge and consent of each of their co-defendants.

#### **FACTS COMMON TO ALL CAUSES OF ACTION**

7. At all times mentioned herein, Plaintiff was an “elder” as such is defined by Welfare & Institutions Code section 15610.27.

8. At all relevant times herein, Plaintiff was in frail physical condition. Plaintiff does not

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drive and therefore relied on others to drive. Plaintiff lives in her home located on a unpaved road in a rural area on the outskirts of Fiddletown, California. Plaintiff lived in her home with her husband, Leon PLAINTIFF until Leon PLAINTIFF's death on June 7, 2005.

9. In the month of October, 2004, Defendant came to the Plaintiff's home to interview as a caretaker for Leon PLAINTIFF and to help Plaintiff around the house. Following the initial interview, Defendant determined that she was not interested in the position.

10. On or about the month of February, 2005 Defendant returned to the home of Plaintiff and her husband and inquired whether the position was still open. Plaintiff and her husband agreed to hire Defendant at the rate of \$650.00 per month plus room in return for caring for Leon PLAINTIFF and performing certain duties around the home which included driving to stores and to the veterinarian's office which neither Leon PLAINTIFF or Plaintiff were able to do. Defendant moved in to Plaintiff's home, and was allowed to live in the 2000 Nomad 235 5<sup>th</sup> Wheel Trailer which Plaintiff owned with her husband. During this time, Defendant befriended both Leon PLAINTIFF and Plaintiff. Leon PLAINTIFF and Plaintiff placed their trust and confidence in the integrity and fidelity of Defendant, and named her as the sole beneficiary to their estate. During this time, Leon PLAINTIFF and Plaintiff gave their Chevrolet Blazer to Defendant for no consideration.

11. Leon PLAINTIFF died on June 7, 2005 after 32 years of marriage to Plaintiff. Defendant remained living at the Plaintiff's property and began to perform small jobs around the home and also assumed the handling of Plaintiff's finances in that Defendant opened bills, prepared checks to pay the bills, and continuing to do shopping and run errands for the Plaintiff, in the nature of a care companion. Plaintiff continued to place her trust and confidence in

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Defendant in part because Defendant told Plaintiff that she was well educated, held degrees in psychology and counseling, and further because Plaintiff's husband had taken care of the bills and expenses throughout their marriage, thus Plaintiff was not accustomed to handling these transactions. Plaintiff told Defendant that she lived on limited income and that it was her practice to pay off credit card bills as fully as possible each month and to live frugally within her means. Plaintiff and her husband also maintained a modest savings account which they set aside for major expenses which might come up from time to time. Plaintiff authorized Defendant to maintain this conservative and frugal style of asset management and based on this understanding and expectation, Plaintiff authorized Defendant to write checks to pay bills.

12. In or about the month of July, 2005 Defendant began to maintain Plaintiff's checkbook, receive statements and pay bills. However, rather than manage the assets in a conservative and frugal manner, and unbeknownst to Plaintiff, Defendant began to charge items on the credit card accounts, and then fail to pay the balance, resulting in rising credit card debt and increased finance charges. Defendant furthermore began to write checks for expenses beyond the authority granted to her by Plaintiff.

13. Due to the trust that Plaintiff placed in Defendant, on or about July 20, 2005, Plaintiff signed a Springing Durable Power of Attorney in which she named Defendant as her attorney-in-fact. On this date she also executed a Gift Joint Tenancy Deed in which Plaintiff named Defendant as joint tenant with her in Plaintiff's Fiddletown property. On this date, Plaintiff also signed a Nomination of Conservator, in which she nominated Defendant to act as her conservator in the event a conservatorship was initiated.

14. During the summer of 2005 Defendant complained to Plaintiff that the Chevrolet

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Blazer was not reliable and had too many miles on it, and Defendant thereafter convinced Plaintiff to co-sign for a loan on a new Honda Civic automobile on or about August 17, 2005. Defendant purchased an extra warranty for this vehicle. Title and obligation for the financing of the vehicle was placed in the name of both Plaintiff and Defendant. Plaintiff understood and intended that the vehicle was a necessary expense and that the vehicle would be used for the purpose of taking Plaintiff to medical visits, shopping and for trips to the veterinarian for Plaintiff's dogs. Plaintiff did not intend to make a gift of the vehicle to Defendant. Defendant then gave her Blazer to Defendant's daughter.

15. In the month of August, 2005, Defendant presented a document from the Department of Motor Vehicles to Plaintiff to sign. Defendant told Plaintiff that the document was necessary. It was Plaintiff's understanding and intent that the document merely added Defendant to the title to the 5<sup>th</sup> Wheel, however, the effect of the document instead was to transfer 100% of the title to the 5<sup>th</sup> Wheel trailer to Defendant alone. Plaintiff signed this document but did not understand or intend the effect. Plaintiff, as a part of this lawsuit, seeks rescission of this document and return of the registered title to this asset.

16. In approximately June, 2005, Plaintiff advised Defendant that she could not afford to pay Defendant the \$650.00 monthly that she had agreed to do when her husband was alive. At this point, Defendant agreed to remain at Plaintiff's property and to perform small services and continue to pay household bills in return for housing in the 5<sup>th</sup> Wheel, continued use of the Honda which Plaintiff and Defendant had purchased, and also in return for some of Defendant's meals.

17. In approximately August, 2005, Plaintiff and Defendant discussed obtaining a

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reverse annuity mortgage with a line of credit against the equity in the real property. At this point in time, Plaintiff's income was only \$1,129.00 from Social Security, and her mortgage payments were approximately \$433.00 per month, leaving only approximately \$686.00 for other monthly expenses. Plaintiff had earlier placed Defendant on title to the Fiddletown real property for the purposes of probate avoidance. Plaintiff and Defendant therefore applied to Wells Fargo Bank for a reverse annuity mortgage and line of credit of approximately \$30,000.00 which was approved, at which time, Defendant voluntarily removed her name from title to the real property. The purpose of the line of credit was to have funds available for such items as roof and deck repair, and other major expenses in and around the home.

18. Defendant handled most of the business transactions with Wells Fargo Bank on Plaintiff's behalf. Defendant convinced Plaintiff to close out the Bank of America accounts and to open up two accounts at Wells Fargo Bank, one checking and one money market, and to place Defendant's name on title to the accounts as joint tenant. The purpose of the joint tenancy form of ownership of the bank accounts was for ease of financial transactions, and was not intended by Plaintiff to be a gift of all of her financial assets to Defendant. The reverse annuity mortgage was established to pay \$1,300.00 per month to Plaintiff in order to supplement her Social Security income. In addition, Defendant convinced Plaintiff to obtain an equity line of credit of approximately \$30,000.00 from the equity in the home to be used for emergency repairs and deferred maintenance. Rather than maintain the equity line as an available line of credit which could be drawn upon as needed and thereby save Plaintiff from paying interest until said funds were withdrawn from the bank, Defendant arranged to have the equity line of \$30,000.00 funded and deposited into the Wells Fargo bank accounts to which Defendant was a joint tenant.

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Defendant repeatedly assured Plaintiff that things were being taken care of, which Plaintiff understood to mean that the transactions were appropriate, fiscally conservative and in Plaintiff's best interests.

19. During the fall of 2005, Defendant complained to Plaintiff that she lacked sufficient funds to pay certain of her own bills. Plaintiff agreed that Defendant could make small payments to her credit cards from the joint checking account such as her Mervyn's credit card and for minor expenses to Defendant's chiropractor.

20. Beginning on or about October 4, 2005, and continuing thereafter, and unbeknownst to Plaintiff, and without permission of Plaintiff, Defendant made regular withdrawals from the Wells Fargo Bank joint checking account and money market which she did not disclose to Plaintiff and which Plaintiff did not comprehend, know about, intend or agree to. The following list of transactions is by way of example only, and not intended in this Complaint to be a full and complete description of all of the unauthorized transactions:

**DEBIT CHARGES**

10/4/2005	Withdrawal in branch	\$1,000.00
10/31/05	Withdrawal in branch	\$ 60.00
11/16/2005	Withdrawal in branch	\$ 150.00
11/23/2005	Withdrawal in branch	\$ 60.00
11/25/05	Bill Pay California State	\$ 100.00
11/28/05	In branch withdrawal	\$ 500.00
11/28/05	ATM withdrawal in Santa Rosa	\$ 300.00
11/28/2005	ATM withdrawal in Santa Rosa K-Mart	\$ 50.00

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11/29/05	Withdrawal in branch	\$ 360.00
12/08/05	Bill pay On-Line to Katherine DEFENDANT	\$2,800.00
12/27/05	Bill Pay California State	\$ 100.00
12/27/05	Withdrawal in branch	\$ 80.00
1/3/06	Withdrawal in branch/store	\$ 60.00
1/4/2006	Bill Pay Katherine DEFENDANT	\$ 350.00
1/11/06	On-line transfer to Acct 2959202xxx	\$ 446.74 from Money Mkt
1/12/2006	Online Transfer to Katherine DEFENDANT	\$30,000.00
1/17/06	ATM withdrawal in Santa Rosa	\$ 300.00 from Money Mkt
1/18/06	Katherine DEFENDANT bill pay	\$ 350.00
1/24/06	Bill Pay California State	\$ 100.00
1/24/06	Online Transfer from 295920xxx	\$8,000.00
1/26/06	Withdrawal in branch	\$1,000.00 from Money Mkt
1/26/06	Withdrawal in branch	\$1,000.00 from Money Mkt
2/7/06	Autmatic transfer to acct xxxxxx1296	\$ 200.00
2/1/2006	Bill pay Katherine DEFENDANT	\$ 350.00
2/17/06	Automatic transfer to Acct xxxxxx1296	\$ 200.00
2/15/06	Bill pay Katherine DEFENDANT	\$ 350.00
2/23/2006	Bill Pay Sonoma County	\$ 20.00
2/24/06	Bill Pay California State	\$ 100.00
2/28/06	Bill Pay Citifinancial	\$ 100.00
3/15/06	Bill Pay KG	\$ 350.00

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3/15/06	Withdrawal in branch	\$ 60.00
3/14/06	ATM withdrawal	\$ 100.00 from Money Mkt
3/29/06	Check card Verizon Dept of Corrections	\$ 150.00
4/5/06	ATM withdrawal	\$ 60.00 from Money Mkt
4/17/06	Withdrawal in branch	\$ 60.00
4/19/06	Bill Pay Sonoma County	\$ 20.00
4/24/06	Bill Pay Sonoma County	\$ 20.00
4/25/06	Bill Pay California State	\$ 70.00
5/5/06	Check card Verizon Dept of Corrections	\$ 100.00
4/27/06	Withdrawal in branch from Money Market	\$ 360.00
5/1/06	Withdrawal in branch	\$ 80.00
5/8/06	Bill pay California State	\$ 124.00
5/23/06	Bill pay Sonoma County	\$ 20.00
5/24/06	Bill Pay California State	\$ 63.00
6/7/06	On line transfer to 901414126	\$ 200.00
6/14/2006	Online Transfer to KG 2959202xxx	\$1,306.57
6/20/06	Online transfer to KG# 2959303xxx	\$1,600.00
6/22/06	Bill pay Sonoma County	\$ 20.00
6/26/06	Bill Pay California State	\$ <u>53.00</u>

**Total Debits** **\$56,303.31**

**CHECKS**

Bank of America Checks

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<u>Date</u>	<u>Check No.</u>	<u>Amount</u>	<u>Payee</u>	<u>Memo</u>
7/8/05	136	\$350.00	Katherine	DEFENDANT
7/18/05	147	\$700.00	Katherine	DEFENDANT
7/27/05	158	\$700.00	Katherine	DEFENDANT
8/8/05	162	\$700.00	Katherine	DEFENDANT
9/9/05	172	\$1,400.00	Katherine	DEFENDANT
9/26/2005	186	\$1,050.00	Katherine	DEFENDANT
<b>Total Bank of America</b>				<b>\$ 4,900.00</b>

Wells Fargo Checks

9/30/05	1004	\$13.43	Volcano	DEFENDANT 209.296.5058
10/10/05	1008	\$350.00	Katherine	DEFENDANT
10/31/05	1019	\$205.00	Peter Smevold	Subira's Tow
11/2/05	1026	\$275.00	Subira Rolen	Meds
11/1/05	1020	\$11.32	Volcano	209.296.5058
11/1/05	1021	\$29.00	Illegible	DEFENDANT-6647
11/7/05	1028	\$106.00	SBC	DEFENDANT
11/14/05	1036	\$40.00	Sonoma County	DEFENDANT 000117401
11/23/05	1039	\$82.00	Dr. Burr	Visxxx
12/1/05	1043	\$50.00	Nanci Edge	xxx
12/1/05	1045	\$25.00	Daisy Sonia	Thank you
12/14/05	1049	\$50.00	Andrew Sharkey	Thank you
12/21/05	1053	\$6.21	Columbia House	(xxxxxx)762

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12/21/05	1054	\$40.00	Sonoma County	Katherine DEFENDANT 000117401
12/21/05	1055	\$48.00	USPS	Annual fees: 24.00 x 2 =\$48.00 PO Boxes: 102 and 202
12/22/05	1057	\$45.00	Nanci Edge	Thank you
12/24/05	1059	\$120.00	Subira Rolén	
12/27/05	1060	\$30.00	Gold Mine	(Unreadable)
1/12/06	1063	\$27.00	Nanci Edge	Nails
1/17/06	1066	\$20.00	Sonoma County	DEFENDANT 000117401
1/24/06	1069	\$100.00	Vanessa Rivera	God bless you
1/31/06	1071	\$100.00	Subira Rolén	A little 4 u Public Defender Fee
1/31/06	1072	\$115.00	Amador Chiropractic	H&2
2/1/06	1074	\$150.00	Subira Rolén	Rent Balance & Miscellaneous
2/1/06	1073	\$25.00	Sierra Club	Special offer membership
2/1/06	1075	\$85.00	Day Sonia	Hair
2/7/06	1076	\$25.00	Amador Chiropractic	
2/8/06	1078	\$8.13	Columbia House	50424492762
2/9/06	1082	\$19.95	Member Choice	Discount Prescription card
2/14/06	1083	\$200.00	Subira Rolén	Medication
2/14/06	1084	\$60.00	Amador Chiropractic	Adjustments
2/23/06	1087	\$27.00	Nanci Edge	

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2/28/06	1089	\$60.00	Amador Chirpractic	
3/2/06	1090	\$395.00	DMV	RV reg fees
3/14/06	1093	\$27.00	Nanci Edge	
3/14/06	1094	\$45.00	Daisy Sonia	
3/15/06	1096	\$60.00	Amador Chiropractic	
3/16/06	1097	\$25.00	Subira Rolen	4D's CDL
3/21/06	1098	\$60.00	Amador Chiropractic	
4/5/06	1103	\$27.00	Nanci Edge	
4/19/06	1106	\$32.00	Nancy Edge	Have a Great Cabo
5/3/06	1108	\$117.50	Bill Parvall	Computer assist
4/29/06	1109	\$470.00	Subira Rolen	Deposit Return
5/11/06	1112	\$27.00	Nanci Edge	
5/31/06	1115	\$27.00	Nanci Edge	Nails
5/31/05	1116	\$80.00	Daisy Sama	Hair

**Total Wells Fargo Bank** **\$3,940.54**

**CREDIT CARDS CHARGES**

May 27, 2005 Verizon Dept of Corrections \$150.00

April 7, 2006 Verizon Dept of Corrections \$150.00

**Total Credit Card Charges** **\$300.00**

**TOTAL** **\$65,443.85**

Plaintiff reserves the right to amend and supplement this recitation of unauthorized

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expenses and withdrawals for a total amount to be determined at trial.

21. By charging on the credit cards and by failing to pay the balances due for her own expenditures, Defendant exceeded the scope of her authority and caused Plaintiff to incur additional finance charges, in addition to late fees, and bank charges, in an amount to be determined at trial.

22. Defendant repeatedly assured Plaintiff that her assets and the accounts were being well managed. These representations were in fact false. The true facts were that Defendant was slowly and methodically depleting Plaintiff's assets for Defendant's own use and purposes.

23. When Defendant made these representations she knew them to be false and made these representations with the intention to deceive and defraud the Plaintiff and to induce her to act in reliance on these representations in the manner hereinafter alleged, or with the expectation that Plaintiff would so act.

24. Plaintiff, at the time these representations were made by the Defendant and at the time Plaintiff took the actions herein alleged, was ignorant of the falsity of the Defendant's representations and believed them to be true. In reliance on these representations the Plaintiff was induced to do the acts stated herein, including but not limited to granting Defendant her power of attorney, granting Defendant an interest in her home, placing Defendant's name as joint tenant on the bank accounts and allowing Defendant to use credit cards, signing the DMV form which transferred title to the 5<sup>th</sup> Wheel to Defendant and obtaining the Honda Civic automobile and financing loan.

25. On or about June 28, 2006, an Amador County Peace Officer visited Plaintiff and expressed concern that Plaintiff may have been the victim of financial abuse by Defendant.

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Plaintiff advised Defendant by telephone that Plaintiff intended to begin to take care of her own finances.

26. Upon learning of the extent to which Defendant took Plaintiff's assets, Plaintiff has, and continues to suffer severe emotional distress and physical injury, including but not limited to stomachaches, headaches, stress, anxiety, dread, panic, helplessness, sleeplessness, and anguish.

**FIRST CAUSE OF ACTION**  
**(Financial Elder Abuse)**

(Elder Abuse and Dependent Adult Civil Protection Act, Welf. & Inst. Code §§15600 *et seq.*)

27. Plaintiff repeats and re-incorporates paragraphs 1-26, inclusive, as if set forth herein at length.

28. During the acts complained of herein, Plaintiff was an elder who suffered from various physical limitations which restricted her ability to carry out normal activities or to adequately protect her rights.

29. At all time relevant to this action, Defendant stood in a position of trust to Plaintiff in that Defendant created the fiduciary relationship of accepting and holding and/or managing Conservatee's property to use solely for her benefit.

30. The taking, secreting and misappropriation by Defendant of Plaintiff's money and property was for a use and purpose not in the due and lawful execution of Defendant's duty to Plaintiff. The actions or failures to act by Defendant as alleged herein are an unconscionable and despicable fraud perpetrated upon this Plaintiff.

31. The conduct of Defendant as described and alleged herein constitutes financial abuse of an elder as defined in Welfare and Institutions Code section 15610.30.

32. Defendant is guilty of recklessness, oppression, fraud, and malice in the commission of the elder abuse of Plaintiff described and alleged in this Complaint.

COMPLAINT

33. Under Welfare and Institutions Code section 15657(a), defendant, and each of them, is liable to Plaintiff for reasonable attorney fees and costs expended to litigation of this claim.

34. Under Civil Code section 3294 Defendant is liable for punitive damages.

35. Defendant is liable for Plaintiff's pain, suffering and emotional distress.

WHEREFORE, Plaintiff seeks relief as set forth below.

**SECOND CAUSE OF ACTION  
(Fraud and Concealment)**

36. Plaintiff realleges and incorporates by reference paragraphs 1 through 26, above, inclusive, as if set forth herein at length.

37. Upon information and belief, Plaintiff alleges that Defendant, and each of them, made representations to Plaintiff to fraudulently induce her to (A) permit Defendant to handle Plaintiff's financial transactions, (B) be able to have access to Plaintiff's checking account, money market account, equity line of credit and Honda vehicle as a joint tenant; and (C) negotiate a reverse annuity mortgage and line of credit on Plaintiff's behalf. These representations include, but are not limited to, that Defendant would undertake these responsibilities with the Plaintiff's best interests in mind, and conduct her business in a conservative and frugal manner, pay bills faithfully and accurately report to Plaintiff the expenses that were incurred and paid. As such, Defendant was under a fiduciary duty to disclose the true facts to Plaintiff.

38. At the time that these representations were made to Plaintiff, Plaintiff believed that they were truthful and accurate. Relying on these representations, Plaintiff permitted Defendant to collect and pay bills, access Plaintiff's credit cards, negotiate with banks and financial institutions, place Defendant's name as a joint tenant on her checking and money market

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accounts, place Defendant's name on the Honda as a co-owner and co-obligor on the auto loan, and further, on July 20, 2005, Plaintiff signed a Springing Durable General Power of Attorney which purported to name Defendant as Plaintiff's attorney in fact.

39. Plaintiff did not discover, and could not reasonably have been expected to discover, the fraudulent nature of the representations made by Defendant.

40. Defendant knew the representations to be false, and/or that these representations were made recklessly without knowing whether the representations were true. Defendant acted with the intent to deceive and defraud Plaintiff, and to induce Plaintiff to continue to rely on her companionship and property management services. Further, Defendant knew that Plaintiff was susceptible to fraud and undue influence in that Plaintiff was recently widowed, and grieving the loss of her husband, and was inexperienced in handling personal financial transactions and thus would be more likely to place her trust and reliance in Defendant.

41. As a proximate result of their fraudulent conduct, Defendant defrauded Plaintiff, who has incurred economic damages in the form of expenses for mental health and medical treatment, and general damages in the form of pain and suffering, in an amount to be determined at trial.

42. The foregoing conduct of each Defendant was an intentional misrepresentation, and was despicable conduct in conscious disregard of the rights or safety of Plaintiff, justifying an award of exemplary and punitive damages.

43. Under Civil Code §3294, defendant is liable for punitive damages.

WHEREFORE, Plaintiff seeks relief as set forth below.

**THIRD CAUSE OF ACTION  
(Constructive Fraud)**

COMPLAINT

44. Plaintiff realleges and incorporates by reference paragraphs 1 through 26 above, inclusive, as if set forth

45. At all time relevant to this action, there existed between Plaintiff PLAINTIFF and Defendants a fiduciary and/or confidential relationship upon which Plaintiff justifiably relied to her detriment. By virtue of the relationship between Plaintiff and Defendants a fiduciary duty existed relating to the management of Plaintiff's property. Pursuant to said duty, Defendant owed the utmost good faith and fairness to Plaintiff in all matters pertaining to each Defendant's

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conduct with respect to her real and personal property.

46. Defendant accepted the reliance of Plaintiff upon their fiduciary and/or confidential relationship for her care and well-being, and then breached her duty to Plaintiff by engaging in self-dealing, misleading Plaintiff as to the true condition of her assets and investments, and failing to take reasonable steps to safeguard Plaintiff's property in her possession and control.

47. Defendant breached the aforesaid duty as alleged herein, by failing to exercise reasonable care in matters relating to the management, control and possession of her assets, and thereby caused Plaintiff to sustain economic losses in an amount to be proven at trial. In particular and without limiting the generality of the foregoing, in breaching said duty(s) as alleged herein, Defendant breached her fiduciary duty to Plaintiff by wrongfully taking her cash assets and by wrongfully obtaining title to her 5<sup>th</sup> Wheel Trailer, causing injuries as described herein.

WHEREFORE, Plaintiff seeks relief as set forth below.

**FOURTH CAUSE OF ACTION  
( Negligence)**

COMPLAINT

48. Plaintiff repeats and reincorporates paragraphs 1-26, inclusive, as if set forth herein at length.

49. The Defendant owed a duty of care to Plaintiff or while acting as fiduciary for Plaintiff in the management and control of her real and personal property. Defendant has breached that duty of care.

50. In committing the acts alleged herein, the defendant, and each of them, breached their duties of care, as well as their fiduciary obligations to Plaintiff, thereby causing Plaintiff financial loss and harm and emotional and physical distress, in an amount to be determined at trial.

WHEREFORE, Plaintiff seeks relief as set forth below.

**FIFTH CAUSE OF ACTION  
(Rescission of DMV Title to 5<sup>th</sup> Wheel Trailer)**

51. Plaintiff incorporates the foregoing paragraphs as if set forth in full herein.

52. Defendant obtained title to the 2000 Nomad 235 5<sup>th</sup> Wheel Trailer through deception, and or/mistake of fact and/or mistake of law. Plaintiff will suffer substantial harm and injury if the document transferring legal title to the 5<sup>th</sup> Wheel Trailer is not rescinded in that, as a result of the Defendant(s)' conduct, Plaintiff has been deprived of her property.

53. Plaintiff intends service of the summons and complaint in this action to serve as notice of rescission of the document purporting to transfer title to the 2000 Nomad 235 5<sup>th</sup> Wheel Trailer.

WHEREFORE, Plaintiff prays judgment as set forth below.

**SIXTH CAUSE OF ACTION**

COMPLAINT

**(Breach of Oral Contract)**

54. Plaintiff incorporates the paragraphs above as if set forth in full herein.

55. On or about the month of February, 2005, Plaintiff with her husband Leon PLAINTIFF, entered into an oral contract with Defendant whereby Defendant was to act as care provider for Leon PLAINTIFF, who was at that time infirm. In return for caregiving, Plaintiff and Leon PLAINTIFF agreed to pay Defendant \$650.00 per month and to allow her to live in the 5<sup>th</sup> Wheel Trailer located on the property.

56. After Leon PLAINTIFF's death, during the summer of 2005, Defendant and Plaintiff entered into a new oral agreement on or about the dates set forth above for the services to be rendered to Plaintiff by Defendant. The essential terms of the agreement was that Defendant would control and manage Plaintiff's financial affairs all with the best interests of the Plaintiff in mind, perform these duties in a conservative and frugal manner in keeping with the Plaintiff's modest financial circumstance, and would furthermore run errands for Plaintiff including but not limited to shopping and taking Plaintiff to the hair dresser and to veterinarian appointments for Plaintiff's dogs. In consideration for these promises, Plaintiff agreed to provide Defendant with room and partial board and for some limited expenses to be paid from accounts funded with Plaintiff's money such as minimum payments on Defendant's credit cards and small chiropractic bills.

57. On or about July 8, 2005, and continuing thereafter, Defendant breached said contracts by abusing and exceeding the authority granted to her in the contract in that she began to withdraw money from the accounts for herself, used credit cards for purchases that were not authorized by Plaintiff, electronically transferred funds to herself and made cash withdrawals

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without advising Plaintiff, and without Plaintiff's consent, understanding or authority.

58. Plaintiff has performed all obligation to defendant except those obligations Plaintiff was prevented or excused from performing.

59. Plaintiff suffered damages legally caused by Defendants' breach of the agreement in the amount of not less than \$65,443.85.

WHEREFORE plaintiff prays judgment as set forth below.

**SEVENTH CAUSE OF ACTION  
(Conversion)**

60. Plaintiff incorporates the paragraphs above as if set forth in full herein.

61. At all times herein mentioned, Plaintiff was and still is, the legal and equitable owner of the property described in Paragraph 20 hereinabove and entitled to the immediate and exclusive possession of the property therein described and valued as \$65,443.85.

62. On or about the month of June, 2006, Plaintiff orally demanded the immediate return of the above-mentioned property of which she was then aware, and continues to demand immediate return of said property, but Defendant failed and refused and continues to fail and refuse to return the property to Plaintiff.

63. The defendant's acts alleged herein were willful, wanton, malicious and oppressive, were undertaken with the intent to defraud, and justify the awarding of exemplary and punitive damages.

WHEREFORE plaintiff prays judgment as set forth below.

**EIGHTH CAUSE OF ACTION  
(Intentional Infliction of Emotional Distress)**

64. The allegations of paragraphs 1 through 26 are alleged and incorporated herein by COMPLAINT

reference.

65. Defendant intentionally engaged in the extreme and outrageous acts described above to cause Plaintiff severe emotional distress; alternatively, Defendants acted with reckless disregard of the probability that her acts would cause Plaintiff severe emotional distress. Defendant knew that Plaintiff was elderly, was grieving over the loss of her husband, and feared isolation.

66. Defendant committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, and acted with an improper and evil motive amounting to malice and in conscious disregard of Plaintiff's rights. Because the acts taken towards Plaintiff were carried out by Defendant acting in a despicable, deliberate, cold, callous, and intentional manner in order to injure and damage Plaintiff, she is entitled to recover punitive damages in an amount according to proof.

WHEREFORE Plaintiff prays judgment as set forth below.

**NINTH CAUSE OF ACTION**  
(Negligent Infliction of Emotional Distress)

67. The allegations of paragraphs 1 through 26 are realleged and incorporated herein by reference.

68. At all times mentioned herein, Defendant had a duty to exercise due care toward Plaintiff, and to refrain from carelessly, negligently, and arbitrarily inflicting emotional distress upon her.

69. Defendant breached the aforesaid duty of care by interfering with Plaintiff's full use and quiet enjoyment of her assets, money and property, by failing to comply with all applicable legal and equitable duties imposed upon her.

COMPLAINT

70. Defendant knew, or should have known, that her failure to exercise due care with regard to the aforementioned conduct would cause Plaintiff severe emotional distress.

71. As a direct and proximate result of the negligent conduct by Defendants, and each of them, Plaintiff suffered serious physical, nervous and emotional distress which under the same circumstances a reasonable person would be unable to cope with.

**PRAYER FOR RELIEF:**

WHEREFORE, Plaintiff prays for judgment against defendants, and each of them, and for an order of this court as follows:

ON THE FIRST CAUSE OF ACTION (FINANCIAL ABUSE OF AN ELDER):

1. For damages in an amount according to proof but not less than \$65,443.85;
2. For attorneys fees and costs according to proof;
3. For prejudgment interest;
4. For punitive damages in an amount according to proof;
5. For general damages for physical injury and emotional distress and,

ON THE SECOND CAUSE OF ACTION (FRAUD):

6. For damages in an amount according to proof but not less than \$65,443.85;
7. For attorneys fees and costs according to proof;
8. For prejudgment interest;
9. For punitive damages in an amount according to proof;
10. For general damages for physical injury and emotional distress, and,

ON THE THIRD CAUSE OF ACTION (CONSTRUCTIVE FRAUD):

11. For damages in an amount according to proof but not less than \$65,443.85;
- COMPLAINT

12. For attorneys fees and costs according to proof;
13. For prejudgment interest;
14. For general damages for physical injury and emotional distress, and,

ON THE FOURTH CAUSE OF ACTION (NEGLIGENCE):

15. For damages in an amount according to proof;
16. For attorneys fees and costs according to proof;
17. For prejudgment interest; and,

ON THE FIFTH CAUSE OF ACTION (RECISSION)

18. For an order of the Court rescinding and cancelling the transfer of title of the 2000 Nomad 235 5<sup>th</sup> Wheel Trailer;

19. For costs associated with obtaining the rescission of title of the 2000 Nomad 235 5<sup>th</sup> Wheel Trailer and,

ON THE SIXTH CAUSE OF ACTION (BREACH OF CONTRACT)

20. That Defendants be required to make restitution to Plaintiff of any and all money or property obtained in an amount to be determined at trial, but not less than the sum of \$65,443.85;

21. For interest at the legal rate from June 30, 2006;

22. For costs of suit; and

ON THE SEVENTH CAUSE OF ACTION (CONVERSION)

23. For the value of the property converted in an amount to be determined at trial but not less than \$65,443.85;

24. For interest at the legal rate on the foregoing sum pursuant to Section 3336 of the Civil Code from and after June 30, 2006;

COMPLAINT

25. For damages for the proximate and foreseeable loss resulting from Defendant's conversion in and amount to be proved at trial;

26. For damages for time and money properly expended in pursuit of the converted property in an amount to be proved at trial;

27. For punitive and exemplary damages; and

ON THE EIGHTH CAUSE OF ACTION (INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

28. For compensatory damages and such other damages according to proof;

29. For general damages for emotional distress and mental anguish according to proof;

30. For punitive damages according to proof;

32. For interest, including prejudgment interest at the legal rate; and,

ON THE NINTH CAUSE OF ACTION (NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)

33. For compensatory damages and such other damages according to proof;

34. For general damages for emotional distress and mental anguish according to proof;

35. For interest, including prejudgment interest at the legal rate; and.

AND AS TO ALL CAUSES OF ACTION THAT THIS COURT FURTHER ORDER:

36. Costs of suit herein; and,

37. For such other and further relief as the Court considers just and proper.

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RESPECTFULLY SUBMITTED,  
COMPLAINT

DATED: January 22, 2007

LAW OFFICE OF AMANDA L. EBAY

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Amanda L. Ebay, Attorney for Plaintiff  
Helen P. PLAINTIFF

**VERIFICATION**

I, Helen P. PLAINTIFF, am the Plaintiff in the above-captioned proceeding. I have read the foregoing Complaint and know its contents, and the same is true of my own knowledge, except as to matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I signed this declaration at Fiddletown, County of Amador, California, on January 23, 2007.

Helen P. PLAINTIFF

COMPLAINT