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

HUBERT L.

Plaintiffs,  
JAMES , Does 1-10,

Defendants.

vs.

CASE NO.

VERIFIED COMPLAINT FOR  
DAMAGES

1. Financial Elder Abuse
2. Fraud & Concealment
3. Constructive Fraud
4. Negligence
5. Conversion
6. Breach of Contract
7. Expungement of Deed

COMES NOW Plaintiff Hubert L. and complains 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 on information and belief that the defendants reside in San Francisco County, and that the relevant acts and omissions occurred in San Francisco County.

**PARTIES**

3. Plaintiff Hubert L. (hereinafter “Plaintiff” or “”) is an adult over the age of 70 years and resident of the City and County of San Francisco.

4. Defendant James (hereinafter “Defendant” or “”) is an adult and a resident of the City of Antioch, County of Contra Costa.

5. The true names, capacities, wether individual, corporate, associate, government, or otherwise, of cross-defendants DOE ONE through DOE TEN 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. At all times mentioned herein, each cross-defendant was the agent, servant and employee of all remaining cross-defendants and at all times mentioned herein was acting within the course and scope of this agency and employment.

7. Plaintiff is informed and believes and thereon alleges, that each of the defendants DOE ONE to DOE TEN is negligently responsible or strictly liable in some manner for the events and happenings herein alleged and that such negligence caused the injuries and damages herein set forth. Plaintiff is uncertain as to the manner or function of said defendants, and - Plaintiff prays leave to amend this complaint when the same has been ascertained.

### **Factual Background**

8. On or about the Spring of 2006, Defendant JAMES DEFENDANT requested of Plaintiff that Plaintiff authorize DEFENDANT. to use Plaintiff’s good credit and name in order to invest in real property in the State of Texas. Defendant told Plaintiff that purchasing property

in Texas was a good business deal, that the properties would be rented out, that DEFENDANT would manage and supervise the investments, and that profits realized from the investments would be distributed to Velma F. DEFENDANT, the step-daughter of Plaintiff and the mother of DEFENDANT. In order to persuade Plaintiff to agree to the transactions, DEFENDANT promised Plaintiff that DEFENDANT would (a) purchase properties that would be good investments, (b) supervise the properties, (c) manage the properties and/or hire a property management company and therefore manage the property management company, (d) act as Plaintiff's agent with regard to the properties (e) pay all mortgages, taxes and expenses from the income generated by renting the properties, (f) act as Plaintiff's fiduciary with respect to the properties and investments, and (g) supervise and manage the investments in a reasonably prudent manner.

9. On or about the Spring and Summer of 2006, and in reliance on the assurances of ., as set forth herein, Plaintiff did lend his good credit and name to Defendant for the purpose of investing in real property in Texas. Defendant thereupon made applications for credit and obtained Plaintiff's signature on credit applications and purchase agreements in order to purchase real property in the State of Texas in the Plaintiff's name. The addresses of the properties purchased in the name of the Plaintiff were:

- i. 115 Lazy Lane, Seely, Texas
- ii. 1008 Gunnison Street, Seely, Texas
- iii. 4711 Nuckols Crossing, Austin, Texas
- iv. 4715 Teri Road, Austin, Texas
- v. 4717 Nuckols Crossing, Austin, Texas

- vi. 4801 Nuckols Crossing, Austin, Texas
- vii. 5005 Teri Road, Austin, Texas
- viii. 5105 S. Pleasant Valley Road, Austin, Texas
- ix. 5206 Bogey Court, Austin, Texas
- x. 5301 Woodland Oaks, Austin, Texas
- xi. 5402 Agua Caliente, Astin, Texas
- xii. 5404 Agua Caliente, Austin, Texas
- xiii. 5405 Agua Caliente, Austin, Texas
- xiv. 5705 Spoke Court, Austin, Texas
- xv. 6502 S. First Street, Austin, Texas

**10.** Defendant has been engaged since the Spring of 2006 in a fiduciary relationship with the Plaintiff in the management of the improved real property set forth in Paragraph 9 above. For a period of years, defendant . has regularly collected the monthly rental payments made by the tenants residing in the subject properties, paid and/or supervised payment of mortgages, liens, insurance, taxes, encumbrances and maintenance and repair, as well as property management company(ies), presumably for the purpose of paying the mortgage and expenses due each month on the properties.

**11.** Defendant . has refused and failed to pay the monthly mortgage payments, taxes, encumbrances, insurance, repairs, maintenance and debt load of whatever source or nature, in a timely and reasonably prudent fashion, and as a result, the debt service delinquent, in arrears, causing additional charges for late fees, loss of insurance policies, penalties, increased interest

charges, and additional damages to be proved at trial.

**12.** On or about the month of July and August, 2007, DEFENDANT told Plaintiff that the Texas investments were not doing well and that he had lost about \$100,000.00. In or about the month of October and November, 2007 DEFENDANT told Plaintiff that if Plaintiff obtained a loan on Plaintiff's property located at 86 \_\_\_\_ Street, San Francisco, California, then DEFENDANT could pay off certain debts of the Texas properties, and that DEFENDANT would then re-finance the Texas properties and repay the loan on 86 \_\_\_\_ Street, San Francisco in full within a matter of a few months. DEFENDANT further told Plaintiff that DEFENDANT would hold on to the Texas properties until the markets improved. DEFENDANT promised to personally supervise and manage the encumbrance on 86 Apollo Street, that the loan was temporary and that it would not affect Plaintiff's equity. In reliance on these affirmative statements, Plaintiff did agree to encumber the property at 86 \_\_\_\_\_ Street, and executed loan documents therefore. However, on October 31, 2007 and prior to finalizing the transaction, Plaintiff and DEFENDANT learned that Plaintiff was not permitted to encumber the Apollo Street property without prior court order, on account of the fact that the co-owner of said property is Plaintiff's wife, who is under a conservatorship in the City and County of San Francisco. Based on this information, Plaintiff told DEFENDANT that he was no longer willing to encumber the \_\_\_\_ Street property, and Plaintiff therefore terminated the authority for DEFENDANT to do anything that would result in an encumbrance on 86 \_\_\_\_\_ Street, San Francisco.

**13.** In spite of the knowledge that 86 \_\_\_\_\_ Street, San Francisco could not be encumbered without the prior permission of the San Francisco Superior Court, and in direct

contravention of the express statements of Plaintiff, DEFENDANT prepared an interspousal deed, forged the signature of Plaintiff's wife on said deed and presented it to a notary for acknowledgment. Defendant thereafter presented the forged deed to a lender and obtained a loan against 86 Apollo Street in the amount of not less than \$275,000.00. DEFENDANT thereafter took the proceeds of the \$275,000.00 loan and has refused and continues to refuse to tell Plaintiff where the proceeds of said loan are, save and except for the sum of approximately \$100,000.00 which was turned over to the attorney for the Plaintiff's wife's conservator.

**14.** On or about the month of December, 2007 and/or January 2008, and February, 2008, Defendant . wrongfully took possession of American Express checks from Plaintiff's account, without express or implied permission of the Plaintiff, and obtained cash or cash equivalent which . then expended for purposes unrelated to managing the real property described in this complaint. The exact amount of the checks is unknown but for purposes of this Complaint, Plaintiff estimates the value to be approximately seven thousand dollars (\$7,000.00).

**15.** Despite repeated requests therefore, Defendant DEFENDANT has refused, and continues to refuse to disclose any information concerning the financial affairs involving Plaintiff, including but not limited to the identity of any property management companies, accountings, named and identities of tenants, real estate records, loan documents, information concerning distribution of funds from loans, and additional information to be determined at trial. Moreover, Defendant . has refused, and continues to refuse, to make timely payments on the encumbrances in Plaintiff's name, thereby causing additional and cumulative damages as set forth herein.

16. As a result of the acts and omissions of Defendants, and each of them, Plaintiff has been injured in an amount to be proven at trial. For the purposes of setting forth an estimate of damages in the within Complaint, Plaintiff has been injured in that he was persuaded to purchase investment properties in the State of Texas that were bad investments and are worth less than the existing debts associated with said properties, is indebted to various mortgage companies, insurance companies, local taxing authorities and other institutions in amounts in excess of two million dollars (\$2,000,000.00).

17. As a result of the acts and omissions of Defendants, and each of them, Plaintiff has been further injured in his mind and body in that he suffers from worry, anxiety, sleeplessness, strain, tension, distress, stomachaches, headaches, loss of appetite and additional physical and mental injuries to be proved at trial.

**FIRST CAUSE OF ACTION**

**(Financial Elder Abuse vs All Defendants)**

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

18. Plaintiff repeats and reincorporates the paragraphs above as if set forth herein at length.

19. During the acts complained of herein, Plaintiff was an elder as defined by Welfare & Institutions Code section 15600 et seq.

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

benefit of Plaintiff's step-daughter, Velma F. ..

**21.** The taking, secreting and misappropriation by defendant, and each of them, of Plaintiff's money and real property was for a use and purpose not in the due and lawful execution of defendant's duty(s) to Plaintiff. The actions or failures to act by Defendants, and each of them, as alleged herein are an unconscionable and despicable fraud perpetrated upon this Plaintiff.

**22.** The conduct of Defendants, and each of them, as described and alleged herein constitutes financial abuse of an elder as defined in Welfare and Institutions Code section 15610.30.

**23.** Defendants, and each of them, are guilty of recklessness, oppression, fraud, and malice in the commission of the elder abuse of Plaintiff described and alleged in this petition.

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

WHEREFORE, Plaintiff seeks relief as set forth below.

**SECOND CAUSE OF ACTION  
(Fraud and Concealment vs All Defendants)**

**25.** Plaintiff realleges and incorporates by reference all paragraphs above as if set forth herein at length.

**26.** Upon information and belief, Plaintiff alleges that Defendants, and each of them,

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made representations to Plaintiff to fraudulently induce him to (A) permit Defendant to make applications for loans in the Plaintiff's name for the purpose of purchasing real property in the State of Texas, (B) permit Defendant to negotiate the purchase of real property in Texas in the Plaintiff's (C) execution loan and purchase documents regarding property in the State of Texas, (D) enter into contracts with tenants and property management company(ies), (E) collect the rental payments from the tenants for the monthly payment to the mortgage company, (F) to allow Defendant . to supervise, manage, control and operate the real properties located in the State of Texas in the Plaintiff's name. These representations include, but are not limited to, that agreeing to these transactions would result in a prudent investment and that the funds from said investment would benefit Plaintiff and also Plaintiff's step-daughter, .' mother, Velma F. ..

**27.** At the time that these representations were made to Plaintiff, he believed that they were truthful and accurate. Relying on these representations, Plaintiff permitted Defendant . to enter into the transactions as described in Paragraph 25 above and as further described herein.

**28.** Plaintiff did not discover, and could not reasonably have been expected to discover, the fraudulent nature of the representations made by Defendant, and each of them, until approximately December, 2007, when Plaintiff learned that DEFENDANT had obtained a loan against Plaintiff's property at 86 Apollo Street in San Francisco without Plaintiff's permission and in contravention of Plaintiff's expressly stated instruction. Plaintiff learned that DEFENDANT had forged an Interspousal Grant Deed on or about December 6, 2007.

**29.** Defendant., and each of them, 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 Defendant's property management and investment services.

30. As a proximate result of their fraudulent conduct, each Defendant defrauded Plaintiff, who has incurred economic damages in the form of expenses regarding the real properties set forth in this Complaint, and general damages in the form of pain and suffering, in an amount to be determined at trial.

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

32. Under Civil Code §3294, defendants are liable for punitive damages.

WHEREFORE, Plaintiff seeks relief as set forth below.

**THIRD CAUSE OF ACTION  
(Constructive Fraud vs All Defendants)**

33. Plaintiff realleges and incorporates by reference all paragraphs above as if set forth herein at length.

34. At all time relevant to this action, there existed between Plaintiff and Defendants, and each of them, a fiduciary and/or confidential relationship upon which Plaintiff justifiably relied upon to his detriment. By virtue of the relationship between Plaintiff and Defendants, and each of them, a fiduciary duty existed relating to the management of Plaintiff's real property. Pursuant to said duty, Defendants, and each of them, owed the utmost good faith and fairness to Plaintiff in all matters pertaining to each defendant's conduct with respect to his real and personal

property.

**35.** Defendants, and each of them, accepted the reliance of Plaintiff upon their fiduciary and/or confidential relationship for her care and well-being, and then breached their duty to Plaintiff by engaging in self-dealing with respect to the title of the subject property, and further, by Defendant's continuing failure to take reasonable steps to safeguard Plaintiff's property in their possession and control.

**36.** Defendants, and each of them, breached the aforesaid duty as alleged herein, by failing to exercise reasonable care in matters relating to the management, control and possession of Plaintiff's 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, Defendants, and each of them, breached their fiduciary duty to Plaintiff by wrongfully taking his cash assets and by wrongfully obtaining title to his real estate, the subject property herein.

WHEREFORE, Plaintiff seeks relief as set forth below.

**FOURTH CAUSE OF ACTION  
( Negligence vs All Defendants)**

**37.** Plaintiff repeats and reincorporates all paragraphs as if set forth herein at length.

**38.** Defendants, and each of them, owed a duty of care to Plaintiff while acting as his fiduciary in the management and control of his real and personal property. Defendants, and each of them, has breached that duty of care.

**39.** 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 harm to

the her in an amount to be determined at trial.

WHEREFORE, Plaintiff seeks relief as set forth below.

**FIFTH CAUSE OF ACTION  
(Conversion vs. All Defendants)**

40. Plaintiff realleges and incorporates by reference all paragraphs above, as if set forth herein at length.

41. In doing the acts complained of herein, including but not limited to obtaining a loan secured by Plaintiff's real property located at 86 Apollo Street, San Francisco through forgery and deceit, and by obtaining cash advances from Plaintiff's American Express Account, without the knowledge or permission either express or implied of the Plaintiff, Defendant . wrongfully asserted dominion and control over property that belonged to Plaintiff and as a result, Plaintiff has suffered damages in an amount to be determined at trial.

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

43. Under Civil Code §3294, defendants are liable for punitive damages.

WHEREFORE, Plaintiff seeks relief as set forth below.

**SIXTH CAUSE OF ACTION  
(Breach of Contract Plaintiff vs. DEFENDANT)**

44. Plaintiff realleges and incorporates by reference all paragraphs above, as if set forth herein at length.

45. Plaintiff and Defendant entered into an oral agreements on or about the dates set

forth above whereby Plaintiff promised to contribute his good credit and his name and Defendant agreed to purchase and invest in real property in the State of Texas as an investment for the purpose of making a profit. In so promising, DEFENDANT promised to use his best efforts, skill, knowledge and energies in the management and control of the investments and to act in the best interests of the Plaintiff at all times and to act at all times in a reasonably prudent manner.

46. On or about January, 2007 Defendant breached said contracts by failing to manage and control the real property investments in a reasonable prudent manner. DEFENDANT continued to breach said agreement through the year 2007 and into the year 2008 in that DEFENDANT has failed and refuses, and continues to fail and refuse to make timely payments on the encumbrances and debt service of the Texas properties, thereby resulting in economic damages to Plaintiff and furthermore damage to Plaintiff's credit and name.

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

48. Plaintiff suffered damages legally caused by Defendants' breach of the agreement in the amount of not less than two million dollars (\$2,000,000.00).

WHEREFORE plaintiff prays judgment as set forth below.

**SEVENTH CAUSE OF ACTION  
(Expungement of Deed vs. All Defendants)**

49. Plaintiff realleges and incorporates by reference all paragraphs above, as if set forth herein at length.

50. On or about October 31, 2008 defendant . forged the signature of Plaintiff's wife, Bernice R. on a document titled Interspousal Transfer Deed, (hereinafter "Interspousal Deed")

and caused it to be notarized and recorded on November 8, 2007 in the Office of the Recorder, City and County of San Francisco, recording number DOC-2007-I486695-00 a true and correct copy of which is attached hereto as Exhibit A and incorporated fully herein by reference.

51. On or about October 31, 2008 DEFENDANT forged the signature of Plaintiff Hubert on a document titled "Deed of Trust" (hereinafer "Deed of Trust") and caused it to be notarized and recorded on November 8, 2007 in the Office of the Recorder, City and County of San Francisco, recording number DOC-2007-I485596-00 a true and correct copy of which is attached hereto as Exhibit B and incorporated fully herein by reference

52. Defendant caused the Interspousal Deed and Deed of Trust to be created and recorded in connection with a scheme to borrow \$275,000.00 secured by Plaintiff's home located at 86 \_\_\_\_\_ Street, San Francisco, California, all without Plaintiff's permission, knowledge and consent.

53. Said Interspousal Deed and said Deed of Trust are frauds and forgeries, are ineffective for any purpose and should be expunged by Order of this Court.

54. Further, any and all deed and applications for credit used to encumber the 86 \_\_\_\_\_ Street, San Francisco property were recorded and presented in direct contravention of Plaintiff's wishes and without the permission of Plaintiff and therefore all such documents should also be expunged.

Wherefore Plaintiff prays judgment as follows:

**DEMAND FOR TRIAL BY JURY**

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55. Plaintiff demands a trial by jury of all claims so triable.

**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;
2. For attorneys fees and costs according to proof;
3. For prejudgment interest;
4. For punitive damages in an amount according to proof;

ON THE SECOND CAUSE OF ACTION (FRAUD):

5. For damages in an amount according to proof;
6. For attorneys fees and costs according to proof;
7. For prejudgment interest;
8. For punitive damages in an amount according to proof;

ON THE THIRD CAUSE OF ACTION (CONSTRUCTIVE FRAUD):

9. For damages in an amount according to proof;
10. For attorneys fees and costs according to proof;
11. For prejudgment interest;

ON THE FOURTH CAUSE OF ACTION (NEGLIGENCE):

12. For damages in an amount according to proof;
13. For attorneys fees and costs according to proof;
14. For prejudgment interest; and,

ON THE FIFTH CAUSE OF ACTION (CONVERSION)

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

ON THE SIXTH CAUSE OF ACTION (BREACH OF CONTRACT)

12. For damages in an amount according to proof;
13. For attorneys fees and costs according to proof;
14. For prejudgment interest; and,

ON THE SEVENTH CAUSE OF ACTION

15. For expungement of that document titled Interspousal Transfer Deed, recorded on November 8, 2007 in the Office of the Recorder, City and County of San Francisco, recording number DOC-2007-I486695-00 and all other deeds and applications presented in support of financing the 86 \_\_\_\_ Street, San Francisco, California property on or about November 8, 2008.
16. For attorneys fees and costs according to proof;
17. For damages in an amount according to proof, and

AND THAT THIS COURT FURTHER ORDER:

15. Costs of suit herein; and,
16. For such other and further relief as the Court considers just and proper.

DATED: March 6, 2008

Respectfully submitted,  
LAW OFFICE OF AMANDA L. EBHEY

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Amanda L. Ebey, Attorney for Plaintiff

**VERIFICATION**

I, the undersigned, am the Plaintiff in the above-captioned proceeding. I have read the foregoing **Complaint for Damages** 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 San Francisco, California, on March \_\_\_\_\_, 2008.

Hubert L. .

