

2013 WL 8359907 (Cal.Super.) (Trial Pleading)
Superior Court of California.
San Mateo County

Josephine SHOOK, an individual; by and through her Guardian Ad
Litem Virginia Lee Williamson, an individual and Plaintiff, Plaintiffs,

v.

Cyrus LAFARRE, a/k/a Hamid R. Gafari, a/k/a Hamid
Reza Jafari; and Does 1 through 25, inclusive, Defendants.

No. CIV 524311.
September 24, 2013.

Jury Trial Demanded

**Complaint for: 1. Violations of the Elder and Dependant Adult Civil
Protectionact (Welf. & Instit. Code § 15600 et seq.) 2. Breach of Fiduciary Duty**

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I. INTRODUCTION

1. This is an action for **elder abuse** brought as a result of the unlawful appropriation of 89 year-old, now deceased, RUDOLPH R. COOK's ("RUDY" or "Decedent") Trust estate, by Defendant Cyrus LaFarre ("CYRUS" or "Defendant"). Defendant became the sole beneficiary of RUDY's Trust estate, worth over a million dollars, via a Purported Amendment to RUDY's long established revocable Trust. The original Trust divided the residue of the Trust estate among RUDY's seven (7) siblings or their issue, and made no mention of Defendant. However, in August of 2012, with his severely impaired physical and mental health, RUDY purportedly executed an amendment to his 2001 Trust. The Purported Amendment named Defendant - who was RUDY's neighbor - as successor Trustee and sole residuary beneficiary. The August 2012 amendment to RUDY's Trust was the result of Defendant's exercise of undue influence over then 88 year-old RUDY, who by August 2012 had become physically and mentally weak, and extremely vulnerable. Moreover, Defendant's claim to the estate is based on an "Amendment" to RUDY's Trust that he alone "found" in the garbage under highly suspicious circumstances.

2. In the six (6) months prior to the Purported Amendment, RUDY had lost two close family members and his live-in companion of thirty (30) years. He was sad, depressed, and lonely. During this time, Defendant, who lived across the street, inserted himself into RUDY's life. He became RUDY's paid caretaker, driving RUDY to the doctor, preparing meals for him, helping him with his medications, doing necessary chores around the house, and shopping for him. Defendant knew 88 year-old RUDY was in an extremely vulnerable state due the rapid declination of his physical, emotional, and mental health. Defendant saw the opportunity, and pounced by misappropriating RUDY's Trust estate.

3. As set forth below in more detail, Defendant exercised undue influence over the physically and mentally weak RUDY. In doing so, Defendant deprived RUDY of his right to dispose of his property according to his long held and carefully crafted plan which provided cash gifts for his favorite charities, and divide the residue of his Trust estate in equal shares among his seven (7) siblings or their issue. Defendant's conduct amounts to **abuse** of the **elderly**, whom the California legislature specifically sought to protect under the **Elder Abuse** Statute.

II. JURISDICTION AND VENUE

4. Venue is proper in this County because, acting as Trustee, Defendant served Plaintiffs with Notification pursuant to [Probate Code § 16061.7](#) and indicated that the principal place of administration of the Trust was San Mateo County, California. Accordingly, pursuant to [Probate Code §17005\(a\)\(1\)](#), this action is being filed in San Mateo County, California.

5. Defendant has sufficient minimum contacts with California, is a citizen of California or otherwise purposefully avails himself of benefits from California so as to render the exercise of jurisdiction over him by the California courts consistent with traditional notions of fair play and substantial justice.

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

III. PARTIES

A. Plaintiffs

7. Plaintiff JOSEPHINE SHOOK is, and at all times herein mentioned was, the sister and heir of Decedent RUDOLPH R. COOK, and residual beneficiary of the original Trust of RUDOLPH R. COOK. Plaintiff JOSEPHINE SHOOK is a 92 year-old **elderly** resident of Belleville, Illinois. Plaintiff JOSEPHINE SHOOK, the sole remaining sibling of RUDY, is lawfully entitled to pursue all claims and causes of action for damages pursuant to [Welfare and Institutions Code section 15657.3\(d\)](#) and [Probate Code section 48](#). Plaintiff JOSEPHINE SHOOK brings this suit through her Guardian *Ad Litem*, VIRGINIA LEE WILLIAMSON, who is her daughter and also a resident of Belleville, Illinois.

8. Plaintiff VIRGINIA LEE WILLIAMSON is, and at all times herein mentioned was, the daughter of Plaintiff JOSEPHINE SHOOK and niece of Decedent RUDOLPH R. COOK. Plaintiff VIRGINIA LEE WILLIAMSON is also a contingent beneficiary of the original Trust of RUDOLPH R. COOK. Plaintiff VIRGINIA LEE WILLIAMSON, as noted above, is a resident of Belleville, Illinois. Plaintiff VIRGINIA LEE WILLIAMSON is lawfully entitled to pursue all claims and causes of action for damages pursuant to [Welfare and Institutions Code section 15657.3\(d\)](#) and [Probate Code section 48](#).

B. Defendants

1. Cyrus LaFarre a/k/a Hamid R. Gafari a/k/a Hamid Reza Jafari

9. Defendant CYRUS LaFARRE, a/k/a HAMID R. GAFARI, a/k/a HAMID REZA JAFARI (“CYRUS” or “Defendant”), is an individual who was Decedent RUDOLPH R. COOK's paid caretaker and neighbor, and Registered Nurse, California Professional License No. XXXXXXXX. Defendant was and is a resident of the City and County of San Francisco.

2. Doe Defendants

10. Plaintiffs are ignorant of the names of those Defendants sued as Does 1-25 and for that reason have sued such Defendants by fictitious names. Plaintiffs further allege that each of said fictitious Doe Defendants is in some manner responsible for the acts and occurrences hereinafter set forth. Plaintiffs will seek leave of court to amend this Complaint to show their true names and capacities when the Doe Defendants are ascertained, as well as the manner in which each fictitious Defendant is responsible for the damages sustained by Plaintiffs.

C. Agency Allegations

11. At all relevant times, Doe Defendants acted as the agents, servants, and employees of their co-defendants, acting within the course and scope of said agency and employment, and with the knowledge, consent, and approval of their co-defendants; their conduct was ratified by their fellow co-defendants.

IV. STANDING TO BRING A SURVIVAL ACTION

12. Plaintiffs JOSEPHINE SHOOK and VIRGINIA LEE WILLIAMSON (collectively “Plaintiffs”), as beneficiaries of Decedent RUDOLPH R. COOK's Trust and estate, have standing to bring this action as interested persons pursuant to [Welfare and Institutions Code section 15657.3\(d\)](#) and [Probate Code section 48](#).

V. FACTUAL BACKGROUND

A. **Financial Elder Abuse Is A Serious Problem Nationally and Locally**

13. **Financial elder abuse** is a serious, yet under-reported and overlooked problem, both nationally and locally. According to a June 2011 study by the MetLife Mature Market Institute, across the nation, **financial elder abuse** results in an estimated \$2.9 billion annual **financial** loss. Similarly, according to a 2007 Report submitted to the California Commission on Aging, there are over 200,000 victims of **financial elder abuse** in California each year. The same study estimates that **financial elder abuse** accounts for forty percent (40%) of all forms of reported **elder abuse**. This is particularly troubling in light of estimates that only 1 in 25 incidents of **financial elder abuse** is ever reported.¹

14. The California legislature has recognized the severity of this problem, and has noted that, “**elder** and dependent adult **abuse** is ... indiscriminate ... and factors such as one's socioeconomic status, gender, race, ethnicity, educational background and geographic location do not provide an impregnable barrier against its broad, horrible reach.” 2005 CA A.C.R. 8. The **Elder Abuse** and Dependent Adult Civil Protection Act reflects important Legislative findings, excerpted here:

The Legislature further finds and declares that infirm **elderly** persons and dependent adults are a disadvantaged class, that cases of **abuse** of these persons are seldom prosecuted as criminal matters, and few civil cases are brought in connection with this **abuse** due to problems of proof, court delays, and the lack of incentives to prosecute these suits.

Welfare and Institutions Code Section 15600.

15. Here in the Bay Area, there are a large and growing number of **elderly** citizens at risk for **financial elder abuse**. According to a recent U.S. Census Bureau report, San Francisco has the highest percentage of senior citizens and the highest median age of any large American city. Sadly and unsurprisingly, San Francisco Adult Protective Services (SFAPS) recently reported that it received roughly 6,000 reports of **elder abuse** in one year, and that 40% of those reports being for **financial abuse**.

16. The **elderly** population in California is large and continuously increasing. This is particularly true here in the Bay Area. Clearly, there is an urgent need to address and remedy the rampant, yet under-reported occurrences of **financial elder abuse**, in order to protect the most vulnerable members of our society and their families.

B. Rudolph R. Cook

17. RUDOLPH R. COOK (“RUDY”) was born on XX/XX/1924 in Cleveland, Ohio. RUDY was the only one of his siblings to move from their native Ohio. RUDY moved to California in 1953 and first lived in San Francisco and then Los Angeles before making San Francisco his permanent home. Despite the long distance from San Francisco to Ohio, RUDY made it a point to keep in close contact with his family back home in his native Ohio. RUDY regularly went back to Ohio for graduations, birthdays, holidays, and other important family events. RUDY traveled back and forth across the country countless times over the years until his back pain and other health concerns made it too difficult for him to continue to do so.

18. RUDY's family and friends remember him as a kind and compassionate individual. Even after he lost his voice due to cancer and endured a number of other health issues, RUDY continued to remain optimistic. He always found ways to share his humor despite needing to use an electronic device to speak. Although no one in his family could convince him to get a cell phone or computer, RUDY did a fine job of staying in touch with his family. RUDY maintained standing Sunday phone calls with his sister Olga, until she passed away in January of 2012. RUDY also routinely spoke with Plaintiff JOSEPHINE SHOOK, his lone surviving sibling, and also his niece, Plaintiff VIRGINIA LEE WILLIAMSON - who has lived with JOSEPHINE since 2011, when JOSEPHINE could no longer live independently.

19. RUDY spent over forty (40) years working at a local San Francisco company, California Saw & Knife Works, where he spent the better part of his career as a bookkeeper. As he did at work, RUDY paid close attention to his **financial** affairs, and always kept meticulous notes. After he retired, RUDY enjoyed volunteering at Laguna Honda Hospital and visiting his local

senior center, where he maintained longstanding friendships. RUDY loved his family, travel, politics, sports, and music. He was a dedicated Catholic, and had tremendous pride in his country, the city of San Francisco and his hometown of Cleveland, Ohio.

C. Rudy's Long Held Plan Was to Have the Residue of His Estate Divided Equally Among His Siblings or Their Issue

20. RUDY's long held plan was to have the residue of his estate divided equally among his siblings or their issue. Having worked as a bookkeeper for the better part of forty (40) years, RUDY was accustomed to paying close attention to **financial** matters. Unsurprisingly, RUDY paid careful attention to the way in which the estates of his family members were distributed when they died.

21. RUDY approved of those plans that provided for an equal distribution among the relevant family members. RUDY's desire to ensure that family assets were distributed equally among family members reflected a long held Cook family tradition. He was proud of the fact that in February of 2001, he had established his own Trust. Consistent with his long held prospective and family tradition, the Trust provided for cash gifts to his favorite charities, the Cleveland Orchestra, the San Francisco Symphony and the San Francisco Opera, and divided the residue of his Trust estate in equal shares among his seven (7) siblings or their issue.

22. RUDY often shared the history of the Cook family tradition with his niece, Plaintiff, VIRGINIA LEE WILLIAMSON ("VIRGINIA"). RUDY explained to VIRGINIA that when his mother died, her will provided his sister, Plaintiff JOSEPHINE SHOOK ("JOSEPHINE"), with a right to "first choice" of all of their mother's assets; with directions that JOSEPHINE divide, equally among her siblings, whatever she chose not to take. Initially, RUDY and his other siblings were hurt by what appeared to be their mother's expression of favoritism for JOSEPHINE. However, when JOSEPHINE took only a modest amount of the household items, and left the bulk of the items to be divided equally among her siblings, RUDY took note of how magnanimous his sister had been.

23. RUDY often retold this story to VIRGINIA; reflecting on how selflessly his sister had handled the situation and how she had done what he considered to be the right thing. RUDY told VIRGINIA that he and his other siblings were touched by their sister's selflessness and that he sought to divide his assets equally among his siblings or their issue, through his Trust. In the coming years, sadly, RUDY would lose two of his last three remaining siblings. However, in their passing, the Cook family tradition of sharing one's assets equally would live on.

24. In February of 2003, RUDY and JOSEPHINE's, brother, Henry Philip Cook, died a widower with no children. According to family tradition, Henry's will divided his assets equally among his siblings and their issue. RUDY spoke with Plaintiffs, JOSEPHINE and VIRGINIA, about how Henry Cook's will was very fair, and again told VIRGINIA that his intention was to have his assets divided equally among his siblings or their issue, through his Trust.

25. In January of 2012, RUDY's sister, Olga Cook Kazura, died a widow, with two adopted adult children. As he did when his brother Henry died, RUDY spoke with Plaintiffs, JOSEPHINE and VIRGINIA, about the loss of his beloved sister Olga. He told JOSEPHINE and VIRGINIA how much he missed Olga, and recalled how he had called her weekly for years and how much he would miss their weekly conversations. Likewise, as he did when Henry died, RUDY spoke with JOSEPHINE and VIRGINIA about his impression of Olga's will. Specifically, RUDY expressed how he thought Olga, like Henry, was very fair in dividing her assets equally among her two sons. Again, RUDY told JOSEPHINE and VIRGINIA how he had plans to divide his assets equally among his siblings or their issue, through his Trust.

26. On June 17, 2012, Manson Glenn Shook passed away. Manson was JOSEPHINE SHOOK's husband, VIRGINIA's father, and RUDY's brother-in-law. Again, as he had always done, RUDY spoke with JOSEPHINE and VIRGINIA about Manson's will. RUDY was happy that Manson had carefully designed his will, leaving his assets for his wife and his two daughters, VIRGINIA and her sister. Again, RUDY informed JOSEPHINE and VIRGINIA that his Trust remained in order, and that it provided for gifts to his favorite charities and that the residue of his estate was to be divided equally among his siblings or their issue.

27. 2012 continued to be a rough year for RUDY. In late June 2012, RUDY's lifetime live-in companion of thirty (30) years, Richard M. Pence ("Richard"), passed away due to complications from a stroke. RUDY was extremely saddened by Richard's death. He expressed to VIRGINIA that he was deeply affected by the recent losses of Olga, Manson, and Richard. RUDY told her he was lonely and saddened due to the fact that all but one of his siblings had passed away, and that virtually all of his friends had also passed away. RUDY told VIRGINIA that if not for his deteriorating health, he would love to travel across the country to visit his sister JOSEPHINE, who lives with VIRGINIA in Illinois and who also has health issues that make traveling difficult. RUDY told her he had all his affairs in order and that his Trust provided gifts for his favorite charities and divided the residue of his estate equally among his siblings or their issue.

28. VIRGINIA was alarmed by the fact that her uncle RUDY appeared to be depressed and lonely. It appeared the loss of two close family members, coupled with the loss of Richard, had left RUDY depressed. VIRGINIA made an effort to contact RUDY more often. VIRGINIA hoped that RUDY would be able to overcome his depression by speaking with her and JOSEPHINE more often. During their conversations, VIRGINIA noticed that RUDY continued to appear deeply affected by the recent loss of his loved ones. VIRGINIA also noticed that RUDY tired easily during their conversations and that he was frequently and uncharacteristically failing to return her phone calls.

29. In late July or early August, RUDY told VIRGINIA that he had recently been hospitalized. RUDY told VIRGINIA that he was spending a significant amount of his time getting medical tests and less of his time at the local senior center. He also told VIRGINIA that his across the street neighbor, Defendant Cyrus LaFarre, had been acting as his caretaker, and he had been paying him to take him to doctor's appointments and such.

30. On Valentine's Day of 2013, VIRGINIA and her husband, along with their son Eric Williamson and his girlfriend, went to visit RUDY at his home in San Francisco. Within minutes of their arrival, Defendant appeared at RUDY's home, walking in unannounced. This was the first time VIRGINIA had ever met Defendant in person. Defendant struck VIRGINIA as being nosy and overbearing. Defendant tried to discourage her and her family from staying with RUDY.

31. That evening, VIRGINIA and her family had dinner with RUDY. VIRGINIA and RUDY spoke about his Trust. RUDY told her to contact his friend JoAnn Chevrette ("JoAnn" or "Ms. Chevrette"). RUDY wanted JoAnn and VIRGINIA to meet because JoAnn was RUDY's close friend and successor-Trustee to his Trust. RUDY wanted JoAnn to know that VIRGINIA was there to help if she needed anything to help her carry-out her role as Trustee. RUDY wanted VIRGINIA to make sure JoAnn had all the addresses of all the beneficiaries of his Trust. He told her that JoAnn would soon be coming down from Plymouth, California to see him and to discuss his Trust. During their visit, RUDY was very frail, would often fail to finish his sentences and sometimes drift off mid-sentence, rejoining the conversation some moments later. VIRGINIA made sure to contact JoAnn when she returned home to Illinois. As RUDY had wished, VIRGINIA and JoAnn discussed RUDY's Trust and how VIRGINIA could help her with the names and addresses of the beneficiaries.

32. On JOSEPHINE's birthday, XX/XX/2013, VIRGINIA tried to contact RUDY after he uncharacteristically failed to call or at least send a card to his sister, as he normally did on her birthday. Unable to reach RUDY, VIRGINIA contacted Defendant to see if he knew how she could get a hold of her uncle. Defendant informed her that RUDY was in the hospital and that he was not doing so well. VIRGINIA told Defendant that she would take the next plane out to San Francisco to be there for her uncle. However, Defendant informed her that he and JoAnn were at the hospital with RUDY and that it would be better if she came later in the week when RUDY would likely be back at home.

33. VIRGINIA flew to San Francisco on March 14, 2013 and found her uncle at home in his living room, in a hospital bed. She noticed that his house had been rearranged. Despite his poor health, RUDY smiled when he saw her and gave her a hug and whispered that it was great to see her and that he loved her. By that point RUDY had turned down the feeding tube that was essential to keep him alive. According to JoAnn and Defendant, RUDY had chosen to die at home. RUDY passed away on the evening of March 15, 2013.

D. Rudy Intended For His Friend of Over 35 Years. JoAnn Chevrette, To Act As Successor Trustee - Not Defendant

34. RUDY's original Trust was established in February of 2001, and named his friend of over thirty-five (35) years, JoAnn Chevrette, as successor Trustee. The original Trust made no mention of Defendant, and remained that way for over eleven years, until RUDY allegedly executed a purported August 1, 2012 Amendment.

35. RUDY and JoAnn first met around 1976 or 1977. In or about 1980, JoAnn and her husband moved to Plymouth, California. RUDY had a second home not far from them in Calaveras County. Over the years, RUDY would visit them when he stayed at his home in Calaveras County. JoAnn and her husband also came to visit RUDY whenever they came to San Francisco.

36. After her husband died in 1992, JoAnn and RUDY continued to be close friends. RUDY continued to come to visit with JoAnn in Plymouth and Calaveras County, and JoAnn continued to visit him in San Francisco. The two also spoke frequently on the phone. In or about 2010, when RUDY stopped driving long distances and rarely stayed at his Calaveras County home, JoAnn began to drive to San Francisco to see RUDY once or twice a month. She also spoke with him by phone at least once a week. She continued to visit and call RUDY regularly until his death.

37. JoAnn first heard about RUDY's Trust in 2001. RUDY told her that he had prepared a Trust and named her as successor Trustee. He told her that he named her because she lived in California and it was his understanding that the successor Trustee needed to be a resident of California.

38. In February of 2013, RUDY and JoAnn spoke on the phone about the Trust. RUDY wanted to confirm that she was still willing to act as successor Trustee. RUDY told JoAnn that if she was still willing to act as successor Trustee, he wanted her to do so. As far as JoAnn knew, she was to act as Trustee upon RUDY's death, and she was ready and willing to do so.

39. JoAnn first met Defendant about six (6) months before RUDY's death. Defendant happened to come over one day when JoAnn was visiting. JoAnn was aware that Defendant had inserted himself into RUDY's life as RUDY's caretaker. In or about December 2012 or January of 2013, RUDY told JoAnn that he had lent Defendant \$40,000. Upon information and belief, those funds were not repaid. The \$40,000 was separate from RUDY's payments to Defendant to act as his caregiver.

E. Defendant Isolated Rudy In Order to Procure a Purported Amendment to Rudy's Trust

40. Towards the end of RUDY's life, he had increasingly become sad, depressed, and lonely due to the traumatic losses that he suffered in 2012 and the marked downturn of his own physical health. Consequently, RUDY became vulnerable and subject to the Defendant's undue influence. Defendant capitalized on RUDY's weakness in order to secure increasing control over him and his affairs. RUDY's family and friends, including Plaintiffs JOSEPHINE and VIRGINIA, RUDY's nephew Eric Williamson, RUDY's longtime friend JoAnn Chevrette, and RUDY's close friend Julie Lenhardt, all witnessed Defendant's unusual and suspicious behavior during this time. Defendant's disturbing actions were part and parcel to his larger ploy to isolate and unduly influence RUDY in order to appropriate the rights to RUDY's Trust estate.

1. JoAnn Chevrette's Surprising and Perplexing Encounter with Defendant

41. Soon after RUDY passed away, a series of unusual and suspicious events occurred that involved Defendant and related to RUDY's Trust. Ultimately these events resulted in Defendant producing a Purported Amendment to RUDY's Trust, that he claimed he found in the garbage. The Purported Amendment inexplicably and suspiciously named Defendant as successor Trustee and sole residual beneficiary of RUDY's Trust estate. The Purported Amendment was dated August 1, 2012. This was quite strange to say the least; particularly considering that as recently as March 2, 2013, JoAnn spoke with RUDY at his home

in San Francisco about her role as successor trustee, and the two made plans for JoAnn to return on March 12, 2013, so that they could discuss her role as successor Trustee. Unfortunately, that meeting never occurred.

42. Instead, on March 9, 2013, JoAnn received a call informing her that RUDY was in the hospital. She drove to San Francisco to see him and to help prepare his home so that he could return there from the hospital. JoAnn took the original Trust from RUDY's home office so that she could review it in preparation to act in her role as Trustee. RUDY was discharged to hospice care in his home on March 12, 2013. Plaintiff VIRGINIA arrived at RUDY's home the evening of March 14, 2013. On March 15, 2013 JoAnn had to go home to take care of some pressing business. She took the original document with her. Sadly, she received a call that evening that RUDY had died.

43. On March 18, 2013, JoAnn returned to San Francisco to meet with Wells Fargo Bank to begin the process of identifying and locating RUDY's accounts. After that meeting, JoAnn spoke with Defendant at his home. Defendant informed her that he had found a copy of RUDY's Trust in a garbage bag. Defendant asked JoAnn if she would give him the original Trust so that he could compare it to the copy he found. JoAnn left the original with Defendant and stayed the night at a friend's house.

44. The next day, March 19, 2013, JoAnn had an appointment with an attorney, who was going to help her with the administration of RUDY's Trust. Before she met with the attorney, JoAnn went to Defendant's house to retrieve the original Trust from Defendant. Defendant returned the original Trust document to JoAnn and explained that he had put it into a different binder.

45. During her meeting with the attorney, the attorney pointed out that page one of the original Trust was missing. After the meeting, JoAnn returned to Defendant's home to inquire about the missing page. Defendant presented JoAnn with pages one and three of an amendment to the Trust signed August 1, 2012. Defendant claimed that he had found the amendment in the garbage, but could not locate page two. The next day, March 20, 2013, Defendant gave JoAnn a copy of page two of the amendment and explained that he found the copy of page two in the garbage as well. To JoAnn's surprise, the Purported Amendment suspiciously named Defendant as the successor Trustee and sole beneficiary to the residue of RUDY's Trust estate.

2. Rudy's Close Friend, Julie Lenhardt, Witnessed Defendant's Attempt to Isolate Rudy from His Family and Friends

46. Julie Lenhardt ("Julie") met RUDY in 2008, through RUDY's great-nephew and Plaintiff VIRGINIA Williamson's son, Eric Williamson. From 2008 until RUDY's death in 2013, Julie and RUDY became close. Julie would visit RUDY at least once every other month. Julie works in nearby Marin County, as a social services supervisor. Julie considered RUDY a surrogate grandfather.

47. On August 29, 2012, Eric Williamson sent an urgent message to Julie regarding his uncle RUDY. Eric, a physician and neurologist, told Julie that RUDY had been hospitalized and that he had just recently been released back to his home. Eric expressed his concern for his uncle and that he wanted Julie to visit RUDY to check up on him. Eric informed Julie that RUDY's family had been in touch with RUDY and that RUDY was weak.

48. Accordingly, Julie tried to contact RUDY; she left messages on his phone but they went unanswered. Out of concern for RUDY, and as Eric had asked, Julie decided to stop by RUDY's home. On the evening of August 30, 2012, Julie went to visit RUDY at his home in San Francisco. This was the first time she met Defendant, who was present when she arrived and remained in the home throughout her visit.

49. Julie spoke with RUDY about his condition. RUDY told her that he lost consciousness while at a local community center and that he had been taken to the hospital. RUDY told her he was upset that the physicians told him he could not drive, at least for a while. Julie offered to help him. RUDY informed her that Defendant was acting as his caretaker.

50. Julie's conversation with RUDY turned to RUDY's emotional state. She observed that he was very tearful and somber. He told her that since his lifetime live-in companion, Richard Pence, had passed away in June of 2012, he felt very lonely and that he had been thinking about his own life and death.

51. RUDY assured her that he had an estate plan in place. RUDY told Julie, as he had told his family and friends over the years, that his assets were going to be distributed among his remaining family members or their issue, with some additional money going to his favorite charities. RUDY told her that his longtime friend, JoAnn, was going to serve as the "executor" of his estate, and that his plans were "iron clad."

52. Shortly after RUDY and Julie discussed his estate, Defendant reappeared. Defendant physically hovered around RUDY and Julie as they spoke. Defendant interrupted Julie when she asked RUDY questions and sometimes even answered for RUDY. Defendant's behavior made Julie feel uncomfortable.

53. Before Julie left RUDY's house, Defendant explained that the visiting nurse had expressed concerns about the conditions in the home and said that there may be a fall hazard. Julie and Defendant agreed that she would come back over the weekend to assist Defendant with re-organizing the home to reduce some of the clutter.

54. Julie attempted to get in touch with Defendant in order to help him reorganize RUDY's house as they had discussed. However, she was unable to reach him. Eventually Julie and Defendant exchanged text messages regarding their previously discussed plan to reorganize RUDY's house. Julie was disturbed by the hostile tone Defendant took in his text response. Defendant told her that she had violated RUDY's privacy by coming to RUDY's home unannounced and that she should stay away.

55. Defendant told Julie that RUDY did not want her to come around anymore and that RUDY did not want her help. Defendant told her she was being pushy in insisting on helping RUDY. Julie was particularly disturbed by the stark contrast in Defendant's behavior when they spoke in front of RUDY and the hostile demeanor Defendant took in their text correspondence; especially Defendant's directive that she stay away from RUDY. This was early September of 2012, approximately seven (7) months before Defendant would mysteriously produce the Purported Amendment to RUDY's Trust that named him as the sole beneficiary of the residue of RUDY's Trust estate.

56. As a social worker, with a Master's degree in clinical social work and research from Columbia University in New York City, and with substantial experience working with Adult Protective Services, Julie has learned to spot the warning signs of **elder abuse**. Defendant's behavior alarmed Julie, particularly the way he attempted to exercise control over who entered RUDY's life and home. Julie made sure to contact RUDY's great nephew, Eric Williamson, to let him know of her concerns.

3. Defendant Continued to Make it Difficult for Rudy's Family to Contact Him in the Weeks and Months Prior to His Passing

57. From August of 2012, the time Defendant began to insert himself into every aspect of RUDY's life, RUDY's family and friends began to experience more and more difficulty when they tried to contact RUDY. Upon information and belief, Plaintiffs allege that Defendant, having full access to RUDY's home during the last months of RUDY's life, unilaterally erased messages from RUDY's answering machine in an attempt to isolate him from his family and friends. Plaintiffs are informed and believe that Defendant did so in order to facilitate Defendant's appropriation of RUDY's Trust estate. For example, during the last few months of his life, despite continuing to maintain his visits to the senior center and to live in his own home, RUDY became nearly unreachable by phone and failed to return answering machine messages left by his family and friends. RUDY became increasingly more difficult to reach as a direct result of Defendant's wrongful acts.

4. Defendant's Self-Interested and Suspicious Conduct After Rudy Passed

58. After RUDY's memorial service, Defendant approached VIRGINIA and asked for a list of all of her cousins and relatives. When VIRGINIA asked why he wanted such a list, he told her there had been a change and he was now the Trustee of RUDY's estate.

59. VIRGINIA was alarmed by Defendant's claim that he was the Trustee of RUDY's estate. This did not comport with what VIRGINIA had long understood - that JoAnn Chevrette was to be the Trustee of RUDY's Trust. VIRGINIA would soon learn of JoAnn's perplexing encounter with Defendant, in which Defendant produced a Purported Amendment to RUDY's Trust that he claimed to have found in the garbage, and that named him as Trustee and sole residual beneficiary of RUDY's estate.

60. After RUDY's funeral services, VIRGINIA requested, through Defendant's counsel, that Defendant provide her with a copy of the Purported Amendment. However, Defendant's counsel refused, stating that she wished to wait until Defendant returned from his trip overseas. VIRGINIA has never seen the original Amendment.

61. VIRGINIA also tried to locate any documents pertaining to RUDY's Trust that may have been left at RUDY's home, the day after the memorial service, but Defendant had already changed the locks and alarmed the house. Having no reason to believe that Defendant was in fact the Trustee to RUDY's estate, and after speaking with the police and explaining their situation, VIRGINIA, her husband, and her son Eric Williamson, entered RUDY's home through an open window. Unfortunately, RUDY's house looked nothing like it had in the past, or even in February, when VIRGINIA and her husband and son had last visited. The house had been nearly emptied - including nearly every drawer and closet. It appeared that Defendant had cleaned out RUDY's house, erasing Defendant's tracks.

62. VIRGINIA and her husband, along with VIRGINIA's son Eric Williamson, next went to two banks RUDY was known to use, to learn that: (1) Wells Fargo had placed a hold on RUDY's accounts - though the address they had listed for Rudolph R. Cook, had been changed to 10 Lunado Way, where Defendant lives; and (2) Defendant produced a Trust document and death certificate to close RUDY's account at Bank of America and open a Trust account in his own name, on March 28, 2013 - Defendant also wrote a number of checks from the Trust account.

63. The day after their visit to RUDY's home and to RUDY's banks, parts of a document that Defendant claimed to be the amended Trust, dated August 1, 2012 were forwarded to VIRGINIA from Defendant's original lawyer, who informed her that she no longer represented Defendant. The documents suspiciously named Defendant as Trustee of RUDY's Trust and as sole residual beneficiary of RUDY's estate.

F. Defendant Knowingly Exerted Undue Influence Over Rudy and Rudy Lacked the Capacity to Enter Into a Trust Amendment

1. Undue Influence

64. Plaintiffs are informed and believe, and on that basis allege, that the Purported Amendment if indeed executed by RUDY, was the direct result of undue influence exerted over him by Defendant. After the death of RUDY's roommate on June 29, 2012, Defendant, who lived across the street from RUDY, suddenly inserted himself into RUDY's life. With RUDY's health drastically declining, Defendant assumed the role of RUDY's paid caretaker. In his role as RUDY's paid caretaker, Defendant took RUDY to doctor's appointments, provided RUDY with meals, helped him with his medications, and assisted with necessary chores around RUDY's home.

65. As the result of the traumatic losses which he had suffered in 2012 and the marked downturn in his own health, RUDY was vulnerable and subject to influence. Defendant capitalized on RUDY's weakness to secure increasing control over him and

his affairs. As RUDY's condition declined, he became dependent on Defendant and placed increasing Trust and confidence in Defendant.

66. On August 1, 2012, RUDY allegedly executed a Durable Power of Attorney for Management of Property and Personal Affairs, designating Defendant as his co-agent. On that same date, he allegedly executed an Advance Health Care Directive designating Defendant as a co-agent.

67. As Defendant's involvement with and control over RUDY increased, he took active steps to isolate RUDY and limit his contact with family members and others. Defendant instructed family members and friends that they were not welcome at RUDY's home and, in some cases, even prohibited them from visiting. When Plaintiff VIRGINIA and her family visited RUDY in February 2013, Defendant attempted repeatedly to convince them that they should not stay in RUDY's home.

68. Defendant actively participated in procuring the Purported Amendment. Obtaining the Purported Amendment was the culmination of Defendant's overall plan to secure control of RUDY's estate. The terms of the Purported Amendment confer an undue benefit on Defendant. The Trust which RUDY had executed in 2001 conveyed the residue of the Trust estate to his siblings and their issue. The Purported Amendment transfers the entire residue to Defendant. With the exception of some modest cash gifts, RUDY's family members are completely eliminated.

69. As noted previously, over the years, RUDY had numerous discussions in which he confirmed that his estate plan was in order and that he intended to divide his estate equally among his siblings and their issue. He also told Plaintiffs that his long-time friend, JoAnn Chevrette, would serve as successor Trustee of his Trust. As he lost one sibling after another, he became increasingly conscious of the need to address his estate plan. He took comfort in the fact that his Trust was in place and that he had provided for the persons and organizations that were most important to him. As late as February 2013, RUDY asked that Plaintiff VIRGINIA become acquainted with Ms. Chevrette so that she could assist her with the Trustee responsibilities when the time came. Though the Purported Amendment naming Defendant as Trustee had allegedly been executed some six (6) months earlier, RUDY gave no indication to Plaintiffs that his estate plan had changed.

2. Rudy Lacked the Capacity to Execute the Purported Trust Amendment

70. If RUDY, in fact executed the Purported Amendment, he lacked the requisite mental capacity to do so. When the Purported Amendment was allegedly executed due to Defendant's undue influence, RUDY did not have sufficient mental capacity to: a) understand the nature of his action in executing the Purported Amendment, b) understand and recollect the nature and situation of his property, or c) remember and understand his relationship to family members and others affected by the Purported Amendment.

71. In or about August 2012, when the Purported Amendment was allegedly executed, RUDY, who was then 88 years-old, was in declining physical and mental health. Within the first six (6) months of the year, he had suffered the loss of a sister, a brother-in-law and his lifetime live-in companion of over thirty (30) years, Richard Pence. These losses had a profound impact on RUDY. Ordinarily positive and optimistic, he had become sad, depressed and lonely. In or about late July or early August, he collapsed and was hospitalized. That event accelerated the decline in RUDY's overall mental and physical health. He had constant pain from a chronic back problem. Years earlier he had cancer surgery that resulted in removal of his voice box. He communicated by placing an electronic device in his throat. As the months progressed, his throat began to narrow, causing increased problems with eating and swallowing.

72. As RUDY's physical health declined, he also experienced a significant diminution in his mental abilities. Though he had a long career as a bookkeeper, even **financial** tasks became difficult for him. He had memory problems and evidenced increasing difficulties in making appropriate decisions about his personal and **financial** affairs. As his physical health deteriorated, he began to lose interest in and a connection with much that was happening around him.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

VIOLATIONS OF THE ELDER AND DEPENDENT ADULT

CIVIL PROTECTION ACT

Welfare & Institutions Code § 15600 *et seq.*

(Against Defendant and Doe Defendants)

73. Plaintiffs hereby reallege and incorporate by reference each and every allegation contained in the paragraphs above as though fully set forth herein.

74. This cause of action is brought pursuant to California Welfare & Institutions Code sections 15600 *et seq.* (The Elder Abuse and Dependent Adult Protection Act.)

75. At the time of the appropriation of RUDOLPH R. COOK's Trust estate, as herein alleged, RUDY resided in California and was more than 65 years of age. RUDY was an "Elder" as defined by California Welfare & Instructions Code Section 15610.27 and is entitled to the statutory protections from financial abuse provided by California Welfare & Institutions Code Sections 15610.07 and 15610.30.

76. Defendant is responsible for financial elder abuse under Sections 15610.30 *et seq.* of the Elder Abuse and Dependent Adult Protection Act.

77. Defendant is responsible for taking, secreting, appropriating, and/or retaining Decedent Rudolph R. Cook's property, including the residue of Decedent Rudolph R. Cook's Trust estate, for a wrongful use or with the intent to defraud.

78. Defendant is responsible for taking, secreting, appropriating, obtaining and/or retaining Decedent Rudolph R. Cook's property, including the residue of Decedent Rudolph R. Cook's Trust estate, by undue influence, as defined in Section 1575 of the Civil Code.

79. Defendant can be deemed to have taken, secreted, appropriated, obtained and/or retained Decedent Rudolph R. Cook's property for wrongful use or with the intent to defraud, because Defendant knew, or should have known, that his conduct was likely to be harmful to Decedent Rudolph R. Cook due to Decedent's failing mental and physical health, and consequent susceptibility to Defendant's undue influence and inability to adequately protect his property rights.

80. Decedent Rudolph R. Cook was deprived of his property rights by means of the purported Trust amendment, which named Defendant as successor Trustee and sole residual beneficiary, contrary to Decedent's original intent, and to the detriment of Decedent's true Trust beneficiaries - including Plaintiffs.

81. Defendant, at all relevant times, had a fiduciary duty to Decedent Rudolph R. Cook in that Defendant was the care-giver to Decedent Rudolph R. Cook. Plaintiffs are informed and believe that Defendant abused his position of trust and breached his fiduciary duty by inducing and/or otherwise wrongfully procuring the Purported Amendment to Rudolph R. Cook's Trust.

82. Defendant was aware, at the time Defendant wrongfully procured the challenged purported Trust amendment, that Decedent Rudolph R. Cook was in failing health, both mentally and physically, and that Decedent was over the age of 65.

83. As a proximate result of the Defendant's wrongful conduct, Decedent has sustained and will sustain substantial economic losses and other general and specific damages all in an amount to be determined according to proof.

84. The actions taken by Defendant as set forth above were in all respects reckless, malicious, willful and oppressive, and manifested either disregard or contempt for the rights of Decedent. Defendant was fully cognizant of the fiduciary position of trust in which he stood. Plaintiffs are thereby entitled to an award of punitive and exemplary damages as well as attorneys' fees, pursuant to [Welfare & Institutions Code section 15657](#), in an amount according to proof at the time of trial.

85. As the subject transactions involved a senior citizen, Plaintiffs are further entitled to treble damages and penalties pursuant to [Civil Code section 3345](#) because Defendant knew or should have known that his conduct was directed to one or more senior citizens.

SECOND CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

(Against Defendant and Doe Defendants)

86. Plaintiffs hereby reallege and incorporate by reference each and every allegation contained in the paragraphs above as though fully set forth herein.

87. Because of his role as Decedent's care-giver, Defendant assumed fiduciary duties to Decedent.

88. Defendant owed a fiduciary duty to Decedent, in which he was entitled at all times to Defendant's Trust, confidence, integrity, and fidelity.

89. In performing the acts and omissions outlined above, Defendant breached his fiduciary duties to Decedent. Among other things, and without limiting the generality of the foregoing, Defendant:

- a) Knowingly exerted undue influence over Decedent in order to obtain the purported Trust amendment, and ultimately appropriate Decedent's Trust estate;
- b) Placed his own **financial** interests above those of the Decedent; and/or
- c) Knowingly and intentionally deprived Decedent of his right to dispose of his property according to his long held and carefully crafted plan; which was to provide cash gifts for his favorite charities, and divide the residue of his Trust estate in equal shares among his seven (7) siblings or their issue.

90. As a proximate result of Defendant's conduct as herein alleged, Decedent and Plaintiffs sustained serious damages, including without limitation general and economic damages, all in an amount according to proof at the time of trial.

91. In doing the acts herein alleged, Defendant, acted with malice, oppression, and/or fraud; acted despicably and with a willful and conscious disregard of the rights and welfare of others; and is liable under [Civil Code sections 3294](#) and [3345](#) for exemplary, punitive, and treble damages.

WHEREFORE, Plaintiffs pray for relief as set forth below.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request judgment against Defendant as follows:

- i. For compensatory damages pursuant to [Welfare and Institutions Code section 15657.5\(a\)](#), and other damages in an amount to be determined by the Court according to proof;
- ii. For punitive damages pursuant to [Welfare and Institutions Code section 15657.5](#) and [Civil Code section 3294](#);
- iii. For damages, including treble, punitive and exemplary damages and penalties pursuant to [Civil Code section 3345\(b\)](#), [Welfare and Institutions Code section 15657.5](#) in an amount sufficient to punish and deter against similar conduct in the future;
- iv. For prejudgment interest at the maximum legal rate;
- v. For restitution and disgorgement of profits;
- vi. For damages, including treble, punitive and exemplary damages and penalties pursuant to [Civil Code section 3345\(b\)](#), [Welfare and Institutions Code section 15657.5](#) in an amount sufficient to punish and deter against similar conduct in the future;
- vii. For reasonable attorney's fees pursuant to [Welfare and Institutions Code section 15657\(a\)](#), in an amount to be determined by the Court;
- viii. For such other and further relief as the Court may deem appropriate.

Dated: September 20, 2013

COTCHETT, PITRE & McCARTHY, LLP

By: <<signature>>

NIALL P. McMARTHY

ANNE MARIE MURPHY

JONATHAN C. HSIEH JONATHAN C. HSIEH

Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury of all issues so triable.

Dated: September 20, 2013

COTCHETT, PITRE & McMARTHY, LLP

By: <<signature>>

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JONATHAN C. HSIEH

Attorneys for Plaintiffs

Footnotes

1 *30 Los Angeles Lawyer* 19, 19 (citing John F. Wasik, *The Fleecing of America's Elderly*, CONSUMERS DIG., Mar./Apr. 2000)

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