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10 *Attorneys for Plaintiff Kim Raynak, guardian of Marie J. Long*

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN AND FOR THE COUNTY OF MARICOPA**

13 KIM RAYNAK, as Guardian of MARIE J.
14 LONG,

15 Plaintiff,

16 v.

17 GENEVIEVE OLEN and GARY OLEN,
18 wife and husband; THE SUN VALLEY
19 GROUP, INC., an Arizona corporation &
20 d/b/a ARIZONA CARE MANAGEMENT;
21 PETER FRENETTE and HEATHER
22 FRENETTE, husband and wife; JEROME
23 ELWELL and JANE DOE ELWELL,
24 husband and wife; WARNER ANGLE
HALLUM JACKSON & FORMANEK,
PLC, an Arizona professional limited
liability company; BRENDA CHURCH
and JOHN DOE CHURCH, wife and
husband; GAMMAGE & BURNHAM,
PLC, an Arizona professional limited
liability company; FRAZER RYAN
GOLDBERG & ARNOLD, LLP, an
Arizona limited liability partnership;
BRIAN THEUT and JANE DOE THEUT,
husband and wife; THEUT, THEUT &
THEUT, PC, an Arizona professional
corporation; WEDBUSH MORGAN
SECURITIES INC., a California foreign
corporation authorized to do business in
Arizona; BLACK AND WHITE
BONDING/SURETY/INSURANCE
ENTITIES I – V,

25 Defendants.

Case No: CV 2010-011839

26 **FIRST AMENDED
COMPLAINT (VERIFIED)**

- (I) Intentional Spoliation
- (II) RICO
- (III) Private Party Civil Rights
42 U.S.C. § 1983
- (IV) Violations of Federal/State
Constitutional Due Process
Guarantees and Equal Protection
- (V) Rule 60 Independent
Action/Savings Clause and Rule
(c)(4) and Federal Rule of Civil
Procedure Counterpart
- (VI) Breach of Fiduciary Duty

JURY TRIAL DEMANDED

1 For her First Amended Complaint Plaintiff brings suit under the above-
2 referenced counts and factual predicates that follow against Defendants, and each of
3 them, joint and severally, as framed below:

4 **FIRST AMENDED COMPLAINT SUMMARY**

5 1. This case incorporates by this specific reference the First Amended
6 Complaints filed, or to be filed, in *Ravenscroft, Mallet and Hall* together with all
7 documents, exhibits, attachments, e-mail, records incorporated by reference, the
8 substantially similar statutes, law, and plausible inferences to be drawn from the non-
9 conclusory facts. All documents accorded judicial notice under A.R.E. 201 are
10 included for review by this Court.
11

12 2. At their core, the incorporated cases and this case specifically, allege
13 concerted action in a course and “pattern” of conduct constituting a series of “predicate
14 acts” with the threat of immediate and on-going “open-ended” repetition by the
15 Enterprise Defendants, and each of them.
16

17 **THE LONG STORY**

18 3. Ms. Long suffered a stroke in 2005 and within months was ensnared in
19 Arizona’s Probate System. The best estimates of Ms. Long’s assets, consisting of real
20 property, securities, investments, bonds, gold and cash was approximately \$1,450,000.
21 Defendants, the Sun Valley Group and its wholly owned subsidiary Arizona Care
22 Management, through the Frenette’s maintained an associate-in-fact relationship which
23 has now spanned over a decade, with Defendant lawyers Elwell, Church, and Theut
24 and, unsurprisingly, appear identically in the *Ravenscroft* First Amended Complaint
25 with one notable exception; the addition of Ms. Church in temporary substitution of
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1 Ms. Gray. The core associated-in-fact constituency is maintained in the *Mallet* case
2 with the addition of Southwest Fiduciary, Inc., also maintaining a presence in the *Hall*
3 matter. Here, as in *Ravenscroft*, as in *Mallet*, and, as in *Hall*, the Enterprise Defendants
4 operate in derogation of their fiduciary duties to the “protected person” liquidating the
5 Estates, where possible, to themselves in the form of unauthorized and undisclosed
6 “professional fee disbursements” implicit and express agreement. By 2009, Ms.
7 Long’s \$1.45 million had been absorbed by the Syndicate leaving Ms. Long penniless,
8 without a home which was sold out from under her, leaving Ms. Long a ward of the
9 state at taxpayer expense.

11 **CLIENT FILES DENIED**

12 4. On June 28, 2010, undersigned counsel of record requested the
13 immediate return of Ms. Long’s client files (which she paid for to the point of
14 insolvency) to include primarily communications, documents and electronic
15 transmissions to or from, or among, or by and between any of the Defendants with one
16 another. We now can justifiably conclude to a certainty this was the habit, pattern, and
17 practice of the Defendants disclosed through dozens upon dozens of email
18 transmissions (*Ravenscroft*) which provide the Court a reasonable and plausible basis
19 upon which to conclude that these Defendants engage in a pattern of racketeering
20 activity, through express or implied endorsement of the scheme or artifice to defraud
21 the “protected person” out of their assets through undisclosed, and unauthorized, *sub*
22 *rosa* financial and wire transfers to themselves as “fiduciary fees,” “attorney fees,”
23 “expert fees,” and in this case, tens of thousands in funds transferred to a Sun Valley
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1 d/b/a bed-to-death warehousing unit, at least until the “protected person” has been
2 stripped of all financial resources. Predictably, the racketeers then “withdraw.”

3 5. In addition to their fiduciary responsibilities under the Code of
4 Professional Conduct, the various Fiduciary Codes adopted by the Arizona Supreme
5 Court, and the statutory fiduciary duties imposed against the predator defendants
6 through legislative enactment under Titles 36 and 14, and elsewhere, the Defendants,
7 and each of them, knowingly, intelligently, and voluntarily, engaged in a conspiracy,
8 which by this point had been perfected, using only two fiduciaries (the Sun Valley
9 Group or Southwest Fiduciaries), as here, “appointed” by the same lawyer group
10 members. The email are presumptively, regular, routine and consistent with a pattern
11 and habit of practice engaged in by the same, or substantially similar, racketeering
12 defendants as disclosed in the Ravenscroft case and exhibits thereto, incorporated
13 herein by this reference. The email, transmissions and document transfers among the
14 various Defendants through various separate and distinct counsel representing
15 concurrent interests of the “client” and the “ward” have waived the right to conceal
16 such documents irrespective of a “discovery freeze.” Obtaining one’s client files,
17 having paid for the privilege and in recognition of the fiduciary duties imposed upon
18 Defendants collectively to act in the “best interests” of the “protected person” is not,
19 and never has been, “discovery.” It was, and continues to be, the Defendants’
20 uncontested fiduciary duty to provide the “client” “ward” his or her files without
21 having to “discover” that which belongs to the client, as a matter of law. The crime-
22 fraud exception would, in any event, require immediate disclosure with or without a
23 discovery request based simply upon the lawyer’s unconditional duty of candor to the
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1 Court by not concealing material and dispositive documents at their immediate
2 fingertips.

3 **DEFENDANTS' *EX PARTE* COMMUNICATIONS**
4 **WITH JUDICIAL OFFICERS**

5 6. This particular case has a distinguishing characteristic effecting veracity
6 of the underlying minute entries, Court orders, and opinions void and/or voidable and
7 that issue is: The judiciary and Defendant lawyer racketeers apparently communicated
8 in some detail relative to an opinion which was forthcoming by then Commissioner
9 Lindsay B. Ellis attempting to collaterally blunt or impede the present series of RICO
10 actions, and specifically, the *Long* case presently. Despite immunity afforded Ms. Ellis
11 (assuming for the sake of argument that she was acting in some capacity as a judicial
12 officer seeking advice from the RICO Defendants presently, *i.e.*, had Ellis been sued in
13 her individual capacity those immunities under certain counts evaporate) reflects that
14 even long-term Probate System judicial insiders (Ellis) viewed the Enterprise as a
15 discreet group of individuals comprised of the Defendants here. Defendants, and each
16 of them, with respect to their conduct on this isolated issue alone represents a classic
17 private party civil rights action under 42 U.S.C. § 1983, dispensing with Federal and
18 State Constitutional Due Process guarantees and equal protection. Under the
19 Independent Action Count this direct attack upon the underlying rulings, irrespective of
20 any immunities granted, provides this Court with immediate and original jurisdiction to
21 piece by piece, dismantle and set aside improperly obtained rulings resulting in a Fraud
22 on the Court (irrespective of the Commissioner's knowing participation in such
23 outrageous and improper conduct, it is the offense against the system and the litigants
24 (Ms. Long) in denial of Ms. Long's due process rights to a fair and impartial hearing
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1 before an unbiased judiciary). The rulings, in *ex parte* fashion, crafted by the RICO
2 Defendants here, may also be set aside at any time under Federal or Arizona Civil Rule
3 60(c)(4) as a void judgment, the Court acting in excess of, or without jurisdiction
4 awarding a “gamed ruling” to the well-known associated-in-fact cadre of Defendants.

5 **JURISDICTION AND VENUE**

6 7. This Court has personal jurisdiction over each Defendant which has
7 caused, and continues to cause, events to occur in Maricopa County through this First
8 Amended Complaint (“FAC”) out of which this cause of action arises, and they are all
9 residents of Maricopa County and/or incorporated within Arizona or California and
10 doing business within Maricopa County. Venue may or may not be proper in Maricopa
11 County.
12

13 **OPERATIVE FACTS**

14 8. The Plaintiff reincorporates here, all facts, documents of record, sworn
15 testimony, transcripts of record, together with the underlying Probate Court files in the
16 *Long, Mallet, Ravenscroft* and *Hall* cases. The Enterprise has been in existence for a
17 minimum of five years and continues its campaign to vitiate Plaintiffs’ constitutional
18 due process and civil rights in an “open-ended” fashion.
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20 9. Defendants, and each of them, utilized the Federal and State banking
21 systems to transfer funds, acquire assets, and submitted email, and passed electronic
22 transmissions, in a series of “predicate acts” defined as classic “racketeering activity”
23 while engaging in a form of extortion under color of law.
24

25 10. Defendants have intentionally spoliated germane and relevant evidence
26 bearing upon the subject matter of this Complaint by refusing, and continuing to refuse,

1 return of the client files, knowing, or with the reasonable ability to ascertain that
2 Defendants, and each of them, have repetitively and intentionally waived any privilege
3 in that regard. This conduct is further evidence of the Enterprise Defendants ongoing
4 and regular way of “doing business.”

5 11. These attempts to disrupt or injure the Plaintiff’s lawsuit, by design and
6 intent are actionable as intentional spoliation. *Cf. Lips v. Scottsdale Healthcare Corp.*,
7 229 P.3d 1008; 2010 Ariz. LEXIS 19 (2010). Ms. Long was entitled to Veterans
8 Administration representation to the extent she needed a guardianship and/or
9 conservatorship which would have, conservatively, preserved 85-90% of her estate.
10 Defendants, and each of them, intentionally failed to advise Ms. Long of her rights to
11 V.A. representation as opposed to the unmitigated looting which occurred. Defendants
12 and each of them, as fiduciaries to Ms. Long owed her a duty of absolute candor in an
13 effort to serve her “best interests” in conservation of estate resources.

14 12. Defendants, and each of them, transferred funds, assets, and tangible
15 personal property belonging to Ms. Long, to themselves, lining their own pockets
16 understanding that an *ex post facto* “rubber stamp” was going to be applied to the “fee”
17 damages when, at some later date after the insolvency had been consummated, the Ellis
18 Court was called upon to retroactively approve the plundering of estate assets in
19 derogation of all fiduciary duties and law, to the detriment of Ms. Long. There are no
20 statutory or other legislatively enacted provisions, or rules of court, pertaining to the
21 Probate System which provides for these credit advances as against uncontrolled and
22 unauthorized expenditures rendering these proceedings constitutionally defective. *In re*
23 *Maricopa County, MH-90-00566*, 173 Ariz. 177, 840 P.2d 1042 (Ct. App. 1992).
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1 Stripping assets and cash from Ms. Long, or Mr. Ravenscroft, or Ms. Mallet, or Mr.
2 Hall, of their private property interests dispenses with constitutionally required pre-,
3 and/or post-deprivation hearings with full and adequate disclosure of the *ex parte* asset
4 transfers without notice. Failure to comply with statutorily prescribed due process
5 considerations render the underlying guardianship and conservatorship proceedings
6 void or voidable. *In re M.H. 2007-001236*, 230 Ariz. 160, 204 P.3d 418 (Ct. App.
7 2008); *In re M.H. 220 Ariz. 277*, 205 P.3d 1124 (Ct. App. 2009).

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9 13. As a factual matter attorneys and fiduciaries for the “ward” are subject to
10 the same ethical and statutory fiduciary duties to the “protected person” and cannot act
11 in an adverse and conflicted fashion against the ward. Any such conduct by the
12 fiduciary, authorized and ratified by the attorneys, will be imputed to the attorney, or
13 attorneys under A.R.S. § 14-5652(B). As the *Long* estate was being liquidated into
14 insolvency for the exclusive pecuniary benefit of the fiduciaries and their attorneys,
15 A.R.S. § 36-506 unconditionally prohibits the denial of any civil rights which should
16 have been accorded. The RICO Defendants precluded Plaintiffs’ rights under the
17 Confrontation Clause denying her, and those similarly situated, to proper due process
18 under the Sixth Amendment to the U.S. Constitution. *In re M.H.*, 222 Ariz. 287, 213
19 P.3d 1014 (Ct. App. 2009).

20
21 **LOCAL RULES MARICOPA COUNTY RULE 5 – PROBATE**
22 **AND MENTAL HEALTH CASES**

23 14. There were no yearly reviews in the *Long* matter. Rule 5.4. There were
24 no reviews ensuring appropriate action relative to “compliance” with the laws of the
25 State of Arizona and Court Rules. *Id.*

1 15. Rule 5.6 is simply reaffirmation of required disclosure affidavits under
2 A.R.S. § 14-5106 which were purportedly to accompany all petitions for appointment
3 of the guardians, conservators, and fiduciaries in this case. Rule 5.7 required the
4 fiduciaries and the lawyers to provide, at least within 90 days post-appointment,
5 statements reflecting the net value of the estate with detailed statements for services
6 rendered, performed and the date each task was accomplished. The total fees, with
7 estimated revisions in quarterly fashion were required in “the proposed form of order”
8 which, of course, was non-existent in the present case. Ms. Long, waited
9 approximately three years to find out that she was bankrupt, a ward of the state, at
10 taxpayer expense, while her non-reporting lawyers and fiduciaries had wiped out in
11 excess of 1.45 million to themselves. Ms. Long’s real property was liquidated at losses
12 inexplicable given the fact there were no appraisals, comparative appraisals, or proper
13 marketing, including the fact that Ms. Long, through her fiduciaries and with the
14 complicity of Wedbush Securities placed Ms. Mallet’s investment account at high risk
15 as to a play on the “derivatives” market. Can there be a plausible explanation for
16 allowing a woman in her mid to late 80s to engage, in effect, in a game of “investment
17 craps” having had a stroke, subject to a Qualified Investor Questionnaire? The only
18 beneficiaries to this monument to the absurd are, of course, the fiduciaries, lawyers and
19 “investment advisors” “churning and burning” as fees are made whether Ms. Long is
20 buying or selling even in a market the entire faculty of MIT failed to understand.

21 16. A.R.S. § 14-5424(D) prohibits defendant lawyers and fiduciaries from
22 validly arguing, as they have persistently done, for their own limitations on liability.
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PARTIES

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2 17. Plaintiff Marie J. Long, through her guardian, Kim Raynak, are both
3 adult residents of the State of Arizona and live within Maricopa County.

4 18. Defendants, the Sun Valley Group, Inc. (“Sun Valley” or “SVG”) and its
5 wholly subsidiary, Arizona Care Management, owned and operated by Peter and
6 Heather Frenette as husband and wife, are license holders, and executive officers, are
7 Arizona corporations authorized to do, and doing business in the State of Arizona and
8 has its principal place of business in Maricopa County, Arizona. The Frenettes are
9 husband and wife, live in Maricopa County and have acted for and in furtherance of
10 their marital community.
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12 19. Defendants Genevieve Olen and Gary Olen, wife and husband, were the
13 Trust fiduciaries and remained beneficiaries of the Long Trust, who were acting for the
14 benefit and in furtherance of their marital community.
15

16 20. Defendant Brenda Church is an attorney in the State of Arizona and
17 resident of Maricopa County employed by Defendant Gammage & Burnham, PLC, an
18 Arizona professional limited liability company. Ms. Church is married to fictitiously
19 named John Doe Church and, as wife and husband, Ms. Church was acting for and in
20 furtherance of her marital community. Defendant Church was employed at Defendant
21 Gammage & Burnham at least during the time frame relevant to this lawsuit of August
22 23, 2005 through October 16, 2008. Ms. Church was then employed at Ryan Frazer
23 Goldberg & Arnold, LLP thereafter. Ryan Frazer is an Arizona limited liability partner
24 authorized to do business as a law firm in Arizona.
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1 21. Defendant Bryan Theut (“Theut”) is a licensed attorney in Arizona and a
2 resident of Maricopa County, Arizona who’s fictitiously named wife, Jane Doe Theut,
3 and whose true identity will be supplemented when known, was acting in furtherance
4 of his marital community at all relevant times hereto. Theut was employed by Theut,
5 Theut & Theut, PC, an Arizona professional corporation authorized to do business as a
6 law firm in Arizona.

7 22. Defendant Jerome Elwell is a licensed attorney in Arizona and employed
8 at Defendant Warner, Angle Hallum Jackson & Formanek, PLC and continues to be so
9 employed. Defendant Jane Doe Elwell is a fictitiously named Defendant whose true
10 identity will be supplemented when known. The acts of Mr. Elwell were for the
11 benefit of and in furtherance of the marital community.

12 23. Defendant Wedbush Morgan Securities Inc. is a California foreign
13 corporation authorized to do business in Arizona and has offices in Maricopa County,
14 Arizona.

15 24. The fictitiously named Black and White Sureties are individuals and
16 entities who, on information and belief, shall underwrite indemnification and
17 repayment of damage to Ms. Long and her estate. Once the identity of these
18 fictitiously named sureties is discovered, this First Amended Complaint shall be
19 amended accordingly. All named Defendants are inter-related, inter-dependent and are
20 jointly and severally liable.
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ADDITIONAL OPERATIVE FACTS

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2 25. Ms. Long is the surviving spouse of a veteran of the United States
3 military and as such, is entitled to benefits provided by the Arizona Department of
4 Veteran Services.

5 26. In addition to the contents of the aforementioned safe deposit box, before
6 she was declared “incompetent,” Ms. Long had assets in the Long Trust valued in
7 excess of \$1,400,000.00.

8
9 27. On or about June 5, 2005, Olen opened an account with and hired
10 Wedbush Morgan Securities as an investment company for the Long Trust and chose
11 Kerry Downs as the investment advisor to manage the trust investments.

12 28. Wedbush invested in highly speculative derivatives in clear violation of
13 fiduciary duties it owed to Ms. Long. Within 36 months, all of that money was gone
14 along with Ms. Long’s home and she has no appreciable assets left to sustain her, other
15 than as a ward of the taxpayers of Arizona.

16
17 29. In disposing of Ms. Long’s real property, Defendants failed to use
18 commercially reasonable methods in a commercially reasonable manner, and instead
19 had a fire sale of her property in derogation of its duties owed to Ms. Long.

EVENTS AND ACTIONS DURING 2005

20
21 30. Plaintiff incorporates the allegations of all of the foregoing paragraphs of
22 this Complaint as if fully set forth herein.

23
24 31. Shortly after Ms. Long suffered a stroke in May 2005, Olen moved Ms.
25 Long (against her wishes) from her long-time residence in Scottsdale, Arizona, to the
26 vicinity of San Diego, California.

1 32. On August 23, 2005, Ms. Patricia Elkerton, the court-appointed attorney
2 for Marie Long in San Diego, recommended, among other things, that guardianship
3 proceedings be instituted in Arizona.

4 33. On or about August 23, 2005, Ms. Olen hired Defendants Church and
5 G&B to represent Olen. Church is an experienced attorney practicing exclusively in
6 the area of estate planning, probate and guardianships.

7 34. Olen hired Church (who billed herself out during the times relevant to
8 this Complaint at \$280.00-\$350.00 per hour) without interviewing or consulting with
9 any other attorneys, Olen has testified that she does not believe it was her obligation as
10 trustee to “attorney shop” for cost-efficient attorney fees.

11 35. On September 8, 2005, the same day the California court issued its order,
12 Olen, through her counsel, Church, filed a petition in Maricopa County Superior Court
13 for Olen to be appointed as guardian for Ms. Long, as well as a petition for
14 appointment of an attorney, an investigator and for physicians to **again** evaluate Ms.
15 Long.
16 Long.

17 36. On or about September 9, 2005, Olen sent Church and G&B \$15,000.00
18 from the Long Trust for a retainer fee. According to the retainer agreement, “the
19 retainer [of \$15,000 was to be] held and applied to the final bill.” Further, the
20 agreement stated that the Long Trust would be charged monthly by Church and G&B,
21 but if “payment is not received within thirty (30) days, our fees will be paid from the
22 retainer agreement.”
23 retainer agreement.”

24 37. On September 14, 2005, despite having full knowledge that: (i) the
25 California court had issued an order directing that guardianship proceedings be
26

1 initiated in Arizona; (ii) Ms. Long had specifically asked to be returned to the State of
2 Arizona; (iii) Ms. Long had been a long-term resident of the State of Arizona; and (iv)
3 there had been no opposition by any person or party to the return of Ms. Long to
4 Arizona; Olen filed a Motion for Determination of Jurisdiction and Venue in the
5 Probate Case, claiming there was a legal issue regarding whether Arizona had
6 jurisdiction and venue over Ms. Long and the guardianship proceedings. Ms. Long's
7 estate paid out another \$3,500.00 in attorneys' fees.

8
9 38. For the guardianship proceedings in California, Olen retained and
10 consulted with Attorneys Church, Batts, Muns and Jones. Between these four
11 attorneys from May-September 2005 and the court-appointed attorney, Ms. Elkerton,
12 the Long Trust paid out approximately \$42,145.00 for legal fees; at \$200.00 an hour,
13 the cluster of attorneys paid themselves for over 210 hours of work. There was nothing
14 to report.

15
16 39. On September 27, 2005, Brian Theut was appointed as guardian ad litem
17 for Ms. Long in Arizona, and was to report to the Court regarding matters relating to
18 Ms. Long and the need for a guardianship.

19 40. On October 24, 2005, Dr. Blum sent Church his paper "evaluation" of
20 Ms. Long, although he never met with her. Blum charged the Long Trust \$5,000.00 for
21 this report, although the report was never presented to the Court in the Probate Case.

22 41. On or about October 25, 2005, Sun Valley was appointed as temporary
23 guardian of Marie Long.
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1 42. As part of Sun Valley’s appointment, it was required to file an affidavit
2 pursuant to A.R.S. § 14-5106, ACJA §§ 7-201-7-202 and Maricopa Court Local Rule
3 5.7.

4 43. Sun Valley failed to file an affidavit in conjunction with its temporary
5 appointment as guardian for Ms. Long.

6 44. By October 26, 2005, Sun Valley, through Heather Frenette, accepted the
7 appointment stating under oath:

8 Sun Valley hereby accepts the duties of temporary guardian of Marie Johanna
9 Long and do solemnly swear that I will perform, according to law the duties of such
10 fiduciary.
11

12 45. Defendants failed to investigate that Ms. Long was entitled to
13 guardianship or other services through the Arizona Department of Veteran’s Services
14 (“ADVS”) at no or minimal cost.
15

16 46. As it turns out, Ms. Long was, in fact, entitled to have the ADVS act as
17 her guardian at no cost, but the Frenettes, Sun Valley and their attorneys (the “Sun
18 Valley Defendants”) chose not to explore this — or any other guardianship options —
19 for their own pecuniary benefit and to the financial detriment of Ms. Long.

20 47. There were only three court appearances in the Probate Case in 2005.

21 48. From May through December 2005, the Long Trust was charged
22 \$137,100.08 in attorney fees (of which \$46,524.00 went to Church and G&B) and
23 trustee fees, as well as \$13,746.10 in guardian fees.
24

25 49. As of December 2005, Ms. Long was living in her personal residence in
26 Scottsdale Arizona.

- 1 • Mr. Elwell -- attorney for Sun Valley (guardian) (retained)
- 2 • Mr. Theut -- guardian ad litem for Marie Long (appointed)
- 3 • Sun Valley -- Guardian (appointed)

4 57. During 2006, Ms. Long resided in her home in Scottsdale, Arizona.

5 58. From December 2005 through April 2006, Sun Valley and Olen retained
6 the services of Villa Home Care to provide home-care services to Marie Long. The
7 amount charged to and paid by the Long Trust to Villa Home Care for that period was
8 approximately \$31,000.00.
9

10 59. Villa Home Care invoices were sent “c/o” Defendant Arizona Care.

11 60. On or about February 7, 2006, Sun Valley, through Peter Frenette,
12 reregistered the trade name “Arizona Care Management” (“Arizona Care”) with the
13 Arizona Corporation Commission.

14 61. In April 2006, Sun Valley terminated the full-time services of Villa
15 Home Care and began providing home-care services to Ms. Long itself under its trade
16 name of Arizona Care Management.
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18 62. Sun Valley did not seek prior approval from the Probate Court before it
19 or its d/b/a Arizona Care became the in-home care provider for Marie Long.

20 63. Sun Valley and its attorneys did nothing to explore the possible option or
21 benefits available to Ms. Long as the spouse of a veteran that might have reduced or
22 helped cover the costs of her care.
23

24 64. Sun Valley charged for everything its employees and agents did related to
25 Ms. Long, claiming that those actions “benefitted” Ms. Long, even such things as when
26 a Sun Valley employee started a grease fire in Ms. Long’s home, or for employees

1 making calls to one another, returning a cable box, conversing about a doll, charging
2 Ms. Long \$92.58 to record her phone calls and issuing multiple billings by different
3 people for the same tasks at different hourly rates.

4 65. Sun Valley's self-serving decision to make itself the provider of in-home
5 care for Ms. Long, in addition to being her guardian, enabled Sun Valley to quadruple
6 the amount of money it was collecting from the Long Trust, which was a matter of
7 conflict of interest endorsed by the Defendant RICO lawyers.

8 66. In 2006 and 2007, the in-home care management fees were 76% and 72%
9 of the total fees paid by the Long Trust to Sun Valley, while the guardian fees — which
10 were also exorbitant and unnecessary — comprised 25% of the Sun Valley fees paid by
11 the Long Trust. In Arizona, we used to call this conduct, "cutting a fat hog."

12 67. On May 23, 2006, Marie Long executed the Second Amendment to the
13 Long Trust, removing the Olen as remainder beneficiaries of the Long Trust and
14 designating her four sisters, Madelon Cloute, Jeanette Churchill, Pat Christiansen and
15 Margaret Aultman, as remainder beneficiaries of the Long Trust.

16 68. Church and Olen were informed by court-appointed counsel, Jon Kitchel,
17 of the change in the remainder beneficiaries.

18 69. In response, in May 2006, Olen again hired Dr. Blum and Dr. Addario to
19 evaluate Ms. Long solely because of the Second Amendment to the trust by Marie
20 Long. This action was not intended to and did not benefit Ms. Long, but was solely
21 aimed at aiding Olen's self-serving interest in putting herself in a position to challenge
22 the validity of the Second Amendment to the Long Trust.
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1 70. In 2006, Church and her staff at G&B charged and were paid by the Long
2 Trust approximately \$4,100.00 in attorney fees and costs relating to the aforementioned
3 evaluations by Dr. Blum and Dr. Addario. In effect, Ms. Long was funding the
4 opposition “fiduciaries” by the hour.

5 71. On or about May 30, 2006, after communication with Church and/or
6 Olen regarding the Second Amendment to the Long Trust, Ms. Garner, attorney for
7 Sun Valley, wrote to Dr. Willson requesting Dr. Willson’s opinion regarding “undue
8 influence” of Marie Long in direct response to her removal of the Olen as
9 beneficiaries of the Long Trust.

11 72. On or about June 16, 2006, Olen (and her counsel) again contacted Dr.
12 Blum M.D. in Tucson, Arizona to evaluate Marie Long as a result of the removal of
13 Olen and her husband as residual beneficiaries of the Long Trust.

14 73. On June 27, 2006, Church paid Dr. Blum \$5,800.00 for his report
15 regarding the alleged “undue influence” of Marie Long.

17 74. Olen reimbursed Church the \$5,800.00 paid to Dr. Blum using trust
18 funds. This amount was not reflected in Olen’s Petition for Approval of Accounting
19 as payment to Dr. Blum, but rather as attorney fees paid to Church.

20 75. For 2006, the Long Trust was charged \$61,954.09 in attorney fees and
21 \$28,469.50 in Olen fees.

22 76. For 2006, Sun Valley acting as *Sun Valley*, charged and was paid by
23 Olen from the Long Trust funds approximately \$72,722.59 for in-home care services
24 for Marie Long.
25
26

1 96. The Trust required that Olen file an annual accounting of the Trust. Olen
2 admitted that she did not know she had to “have a full accounting every year” and
3 chose not to annually account for the Trust until July 31, 2008, three years late.

4 97. On July 31, 2008, Olen submitted an accounting for a 36-month period
5 from June 2005 through April 30, 2008. This accounting shows that the beginning
6 balance of the Long Trust was \$1,281,735.42, plus receipts of \$146,864.54, for a total
7 of \$1,428,600.00. However, the losses were \$172,000.00 and the disbursements
8 totaled \$821,473.00. The ending balance of the Long Trust as of April 30, 2008 was
9 reported as \$435,061.34.

11 98. For the period of June 1, 2005 through April 31, 2008, the reported losses
12 of \$172,065.74 consisted of a \$65,000.00 loss for the sale of Ms. Long’s home and
13 \$107,065.74 from the Wedbush investments. (*Id.*).

14 99. For the period June 1, 2005 through April 31, 2008, disbursements from
15 the Trust totaled \$821,472.88, including \$180,265.90 for attorney fees and legal costs
16 (21.9% of the total disbursements), \$351,914.88 (42.9 % of the total disbursements)
17 for in-home care and assisted living expenses, and \$104,173.40 for guardian fees
18 (29.5%). (*Id.*) All funds went to the Syndicate.

20 100. Of the \$180,265.90 for attorney fees and costs, \$95,276.56 was paid to
21 Church (53% of the total disbursements for attorneys’ fees and costs), \$18,646.45
22 (10.3%) to the Guardian’s counsel, \$23,335.05 (12.9%) to the California attorneys,
23 and \$16,609.83 (9.2%) to Brian Theut, Guardian *ad Litem*.

25 101. Olen failed to provide this accounting to Marie Long.

26

1 102. On July 31, 2008, Olen submitted a petition for approval of accounting of
2 the Trust for the period of June 1, 2005 through April 30, 2008, also years after
3 liquidation.

4 103. On September 8, 2008, Sun Valley filed a “Statement for Basis for
5 Attorney fees.” Attached was an affidavit from Sun Valley requesting court approval
6 for guardian fees and expenses of \$104,182.80. The incomplete invoices attached
7 were *not* for guardian fees, but for Sun Valley “care expenses” provided by Sun
8 Valley and under its trade name “Arizona Care Management” (“Arizona Care”). Sun
9 Valley did not reference or disclose care fees charged to the Long Estate by Sun
10 Valley or Arizona Care and paid by the Long Trust. Further, it did not include all the
11 Sun Valley or Arizona Care invoices or any of its invoices for guardian fees.
12

13 104. On October 6, 2008, Church filed her Affidavit of Attorneys’ fees and
14 costs. Church requested \$67,241.50 in fees (from August 2008 through March 3,
15 2008) and \$11,335.06 in costs, although the documented costs were only \$7,235.06.
16 She did not include additional billings already paid for in March 2008 through
17 September 2008. She noted that \$16,700.00 was held in the attorney trust account for
18 Genevieve Olen, not the Long Trust.
19

20 105. On October 6, 2008, Church knew that the additional \$4,100.00
21 requested for costs was for Dr. Blum’s fees, but she did not: 1) explain or disclose that
22 it was for Dr. Blum’s fees; or 2) disclose why it was not reflected in her cost schedule.
23

24 106. On October 16, 2008, Church left G&B and joined Frazer Ryan.
25
26

1 107. In Church's Affidavit, she stated that \$16,700.00 was in her attorney trust
2 account funds belonging to the Long Trust. She did *not* explain or disclose to the
3 Court:

4 a. Whether the initial retainer of \$15,000.00 had been used for attorney
5 fees, Dr. Blum's fees or other fees and costs (it was); and

6 b. The source of the additional \$1,700.00 in Church's attorney trust account
7 (a refund from Dr. Blum).
8

9 108. On November 10, 2008, Olen submitted a request for \$54,232.50 for
10 Trustee fees without support of affidavit or billings.

11 109. On November 22, 2008, Olen sent a check to G&B for \$3,667.43.
12 Instead of returning the check to Olen since payment was already made from the
13 attorney trust account, G&B signed the check over to Frazer Ryan, and it was
14 deposited in Frazer Ryan's trust account.
15

16 110. Olen's accounting did not reflect the disbursement of these attorney fees
17 to Frazer Ryan.

18 111. Olen's accounting does not list the additional \$1,700.00 or the
19 \$15,000.00 initial retainer as an asset of the trust, nor does the accounting reflect
20 attorney trust funds that properly belong to the Long Trust. (*Id.*)

21 112. Frazer Ryan disbursed fees from the attorney trust account on December
22 19, 2008 (\$6,560.74) and January 1, 2009 (\$4,844.00) for attorney fees in violation of
23 the written fee agreement.
24

25 113. On November 8, 2008, Ms. Long filed a Petition for Appointment of
26 Successor Trustee, seeking to replace Olen as Trustee of the Long Trust.

1 Of the total disbursements from the trust, \$8,450.00 was for trust accountant fees
2 (8.6% of the total disbursements) \$30,979.12 for Assisted Living and Incontinence
3 care (31.6%), \$17,881.36 was for attorney fees and legal costs (18.3%), and
4 \$25,095.22 for guardian fees (25.5%).

5 122. Of the \$17,881.36 for attorney fees and legal costs, Church was paid
6 \$14,863.70 (83%) and the guardian's attorney was paid \$3,017.66 (17%). According
7 to the Supplemental Accounting, the Trust assets were now valued at approximately
8 \$455,000.00 with receipts of \$15,477.44 and disbursements of \$98,315.
9

10 123. According to Olen's accounting, the total value of the Long Trust was
11 reduced from \$1,281,735.00 to \$319,000.00 by disclosure in 2009. (*Id.*)

12 124. Olen requested another \$59,321.50 in trustee fees.

13 125. On January 30, 2009, Olen also paid Invoice 42734 for \$4,844.00.
14 Instead of returning this check to the Long Trust, Frazer Ryan deposited the payment
15 into the attorney trust account.
16

17 126. On February 12, 2009, Sun Valley filed an "updated" claim for fees
18 requesting \$24,948.15 for guardian fees and expenses. Sun Valley attached invoices
19 for guardian invoices only. Sun Valley did not attach the missing invoices for in-
20 home care services provide by Sun Valley or Arizona Care to Marie Long. Sun
21 Valley did not disclose in its affidavit its relationship to Arizona Care or that Sun
22 Valley charged the Long Trust separately for care fees.
23

24 127. On February 18, 2009, Church submitted an additional and supplemental
25 Affidavit of Attorney Fees and Costs for Gammage and Burnham. Again, Church did
26 not reference or disclose the \$16,700.00 held in the attorneys' trust account (or why

1 this amount was still in the attorney trust account) or the discrepancy in the request for
2 costs for an additional \$4,100.00. All fees were already “advanced.”

3 128. On February 27, 2009, interested parties sent a letter requesting specific
4 invoices regarding Sun Valley, Villa Home Care and Arizona Care that were not filed
5 with Sun Valley’s affidavits.

6 129. Olen and/or her attorney refused to provide asupplemental accounting to
7 the Court in the Long Matter or any of the parties.

8 130. Review of the Sun Valley and Arizona Care invoices established that Sun
9 Valley provided its own care services through itself or its trade name, Arizona Care, to
10 Marie Long. The total charged by Sun Valley for care services was \$72,752.59, and
11 Arizona Care charged \$161,874.68, which was a significant portion of the dwindling
12 Trust funds.
13

14 131. On April 28, 2009, Olen submitted a supplemental accounting stating that
15 the current account value (as of December 2008) was \$339,356.98, which included the
16 savings bonds and other assets omitted from the prior two accountings submitted to
17 the court for approval by Trustee.
18

19 132. On April 28, 2009, Olen submitted an “Addendum to Olen’s Accounting
20 and Supplemental Financial Information listing the safety deposit box as “contents
21 unknown” and a zero (-0-) value and added the two savings bonds in Olen’s personal
22 possession, but not the \$16,700.00 in the attorney trust account or the petty cash
23 (\$2,133.70) in Olen’s personal possession as assets of the trust.
24

25 133. On May 8, 2009, Ms. Long and the interested parties filed a Petition to
26 Remove Olen as Trustee.

1 134. As of June 30, 2009, the trust balance had been reduced to \$121,987.17.

2 135. From January 1, 2008, through June 1, 2009, Olen disbursed \$252,143.71
3 and, of that amount, \$163,583.79 was for attorneys' fees and costs; \$123,693.40 was
4 for Olen's attorney fees, \$11,217.18 for guardian *ad litem* attorney fees; \$3,354.00 for
5 Olen's attorney fees for a legal opinion regarding the investment broker; \$1,750.00 for
6 Emily Kile, attorney; \$22,793.46 for the guardian's attorney fees; and \$775.00 for
7 court-appointed counsel for Marie Long, Jon Kitchel, for a deposition fee; \$29,036.75
8 of the \$252,143.71 was for the guardian fees paid to Sun Valley.

9 136. In August 2009, Olen caused the liquidation of the U.S. savings bonds
10 and gold coins, and deposited the proceeds into the BOA trust banking account in the
11 amount of \$47,377.20, and \$2,762.10 for the gold coins.

12 137. On September 25, 2009, the balance of the trust assets was approximately
13 \$44,000.00 and the Trust had no cash assets as of November 16, 2009.

14 138. On October 16, 2009, the Court ordered that the next hearing scheduled
15 for October 30, 2009 would include evidence on the Petition to Remove Trustee.

16 139. Ms. Olen did not appear at the October 30, 2009 hearing.

17 140. On November 16, 2009, prior to the continued hearing set for November
18 20, 2009, Ms. Olen resigned as trustee of the Long Trust. Ms. Olen did not appear at
19 the November 20, 2009 hearing. As a result, of Ms. Olen's resignation, the Petition to
20 Remove Trustee was rendered moot.

21 141. On December 17, 2009, Ms. Long was declared indigent by the Probate
22 Court. Defendants liquidated unto themselves over \$1,400,000.00.

1 functions or performing “judge-like” conduct breaching statute after statute after
2 statute, Rule 33 of the Maricopa County Local Rules of Probate, including Rule 5 in
3 that same regard while being sued in his individual (non-immune) capacity. Further,
4 as a matter of public policy, any officer of the court engaging in theft, extortion,
5 bribery, schemes and/or artifices to defraud, intentional violations in derogation of
6 Plaintiff’s civil rights and in breach of well-established civil rights law vitiates any
7 claim whatsoever to qualified or absolute immunity. Last Plaintiff’s checked theft of
8 client funds *without court authorization* is not, nor has it ever been construed to be a
9 “judicial function” and is clearly outside of the scope of immunity. *See, e.g., Zarcone*
10 *v. Perry*, 572 F.2d 52 (2nd Cir. 1978). “Absolute immunity” vaporizes in the face of
11 individual capacity suits, as here, versus official capacity suits against governmental
12 agencies or governmental officials. *Kentucky v. Graham*, 473 U.S. 159 (1985).
13 Defendants fail in their burden of proof establishing a RICO exemption for personal
14 liability overridden by abrogation of public policy concerns, as recently raised by our
15 own Arizona Supreme Court issuing orders on the precise counts for which Theut
16 claims “immunity.” Theut is not entitled to qualified immunity either. *Forrester v.*
17 *White*, 484 U.S. 219, 224 (1988). Even a prosecutor when performing
18 administratively (billing) is only entitled to qualified immunity, at best, and the irony
19 should not be lost on the jury or the reviewing court that Theut, functionally requests
20 absolute immunity for “prosecuting” his own client tossing statutory fiduciary duties,
21 and disclosure requirements, in breach of legislative enactments and judicial controls
22 designed to obviate such conduct, not to enable it through an “immunity” defense.
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1 145. One other factor significant to all cases is the flawed “court-
2 appointments” in the first instance. Plaintiff’s position is that once an appointment is
3 fraudulently procured through inadequate, and limited disclosure designed for the
4 purposes of concealment of the associated-in-fact Enterprise, and where the Enterprise
5 has been pre-notified of the “recommendations” from the “first-appointed” that the
6 appointment process has been gamed beyond repair and is, in effect, a fraud on the
7 court by officers of the court without effect void *ab initio*. See, e.g., *Dykes v.*
8 *Hosemann*, 743 F.2d 1488, 1496-97 (11th Cir. 1984) (judge acting in clear and
9 complete absence of personal jurisdiction loses judicial immunity); *Archie v. Lanier*,
10 95 F.3d 438 (6th Cir. 1996) (criminal conduct does not constitute a “judicial function”
11 abrogating immunity in its entirety); and, where, as here, Theut together with the
12 Syndicate conspired to violate Plaintiff’s clearly established federal and state
13 constitutional due process and equal protection rights are absolutely liable for damages
14 under § 1983. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). The “fearless”
15 independence required of an official is not implicated where the constitutional
16 deprivations are clearly established (*i.e.*, by Probate Court statute, rule, and well-
17 defined due process and equal protection law developed over the last 40 years) which
18 Theut was well-versed in. The defense has failed to raise for this Court any objective
19 reasonable inferences explaining Theut’s breaches of statute and law by explaining the
20 objective reasonableness of his actions.
21
22

23 146. The entire Maricopa County Probate System has been gutted by moving
24 the old judges and commissioners out replacing them with the new. To the extent
25 Defendants want to argue what great guys they were under the old regime is
26

1 something that can be claimed to a jury but has no preclusive effect with respect to
2 these matters.

3 147. Further, it should be noted that each and every Defendant which has, and
4 continues to conceal material and dispositive evidence such as the Theuts in all three
5 proceedings to which they are connected. Plaintiff requests sanctions and attorneys'
6 fees for having to defend the frivolous and meritless inevitable motions to dismiss to
7 be refiled in identical format which will be, of course, incapable of addressing the
8 dispositive authority herein under Rule 11, A.R.S. § 12-349 and under the various
9 counts in this First Amended Complaint. Disposing of anticipated arguments by
10 Defendant Elwell and Warner Angle Hallum Jackson & Formanek, as his employer
11 are also easily disposed of. First, and as discussed thoroughly in the incorporated
12 Ravenscroft FAC, apparently, by admission of counsel, Jerome Elwell and his firm
13 have emptied the computer contents, emails, electronic transmissions, and
14 electronically stored documents, together with "hard copy" file contents from an
15 Enterprise member's computer architecture. That conduct is criminal, constitutes an
16 additional in a series of predicate acts designed to obstruct the administration of
17 justice, is a breach of the Code of Professional Conduct and ethics opinions on point
18 and is in violation of Federal and State retention requirements, for example under
19 Sarbanes-Oxley. Warner Angle's imputation and Elwell's conduct is established as a
20 matter of law irrespective of claims to "limited involvement" as though the firm was
21 unaware that it was obtaining the entire electronic file deleted from Enterprise member
22 Gray's computer architecture unintentionally. As with all RICO Defendants, Elwell
23 fails to distinguish applicable law nor does he pretend to disavow his fiduciary
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1 obligations to the Plaintiffs. And, as with the other Defendants, a meaningless
2 distinction is made between attorney-client representation and fiduciary duties owed
3 by the fiduciary, and the lawyers by ratification, to the “protected person” despite all
4 law to the contrary. Similarly, with respect to all defensive claims, evidence of
5 fiduciary breaches, violations of statute, intentional violations of the Due Process
6 Clause, Equal Protection Clause, the RICO Statutes and specifically breach of
7 fiduciary duties as Elwell (and the other RICO Defendants) failed to disclose, in
8 detail, his contacts, connections, and associations with the racketeering Defendants,
9 render their legal arguments meritless. Warner Angle appears to make a distinction
10 between its complicity and that each member of the firm must have participated in the
11 fraud despite pocketing the Plaintiff’s assets without court authority or oversight. If
12 Elwell was running a rogue or renegade operation Defendants can certainly construct
13 that argument although it will have little merit under the current and existing state of
14 the law in Arizona. Once Elwell drained the computer architecture and electronic
15 transmissions and email of his predecessor associated-in-fact Enterprise member, Ms.
16 Gray, the “limited role” arguments are incapable of rational explanation to this Court,
17 or a jury, relative to material concealment including the cozy receipt of *ex-parte*
18 communications from a jurist supposedly acting within the confines of her “judicial
19 duties.” The Court may have judicial immunity. Elwell and his firm still had, and
20 have, an absolute duty of candor to the tribunal to disclose those emails relative to the
21 several cases at bar to which Elwell is a part. They continue to refuse to indulge in
22 such appropriate behavior.
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1 148. Ironically, Elwell claims that he was the “victor” in obtaining the *ex-*
2 *parte* tainted Court Order “exonerating” his conduct. That decision, of course, will be
3 subject to set aside under a variety of counts herein, however, Elwell and Warner
4 Angle were instrumental in the deprivation of Ms. Long’s clearly established due
5 process rights by unceremoniously stripping her of assets to the point of indigence.
6 Elwell and Warner Angle failed to distinguish any law on private party liability under
7 § 1983 and importantly, in the context of a motion to dismiss, Defendants present
8 absolutely no plausible counter-interferences and will be able to present none
9 responsive to this FAC passing the “straight face” test.
10

11 149. Stripping a “protected person” and ward to whom fiduciary duties are
12 owed, without notice, without an opportunity to be heard, and without notice of the
13 fund transfers through Federally regulated depositories may be how business is
14 conducted with the Enterprise at issue here, but is certainly not the rendition of
15 “ordinary course legal services” in this or any other alternate universe within which
16 Elwell and his firm operate. Further, sanctions, attorneys’ fees and costs should
17 Defendants decide to refile a replica of their underlying motions is requested in
18 advance.
19

20 150. Church on the other hand employs a tactic of using “colleagues” which
21 are part of the Enterprise giving her “the highest possible ratings for legal ability and
22 ethical standards earning her inclusion in “The Best Lawyers in America” defense.
23 That is a fine argument but does not quite rise to the level of a plausible counter-
24 interference required of Defendants to defeat this FAC. Church’s counsel, Lewis &
25 Roca, filed pleadings with full knowledge of the underlying *ex-parte* communications
26

1 at issue which were unceremoniously concealed by Ms. Church as one of the “chosen
2 ones” to be entrusted with the Probate Court’s highest achievement in ethics award by
3 accepting *ex-parte* prohibited communications as she adroitly manipulated the “Ellis
4 opinion” without disclosure. Material concealment in the administration of justice
5 (obstruction of justice) and in breach of Ms. Long’s civil liberties and due process
6 rights is prohibited. The abject theft driving Ms. Long into the poor-house, literally, at
7 taxpayer expense, defies rational explanation, or a plausible counter-interference for
8 which none was given by Lewis & Roca in the first instance. Church and her lawyers
9 knew the system was gamed, participated in material concealment, realized the “21-
10 page Ellis ruling” was designed to blunt this series of lawsuits, while concealing
11 material evidence, email, and documentation which will clearly reflect exchanges
12 between and among participants of the Enterprise facilitating rulings in derogation of
13 law, statute and the Code(s) of Professional and Judicial Conduct. Rather than address
14 the specifics in detail of the FAC it is fully expected that Lewis & Roca will again file
15 a frivolous “motion to dismiss” prolonging a “discovery freeze” while sitting on literal
16 mountains of inculpatory evidence. Notably, under *Twombly*, *Iqbal*, and *Cullen*,
17 Defendant Church cannot address the specificity and detail in the Complaint other
18 than name calling as “preposterous.” Defendants, uniformly, conflate issues of claim
19 preclusion, issue preclusion and collateral estoppel knowing that the issues presented
20 in this FAC, and the counts here have not been litigated, in any context, in any forum
21 and knowing that a judge or a commissioner cannot approve unlawful acts. For
22 example, Church was instrumental in ensuring that Wedbush Securities
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1 inappropriately maintained Ms. Long's securities account investing in derivatives as
2 age-appropriate, for a woman in her mid-80s.

3 151. Church also joins her employer Gammage & Burnham claiming "*res*
4 *judicata*" forgetting that Church's appointment, like all other RICO defendants, was
5 obtained through fraud and artifice on the Court, failure to disclose, which included
6 fraudulent and intentional misrepresentations as to the *ex post facto* "rubber stamp"
7 approvals by the *ex-parte* jurist attempting in vain to ratify conduct and accounting
8 practices expressly prohibited by statute. As explained here, and in *Ravenscroft*, there is
9 no *res judicata* effect or collateral estoppel where the fraudulent billings were transferred
10 months and years prior to "Court authorization" in derogation of rule, statute and law.
11 Church's "application" and disclosure documents were, and are, non-existent and
12 Defendants have admittedly requested, pursuant to Rule 201, that the Court take judicial
13 notice of the underlying files. The material defects in appointment render the
14 appointments *void ab initio* or voidable once discovered and in conjunction with the
15 material mismanagement of Ms. Long's affairs and in approving the object theft by her
16 client of deposit box items of value and trust assets from Ms. Long, renders such issues
17 ill conceived, without authority and objectively frivolous under Rule 11.

20 152. The RICO Counts, the enterprise liability for a pattern and practice of
21 racketeering activity, the criminal conduct, breach of well-established, constitutional due
22 process protections, breach of fiduciary duty, and evidence of breach and set aside of
23 legislative enactments and statutes designed to control Probate Court functioning, were
24 not, and could not have been litigated previously. The Court will notice that the Arizona
25 Supreme Court in its order reviewing and recommending alteration to the Probate
26

1 System has made this an issue of state wide importance and the simple fact that
2 Defendants conduct continues unabated post-filing of this First Amended Complaint is
3 simply evidence of an “open-ended” conspiracy under RICO. To the extent that the
4 underlying probate proceedings present evidence of racketeering conduct, constitutional
5 deprivations, breach of fiduciary duty, subject to set aside under Rule 60, without time
6 limits, outside of the Probate System ratifying such conduct is not a “relitigation” in any
7 form whatsoever. Church observes that approval of criminal conduct under the RICO
8 statutes together with addressing issues under the Confrontation Clause and the Due
9 Process Clause were “essential” to the orchestrated probate decisions in violation of
10 statute and law. The RICO Defendants, nor their counsel, apparently can point to an
11 order, minute entry, judgment, or transcript in which the criminality of the conduct was
12 discussed, or touched upon in any fashion. And, as discussed previously, no Court has
13 inherent jurisdictional authority to rewrite the law, avoid the law, intentionally
14 misconstrue the law, or act in any way approving criminal conduct as part of a “judicial
15 function” in anticipation of deriving some issue or claim preclusive benefit accorded
16 such conduct. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 173 L.E.2d 868 (2009); *Bell Atlantic*
17 *Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007); *Cullen v. Koty-Leavitt Ins.*
18 *Agency, Inc.*, 218 Ariz. 417, 189 P.3d 344 (2008).

21 153. Before leaving these “defense” issues, one other interesting point of irony
22 is that each and every Defendant claimed effective “immunity” for their conduct under
23 all counts resulting from their procurement of judicial orders in violation of clearly
24 articulated legislative enactments, statutes, rules of court, law, and clearly articulated
25 constitutional contours of appropriate due process and equal protection by claiming that
26

1 as private parties, that Plaintiff must prove for the purposes of a Section 1983 claim, that
2 they acted under color of state law with the joint participation or in conspiracy with state
3 officials. The Defendants uniformly concede their participation in the procurement of
4 orders breaching every conceivable aspect of due process, state and federal constitutional
5 provisions in that regard, from jurists engaging in *ex parte* communications to
6 reconstruct opinions, by direct solicitation of the private party defendants, while
7 intentionally misconstruing dispositive law on point. *Sutton v. Providence St. Joseph*
8 *Medical Center*, 192 F.3d 826 (9th Cir, 1999). The point of this suit, at its core, is that
9 the enterprise acted with public officials in tow to accomplish their financial exploitation,
10 which but for inducing the judiciary and other public officials such as the Public
11 Fiduciary and the Office of General Litigation Services to actively participate,
12 Defendants could not have completed their schemes. The “finality” they now seek to
13 accord the improper and fraudulently motivated rulings is illusory. Email disclosures in
14 the *Ravenscroft* matter prove the point, prove circulation by and between state officials,
15 state agencies, and indicate that degree of inextricable intertwinement with officials
16 acting under color of state of law which imposes liability upon the private actors, as a
17 matter of law. Defendants concede these points as well and provide no plausible counter
18 inference contraindicating application of private party liability “under color of state law”
19 acting in concert with public officials acting in their official capacities to deprive the
20 Plaintiff’s of their constitutional due process protections in deprivation of Plaintiffs’
21 private property and civil rights. 42 U.S.C.A. § 1983.
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COUNT I
Intentional Spoliation

1
2 154. This First Amended Complaint (FAC) reincorporates all prior
3 enumerated paragraphs construed in their entirety as a unified whole. This FAC
4 reincorporates by specific reference to the *Ravenscroft, Mallet, and Hall* First
5 Amended Complaints, to be filed in proximity herewith.
6

7 155. Defendants, and each of them, have failed to disclose dispositive and
8 material evidence in the form of electronic transmissions constituting Ms. Long's files
9 paid for in full by Ms. Long. Ms. Long was entitled to the files because she had paid
10 for, and reasonably understood that the file contents, emails, and adverse conduct
11 would be immediately and timely disclosed to her under the reasonably foreseeable
12 crime-fraud exception which further waives the "attorney-client" shield in breach of
13 fiduciary duties owed Ms. Long. Defendants have deleted, scrubbed and spoliated the
14 electronic architecture of the underlying file contents which is the reason why
15 Defendants refuse, and continue to refuse production of email, electronic transmissions
16 and dispositive evidence which relates to, or which may relate to, Ms. Long inculcating
17 Defendants in a conspiracy to defraud Ms. Long of her assets.
18

19 156. *Lips v. Scottsdale Healthcare Corp.*, 229 P.3d 1088, 2010 Ariz. LEXIS 19
20 (2010), recognizes third-party intentional spoliation. Defendants, and each of them,
21 have by specific intent, attempted to disrupt or injure the Plaintiffs' lawsuits by
22 intentionally withholding, concealing, and/or destroying material evidence under the
23 Defendants direct control or constructive control. A court-ordered discovery freeze has
24 no impact upon the duty of counsel to provide the Court and the litigants with material
25 evidence and the Defendants may not suppress nor encourage perjury or subornation of
26

1 perjury an obstruction of justice. Suppressing or concealing material evidence is
2 absolutely improper irrespective of what phase of the litigation is pending, with or
3 without a “discovery” request and with or without regard to a request for production of
4 documents, or otherwise.

5 157. The Defendants, and each of them, have instructed public entities, public
6 agencies, pursuant to Plaintiff’s Public Records Request and Plaintiff’s requests
7 pursuant to Arizona Supreme Court Rule 123 to intentionally avoid disclosure
8 irrespective of the fact that concurrent requests for such records are not “discovery” by
9 definition, as a matter of law. These acts and cover-up of the underlying actionable
10 conduct reflects the inter-dependent associated-in-fact enterprise developed by the
11 Defendant lawyers, fiduciaries, and each of them pursuing sham litigation defenses
12 with the reasonable and only inference for the unqualified blockade to prevent the
13 absolute destruction of the defense at the inception of the case.
14

15 158. Intentional concealment, suppression of material evidence or instructing
16 others to commit violations of state law with the effect being to deprive the Plaintiff of
17 material and dispositive evidence relating to this action, are acts which by design are
18 intended to disrupt and injure the Plaintiff’s suit. Plaintiff’s request an award of
19 punitive damages in amounts sufficient to deter other similarly situated lawyers and
20 defense counsel and defendant lawyers and fiduciaries engaging in acts detrimental to
21 the administration of justice. Plaintiff also respectfully request this Court immediately
22 enjoin Defendants, and each of them from intentionally suppressing and/or concealing
23 material evidence bearing upon the dispositive issues raised in this FAC. Plaintiff
24 further requests an Order to Show Cause hearing on the issues relating to production
25
26

1 required under Plaintiff's Public Records Request and Rule 123 requests setting aside
2 defense instructions to the public agencies to refrain from answering and responding,
3 fully, to the requests.

4 **COUNT II**
5 **RICO**

6 **(18 U.S.C.S. § 1961 ET SEQ; VIOLATION OF 18 U.S.C. § 1962 (a); VIOLATION**
7 **OF 18 U.S.C. § 1962(b); VIOLATION OF 18 U.S.C. § 1962(c); CONSPIRACY**
8 **TO VIOLATE 18 U.S.C. § 1962(a) IN VIOLATION OF 18 U.S.C. § 1962(d);**
9 **CONSPIRACY TO VIOLATE 18 U.S.C. § 1962(d) IN VIOLATION OF 18 U.S.C.**
10 **§ 1962(d); CONSPIRACY TO VIOLATE 18 U.S.C. § 1962(c) IN VIOLATION**
11 **OF 18 U.S.C. § 1962(d); VIOLATION OF 18 U.S.C. § 1964(c))**

12 159. Plaintiff reincorporates all prior and subsequent enumerated paragraphs
13 into this count, the FAC to be read as a unified whole.

14 160. Defendants, and each of them, are charged with participation in the
15 conduct of the affairs of an "enterprise" through a "pattern of racketeering activity and
16 conspiracy" committing said offenses defined as "racketeering activities" under 18
17 U.S.C. § 1961(1) as "predicate acts" causing the Plaintiff injury to his business or
18 property (18 U.S.C. § 1964(c) and under 18 U.S.C. § 1962(a)(b)(c)(d)). An
19 "enterprise" is broadly construed under 18 U.S.C. § 1961(4), which "broadly non-
20 exhaustively encompasses any group of individuals associated-in-fact which includes,
21 but is not limited to, business-like entities."

22 **ENTERPRISE**

23 161. The enterprise of associated-in-fact individuals remains fairly constant
24 throughout the *Long, Ravenscroft, Mallet and Hall* cases. In fact, in prior pleadings
25 Defendants, and each of them, have moved to consolidate the proceedings, for all
26 purposes because of the substantial similarity in identity of the RICO Defendants in all

1 referenced cases (*i.e.*, *Long, Ravenscroft Mallet and Hall*). “Enterprise” has been
2 broadly and non-exhaustively construed as any group of individuals’ associated-in-fact
3 which includes, but is not limited to, business-like entities. *Boyle v. U.S.*, 129 S.Ct.
4 2237, 2243 (2009) (“structure” does not require the associated-in-fact Enterprise to
5 maintain a “command post hierarchy” to qualify under the minimal standards
6 associated with the structure requirements comprising an enterprise.) The Enterprise,
7 for RICO purposes need not be motivated by an “economic purpose.” *National*
8 *Organization for Women, Inc. v. Scheidler*, 520 U.S. 249 (1994).

9
10 162. The conduct of the Enterprise qualifies under either and “open-ended”
11 continuity analysis or a “closed-end” continuity analysis: The predicate acts date to at
12 least 2005. Defendants have conceded that each predicate act under RICO in the
13 mailing, wire transfer, or use of the U.S. Mail is actionable as a predicate act which
14 was accomplished here, for all billings in execution of the scheme or artifice to defraud
15 Plaintiffs out of their valuable assets and property. *Bridge v. Phoenix Bond & Indem.*
16 *Co.*, 128 S.Ct. 2131 (2008) (Supreme Court notes first-party reliance is not required,
17 only that any third-party may rely upon Defendants actions, email or otherwise,
18 causing damage to the Plaintiff); the Court’s adoption of a “flexible” proximate cause
19 analysis is all that is required and where the mail and wire fraud predicate acts were
20 directly related to the Plaintiff’s injury is all that is required to sustain the RICO
21 analysis).

22
23
24 163. The purpose of Defendants’ RICO Enterprise was simply the improper
25 acquisition of money from those under their care as fiduciaries, and pick the pockets of
26

1 the “protect person.” The RICO Defendants were not to engage in self-dealing lining
2 their own pockets to the Plaintiffs’ ultimate financial demise.

3 PREDICATE ACT STANDING

4 164. The Plaintiffs, and each of them, specifically Ms. Long, may stack the
5 predicate acts arising out of similar cases involving the Enterprise which conduct has
6 been incorporated by reference in the companion cases of *Mallet, Ravenscroft and*
7 *Hall*. Use of predicate acts involving the same Enterprise associated-in-fact individuals
8 or entities are viable components of Plaintiff’s well-pled “pattern” of unlawful RICO
9 conduct. *Cf. H.J., Inc. v. Northwestern Bell Telephone*, 492 U.S. 229, 242 (1989);
10 *Bridge v. Phoenix Bond & Indem. Co., supra; Accord, Depp v. Tripp*, 863 F.2d 1356,
11 1366 (7th Cir. 1988) (although one of the racketeering acts was not successful does not
12 mean that it is unavailable to establish a pattern); *See also, Banks v. Wolt*, 918 F.2d 418
13 (3rd Cir. 1990).

16 CONTINUITY

17 165. The Ninth Circuit has declined to impose a bright-line one-year test for
18 “closed-end continuity.” *Allwaste, Inc. v. Hinson*, 65 F.3d 1523 (9th Cir. 1995). The
19 present cases demonstrate the acts were not isolated, sporadic, or short-term and
20 conduct, as here, designed to conceal or prevent discovery of prior misconduct projects
21 the threat of an “open-ended scheme” which imposes liability irrespective of brevity.
22 *Cf. United States v. Indelicato*, 865 F.2d 1370 (2nd Cir. 1989); *Olive Can Co., Inc. v.*
23 *Martin*, 96 F.2d 1147 (7th Cir. 1990).

24
25 166. “Open-ended continuity” prevails in the instant actions, given the fact
26 that the Enterprise acts in a way which reflects upon its regular way of doing business,

1 which is to strip the “protected” persons to whom they owe fiduciary responsibilities of
2 assets, collectively in these cases exceeding \$3,500,000. *H.J., Inc., supra* at 492 U.S.
3 239, 242 (1989). *See also, Tabas v. Tabas*, 47 F.3d 1280 (3rd Cir. 1995 (conduct post-
4 dating Complaint filing evidence of “open-ended continuity” and is evidence of the
5 Enterprises open-ended threat of continuing this conduct as Defendant’s regular way of
6 doing business). Cover-ups also qualify as open-ended and furnish further evidence
7 where the Defendants attempt to suppress dispositive material testimony and evidence
8 involving obstruction of justice and are thus considered part of a “pattern of
9 racketeering activity” for RICO purposes. *U.S. v. Teitlar*, 802 F.2d 606 (2nd Cir. 1986).

11 167. As Plaintiff’s plead, the scheme and pattern of racketeering activity
12 engaged in by the Enterprise was to receive, in effect, bribes and kickbacks from one
13 another denying Plaintiff her fiduciary entitlements to the rendition of honest services
14 under § 1346 as a defined predicate act under § 1961(1)(b). *Cf., Skilling v. United*
15 *States*, 2010 U.S. LEXIS 5259 (June 24, 2010); *Weyhrauch v. United States*, 2010 U.S.
16 LEXIS 5254 (June 24, 2010).

18 168. It is also a predicate act to exercise the wrongful use of an otherwise valid
19 power (i.e., judicial appointment) that converts permissible action into extortion. *U.S.*
20 *v. Hyde*, 448 F.2d 815 (5th Cir. 1971). Racketeering activity defined exhaustively
21 under § 1961(1) includes bribery and extortion punishable under state law by
22 imprisonment for more than one year which, in the instant case, exists as a class 1, 2, or
23 4 felony with respective periods of incarceration presumptively set at 5-10 years, 3.5-7
24 years, and 2.5-3 years respectively. A.R.S. § 13-1804(7); § 1951(b)(2).

1 169. Executing on a scheme or artifice to defraud while engaging in the
2 material suppression of evidence obstructing the administration of justice is, in addition
3 to a RICO predicate act, unconditionally prohibited by a legitimate duty requiring
4 lawful conduct by officers of the court to be compatible with the very nature of a trial
5 as a search for truth. *Nix v. Whiteside*, 475 U.S. 157, 106 S.Ct. 988 (1986). Use of
6 perjured or false evidence, or the material concealment thereof, where the lawyers
7 know or reasonably should know the conduct is illegal or fraudulent is a fraud on the
8 court and actionable. *Nix v. Whiteside, supra*. Perjury, or subornation of perjury
9 through affidavit is, according to the *Nix* Court, as much a crime as tampering with
10 witnesses (also a racketeering predicate offense), undermining the administration of
11 justice. *Nix v. Whiteside, supra*.

13 170. The Defendants also conflate evidence of theft, extortion, and bribery as
14 a roundabout way to obtain fee disgorgement under prior proceedings isolated to the
15 Probate Court proceedings. Wrong. It is that evidence of theft, extortion, bribes and
16 kickbacks as “predicate acts in a pattern” of racketeering activity as an enterprise,
17 which is proof of the associated-in-fact Enterprise’s conduct. It is the direct damages
18 sustained to the Plaintiff’s property which is at issue, and the manner and method
19 Defendants executed on their scheme to liquidate the Plaintiff’s assets unto themselves.
20 A “fee contest” has little or nothing to do with this case and of course reflects upon
21 whether the issues presented in this matter were fully and fairly litigated in any
22 underlying proceeding in any forum, at any time which, of course, there were not.
23
24

25 171. In addition to the multiplicity of ongoing predicate acts in the *Long* case
26 alone, include false attestations to Federal financial institutions for the purpose of

1 unlawfully obtaining Plaintiff's property or assets. The fact that a bank, or the courts
2 for that matter, or other State or Federal agencies, relied upon Defendants' emails,
3 wires, electronic transmissions, or other documents is all that is required. Fiduciary
4 Fraud under A.R.S. § 13-2201(2)(3) and A.R.S. § 13-2202(A)(2) are minimally Class 6
5 felonies with a presumptive period of incarceration of 1-1.5 years.

6 172. The Syndicate bribes are predicate acts under 18 U.S.C. § 201 under §
7 1961(1)(b) which include, but are not limited to: § 1341 (relating to mail fraud); §
8 1343 (relating to wire fraud); § 1344 (relating to financial institution fraud); § 1503
9 (relating to obstruction of justice); § 1510 (relating to obstruction of a criminal
10 investigation); §1513 (relating to retaliation against the "protected person"); § 1952
11 (relating to racketeering); and § 1957 (engaging in monetary transactions in property
12 derived from specified unlawful activity).

13 **CONSPIRACY AS A PREDICATE ACT**

14
15 173. Under §1961(1)(D), conspiracy is a viable predicate act. *U.S. v. Licavoli*,
16 725 F.2d 1040 (6th Cir. 1983); *U.S. v. Warneke*, 310 F.3d 542 (7th Cir. 2002). In the
17 present case, and in the companion cases, the defendants' unanimous participation as
18 reflected in the email chain (*Ravenscroft*) necessarily reflects the mental intent required
19 for a conspiracy claim under §1962(d) (*see, generally, Shearin v. E.F. Hutton Group*,
20 *Inc.*), 885 F.2d 1162 (3rd Cir. 1989). The first amended complaint has stated that the
21 agreements entered into by the defendants, and each of them, were for the commission
22 of at least two predicate acts by those associated with the enterprise here. *See, Salinas*
23 *v. United States*, 522 U.S. 52 (1997) (a conspiracy may exist even if a conspirator does
24 not agree to commit or facilitate each and every part of the substantive offense; the
25
26

1 conspirator must intend to further the endeavor which, if completed, would satisfy the
2 elements of a substantive criminal offense); *Id.* at 522 U.S. 65). Put another way, had
3 the defendants, in their fiduciary capacities, actually performed as required by law
4 would necessarily exclude independent self interested behavior as an explanation for
5 their conduct. The defendants, and each of them, certainly had a strong, common
6 motive to conspire because without the economic collaboration between the fiduciaries
7 and lawyers, their economic interests in the estate would have deteriorated immediately
8 absent the enterprise's monetary objectives in controlling the finances and assets.
9 There is no other plausible explanation for the manner and method in which the
10 lawyers and fiduciaries breached their duties to the "protected person" requiring
11 secreted email and collaborative efforts unnecessarily protracting the guardianship
12 and/or conservatorship proceedings.

14 **SCIENTER**

15
16 174. Rule 9(b) provides that "malice, intent, knowledge, and other condition
17 of mind may be averred generally" but, nonetheless, the plaintiffs have provided
18 hundreds of email, transcripts, deposition testimony, all reflecting upon defendants'
19 collective intent which minimally give rise to a "strong inference" of fraudulent intent
20 by engaging in conduct diametrically opposed to regulation, rule, and statute designed
21 to achieve the polar opposite of that conduct engaged in by defendants. *O'Brien v.*
22 *National Property Analysts Partners*, 936 F.2d 674 (2nd Cir. 1991).

24 **RULE 9(b)**

25 175. In addition to the specific dates, times and parties relative to the
26 testimony and email provided, and in addition to specific dates, times, and defendant

1 perpetrating any given act of fraud, the Court is requested to take judicial notice of the
2 underlying probate files, including the entire file contents, including email, electronic
3 transmissions, electronic reception, work product, firm deposits, the dates, and/or the
4 omissions, to act in accordance with prescribed law. *See, Moore v. Kayport Package*
5 *Express, Inc.*, 885 F.2d 531 (9th Cir. 1989).

6 WHEREFORE, plaintiff having fully pled his claim against defendants under
7 Count II, respectfully requests that this Court enter judgment in favor of plaintiff and
8 against all defendants, individually, jointly and severally, and against their respective
9 marital communities, if any, as follows:
10

11 A. Awarding plaintiff allowable statutory damages (trebled) resulting
12 from defendants' violations of the above-referenced RICO statutes;

13 B. Awarding plaintiff statutory entitlement to reasonable attorney's
14 fees, together with a loadstar factor, costs and expenses associated with
15 prosecution;

16 C. Such other and further relief as the Court deems just and proper
17 under the circumstances.
18

19 **COUNT III**
20 **Private Party Civil Rights Violations**
21 **42 U.S.C. §1983 (all Defendants)**

22 176. Plaintiff reincorporates all prior and subsequent paragraphs into this
23 Count to be read as a unified whole.

24 177. Professional licensees, such as Defendants, are liable for violations of 42
25 USCS § 1983. (*See generally Kimes v. Stone*, 84 F.3d 1121 (9th Cir. 1996) (finding
26

1 that the Supremacy Clause “prohibited application of state’s litigation privilege bar to
2 42 USCS § 1983 action against attorneys”).

3 178. Private actor liability requires one of the following: “(1) public function;
4 (2) joint action; (3) governmental compulsion or coercion; and (4) governmental
5 nexus.” *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826 (9th Cir. 1999); *Lee v.*
6 *Katz*, 276 F.3d 550, 554 (9th Cir. 2002).¹

7
8 179. Satisfaction of any one of the foregoing tests is sufficient to find state
9 action. *Lee, supra*, at 276 F.3d at 554.

10 180. Once Defendants and the Enterprise, through the attorneys and other
11 licensees as officers of the court, fiduciaries and/or court-appointed actors who
12 participated in the Enterprise, sought to act without legal authority, or in excess of
13 authority granted to them through the Courts, the acts of these individuals crossed the
14 line from private enterprise to outright fraud and private party liability in the
15 procurement of judicial orders in contempt of 42 U.S.C. § 1983.

16
17
18 ¹ In *Lugar v. Edmondson*, 457 U.S. 922 at 924, 102 S.Ct. 2744, 73 L. Ed. 2d 482, the
19 Court held that the private Defendants who had initiated the attachment process could be
20 liable as state actors for “participating in the deprivation”: “Invoking the aid of state
21 officials to take advantage of state-created attachment procedures” made the private
22 Defendants “*willful participants in joint activity with the State or its agents.*” *Id. at 942.*
23 *See Lugar*, 457 U.S. at 941 (“We have consistently held that private party joint
24 participation with state officials in the seizure of private property is sufficient to
25 characterize the party as a ‘state actor.’”); *see also Dennis v. Sparks*, 449 U.S. 24, 27-28,
26 66 L.Ed. 2d 185, 101 S. Ct. 183 (1980) (“Private persons, jointly engaged with state
officials in the challenged action are action... ‘under color’ of law for purposes of §1983
actions.”); *States v. Price*, 383 U.S. 787, 794, 16.L Ed. 2d 267, 86 S. Ct. 1152 (“private
persons, jointly engaged with state officials in the prohibited action, are acting “under
color” of law for purposes of this statute to act “under color” of law does not require that
the accused be an officer of the State. It is enough that he is a willful participant in joint
activity with the State or its agents.”); *Fonda v. Gray*, 707 F.2d 435,437 (9th Cir. 1983)
 (“A private party may be considered to have acted under color of state law when it
engages in a conspiracy or acts in concert with state agents to deprive one’s
constitutional rights.”)

1 181. A professional license together with a court appointment is not a vehicle
2 for immunizing the license holder or appointee from its prohibited use.

3 182. Defendants have acted with the intent to hinder, obstruct and/or evade
4 culpability for their prohibited joint conduct under color of state law.

5 183. Defendants have misused the state courts by generally simulating process
6 to mask their own misconduct and were all willful participants in joint activity with the
7 State or its agents.

8 184. The Plaintiff has been damaged by reason of Defendants' violations of §
9 42 U.S.C. § 1983, in amounts to be determined at trial.

10 WHEREFORE, Plaintiff, having fully pled this claim against Defendants under
11 Count III, respectfully request that this Court enter Judgment in favor of Plaintiff and
12 against all Defendants, individually, jointly and severally and against their respective
13 marital communities, if any, as follows:
14

15 A. Awarding Plaintiff all allowable statutory damages resulting from
16 Defendants' violations of Ms. Long's constitutional rights;
17

18 B. Awarding punitive or exemplary damages in an amount sufficient
19 to deter these Defendants or others similarly situated from violating the civil
20 rights of vulnerable adults; and

21 C. Such other or further relief as the Court deems just and proper
22 under the circumstances.
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COUNT IV
Violations of Federal/State Constitutional Due Process
Guarantees and Equal Protection

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3 185. Plaintiff incorporates each and every allegation contained in the above
4 paragraphs of this First Amended Complaint as though fully set forth herein.

5 186. Ms. Long was stripped of her private property interests, without hearing,
6 without notice, in secret, as her assets were liquidated to the Defendants and each of
7 them (and their employer law firms) in violation of well established law and accepted
8 practices under the 14th Amendment Due Process Clause. *Mullane v. Central Hanover*
9 *Bank & Trust Co.*, 399 U.S. 306 (1950). The fact that the state approves the absence of
10 pre- or post-deprivation hearings, post-liquidation of assets purportedly protected by
11 the fiduciaries and lawyers assigned to and for the benefit of the “protected person”
12 does not, and cannot, constitutionally authorize the deprivation of property interests
13 without appropriate procedural safeguards, of which there were absolutely none in the
14 present matter. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S.Ct. 1148 (1982).
15 The *Logan* Court also addressed certain Equal Protection arguments endorsed by
16 Justice O’Connor in her concurrence relative to the Due Process Clause, which is
17 applicable in the instant case.
18
19

20 187. Due process requires that courts make certain that proper professional
21 judgment was “in fact” exercised in the denial of a liberty interest and that due process
22 is assured that property will not be taken through government authority absent notice
23 and an opportunity to be heard. *Morrison v. Shanwick Int’l Corp.*, 167 Ariz. 39, 42
24 (Ct.App. 1990).
25
26

1 WHEREFORE, Plaintiff having fully pled her claim against Defendants under
2 Count IV, respectfully requests that this Court enter judgment in favor of Plaintiff and
3 against all Defendants, individually, jointly and severally, and against their respective
4 marital communities, if any, as follows:

5 A. For an order granting plaintiff relief setting aside all orders,
6 minute entries, and judgments arising out of the underlying probate proceedings;

7 B. For an award of costs and attorney's fees pursuant to 42 U.S.C.
8 §1988 and damages, to be proven at trial relating to said constitutional
9 deprivations;
10

11 C. To the extent required injunctive relief.

12 **COUNT V**
13 **Rule 60 Independent Action/Savings Clause**
14 **and Rule 60(c)(4)/60 (b)(4)**
15 **(all Defendants)**

16 188. Rule 60 provides an independent action clause to relieve a party from a
17 judgment, order, or proceeding, or to set aside a judgment for fraud on the court,
18 typically by officers of the court as occurred in the present case. Likewise, the
19 judgments entered in excess of jurisdictional authority, or without jurisdiction at all, or
20 in violation of the law, are void.

21 189. Where the fiduciaries and lawyers assigned for the protection of the
22 "ward" or "protected person" agitate for her (his) defeat, the fraudulent
23 misrepresentations, conflicts of interest, and duties to the tribunal are impaired to such
24 an extent that, as here, Ms. Long had absolutely no chance of vindicating her property
25 or liberty interests. This concerted action by and between the fiduciaries and
26 "appointed" lawyers engaged in "extrinsic fraud" in securing funds for themselves at

1 the expense of Ms. Long. *In the Matter of the Estate of Thurston*, 199 Ariz. 215, 16
2 P.3d 776 (Ct.App. 2000). As such there is a heightened duty where a fiduciary
3 relationship exists, as here, between the lawyers, the fiduciaries, and the lawyers acting
4 in a fiduciary capacity to deal fairly, and not fraudulently, and to disclose the true facts.
5 Where, as here, the Defendants, and each of them, refused to reveal the truth while
6 denying Ms. Long any opportunity at hearing or otherwise for adequate representation,
7 and where the fiduciary personally profits by his fraudulent conduct, the justification in
8 a collateral proceeding to set aside the judgment is appropriate. *Id.* There is no dispute
9 in the present matter that the accounting records were not made fully available for
10 examination by Ms. Long in a timely manner, nor were documents shared with Ms.
11 Long advising her as to the hemorrhaging of her estate to and for the benefit of her
12 assigned attorneys and fiduciaries. The preceding evidence is overwhelming that the
13 attorneys in collusion with the fiduciaries prevented Ms. Long from knowing the status
14 of the probate proceedings, and that she was denied access to any documents or
15 information concerning the financial status of the estate and was prevented from
16 asserting any claims regarding estate assets. *In re Thurston, supra.* Such self-serving
17 and deceptive conduct is actionable.

20 190. The Court, under Rule 60, has inherent power to relieve a party from a
21 judgment, order, or a proceeding for fraud on the court by officers of the court. Where
22 the fraud rises to the level of an unconscionable plan or scheme designed to improperly
23 influence the court, courts can and “should” act. *Dixon v. Comm’r of Internal Revenue*
24 *Service*, 316 F.3d 1041, 1046 (9th Cir. 2003). *Cf. Levander v. Pober*, 180 F.3d 1114,
25 1119 (9th Cir. 1999) (recognizing the power of the court to amend a judgment or order
26

1 under its inherent power for extinguishment of the judgment or order obtained by fraud
2 on the court); *Cf. Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128 (1132-1133)
3 (9th Cir. 1995).

4 WHEREFORE, plaintiff having fully pled her claims against Defendants under
5 Count V, respectfully request that this Court enter judgment in favor of Plaintiff setting
6 aside all tainted, underlying judgments, orders, and minute entries obtained in the
7 underlying proceedings.

8
9 **COUNT VI**
10 **Breach of Fiduciary Duty**

11 191. Plaintiff reincorporates each and every allegation contained in the
12 foregoing paragraphs as though fully set forth herein.

13 192. Relative to the fiduciaries and attorneys *In re Estate of Shano*, 177 Ariz.
14 550, 869 P.2d 1203 (Ct. App. 1993) and *In re Estate of Fogleman*, 197 Ariz. 252, 3
15 P.3d 1172 (Ct. App. 2000) define the fiduciary duties and obligations owed by
16 Defendants to the Plaintiff.

17 193. The duty owed to Plaintiff Long by Defendant attorneys Theut, G&F,
18 TT&T, Church, SVG, Peter Frenette and Heather Frenette, Genevieve Olen and Gary
19 Olen, Jerome Elwell, Warner, Angle, Hallum, Jackson & Formanek and Wedbush
20 Morgan Securities, Inc. is defined under Arizona law. *See, Paradigm Ins. Co. v.*
21 *Langerman Law Offices, P.A.*, 200 Ariz. 146, 24 P.3d 593, 201 (2001); *See also,*
22 *Associated Aviation Underwriters v. Wood*, 209 Ariz. 137, 98 P.3d 572 (App. 2004).

23
24 194. Evidence that Plaintiff Long was invited to rely on Defendant Attorneys'
25 legal services and representations subjects Defendant Attorneys and law firms to
26

1 liability. *See, generally, Kremser v. Quarles & Brady, L.L.P.*, 201 Ariz. 413, 418 (Ct.
2 App. 2001); *Cf. Chalpin v. Snyder*, 220 Ariz. 413 (Ct. App. 2008).

3 195. Defendants, and each of them, breached their professional and fiduciary
4 duties to Ms. Long.

5 WHEREFORE, Plaintiff, having fully pled her claims against Defendants under
6 Count VI, respectfully requests that this Court enter judgment in favor of Plaintiff and
7 against these Defendants, individually, jointly and severally and against their respective
8 marital communities, if any, as follows:

9
10 A. Awarding Plaintiff all allowable actual damages resulting from
11 Defendants' breaches of their fiduciary and/or professional duties;

12 B. Awarding punitive or exemplary damages in an amount sufficient
13 to deter these Defendants or others similarly situated from engaging in the
14 conduct alleged in Count VI; and

15 C. Such other or further relief as the Court deems just and proper
16 under the circumstances, including attorney's fees and costs.
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JURY DEMAND

Plaintiff demands a trial by jury for all issues so triable.

Respectfully submitted this 23rd day of July, 2010.

GOODMAN PA

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of July, 2010, I electronically transmitted the above document to the Clerk’s Office of the Maricopa County Superior Court using the CM/ECF system for filing, with a copy served *via* First Class U.S. Mail, postage pre-paid, and/or electronically transmitted or hand delivered as designated below to:

The Honorable Peter J. Cahill
Gila County Superior Court
1400 East Ash
Globe, AZ 85501
Visiting Judge of the Gila County Superior Court

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VERIFICATION

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STATE OF ARIZONA)
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County of Maricopa)

GOODMAN P.A. in the above-entitled action affirms that the contents of the attached Complaint are true, correct and faithful to the evidentiary record. This verification is knowingly submitted under penalty of perjury. The factual averments of this First Amended Complaint are from official and public records. Documents of record have been incorporated by reference into this First Amended Complaint as substantive proof of the facts and allegations contained herein. Submittal of this First Amended Complaint to the U.S. Attorney’s Office, and the Arizona Attorney General’s Office is required by law.

DATED this 23rd day of July, 2010.

GOODMAN P.A.

By /s/ Grant H. Goodman
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