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11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 HELGA MALLET, an adult individual,

Case No: CV 2010-011840

14 Plaintiff,

**FIRST AMENDED
VERIFIED COMPLAINT**

15 vs.

16 THE SUN VALLEY GROUP, INC., an
17 Arizona corporation; PETER FRENETTE
18 and HEATHER FRENETTE, husband and
19 wife; GRAY & FASSOLD, P.C., an Arizona
20 professional corporation; ALISA GRAY and
21 JOHN DOE GRAY, wife and husband;
22 WARNER ANGLE HALLAM JACKSON &
23 FORMANEK, PLC, an Arizona professional
24 limited liability company; JEROME
25 ELWELL and JANE DOE ELWELL,
26 husband and wife; SOUTHWEST
FIDUCIARY, INC., an Arizona corporation;
GREGORY DOVICO and PEGGY
DOVICO, husband and wife; DYER &
FERRIS. LLC, an Arizona limited liability
company; CHARLES M. DYER and JANE
DOE DYER, husband and wife; BLACK
SURETIES—INSURER ENTITIES I-III,

Defendants.

- (I) Intentional Spoliation
- (II) RICO
- (III) Private Party Civil Rights
Violations, 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 Ariz.
R.Civ.P. 60(c)(4)/ Fed.R.Civ.P.
60(b)(4)
- (VI) Breach of Fiduciary Duty

JURY TRIAL DEMANDED

1 Plaintiff Mallet for her First Amended Complaint (“FAC”) against Defendants,
2 and each of them, states as follows:

3
4 **JURISDICTION AND VENUE**

5 1. This Court has original, concurrent, and personal jurisdiction over each
6 Defendant, all residing and/or doing business within Maricopa County, Arizona,
7 causing events to occur in Maricopa County out of which the Mallet FAC arises.

8 2. This Court has original and concurrent jurisdiction under Arizona and
9 Federal Constitutional Law and Statute; and jurisdiction under the Due Process Clause
10 and Equal Protection Clause for both, including concurrent jurisdiction under the
11 Federal RICO Statutes as pled, together with concurrent and original jurisdiction to hear
12 Plaintiff’s Private Party Civil Rights Count under 42 U.S.C. § 1983.

13 3. This Court has original and/or concurrent jurisdiction to hear Mallet’s
14 Rule 60 Independent Action/Savings Clause for Fraud on the Court by Officers of the
15 Court and pursuant to Ariz.R.Civ.R. 60(c)(4)/Fed.R.Civ.P. 60(b)(4) together with
16 original and concurrent jurisdiction to hear Mallet’s State Law Breach of Fiduciary
17 Duty claims pursuant to Statute, Regulation, Rule, and the Arizona Code of Professional
18 Conduct.
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20 4. This Court also retains original and concurrent jurisdiction to hear
21 Plaintiff’s State Law Intentional Spoliation claims arising out of actionable conduct as
22 more thoroughly described below.
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1 5. This Court retains original and concurrent jurisdiction to hear, consider,
2 and incorporate by this specific reference, First Amended Complaints recently filed, or
3 to be filed in proximity herewith in the *Ravenscroft, Long/Raynak*, and *Hall* cases which
4 reflect a core associated-in-fact Enterprise engaging in “predicate acts” as defined
5 “racketeering activity” unlawfully acquiring Ms. Mallet’s private property in derogation
6 of the RICO Statutes while Defendants acted in the capacity of private parties acting
7 under color of state law inducing court orders and affirmative State Action depriving
8 Plaintiff, in an unconstitutional deprivation of private property rights without pre- or
9 post-deprivation rights to notice and an opportunity to be heard, an opportunity to be
10 heard at a meaningful time, in a meaningful manner, in violation of State and Federal
11 Statute by the RICO Defendants, by intent and design to deprive Plaintiff of her
12 Constitutional Due Process Guarantees and Equal Protection in violation of said
13 constitutional provisions in violation of Private Party Civil Rights liability pursuant to
14 42 U.S.C. § 1983.
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17 6. This Court is also entitled to hear, enjoin, and issue Order(s) to Show
18 Cause why Defendant(s), as Ms. Mallet’s directly paid counsel, has not returned Ms.
19 Mallet’s client files upon repeated request. Ms. Mallet’s directly employed counsel,
20 who collectively refuse, and continues to refuse, Ms. Mallet’s absolute right to the entire
21 client file including, but not limited to; all communications, transmissions, email,
22 electronic or hard copy transmissions to or from any third party, as well as work
23 product, notes, administrative billings, correspondence in electronic fashion or
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1 otherwise with state, municipal, county personnel, agencies, including communications
2 to or from any judicial officer or other Officer of the Court (whether Court staff,
3 secretarial, paralegal, investigative, medical personnel, banking, investment, or other
4 Federal or State depositories or holders of Mallet property, funds, retirement funds,
5 annuities, or assets in any fashion being held by said institutions in communication with
6 Defendant lawyers, law firms, fiduciaries, and sureties [Sun Valley Group (“SVG”) –
7 Peter and Heather Frenette; Southwest Fiduciary, Inc. (“SFI”) - Gregory and Peggy
8 Dovico, Philip and Jane Doe Dovico; Gray & Fassold, P.C. (“G&F”) – Alisa Gray;
9 Warner Angle Hallam Jackson & Formanek, PLC (“Warner Angle”) – Jerome Elwell;
10 Dyer & Ferris (“D&F”) – Charles M. Dyer associated with Defendants, or each of them,
11 as well as any notices to insurers and bonding agencies responsible for the damages
12 suffered by Ms. Mallet as well as any reservation of rights or other documents which
13 may lead to impairment of recovery under the bonding, D&O Coverage, Errors and
14 Omissions Coverage, Malpractice Insurance, pursuant to regulation and statute.
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17 7. Appended as **Exhibit 1** is Ms. Mallet’s Omnibus Public Records Request
18 pursuant to A.R.S. §§ 39-121 through 39-121.03, *et al.*, A.R.S. § 41-1350; A.R.S. § 39-
19 121.01(B)(C)(D)(1); A.R.S. § 41-1347(A)(B); Ariz. Sup. Ct. R. 96(a)(5)(b)(1)(d)(e);
20 and Ariz. Sup. Ct. R. 123. Defendants, and each of them, refuse to answer or respond,
21 other than to suggest that given the Court “discovery freeze” that consideration of the
22 Public Records Requests has been intentionally abandoned by Defendants through
23 instructions to their clients to fail to respond, and/or through instruction to the agencies,
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1 County, State or Municipal employees to refrain from responding in violation of law,
2 statute, and regulation and under Arizona Supreme Court Rule. (**Exhibit 3** – JS&H
3 letter dated July 10, 2010.)

4 8. Venue may or may not be proper in Maricopa County depending in large
5 measure upon whether Ms. Mallet is able to receive a fair, unbiased, and impartial
6 hearing on the merits by a judge which, upon consideration, and after full disclosure of
7 issues which a reasonable person would expect to impair or reflect upon the
8 “appearance of impropriety” of the Court in relation to the associations, contacts,
9 connections, and appointment of certain jurists by the Maricopa County Presiding Judge
10 to hear these matters, involving Maricopa County jurists, commissioners, Maricopa
11 County court personnel, and Maricopa County, State and/or Municipal employees
12 and/or agencies referenced throughout the *Ravenscroft, Long and Hall* First Amended
13 Complaints, specifically incorporated herein by this reference.
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16 **PARTIES**

17 1. Plaintiff Helga Mallet (referred to as “Helga” and “Mallet”) is an adult
18 resident of the State of *Colorado*.

19 2. Helga is the beneficiary of the Helga Mallet Trust first dated January 18,
20 1995, (“Trust 1”) and the Helga Mallet Trust first dated May 25, 2007, (“Trust 2”)
21 (collectively the “Mallet Trusts”).¹
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24 ¹ The “Mallet Trusts” includes any and all trusts and/or accounts owned by Mallet at all
25 times relevant to this First Amended Complaint.

1 3. Along with the Mallet Trusts, Helga owned real property in Arizona,
2 Colorado, and Nevada.

3 4. Defendant The Sun Valley Group, Inc. (“SVG”) is an Arizona
4 corporation, incorporated since 1997, authorized to do business as a licensed fiduciary
5 in the State of Arizona and has its principal place of operation in Maricopa County,
6 Arizona.

7 5. At all relevant times hereto, Defendant Peter Frenette (referred to as
8 “Frenette”) was a director and officer of Defendant SVG and a resident of Arizona
9

10 6. Defendant Heather Frenette, at all relevant times hereto, was a director
11 and officer of Defendant SVG and a resident of Arizona.

12 7. At all relevant times hereto, Defendant Peter Frenette and Defendant
13 Heather Frenette (collectively referred to as “Defendants Frenettes”) were husband
14 and wife acting for, and in furtherance of, the marital community.
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16 8. Defendant Alisa Gray (referred to as “Gray”) is a licensed attorney in
17 the State of Arizona and is a resident of Arizona. Defendant Gray served as legal
18 counsel for Defendant SVG for the Probate Case.

19 9. Defendant John Doe Gray is a fictitiously named Defendant whose true
20 identity will be supplemented when known.

21 10. During all relevant times hereto, Defendants Alisa Gray and John Doe
22 Gray (collectively referred to as “Defendants Grays”) were wife and husband, and
23 Defendant Gray was acting for, and in furtherance of, her marital community.
24

1 11. Defendant Gray & Fassold, P.C. (hereinafter referred to as “G&F”) is an
2 Arizona professional corporation authorized to do business as a law firm in Arizona.

3 12. Defendant Gray, at all relevant times hereto, was the president of
4 Defendant G&F.

5 13. Defendant Jerome Elwell recently substituted as counsel to the Sun
6 Valley Defendants and is charged with the knowledge of, and imputed with the
7 violation of all fiduciary duties, breaches of statute, breach of due process, breach of
8 civil liberties and civil rights, breaches of trust, breaches of statutory duty and is
9 charged with the knowledge of and is a direct participant in the scheme or artifice to
10 defraud Mrs. Mallet. Mr. Elwell is a senior partner in Defendant Warner & Angle and
11 has taken possession of all Gray files, email, electronic transmissions, and ESI. Mr.
12 Elwell has been named as a Defendant for the exact same conduct here, and in
13 companion case(s) [*Ravenscroft, Long*] involving the same racketeering activities
14 illustrated here. Mr. Elwell’s firm hereinafter “Warner Angle Hallam Jackson &
15 Formanek PLC – Warner Angle” is imputed with knowledge of the racketeering
16 activities, theft, and transmission of stolen property and issues which arose above and
17 below. Mr. Elwell is a licensed attorney in the State of Arizona and is a resident of
18 Arizona and an employee/shareholder of Defendant Warner Angle Hallam Jackson &
19 Formanek PLC.
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22 14. Jane Doe Elwell is a fictionally named Defendant whose true identity
23 will be supplemented when known.
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1 15. During all relevant times hereto, Defendants Jerome Elwell and Jane
2 Doe Elwell (hereinafter collectively referred to as “Defendants Elwell”) were husband
3 and wife, and Defendant Elwell was acting for, and in furtherance of, their marital
4 community.

5 16. Warner Angle Hallam Jackson & Formanek PLC (“WA”) is an Arizona
6 professional limited liability company authorized to do business as a law firm in
7 Arizona.

8 17. Defendant Southwest Fiduciary, Inc. (referred to as “SFI”) is an Arizona
9 corporation authorized to do business as a licensed fiduciary in Arizona.
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11 18. Defendant Gregory Dovico was, at all relevant times hereto, a director
12 and officer of Defendant SFI.

13 19. Defendant Peggy Dovico was, at all relevant times hereto, an officer of
14 Defendant SFI.

15 20. Defendant Gregory Dovico and Defendant Peggy Dovico (collectively
16 referred to as “Defendants Dovicos”) were husband and wife acting for, and in
17 furtherance of, the marital community.
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19 21. Defendant Charles M. Dyer (referred to as “Dyer”) is a licensed
20 attorney in the State of Arizona and a resident of Arizona. Defendant Dyer served as
21 legal counsel for Defendant SFI in the Probate Case and at all relevant times an
22 employee/shareholder of Defendant Dyer & Ferris.
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1 22. Defendant Jane Doe Dyer is a fictitiously named Defendant whose true
2 identity will be supplemented when known.

3 23. During all relevant times hereto, Defendants Charles M. Dyer and Jane
4 Doe Dyer (hereinafter collectively referred to as “Defendants Dyers”) were husband
5 and wife, and Defendant Dyer was acting for, and in furtherance of, his marital
6 community.

7 24. Defendant Dyer & Ferris, LLC (referred to as “D&F”) is an Arizona
8 professional corporation authorized to do business as a law firm in Arizona.

9 25. The fictitiously named Defendants in the caption to the FAC are
10 individuals and entities who, on information and belief, committed acts or omissions
11 or caused events to occur that resulted in injury or damage to Mrs. Mallet. Once the
12 identity of these Defendants is discovered, this fact shall be amended accordingly.

13 26. The fictitiously named Black Sureties or other fictitiously named entities
14 in the caption of the FAC are entities required to indemnify and pay Ms. Mallet’s
15 damages, in full, trebled together with punitive damages as framed below. The Black
16 Sureties and/or insurers must also pay Ms. Mallet’s attorneys’ fees, costs, and expenses,
17 together with any and all damages assessed by the Court and/or jury herein. Once the
18 identities of these Defendants are discovered, this FAC shall be amended accordingly.

19 27. All named Defendants are inter-related, inter-dependent, and are jointly
20 and severally liable.
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2 **ALLEGATIONS COMMON TO ALL COUNTS**

3 28. This FAC, including all prior and subsequent paragraphs, are to be read
4 in their entirety as a unified whole.

5 29. Helga Mallet is a 78-year-old widow.

6
7 30. Mrs. Mallet manages her daily life, operated a small business, traveled
8 frequently, maintained the accounts and records of her business and planned for her
9 future.

10 31. Beginning in late 2007, Helga was the unfortunate victim of an internet
11 scam involving a phony international sweepstakes that stole approximately
12 \$240,000.00 from her.

13 32. The scheme against Helga began with Defendants SFI, Dovico, Dyer,
14 and D&F (the "SFI Defendants") initiating proceedings in the probate case on January
15 13, 2008, with an "Emergency Petition" for the Appointment of a Temporary
16 Conservator that would find Helga incapacitated and immediately take control of
17 Helga's assets. The Petition failed to comply with the rules and statutes including, but
18 not limited to A.R.S. § 14-5401.01:

19
20 a. The Petition was filed by Defendant SFI's attorneys Defendants
21 D&F and Dyer only nine days in advance of the hearing date.

22
23 b. The Petition failed to comply with A.R.S. § 14-5401.01 because
24 it did not properly set forth the emergency that necessitated the temporary
25

1 appointment of a conservator rather than the permanent appointment. The
2 petition merely cites there is an emergency, but fails to establish any facts
3 demonstrating immediate action is necessary.

4 c. The Petition failed to clearly set out specific facts that immediate
5 and irreparable injury would result, as required by A.R.S. § 14-5401.01.

6 d. The Petition also failed to comply with the requirements set forth
7 in Ariz.R.Pro.P. Rule 23 because it did not request the appointment of a
8 permanent conservator or set forth why a permanent appointment was not
9 necessary.
10

11 e. Defendant Gregory Dovico, the person verifying the Petition
12 failed to set forth any efforts he made to give notice or claim notice should not
13 be required.

14 f. Neither Defendants SFI and Gregory Dovico nor Defendants
15 D&F and Dyer certified that the notice of the Petition, order and all filed
16 reports and affidavits would be given to the proposed protected person by
17 personal service within the time period the court directs but not more than
18 seventy-two hours after entry of the order of appointment. In fact, neither
19 Defendants SFI and DoVico's bills nor Defendants D&F and Dyer's bills show
20 entries for service of the order upon Mallet.
21

22 33. These omissions deprived Mallet of important and necessary procedural
23 protections designed to protect vulnerable adults. These omissions concealed
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1 potential conflicts and connections between the Defendants. This concealment
2 furthered and facilitated the ability of the Enterprise to accomplish its goal of billing
3 for professional services that were neither desired nor needed by Mrs. Mallet.

4 **Ms. Mallet’s Procedural and Substantive Due Process Rights**

5 34. The Maricopa County Probate Court failed in protecting Mallet’s
6 Constitutional rights: 1) Mallet was not sufficiently notified of the Emergency
7 Petition, and 2) she was not present, not permitted to be heard in opposition to this
8 Petition, not able to present evidence or cross-examine any witnesses all required by
9 A.R.S. § 14-5401.01 and A.R.S. § 14-5407.
10

11 35. There is no evidence in the record that any standardized testing to assess
12 Mrs. Mallet’s capacity then or in any subsequent proceedings. Defendants presented
13 no sustainable medical evidence required in statute as to “mental illness” or
14 “incompetence.”
15

16 36. The Probate court, or Defendants, never advised Mallet of her right to
17 object to the petition.

18 37. The Probate Court and Defendants, and each of them, had a fiduciary
19 and attorney-client duty to Mallet, and failed in the duty to “periodically review
20 cases” and to dismiss cases that had not been efficiently resolved pursuant to Rule 10
21 Ariz.R.Prob.P.
22

23 38. The Probate Court and Defendants, and each of them, also had a duty to
24 exercise appointment authority while “encourage[ing] the development of maximum
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1 self-reliance and independence of the incapacitated person,” as required by A.R.S.
2 §14-5304.

3 39. Defendants SFI, Dovico, and Dyer violated A.R.S. § 14-5407 by failing
4 to follow proper procedure concerning the original hearing and order failing to: (1)
5 allow the person to be protected counsel of her choice, (2) failing to appoint an
6 investigator to interview the person to be protected, and (3) direct a medical or
7 psychological evaluation of the person to be protected, under Titles 36/14, *infra*.
8

9 40. On February 22, 2008, the Probate Court failed to follow the provisions
10 of A.R.S. § 14-5401.01 and without these safeguards, Defendant SFI was appointed
11 conservator for Helga’s cash, property and possessions without any restrictions on
12 SFI’s access or disbursement of these assets without a time limit.

13 41. Pursuant to A.R.S. §14-5401.01, Temporary Conservators are to be
14 appointed for not more than 30 days if the appointment occurred without notice and
15 not more than six (6) months, without good cause shown. No good cause was shown
16 on February 22, 2008, or at any other time for a conservatorship but the temporary
17 conservatorship extended for a year without following the necessary checks and
18 balances required by Arizona statutes. The Constitutional safeguards were
19 intentionally violated and waived by all Defendants.
20

21 42. The Probate Court, through Defendants concerted conduct, breached
22 their duty to Mallet by appointing a “temporary” conservator pursuant to A.R.S. § 14-
23 5401.01 which lasted for over a year based on non-existent or statutorily deficient
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1 medical evidence that Mallet was “incapacitated,” creating a *de facto* permanent
2 conservatorship without following procedural protocol requirements for permanent
3 appointment set forth in A.R.S. § 14-5404.

4 43. The Probate Court, and Defendants, failed to protect Plaintiff’s right to
5 counsel of her own choosing as provided in A.R.S. §§ 14-5310, 14-5401.01 for
6 temporary appointments and A.R.S. §§ 14-5303, 14-5404 for permanent
7 appointments.

8 44. The Probate Court, and Defendants, violated Ariz.R.Prob.P. 33 by
9 approving payment for attorney and fiduciary compensation after such payments had
10 already been disbursed from Plaintiff’s estate and without a hearing or opportunity for
11 Plaintiff to dispute the distributions.

12 45. The Probate Court prompted by Defendant SFI committed material
13 violations of the probate code and Arizona statutes causing direct harm to Plaintiff by
14 allowing Defendants to defraud Plaintiff under the color of state law by state actors
15 used by private parties.

16 46. Contrary to A.R.S. § 14-5411, the Court did not require the SFI
17 Defendants to obtain a bond “in the amount of the aggregate capital value of the
18 property of the estate in conservator’s control plus one year’s estimate income . . .”
19 instead it only required a \$200,000.00 bond, even though as Defendants SFI, Dovico,
20 D&F and Dyer estimated and filed on January 22, 2009, Helga’s estate had a balance
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1 of \$1,849,284.15 in November 2008 Defendants have since liquidated to themselves
2 all of Helga's assets.

3 47. The Defendants' failure to enforce its rules, complete disregard for
4 Mallet's substantive and procedural due process rights, and failure to allow her
5 representation, created a zone of danger subjecting vulnerable adults like Mallet to the
6 predatory practices of her court appointed attorneys, guardians, and conservators.²

7
8 48. Before their respective appointments, SFI and SVG failed to file a
9 disclosure affidavit with the Court as required to be filed by any conservator seeking
10 appointment before such appointment can be approved by the court. A.R.S. § 14-
11 5106 and Ariz.R.Prob.P. 20. Such disclosure requires the appointee to provide to the
12 court, under oath, whether the appointee has acted as a guardian or conservator for
13 another person within three years of the petition; how many individuals the appointee
14 is serving and how many terminated appointments the appointee has had in the last
15 three years; whether appointee has knowledge of the powers and duties of a
16

17 ² United States Courts have recognized a constitutional right to be free from a "state-
18 created danger," which occurs when "state authority is affirmatively employed in a
19 manner that injures a citizen or renders him 'more vulnerable to injury from another
20 source than he or she would have been in absence of state intervention.'" *Bright v.*
21 *Westmoreland County*, 443 F.3d 276, 281 (3d Cir. 2006) (quoting *Schieber v. City of*
22 *Philadelphia*, 320 F.3d 409, 416 (3d Cir. 2003)). A state-created danger claim has four
23 elements: (1) 'the harm ultimately caused was foreseeable and fairly direct;' (2) a state
24 actor acted with a degree of culpability that shocks the conscience;(3) a relationship
25 between the state and the plaintiff such that the 'the plaintiff was a foreseeable victim of
26 the defendant's acts,' or a 'member of a discrete class of persons subjected to the
potential harm brought about by the state's actions,' as opposed to a member of the
public in general; and (4) a state actor affirmatively used his or her authority in a way
that created a danger to the citizen or that rendered the citizen more vulnerable to
danger than had the state not acted at all. *Id.*

1 conservator; whether appointee has acted in a fiduciary capacity pursuant to a power
2 of attorney; whether the appointee has failed to file any accounting within three
3 months of receiving a delinquency notice; whether the appointee has ever been
4 removed as a conservator and under what circumstances; the nature of the relationship
5 between Mallet and the appointee; whether the appointee or an enterprise it has an
6 interest in ever received anything of value, greater than nine hundred dollars, by gift,
7 devise, or bequest from an individual or its estate to whom the appointee was not
8 related and for whom the proposed appointee served as a guardian, conservator,
9 trustee, or agent; and whether the appointee has an interest in any enterprise providing
10 housing, health care or other services to any individual; together with all
11 communications, contacts, and relationships with “appointed counsel.”

13 49. SFI and later SVG violated Ariz.R.Prob.P. 33 by disbursing money
14 from Plaintiff’s estate prior to receiving court approval for such distributions.

16 50. The SFI Defendant’s first order of business was to file an Emergency
17 Stipulated Motion for Authorization for the release of cash from Helga’s Trust 1
18 account.

19 51. The Probate Court granted the Emergency Stipulated Motion for
20 Authorization to Release Funds *on the same day it was filed* without notice to Helga
21 or any opportunity for her to personally be heard on the matter which was in violation
22 of her Constitutional Due Process rights.

1 52. The SFI Defendants immediately extracted \$100,000.00 from Helga's
2 Trust 1.³

3 53. Instead of acting as fiduciaries for Helga as required by A.R.S. §14-
4 5417, the SFI Defendants spent every penny of the \$100,000.00 from Helga's Trust 1
5 while doing little to protect or preserve her assets.

6 54. After assuming control of the Mallet Trusts, Defendants liquidated over
7 \$350,000.00 in securities from Trust 1 to cover a negative margin balance. There was
8 no urgency to decrease this margin balance yet, this liquidation of securities occurred
9 without regard to historically low market conditions resulting in additional losses to
10 the Mallet Trusts.
11

12 55. By the end of June 2008, less than six (6) months after Defendants
13 control commenced, the Mallet Trusts had been depleted to a balance less than
14 \$390,000.00; more than half of her initial cash assets had disappeared and the
15 Defendants had failed to file an inventory of the estate owned by the protected person
16 on the date of the conservator's appointment as required by A.R.S. §14-5418.
17

18 56. Between February 2008 and September 2008, SFI Defendants were re-
19 appointed three times as Helga Mallet's "temporary" conservator. These re-
20 appointments were stipulated to without any advocacy: no hearing , no direct notice to
21 Helga, and no opportunity for Helga to be personally heard in opposition nor was she
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23 ³ All documents or exhibits referenced throughout this Complaint are incorporated by
24 reference and made a part hereto. The Court is requested to take judicial notice
25 pursuant to Rule 201 Ariz.R.Evid.
26

1 provided the opportunity to present evidence, cross-examination of witnesses
2 (including the court-appointed examiner and investigator) or to a trial by jury; all of
3 which is required by A.R.S. § 14-5401.

4 57. The Probate Court and Defendants breached their duty to Helga by
5 appointing a “temporary” conservator pursuant to A.R.S. § 14-540.01 which lasted
6 over a year based on nonexistent or insufficient medical evidence that Helga was
7 incapacitated. This created a *de facto* permanent conservatorship without following
8 procedural requirements for permanent conservatorship set forth in A.R.S. §14-5404.
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10 58. While Defendants were the Trustee, Helga’s Trust 1 was reduced over
11 \$500,000.

12 59. Defendants continued their scheme to steal from and defraud Helga by
13 undervaluing her real property and then liquidating it to make sure there was cash
14 available to pay their own inflated bills and unnecessary costs.
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16 60. Defendants also failed to make mortgage payments on Helga’s
17 properties for prolonged periods of time causing the banks to take action.

18 61. Helga was not directly notified of the sale or disposition of any of her
19 real property and she was provided no ability to personally object to the disposal of
20 her property all in violation of the rights provided her under the United States
21 Constitution and Arizona Constitution.
22

23 62. Helga’s personal belongings were also sold without notice or approval
24 from her.
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1 63. During 2008, Helga's estate was wiped out, her \$1,027,366.55 portfolio
2 was depleted of all funds, by October 31, 2008, and it had negative \$1.76 balance.

3 64. Defendants induced the Probate Court to violate Rule 33 Ariz.R.Prob.P.
4 by approving payment for attorney and fiduciary compensation after such payments
5 had already been disbursed from Helga's estate without a hearing or opportunity for
6 Helga to dispute the distribution.

7 65. Since the conservator was appointed, Helga received no reports
8 regarding her finances, was not consulted with regard to the disposition of her
9 personal property or the administration of her estate, and was inhibited in her efforts
10 to retrieve her personal property from her personal residence.

11 66. Defendants were also aware of an IRS tax lien that was placed upon
12 Mallet's estate. Instead of taking any steps to resolve the tax issue, which was a result
13 of her deceased husband, not by Helga's actions, Defendants continued to liquidate
14 Mallet's assets to pay the Defendants' bills and fees.

15 67. Defendants made an Emergency Petition for Inpatient Mental Health
16 Care, which the court granted via an order authored by Defendants GF, which
17 ordered Helga to a "level one behavioral health treatment facility" with no
18 restrictions on her admittance.

19 68. Defendants made an Emergency Application for Temporary
20 Guardianship of Helga and recommended SVG to the Probate Court for the
21 permanent conservator.
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1 69. The Court authorized committing Helga the same day, without a
2 hearing, without medical testimony, all in violation of A.R.S. § 14-5312.01, denying
3 Helga her Constitutional rights by failing to provide her notice and the opportunity to
4 be heard, failing to meet the “clear and convincing” evidentiary standard anyway.

5 70. The Probate Court appointed SVG as a “new” Temporary Conservator
6 for Plaintiff Mallet without making the findings required by A.R.S. § 14-5304(B).⁴

7 71. Helga was further denied her due process rights when the evidentiary
8 showings of her mental capacity were not shown in the heightened evidentiary
9 standard of “clear and convincing” evidence but instead reviewed by the Enterprise
10 and without objection entered into the record. *See*, A.R.S. § 14-5305.

11 72. Mallet had to pay to be in this mental facility where she was held to a
12 strict pharmaceutical regime against her will. Helga wanted to stay at her own
13 personal residence. Instead, Defendants denied Helga her due process rights and
14 wasted her assets by requiring her to stay in a medical facility.

15 73. Defendants owed Helga a duty to ensure her life and property were
16 maintained and protected from financial exploitation. Instead, Defendants diverted
17 funds for their own benefit, leaving Plaintiff Mallet penniless.

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22 ⁴ The Court may appoint a general or limited guardian as requested if it is satisfied by
23 clear and convincing evidence that: (1) The person for whom a guardian is sought is
24 incapacitated; (2) The appointment is necessary to provide for the demonstrated needs of the
25 incapacitated person; (3) The person’s needs cannot be met by less restrictive means, including
26 the use of appropriate technological assistance.

A.R.S. § 14-5304(B).

1 74. This exploitation occurred under the supervision of estate fiduciaries
2 and with the assistance and approval of the Defendant Maricopa County Probate
3 Court who adopted an official policy that failed to act in accordance with the United
4 States Constitution, Arizona Constitution and Arizona statutes that were in place to
5 ensure Helga Mallet was provided all rights due her as a “protected person.”

6 75. The Maricopa County Public Fiduciary’s Office failed to report the
7 condition of Plaintiff and the estate or to account for funds expended as required by
8 A.R.S. § 14-5312.

9 76. Each of the Defendants failed to “encourage [Plaintiff] to develop
10 maximum self-reliance and independence” or “actively work toward limiting or
11 terminating the guardianship and seeking alternatives to guardianship,” instead
12 prolonging Plaintiff’s guardianship indefinitely in order to facilitate the disbursement
13 of hundreds of thousands of dollars from Plaintiff’s estate.

14 77. Rather than fulfilling their duty to help Mallet become self-sufficient
15 and independent as quickly as possible, Defendants have consistently sought to
16 restrict her actions—including monitoring private communications—and have taken
17 other steps (or failed to take actions that they should have taken) in order to extend
18 their tenure as temporary guardians, conservators, etc., and maintain control over her
19 assets.
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22 78. Defendants have also failed to explore or pursue claims that Mallet has
23 against the Jamaican extortionists.
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1 79. Defendants have failed to mitigate or eliminate the IRS tax lien from
2 Mallet's deceased husband's business activities.

3 80. Defendants have engaged in self-dealing to the detriment of Mallet. For
4 example, and as demonstrated through appended transcript as **Exhibit 4**, Plaintiff
5 Mallet's "fiduciary" through its counsel, Elwell, have released Ms. Mallet to travel
6 half-way across the Country to live on her own in Colorado where she takes care of
7 her daily needs, fends for herself on a daily basis taking care of all her own financial
8 and medical affairs, while leaving alone in the remnants of a single small-piece of
9 property not liquidated by the fiduciaries through their counsel such as Elwell to
10 themselves. These admissions by conduct by the fiduciaries and lawyers assigned to
11 act in the "best interests" of Ms. Mallet would be, of course, fundamentally
12 breaching their fiduciary duties to Mallet had they any reason to suspect that she was
13 "mentally incompetent," "mentally ill," unable to clearly and articulately
14 communicate. And, they would have breached their fiduciary obligations to Ms.
15 Mallet had they thought, or believed, or had any medical evidence of, any mental
16 capacity impairment rising to the level of "clear and convincing evidence" which
17 would have necessarily precluded, as a matter of law, Ms. Mallet acting on her own
18 behalf, managing her own financial affairs, communicating and retaining counsel
19 while taking care of her own housing needs, nutrition, travel without restriction,
20 driving, and engaging in everyday ordinary activities reserved for those of us
21 presumed "competent" functionally abrogating any Court orders, minute entries or
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1 medical evidence, if it ever existed at all, to the contrary relative to Ms. Mallet's
2 "competence." There is only one plausible inference that can be derived from this
3 conduct since the liquidation of all, or substantially all, of Helga's assets has been
4 transferred to, or for the benefit of the Enterprise. That issue is to attempt to
5 collaterally attack these proceedings and Helga's choice of counsel to pursue
6 recovery of her assets and for effective imprisonment and deprivation of her liberty
7 interests. There is only one gambit, albeit unconstitutional, left for these fiduciaries
8 which are in effect, additional extortionate activities as "racketeering" "predicate
9 acts" and that is: prolong the limited "conservatorship," claim to control Mallet's
10 "estate," although there is nothing left of it, claim that a lawsuit brought against the
11 fiduciaries and lawyers having stolen the Mallet assets claiming Mallet is still
12 "incompetent" (despite all evidence to the contrary) to manage her daily affairs and
13 "contract" and engage in a meaningful attorney-client relationship. There is no other
14 reason for the conservatorship, no matter how limited, to exist, the Defendants
15 themselves having provided this Court the material "competency" facts which are
16 incontestable on the issue of Ms. Mallet's "competence." If, as discussed below, Ms.
17 Mallet could, and can be, sued for criminal conduct she would not, under Arizona
18 standards, qualify for appointed counsel, other than for her indigence brought about
19 by defendants, but certainly not for an inability to stand trial as "mentally ill" or even
20 "mentally incompetent." Obstruction, abuse of process, and tortuous interference
21 with the attorney-client relationship is all that remains of the "conservatorship"
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1 which exists in name only at this point given Defendants own conduct, apparently
2 satisfying their own standards as to “competency.” Helga was kicked to the curb
3 and, as in the companion cases, once the money ran out her “competence” having
4 been magically restored, the fiduciaries and lawyers wash their hands of the
5 “protected person” unless, as here, there is an existing ulterior motive in their
6 attempts to limit their own prospective liability for conduct committed while in the
7 standing of the attorney-client relationship and/or as a fiduciary to “protect” Ms.
8 Mallet. There are no statutes, rules or regulations which allow the Defendant
9 attorneys and Defendant fiduciaries to avoid liability by claiming they control the
10 “right of contract” and preservation of an estate, already looted to the point of
11 insolvency. These positions and plausible inferences asserted by Ms. Mallet here are
12 endorsed by the guardian *ad litem* and by Helga’s court-appointed counsel in the
13 original transcript of proceedings occurring July 26th, 2010 attached as **Exhibit 4**.

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16 81. Mallet has been stripped of over a million dollars in cash and assets.
17 This exploitation occurred under the supervision and direction of fiduciaries, with
18 approval by the Maricopa County Superior Court.

19 82. Defendants, and each of them, owed a duty to Mallet to ensure that her
20 estate was maintained and protected from financial exploitation. Instead, Defendants
21 diverted funds for their own pecuniary gain, and to the detriment of Mallet.

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23 83. The operation of that Enterprise actively, directly and proximately
24 caused damage to Mallet in an amount to be proven at trial, and trebled, together

1 with punitive damages in an amount to deter these defendants, and others, from
2 engaging in exploitative conduct against those they are charged with protecting.
3 Treble damages and punitive damages are not mutually exclusive and are allowed.
4 *Rhue v. Dawson*, 173 Ariz. 220, 841 P.2d 215 (Ct. App. 1992) (includes attorney fees
5 and costs as well).

7 **Operative Facts/Controlling Authority**

8 84. Plaintiff reincorporates all prior paragraphs, documents of record, sworn
9 testimony and transcripts, affidavits, the underlying probate files, including the First
10 Amended Complaints in *Long/Raynak, Ravenscroft and Hall* and documents
11 accorded judicial notice under A.R.E. 201.

13 **Client Files Denied**

14 85. On June 28, 2010, undersigned counsel of record requested immediate
15 return of the client files (for which all Plaintiffs, and those incorporated by reference,
16 paid for, most to the point of insolvency) to include primarily communications, emails,
17 electronic transmissions to or from, or among, or by and between, any of the
18 Defendants with one another, third-parties, other Officers of the Court, reporters, and
19 judicial staff, State, County, or Municipal agencies or anybody employed thereunder,
20 or the Judiciary or Commissioners with the electronic transmissions going to or from,
21 or “copied,” or “forwarded” or “blind” copied. Those requests have been denied, in
22 total, by Defendants under the guise of a “discovery freeze.” The Court is aware that
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1 return of the client files is a protected property interest having nothing whatsoever to
2 do with “discovery”.

3 86. On June 1, 2010, and incorporated by reference as Exhibit 1 to this FAC,
4 was an Omnibus Public Records Request and Requests under Ariz. Sup. Ct. R. 123
5 pertaining to Mr. Hall, Marie Long, Helga Mallet, and Edward Abbott Ravenscroft III.
6 Opposing counsel and Defendants directly have instructed and/or communicated with
7 each and every respondent served with the Requests. The result of which has been the
8 intentional failure to respond other than in heavily redacted form with unidentifiable
9 withholdings in violation of statute and law by the Office of General Litigation
10 Services and the Public Fiduciary the rest not responding at all. This Court recognizes
11 that a Public Records Request and Request under Ariz. Sup. Ct. R. 123 is not a request
12 subject to a “discovery freeze” as they are not “discovery” and unrelated to the
13 litigation process even during ongoing litigation. The only objective inference to be
14 derived from this conduct, including the mutilation, spoliation, and elimination of
15 underlying electronically stored files (as discussed thoroughly in the *Ravenscroft*
16 matter) is that if the information were disclosed the evidence would have eviscerated
17 the blizzard of defense filings. The Defendants, and each of them, have knowingly
18 and intentionally violated the law, Codes of Professional Conduct, Ethics, opinions on
19 point, and have acted in a manner inconsistent with their duty of candor, honesty, and
20 forthrightness to the Court and the litigants. Due to Defendants cross-pollination in
21 issuing and receiving emails from third-parties unrelated to any “attorney-client”
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1 relationship, concealment of the emails and other electronic transmissions were
2 expressly waived long ago. Importantly, the Plaintiffs and each of them, directly paid
3 for the work product, files, and all material generated which related, or which may
4 have related, to them whether in attorney-client fashion or under strict fiduciary
5 standards requiring return of the files to the Plaintiff bearing upon a conspiracy and
6 conduct designed expressly to undermine and intentionally breach fiduciary duties
7 owed concurrently and directly to the Plaintiffs as the “protected persons” and as the
8 owner, not merely the beneficiary of, the cash and assets (wiped out), Ms. Long’s cash
9 and assets (wiped out), Ms. Mallet’s cash and assets (wiped out) and the invasion and
10 failure to defend against invasion of Mr. Ravenscroft’s assets exceeding \$600,000 in
11 “professional fees” and approximately \$2 million in “waived” claims against M&I
12 Bank, because, of course, in Mr. Ravenscroft’s case M&I Bank held Mr. Ravenscroft’s
13 assets which were distributed to Defendants; in that case a *quid pro quo* for fiduciary
14 and attorney “fees” were held by M&I Bank in a CD.

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17 **Intentional Statutory Breaches in Underlying Probate**
18 **Proceedings as Evidence of Actionable Conduct**

19 87. Defendants, and each of them, conflate the Counts of (I) Intentional
20 Spoliation; (II) RICO; (III) Private Party Civil Rights Liability Under 42 U.S.C. §
21 1983; (IV) Violation of Constitutional Due Process Guarantees and Equal Protection;
22 (V) Rule 60 Independent Action/Savings Clause and Rule 60(c)(4) and its Federal
23 Rule counterpart; and (VI) Breach of Fiduciary Duty in these actions which
24 incorporate causes of action wholly independent from, and distinct from, the “probate”
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1 proceedings, which are merely evidence of violative conduct under Counts I-VI, and
2 ***not*** litigated under Titles 36 or 14 of the Arizona Revised Statutes.

3 88. Defendants, and each of them, have knowingly and intentionally violated
4 the Code of Professional Conduct, applicable Fiduciary Codes adopted by the Arizona
5 Supreme Court, and have intentionally set aside legislative enactments under Titles 36
6 and 14, and elsewhere, engaging in a RICO conspiracy all “appointed” by the same
7 fiduciaries, lawyers, and “appointees.” The Enterprise, by definition, is incestuous.
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9 89. Defendants, and each of them, intentionally breached Public Health and
10 Welfare Statutes obtaining “appointments” under color of law from state officials
11 obtaining Court Orders in violation of statute, rule, and the State and Federal
12 Constitutions.

13 90. Mr. Hall, as with Ms. Long and Mr. Ravenscroft, were all entitled to
14 Veterans Administration benefits to the extent a guardianship or conservatorship were
15 needed for a limited period of time at pennies on the dollar to the extraordinary
16 damage sustained. The Defendants, and each of them, failed to apprise, advise and
17 instruct Mr. Hall, as with Mr. Ravenscroft and Ms. Long, that VA treatment and
18 oversight were available, and in the “best interests” and conservation of Plaintiffs’
19 assets. Ms. Mallet was not advised at all relative to the issues *infra*.
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21 91. Defendants, and each of them, pre-approved, unilaterally without notice
22 or a right to be heard by the Plaintiff as his or her private property interests were
23 quietly liquidated without Court approval, or Court oversight, or audit, until the RICO
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1 Defendants, and each of them, had sufficiently exhausted the assets of those to whom
2 an attorney-client duty and/or fiduciary duties were owed in violation of Rule and
3 Statute, and in violation of the Due Process Clause and the Equal Protection Clause.

4 92. State action, in violation of the Federal and State Constitutions, Federal
5 and State statutes, and Local Rules, provided Defendants, and each of them, with the
6 opportunity to obtain an *ex post facto* “rubber stamp” relative to the asset liquidations.
7 There are no statutory or other legislatively enacted provisions, or rules of court which
8 provide for these credit advances as against uncontrolled and unauthorized
9 expenditures rendering these proceedings, constitutionally defective. *In re Maricopa*
10 *County*, MH-90-00566, 173 Ariz. 177, 840 P.2d 1042 (Ct. App. 1992). Failures to
11 comply with due process considerations in the absence of any pre- or post-deprivation
12 hearings, under color of state law, render the underlying guardianship and
13 conservatorship proceedings void or voidable. *In re M.H.* 2007, 001236, 230 Ariz.
14 160, 204 P.3d 418 (Ct. App. 2008); *In re M.H.* 220 Ariz. 277, 205 P.3d 1124 (Ct. App.
15 2009). The “fee” liquidations disclosed months and in certain cases such as *Mallet,*
16 *Long, Hall and Ravenscroft* a year or more after the fact precludes Plaintiffs’ right
17 under the Confrontation Clause denying due process under the Sixth Amendment to
18 the U.S. Constitution. *In re MH* 222 Ariz. 287, 213 P.3d 1014 (Ct. App. 2009).

19 93. Statutes intentionally breached include, but are not limited to: (1) A.R.S.
20 § 14-5652(B) (fiduciaries and attorneys for the “ward” cannot act in an adverse and
21 conflicted fashion against the “protected person” with such conduct by the fiduciary
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1 authorized and ratified by its attorneys, inputted to the attorney or attorneys as a matter
2 of legislative prerogative); (2) A.R.S. § 36-506 (unconditionally prohibits denial of
3 any civil rights of the “ward” or “protected person”); (3) Probate and Mental Health
4 Cases, Local Rules of Maricopa County, Rule 5-5.4 (no reviews ensured “compliance”
5 with the laws of the State of Arizona and Court Rules); (4) 5.6/A.R.S. § 14-5106
6 (requires full, complete and candid disclosure involving all contacts, connections, and
7 relationships between and among those seeking “appointment” which, in the instant
8 case if any documents were filed at all, were unqualifiedly deficient, by intent and
9 design); (5) LR 5.7 (required fiduciaries and their lawyers to provide, within 90 days
10 post-appointment, statements reflecting the net value of the “protected persons” assets
11 together with detailed statements for services rendered; estimates of total fees with
12 estimated revisions in quarterly fashion required in the “proposed form of order”
13 which, were non-existent in the present case); (6) A.R.S. § 14-5424(D) (prohibits
14 defendant lawyers and fiduciaries from validly arguing, as they have persistently done,
15 for their own limitations on liability); (7) RICO Defendants entered into a direct
16 attorney-client relationship with Ms. Mallet. Ms. Mallet paid for the legal services,
17 advice, expected competency, and duty of undeviating loyalty for and on behalf of Ms.
18 Mallet’s paramount interests. Defendants were required to immediately turn over the
19 Mallet files, and any documents, work product, communications, email, electronic
20 transmissions, electronic storage, redundant electronic storage, in native format with
21 the metadata and attachments, which has been the law under Arizona Supreme Court
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1 authority for the last 27 years. *Cf. Nat'l Sales & Service Co. v. Superior Court*, 136
2 Ariz. 544, 667 P.2d 738 (1983) (lawyers duty requires ***not*** prejudicing or damaging
3 client irrespective of a “charging” or “retaining” lien (inapplicable here in any event);
4 the attorney shall immediately return client files to avoid impairing client’s ability to
5 prosecute and/or defend him or herself in subsequent proceedings; disbarment
6 required); *See also, Fickett v. Superior Court*, 27 Ariz. App. 793, 558 P.2d 988 (Ct.
7 App. 1976) (attorney undertaking representation of guardian of a “protected person”
8 assumes an attorney-client relationship not only with the guardian, but also with the
9 ward where the attorney knows, or should know, that the guardian is acting adversely
10 to the ward’s interest; frustration of the guardianship becomes foreseeable, as does
11 foreseeability of damage to the ward; the ward’s interest(s) overshadow those of the
12 guardian in situations where the “protected person” is in fact the owner of the assets;
13 the protection of which the attorneys and fiduciaries are employed, which creates the
14 direct attorney-client relationship and fiduciary duties where the “protected person” is
15 not merely a “beneficiary,” but is in fact the title-holder and owner of assets which
16 cannot be divested or impaired by statute); *Snell & Wilmer, LLP v. Fegen (In re Estate*
17 *of Fogelman)*, 197 Ariz. 252, 3 P.3d 1172 (Ct. App. 2000) (a lawyer may not engage
18 in conflicted representation in which the lawyer’s interest(s) are materially limited
19 based upon “responsibilities” to a concurrent client, or a third-person, or driven by the
20 lawyers own self-interest; where representation of multiple clients exists, written and
21 informed consent and consultation shall be required and must include a full and
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1 detailed explanation and implication of the risks inherent in the lawyers dual roles,
2 including the advantages and risks involved; the lawyers duty to the “protected
3 person” is direct as the direct owner of the assets purportedly being “protected,” and
4 the “protected person” is not by definition, a “beneficiary” of his own estate assets
5 which legally trumps all conflicted concurrent representation).

6 94. For example, A.R.S. § 36-540 was breached, including the absence of any
7 findings by clear and convincing evidence of a documented “mental disorder” which
8 was remedial within a period of weeks under appropriate psychotropic medications
9 properly administered at virtually no cost. A.R.S. § 36-501(26). The plaintiff, as with
10 all incorporated cases, was deprived of an evaluation by at least two qualified
11 physicians (A.R.S. § 36-501(12)). The Plaintiffs were not “gravely disabled” as defined
12 under A.R.S. § 36-501(16), nor were the Plaintiffs, and each of them as incorporated by
13 reference, given the opportunity or explained to, *sua sponte* by the Probate Court, that
14 Plaintiffs had valuable constitutional rights under A.R.S. § 36-501(20) for appointment
15 of an “independent evaluator” by a physician of their own choosing. Under A.R.S. §
16 36-501(33) the record for which judicial notice is requested contains absolutely no
17 “clear and convincing evidence” that plaintiff was “acutely disabled” at any time, let
18 alone within weeks of the Probate Court entrapment, or at the “Emergency” “Hearings,”
19 or at any other time relevant here..

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22 95. In the *Hall, Mallet* and *Ravenscroft* cases incorporated herein by this
23 reference, all were released “under their own recognizance” to manage their own
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1 financial affairs, to manage their daily activities without fear of injury to self or others,
2 without clear and convincing evidence of a “mental disease” rendering them
3 “incompetent,” with each and every Plaintiff denied the opportunity to retain counsel, as
4 a constitutional right, of their own choosing in violation of U.S. and State Constitutional
5 guarantees. The fact that the underlying Probate Proceedings required the incorporated
6 cases of Mr. Hall to illustrate his competency to testify under oath subject to cross-
7 examination in standards equivalent to A.R.S. § 13-4501(1)(2) is, by Judicial
8 Admission, incontestable evidence of “competence.” Mr. Ravenscroft, similarly, had to
9 testify his way out of the guardianship and certain conservatorship appointments while
10 managing his own affairs on a daily basis, living alone in his own house responsible for
11 his daily financial and medical affairs. Mr. Hall and Mr. Ravenscroft are fully
12 competent, lucid, and able to communicate with undersigned counsel, and to understand
13 the nature and appreciate the magnitude of the proceedings, and apparently by judicial
14 fiat, are fully capable to respond to direct and cross-examination and present lucid,
15 candid and truthful explanations which, in fact and law, were adopted by the underlying
16 Probate Jurists handling the respective cases. On the other hand, Ms. Mallet, now in her
17 late 70s, has had her estate, as explained Monday at hearing (the Mallet FAC shall be
18 provided shortly awaiting an expedited transcript from Monday (this is Friday, July 30,
19 2010), July 26, 2010 involving, as usual, Enterprise Defendants Sun Valley Group and
20 Jerome Elwell and Co., explaining to a Probate Commissioner how to abuse process by
21 issuance of subpoenas under Rule 11 seeking privileged attorney-client information to
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1 collaterally attack these proceedings.) Ms. Mallet, like Mr. Hall and Mr. Ravenscroft,
2 has apparent “competence” to the extent that her “fiduciaries” allowed her to move, on
3 her own, half-way across the country to Colorado managing her own daily affairs,
4 managing her own funds (what little there is left as she teeters on the brink of
5 insolvency), while Sun Valley attempts to collaterally attack Ms. Mallet’s “mental
6 competence” despite its admissions by conduct clearly and unequivocally representing
7 their lack of concern, as a fiduciary, that Ms. Mallet is competent, capable, lucid, has a
8 high degree of competence to manage her daily affairs, both financially and medically,
9 since there is no money left for SVG to bill against (**Exhibit 2**).

11 96. The sham perpetuation by the fiduciaries reflects that the probate
12 “incarceration” was illusory, a Fraud on the Court by Officers of the Court, and
13 unreasonably protracted for the simple reason of exhausting assets which of course,
14 render the underlying proceedings void. *In re Maxwell*, 146 Ariz. 27, 703 P.2d 574 (Ct.
15 App. 1985). There are no records with respect to any suit (other than here) pending
16 before this Court, or incorporated by reference for consideration, where evidence of
17 conduct sustaining each and every count is predicated, in part, upon unqualified
18 breaches of Titles 36 and 14. There does not exist, nor has it ever been the legislative
19 intent to confine criminal misconduct arising out of administration of probate
20 proceedings to the Probate Court. (*See* A.R.S. § 14-5429(A)(B)(C)(D) which allows for
21 “concurrent jurisdiction” and “other proceedings” in which the conservator as a
22 fiduciary is individually liable in suit and who may be sued directly in its individual
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1 capacity or its fiduciary capacity.) Attorneys appointed for the protection of the ward
2 and the unqualified protection of their own resources cannot act in an adverse and
3 conflicted fashion; any such conduct by the fiduciary, authorized and ratified by its
4 attorneys, is imputed to the attorney, or attorneys under A.R.S. § 14-5652(B). A.R.S. §
5 14-5408(a)(1) provides jurisdiction to probate jurists only that power to “preserve” and
6 protect the ward’s assets for his or her own benefit, or the benefit of that person’s
7 dependents. The statute does not provide jurisdiction, constitutionally, allowing the
8 Probate Court to disregard attorney-client relationships freely entered into by the
9 “protected person.” A conservatorship does not impair one’s right of contract given the
10 fact that “incompetency” is no longer at issue by virtue of the temporary guardianship or
11 permanent guardianship dismissals which are *res judicata* as to the “mental capacity” of
12 the “protected person.” Further, there is no conservatorship statute limiting, or
13 purporting to limit a Plaintiff’s constitutional right to counsel of his or her own choosing
14 to pursue recovery. Those being sued are absolutely conflicted out to prevent retention
15 on the basis of self-interest from attempting to regulate, interfere, or undermine the
16 attorney-client relationship brought by the self-sustaining and independent adult
17 individuals, of contracting age, formerly under guardianship. Additionally, an attorney
18 arguing for his own prospective liability limitations (all have) attempting to act as
19 constitutional “gatekeepers” while engaging in acts of theft and criminal conduct
20 renders void, or voidable, court orders invading the attorney-client relationship which
21 seeks to level the playing field as against the offending fiduciaries and attorneys.
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1 97. A.R.S. § 14-5408(B) has absolutely no “effect” on the capacity of the
2 protected person in the conservatorship setting. Judgments, decrees, minute entries,
3 court orders, “appointments,” fraudulent and intentionally delayed “accounting” by
4 officers of the court, by their very nature are frauds on the court, and have no issue or
5 claim preclusive effect which include the fact that under state law an official applying a
6 “rubber stamp” to the Probate proceedings are subject to set aside, at any time, without
7 qualification. *Estate of P.K.L.*, 189 Ariz. 487, 943 P.2d 847 (Ct. App. 1997). In the
8 present matter, A.R.S. § 14-5411 required sufficient bonding to protect the “protected
9 person” from his supposed protectors, the lawyers and fiduciaries, in the event of
10 negligent or other culpable conduct damaging the assets owned by the ward. In the *Hall*
11 matter, as in *Ravenscroft, Long and Mallet*, the bonding amounts were *de minimis* in
12 contrast to the unauthorized and undisclosed disbursements to the Defendants, and each
13 of them. A.R.S. § 14-1406 provides further evidence that Defendants, and each of
14 them, may only operate “to the extent there is no material conflict of interest ...” *Olivas*
15 *v. Olivas*, 132 Ariz. 61, 643 P.2d 1031 (Ct. App. 1982) (fraudulent conduct accruing in
16 1959 required judgment set aside of separate proceedings brought 20 years prior
17 resulting in this 1982 opinion). *Cf. Ivancovich v. Meier*, 122 Ariz. 346, 348-49, 595
18 P.2d 24, 26-27 (1979) (party deprived of the opportunity to present his or her case in
19 court on the merits [this case in particular without disclosure of intentionally concealed
20 and/or spoliated documents] is considered a fraud on the court). Defendants
21 intentionally failed to advise on constitutional due process right to petition the Court to
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1 remove and expunge the guardianship or protective proceedings under A.R.S. § 14-5307
2 nor did Defendants or their law firm advise under A.R.S. § 14-5303 requiring a
3 physician's report and comprehensive testing listing any functional impairments
4 together with a prognosis for the immediate future and opportunities for improvement,
5 on a short term basis, to truncate the proceedings.

6 98. Ariz. R. Prob. P. 33 does not provide for an *ex post facto* “rubber
7 stamp” approving after the fact payment, advances and distributions diminishing assets
8 for attorney and fiduciary funding, without notice, without review, without
9 Department Accounting Review provided by Probate Administration, without advising
10 that assets had been, and continued to be, depleted, in secret. And, as discussed above,
11 lawyers engaged in the scope of representation directly, or in a direct fiduciary
12 relationship for the protection of assets (not for a “beneficiary”) are absolutely
13 prohibited and barred from entering into agreements or exercising purported authority
14 under color of law that attempts to prospectively limit their liability. *See, Ariz. R.*
15 *Supp. Ct. 42, ER1.8(a)(1); Flagstaff Affordable Hous. Ltd. P’ship v. Design Alliance,*
16 *Inc., 223 P.3d 664; 2010 Ariz. LEXIS 11 (Feb. 12, 2010) (lawyers claiming limitations*
17 *for their own legal malfeasance were rejected in this Arizona Supreme Court opinion).*
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ANTICIPATED DEFENSES

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2 99. There are no defenses under the Code of Professional Conduct (adopted
3 or model) as evidence of intentional and material breaches of fiduciary duty and the
4 attorney-client relationship where the defendant lawyers and fiduciaries agitate for the
5 financial demise of the client or protected person to whom unqualified duties of
6 fidelity, trust, and candor are owed. The RICO defendants here are defenseless, and
7 cannot provide a plausible common sense explanation as to why they failed to provide
8 the client files owed, unequivocally, in breach of Arizona Supreme Court authority
9 requiring disbarment for such conduct. Obstructive gamesmanship in this regard will
10 not be tolerated by any Court, “discovery freeze” or not, as entitlement to the client
11 files and the Public Records is absolute; not “discovery,” and not shielded under any
12 theory of attorney-client privilege which must be abandoned even if asserted, under
13 the crime-fraud exception and/or principals of waiver which exist presently. Clearly,
14 the U.S. Supreme Court cases of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.
15 Ct. 1955 (2007); *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 173 L.Ed.2d 868 (2009); and
16 Arizona Supreme Court, *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 189 P.3d 344
17 (2008) credit all facts contained within the FAC as true for the purposes of deciding a
18 Rule 12(b)(6) Motion. The operative facts must merely be plausible with the
19 Defendants’ burden of proof to point out to the Court exactly which factual predicates
20 are “implausible” based upon a rational and reasoned plausible counter-inference
21 which would, in these cases, merely present a “tie” with the “tie going to the runner”
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1 (Plaintiff). Defendants, and each of them, simply quote, without reference to the First
2 Amended Complaint, or underlying Complaint, or the incorporated First Amended
3 Complaints or Complaints what exactly was “conclusory” and not rationally related as
4 a non-conclusory fact, or what, if anything, was “speculative” to defeat, as a matter of
5 law, Plaintiffs’ allegations. There are none presented by the defense, and there will be
6 none other than general citation to certain catch-phrases adding nothing to, nor
7 detracting from the substance of Plaintiff’s Amended Complaint(s). Using words like
8 “preposterous,” “stunt,” and “sanctions” while concealing material and dispositive
9 evidence, concealing the client files, instructing public agencies to refrain from
10 answering Public Records Requests is not, typically, the type of evidence required of
11 the defense to “defeat”, on the basis of a motion to dismiss, Plaintiff’s well-pled
12 Amended Complaint(s). Ironically, as the Court reads Defendants’ Motions to
13 Dismiss, which will inevitably be filed (subject to sanctions, attorneys fees and costs),
14 Defendants do nothing more than that which is expressly disallowed by incantation of
15 “formulaic recitation” of the elements of a defensive claim ...”, substituting by proxy
16 jingoism for a plausible counter-inference explaining Defendants’ criminal conduct.
17 Just as complaints built on “mere conclusory statements” are insufficient under the
18 above trilogy, “mere conclusory defensive statements” are likewise subject to
19 repudiation by the Court as fundamentally deficient in support of a “motion to
20 dismiss.” The trial court here is not permitted to speculate about hypothetical facts
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1 that might present a plausible counter-inference, when none are presented by the
2 defense which would entitle the defendant to relief.

3 100. Defendants, and each of them, are expected to maintain frivolous
4 arguments relative to “judicial absolute immunity” as “Officers of the Court
5 committing a Fraud on the Court” with the fiduciaries and lawyers deriving “absolute
6 immunity” for perjured testimony as Officers of the Court. Ironically, these types of
7 meritless arguments seeking to limit the liability of the perjuring lawyers charged with
8 fiduciary duties here, and others similarly situated, in “prosecution” of the “protected
9 person,” vitiating well-established Constitutional Due Process Guarantees and Equal
10 Protection is more a testament to Defendants’ desperation than a coherent plausible
11 legal argument, lacking authority arising out of U.S. Supreme Court opinions, any
12 Circuit Court of Appeals, any District Court in the Country, or any Arizona State
13 Supreme Court, Court of Appeals, or trial court disposition of law favorable to
14 Defendants’ under facts substantially identical or similar to those at issue.
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17 **“IMMUNITY”**

18 101. Defendants, and each of them, relative to their ongoing scheme in
19 multiple cases against similarly situated plaintiffs cannot use their law license
20 checking out of the Code of Professional Conduct and the statutes referenced above
21 converting their law license into a license to steal. For example, unauthorized billing
22 practices in addition to being a series of predicate acts under criminal wire fraud
23 statutes, while enabling the extortionate conduct of the fiduciary and liquidation of
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1 assets decades in the making, [like Hall’s prized gun collection], are not “judge-like”
2 functions entitling lawyers like Gray, Elwell, and Dyer *et al.*, and SFI/SVG to escape
3 liability. The Arizona Supreme Court has made the issues at bar a matter of statewide
4 importance, and public policy dictates that any officer of the court engaging in theft,
5 extortion, bribery, or other schemes and/or artifices to defraud punishable by
6 imprisonment of one year or more under Arizona state law is, as discussed below,
7 RICO “racketeering activity” in a series of acts designed to obtain Plaintiffs’ private
8 property interests. After-the-fact “rubber stamps” by the underlying Probate Court
9 does not “immunize” one for the original and unauthorized theft or extortionate receipt
10 of client funds nor has such conduct ever been construed to be a “judicial function”
11 and is, of course, clearly outside the scope of immunity, absolute or qualified. *See,*
12 *e.g., Zarcone v. Perry*, 572 F.2d 52 (2nd Cir. 1978). “Absolute immunity” vaporizes in
13 the face of individual capacity suits, as here, versus “official capacity” suits against
14 governmental agencies or governmental officials which is obviously not the case here.
15 *Kentucky v. Graham*, 473 U.S. 159 (1985). Defendants fail in their burden of proof
16 establishing a RICO or Due Process exemption for personal liability by abrogation of
17 public policy concerns, as recently endorsed by our own Arizona Supreme Court
18 issuing orders on the precise “billing practices” for which they may claim “immunity.”
19 Qualified immunity went out the window long ago as well. *Forrester v. White*, 484
20 U.S. 219, 224 (1988); *Cf. Dykes v. Hosemann*, 743 F.2d 1488, 1496-97 (11th Cir.
21 1984) (Judge acting in clear and complete absence of personal jurisdiction loses
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1 judicial immunity); *Archie v. Lanier*, 95 F.3d 438 (6th Cir. 1996) (criminal conduct
2 does not constitute a “judicial function” abrogating immunity in its entirety).
3 Defendants intentionally (or innocently) abrogating clearly established Federal and
4 State constitutional due process and equal protection rights are absolutely liable for
5 damages under § 1983. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). Claims in breach
6 of clearly established law under the Due Process Clause and any violation or violations
7 of that Clause (no matter how unclear it may be that the particular action is a violation)
8 violate a clearly established right vitiating “immunity.” *Anderson v. Creighton*, 483
9 U.S. 635, 639-40 (1987).
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12 **EVIDENCE OF BREACH OF A.R.S. § 40-46-456 (ARIZONA**
13 **VULNERABLE ADULT PROTECTION STATUTE)**

14 102. Although not strictly a Count under this FAC, its breach may be used as
15 proof of the scheme and/or artifice to defraud in violation of fiduciary and attorney-
16 client duties owed. First, A.R.S. § 46-456 requires (*see Fickett, supra; In re Fogelman,*
17 *supra*, Ariz. R. Sup. Ct. 42, E.R. 1.8(a)(1), *supra; Flagstaff Affordable Hous. Ltd.*
18 *P’ship v. Design. Alliance Inc., supra*, 223 P.3d 664; 2010 Ariz. LEXIS 11 (Feb. 12,
19 2010); *National Sales & Service Co. v. Superior Court, supra*) that defendants were in a
20 position of “trust and confidence”. All defendants had express and unqualified
21 fiduciary obligations to plaintiff. The basis for the due process claims, claims under §
22 1983, together with the Racketeering Counts, were the unilateral taking of assets for the
23 exclusive pecuniary gain of Defendants, and each of them, without “prior approval of
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1 the transaction” by the Court or any other oversight administered by the State, except
2 long after the fact. A court, commissioner or other state, county or municipal public
3 official, or officer of the court, cannot give retroactive application and approval of
4 fraudulent criminal conduct despite state court action under color of law to attempt
5 ratification of such conduct by issuance of “court order or decree”.

6
7 **42 U.S.C. § 1983**

8 103. Defendants, and each of them, apparently by instinct, massacre the
9 holdings of dispositive authority cited by Plaintiff in this FAC on § 1983. A few simple
10 facts are ignored by Defendants. First, the lawyers and fiduciaries are licensed by the
11 State of Arizona as “private parties” and the Defendants act as “private parties” and, if
12 as Defendants suggest, receiving an “appointment” converts one to a State Official
13 under color of State law, then, for the purposes of this argument Defendants are liable
14 under 42 U.S.C. § 1983 irrespective of “appointment”, private party, or as the defense
15 suggests, or not. The nub of the issues under the § 1983 Count are private parties,
16 acting under color of State law (“appointment”) in concert with State Officials to
17 deprive plaintiff and others similarly situated of their constitutional due process
18 protections and guarantees. The private property deprivations without notice and an
19 opportunity to be heard, without an opportunity to cross-examine and confront those
20 engaging in the concealed theft, is the gravamen of the FAC. There is no contest by
21 Defendants that fund transfers, asset liquidations, as well as liquidation of retirement
22 accounts, social security benefits, and other valuable assets were liquidated without
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1 notice, without an opportunity to be heard months after the fact, and well before
2 plaintiff was kicked to the curb once Defendants had rendered her penniless.
3 Defendants seeking to blame the Probate Court Judiciary or Commissioners simply
4 aggravate the situation by conclusive admission of action under “color of State law” in
5 deprivation of well established due process protections.

6 104. There is other, and have been other fundamentally meritless claims
7 injected into these collective proceedings by Defendants, and defense counsel, which
8 are, by definition, frivolous and deserving of sanctions, attorneys’ fees, and costs, the
9 “immunity” defense a laughable, but prime example.
10

11 **COMPETENCY DEFINED**

12 105. Ms. Mallet, Mr. Hall and Mr. Ravenscroft are able to care for their own
13 personal safety and are fully capable of providing for and attending to daily necessities
14 of life such as food, clothing, shelter, and their own medical care. This is the accepted
15 definition of “competent” used in Arizona and is, of course, the polar opposite of the
16 definition of “incompetent” continually conflated by the defense. *Kelly v. Elliston*, 188
17 Ariz. 514, 910 P.2d 665 (Ct. App. 1996); *Kelly v. Ariz. Dept. of Econ. Sec.*, 213 Ariz.
18 17, 137 P.3d 973 (Ct. App. 2006) (chronic “poly-substance abuse” negated the need for
19 appointment of a guardian *ad litem* where, in fact, there was no “mental illness”
20 impairing the ability of Plaintiff to assist in her own defense while communicating
21 adequately with counsel rendering her, as a matter of law, “mentally competent.”).
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COUNT I
Intentional Spoliation

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2 96. 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 the *Ravenscroft, Hall, and Long* First Amended
5 Complaints, filed in proximity herewith.
6

7 97. Defendants, and each of them, have failed to disclose dispositive and
8 material evidence in the form of electronic transmissions constituting Ms. Mallet’s
9 files paid for in full by Ms. Mallet. Ms. Mallet was entitled to the files because she
10 had paid for, and reasonably understood that the file contents, emails, and adverse
11 conduct would be immediately and timely disclosed to her under the reasonably
12 foreseeable crime-fraud exception which further waives the “attorney-client” shield in
13 breach of fiduciary duties owed. 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
16 transmissions and dispositive evidence which relates to, or which may relate to this
17 file inculcating Defendants in a conspiracy to defraud.
18

19 98. *Lips v. Scottsdale Healthcare Corp.*, 229 P.3d 1088, 2010 Ariz. LEXIS
20 19 (2010), recognizes third-party intentional spoliation. Defendants, and each of
21 them, 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
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1 has no impact upon the duty of counsel to provide the Court and the litigants with
2 material evidence. Defendants may not suppress nor encourage perjury or subornation
3 of perjury and obstruction of justice. Suppressing or concealing material evidence is
4 absolutely improper irrespective of what phase of the litigation is pending, with or
5 without a “discovery” request and with or without regard to a request for production
6 of documents, or otherwise.

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

17
18 100. Intentional concealment, suppression of material evidence or instructing
19 others to commit violations of state law with the effect being to deprive the Plaintiff of
20 material and dispositive evidence relating to this action, are acts which by design are
21 intended to disrupt and injure the Plaintiff’s suit.

22
23 101. Plaintiffs having fully plead Count I request an award of punitive
24 damages in amounts sufficient to deter other similarly situated lawyers and defense

1 counsel and defendant lawyers and fiduciaries engaging in acts detrimental to the
2 administration of justice. Plaintiff also respectfully requests this Court immediately
3 enjoin Defendants, and each of them from intentionally suppressing and/or concealing
4 material evidence bearing upon the dispositive issues raised in this FAC. Plaintiff
5 further requests an Order to Show Cause hearing on the issues relating to production
6 required under Plaintiff's Public Records Request and Rule 123 requests setting aside
7 defense instructions to the public agencies to refrain from answering and responding,
8 fully, to the requests. And, Plaintiff requests the immediate disgorgement of her client
9 files by Defendants.
10

11 **COUNT II**
12 **RICO**

13 **(18 U.S.C.S. § 1961 *et seq.*; Violation of 18 U.S.C. § 1962 (a); Violation of**
14 **18 U.S.C. § 1962(b); Violation of 18 U.S.C. § 1962(c); Conspiracy to**
15 **Violate 18 U.S.C. § 1962(a) in Violation of 18 U.S.C. § 1962(d);**
16 **Conspiracy to Violate 18 U.S.C. § 1962(d) in Violation**
17 **of 18 U.S.C. § 1962(d); Conspiracy to Violate 18 U.S.C. § 1962(c)**
18 **In Violation of 18 U.S.C. § 1962(d); Violation of 18 U.S.C. § 1964(c))**

19 102. Plaintiff reincorporates all prior and subsequent enumerated paragraphs
20 into this count, the FAC to be read as a unified whole.

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

4 **ENTERPRISE**

5 104. The enterprise of associated-in-fact individuals remains fairly constant
6 throughout the *Long, Ravenscroft, Hall and Mallet* cases. In fact, in prior pleadings
7 Defendants, and each of them, have moved to consolidate the proceedings, for all
8 purposes because of the substantial similarity in identity of the RICO Defendants in all
9 referenced cases (*i.e., Long, Ravenscroft, Hall, and Mallet*). “Enterprise” has been
10 broadly and non-exhaustively construed as any group of individuals’ associated-in-
11 fact which includes, but is not limited to, business-like entities. *Boyle v. U.S.*, 129
12 S.Ct. 2237, 2243 (2009) (“structure” does not require the associated-in-fact Enterprise
13 to maintain a “command post hierarchy” to qualify under the minimal standards
14 associated with the structure requirements comprising an enterprise.) The Enterprise,
15 for RICO purposes need not be motivated by an “economic purpose.” *National*
16 *Organization for Women, Inc. v. Scheidler*, 520 U.S. 249 (1994).

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

8
9 106. The purpose of Defendants’ RICO Enterprise was simply the improper
10 acquisition of money from those under their care as attorney-client or fiduciaries, and
11 to pick the pockets of the “protected person.” The RICO Defendants were not to
12 engage in self-dealing lining their own pockets to the Plaintiffs’ ultimate financial
13 demise.

14 **PREDICATE ACT STANDING**

15
16 107. The Plaintiff may stack the predicate acts arising out of similar cases
17 involving the Enterprise which conduct has been incorporated by reference in the
18 companion cases of *Ravenscroft, Long and Hall*. Use of predicate acts involving the
19 same Enterprise associated-in-fact individuals or entities are viable components of
20 Plaintiff’s well-pled “pattern” of unlawful RICO conduct. *Cf. H.J., Inc. v.*
21 *Northwestern Bell Telephone*, 492 U.S. 229, 242 (1989); *Bridge v. Phoenix Bond &*
22 *Indem. Co.*, *supra*; *Accord, Deppe v. Tripp*, 863 F.2d 1356, 1366 (7th Cir. 1988)
23 (although one of the racketeering acts was not successful does not mean that it is
24

1 unavailable to establish a pattern); *See also, Banks v. Wolk*, 918 F.2d 418 (3rd Cir.
2 1990).

3 CONTINUITY

4 108. The Ninth Circuit has declined to impose a bright-line one-year test for
5 “closed-end continuity.” *Allwaste, Inc. v. Hecht*, 65 F.3d 1523 (9th Cir. 1995). The
6 present cases demonstrate the acts were not isolated, sporadic, or short-term and
7 conduct, as here, designed to conceal or prevent discovery of prior misconduct
8 projects the threat of an “open-ended scheme” which imposes liability irrespective of
9 brevity. *Cf. United States v. Indelicato*, 865 F.2d 1370 (2nd Cir. 1989); *Olive Can Co.,*
10 *Inc. v. Martin*, 906 F.2d 1147 (7th Cir. 1990).

12 109. “Open-ended continuity” prevails in the instant actions, given the fact
13 that the Enterprise acts in a way which reflects upon its regular way of doing business,
14 which is to strip the “protected” persons to whom they owe fiduciary responsibilities,
15 of their assets, collectively in these cases exceeding \$3,500,000. *H.J., Inc., supra* at
16 492 U.S. 239, 242 (1989). *See also, Tabas v. Tabas*, 47 F.3d 1280 (3rd Cir. 1995)
17 (conduct post-dating Complaint filing evidence of “open-ended continuity” and is
18 evidence of the Enterprises open-ended threat of continuing this conduct as
19 Defendant’s regular way of doing business). Cover-ups also qualify as open-ended
20 and furnish further evidence where the Defendants attempt to suppress dispositive
21 material testimony and evidence involving obstruction of justice and are thus
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1 considered part of a “pattern of racketeering activity” for RICO purposes. *U.S. v.*
2 *Teitler*, 802 F.2d 606 (2nd Cir. 1986).

3 110. As Plaintiff pleads, the scheme and pattern of racketeering activity
4 engaged in by the Enterprise was to receive, in effect, bribes and kickbacks from one
5 another denying Plaintiff fiduciary entitlements to the rendition of honest services
6 under § 1346 as a defined predicate act under § 1961(1)(b). *Cf.*, *Skilling v. United*
7 *States*, 2010 U.S. LEXIS 5259 (June 24, 2010); *Weyhrauch v. United States*, 2010 U.S.
8 LEXIS 5254 (June 24, 2010).

9
10 111. It is also a predicate act to exercise the wrongful use of an otherwise
11 valid power (i.e., judicial appointment) that converts permissible action into extortion.
12 *U.S. v. Hyde*, 448 F.2d 815 (5th Cir. 1971). Racketeering activity defined exhaustively
13 under § 1961(1) includes bribery and extortion punishable under state law by
14 imprisonment for more than one year which, in the instant case, exists as a class 1, 2,
15 or 4 felony with respective periods of incarceration presumptively set at 5-10 years,
16 3.5-7 years, and 2.5-3 years respectively. A.R.S. § 13-1804(7); § 1951(b)(2).

17
18 112. Executing on a scheme or artifice to defraud while engaging in the
19 material suppression of evidence obstructing the administration of justice is, in
20 addition to a RICO predicate act, unconditionally prohibited by a legitimate duty
21 requiring lawful conduct by officers of the court to be compatible with the very nature
22 of a trial as a search for truth. *Nix v. Whiteside*, 475 U.S. 157, 106 S.Ct. 988 (1986).
23 Use of perjured or false evidence, or the material concealment thereof, where the
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1 lawyers know or reasonably should know the conduct is illegal or fraudulent is a fraud
2 on the court and actionable. *Nix v. Whiteside, supra*. Perjury, or subornation of
3 perjury through affidavit is, according to the *Nix* Court, as much a crime as tampering
4 with witnesses (also a racketeering predicate offense), undermining the administration
5 of justice. *Nix v. Whiteside, supra*.

6 113. The Defendants also conflate evidence of theft, extortion, and bribery as
7 a roundabout way to obtain fee disgorgement under prior proceedings isolated to the
8 Probate Court proceedings. Wrong. It is that evidence of theft, extortion, bribes and
9 kickbacks as “predicate acts in a pattern” of racketeering activity as an enterprise,
10 which is proof of the associated-in-fact Enterprise’s conduct. It is the direct damages
11 sustained to the Plaintiff’s property which is at issue, and the manner and method
12 Defendants executed on their scheme to liquidate the Plaintiff’s assets unto
13 themselves. A “fee contest” has little or nothing to do with this case and of course
14 reflects upon whether the issues presented in this matter were fully and fairly litigated
15 in any underlying proceeding in any forum, at any time which, of course, there were
16 not.
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19 114. The multiplicity of ongoing predicate acts includes false attestations to
20 Federal financial institutions for the purpose of unlawfully obtaining Plaintiff’s
21 property or assets. The fact that a bank, or the courts for that matter, or other State or
22 Federal agencies, relied upon Defendants’ emails, wires, electronic transmissions, or
23 other documents is all that is required. Fiduciary Fraud under A.R.S. § 13-2201(2)(3)
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1 and A.R.S. § 13-2202(A)(2) are minimally Class 6 felonies with a presumptive period
2 of incarceration of 1-1.5 years.

3 115. The Syndicate bribes are predicate acts under 18 U.S.C. § 201 under §
4 1961(1)(b) which include, but are not limited to: § 1341 (relating to mail fraud); §
5 1343 (relating to wire fraud); § 1344 (relating to financial institution fraud); § 1503
6 (relating to obstruction of justice); § 1510 (relating to obstruction of a criminal
7 investigation); §1513 (relating to retaliation against the “protected person”); § 1952
8 (relating to racketeering); and § 1957 (engaging in monetary transactions in property
9 derived from specified unlawful activity).
10

11 **CONSPIRACY AS A PREDICATE ACT**

12 116. Under §1961(1)(D), conspiracy is a viable predicate act. *U.S. v. Licavoli*,
13 725 F.2d 1040 (6th Cir. 1984); *U.S. v. Warneke*, 310 F.3d 542 (7th Cir. 2002). In the
14 present case, and in the companion cases, the Defendants’ unanimous participation as
15 reflected in the email chain (*Ravenscroft*) necessarily reflects the mental intent
16 required for a conspiracy claim under §1962(d) (*see, generally, Shearin v. E.F. Hutton*
17 *Group, Inc.*), 885 F.2d 1162 (3rd Cir. 1989). The First Amended Complaint has stated
18 that the agreements entered into by the Defendants, and each of them, were for the
19 commission of at least two predicate acts by those associated with the Enterprise here.
20 *See, Salinas v. United States*, 522 U.S. 52 (1997) (a conspiracy may exist even if a
21 conspirator does not agree to commit or facilitate each and every part of the
22 substantive offense; the conspirator must intend to further the endeavor which, if
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1 completed, would satisfy the elements of a substantive criminal offense); *Id.* at 522
2 U.S. 65). Put another way, had the Defendants, in their fiduciary capacities, actually
3 performed as required by law would necessarily exclude independent self interested
4 behavior as an explanation for their conduct. The Defendants, and each of them,
5 certainly had a strong, common motive to conspire because without the economic
6 collaboration between the fiduciaries and lawyers, their economic interests in the
7 estate would have deteriorated immediately absent the enterprise’s monetary
8 objectives in controlling the finances and assets. There is no other plausible
9 explanation for the manner and method in which the lawyers and fiduciaries breached
10 their duties to the “protected person” requiring secreted email and collaborative efforts
11 unnecessarily protracting the guardianship and/or conservatorship proceedings.

12 **SCIENTER**

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

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

10 WHEREFORE, Plaintiff having fully pled this claim against Defendants under
11 Count II, respectfully requests 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 A. Awarding Plaintiff allowable statutory damages (trebled)
15 resulting from Defendants' violations of the above-referenced RICO statutes;
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17 B. Awarding Plaintiff statutory entitlement to reasonable attorney's
18 fees, together with a loadstar factor, costs and expenses associated with
19 prosecution;

20 C. Such other and further relief as the Court deems just and proper
21 under the circumstances.
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COUNT III
Private Party Civil Rights Violations
42 U.S.C. §1983 (all Defendants)

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

121. Professional licensees, such as Defendants, are liable for violations of 42 USCS § 1983. (*See generally Kimes v. Stone*, 84 F.3d 1121 (9th Cir. 1996) (finding that the Supremacy Clause “prohibited application of state’s litigation privilege bar to 42 USCS § 1983 action against attorneys”).

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

⁵ In *Lugar v. Edmondson*, 457 U.S. 922 at 924, 102 S.Ct. 2744, 73 L. Ed. 2d 482, (1982) the Court held that the private Defendants who had initiated the attachment process could be liable as state actors for “participating in the deprivation”: “Invoking the aid of state officials to take advantage of state-created attachment procedures” made the private Defendants “*willful participants in joint activity with the State or its agents.*” *Id.* at 942. *See Lugar*, 457 U.S. at 941 (“We have consistently held that private party joint participation with state officials in the seizure of private property is sufficient to characterize the party as a ‘state actor.’”); *see also Dennis v. Sparks*, 449 U.S. 24, 27-28, 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, 86 S. Ct. 1152, 16 L. Ed. 2d 267, (1966) (“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.”)

1 123. Satisfaction of any one of the foregoing tests is sufficient to find state
2 action. *Lee, supra*, at 276 F.3d at 554.

3 124. Once Defendants and the Enterprise, through the attorneys and other
4 licensees as officers of the court, fiduciaries and/or court-appointed actors who
5 participated in the Enterprise, sought to act without legal authority, or in excess of
6 authority granted to them through the Courts, the acts of these individuals crossed the
7 line from private enterprise to outright fraud and private party liability in the
8 procurement of judicial orders in contempt of 42 U.S.C. § 1983.
9

10 125. A professional license together with a court appointment is not a vehicle
11 for immunizing the license holder or appointee from its prohibited use.

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

14 127. Defendants have misused the state courts by generally simulating
15 process to mask their own misconduct and were all willful participants in joint activity
16 with the State or its agents.
17

18 128. The Plaintiff has been damaged by reason of Defendants' violations of
19 42 U.S.C. § 1983, in amounts to be determined at trial.

20 WHEREFORE, Plaintiff, having fully pled this claim against Defendants under
21 Count III, respectfully request that this Court enter Judgment in favor of Plaintiff and
22 against all Defendants, individually, jointly and severally and against their respective
23 marital communities, if any, as follows:
24

1 Court also addressed certain Equal Protection arguments endorsed by Justice
2 O'Connor in her concurrence relative to the Due Process Clause, which is applicable
3 in the instant case.

4 131. Due process requires that courts make certain that proper professional
5 judgment was "in fact" exercised in the denial of a liberty interest and that due process
6 is assured that property will not be taken through government authority absent notice
7 and an opportunity to be heard. *Morrison v. Shanwick Int'l Corp.*, 167 Ariz. 39, 42,
8 804 P.2d 768 (Ct.App. 1990).

9
10 WHEREFORE, Plaintiff having fully pled this claim against Defendants under
11 Count IV, respectfully requests 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 A. For an order granting Plaintiff relief setting aside all orders,
15 minute entries, and judgments arising out of the underlying probate
16 proceedings;
17

18 B. For an award of costs and attorney's fees pursuant to 42 U.S.C.
19 §1988 and damages, to be proven at trial relating to said constitutional
20 deprivations;

21 C. To the extent required injunctive relief.
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COUNT V
Rule 60 Independent Action/Savings Clause
and Rule 60(c)(4)/60 (b)(4)
(all Defendants)

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

133. Where the fiduciaries and lawyers assigned for the protection of the “ward” or “protected person” agitate for her (his) defeat, the fraudulent misrepresentations, conflicts of interest, and duties to the tribunal are impaired to such an extent that, as here, Ms. Mallet had absolutely no chance of vindicating her property or liberty interests. This concerted action by and between the fiduciaries and “appointed” lawyers engaged in “extrinsic fraud” in securing funds for themselves at the expense of the client. *In the Matter of the Estate of Thurston*, 199 Ariz. 215, 16 P.3d 776 (Ct.App. 2000). As such there is a heightened duty where a fiduciary relationship exists, as here, between the lawyers, the fiduciaries, and the lawyers acting in a fiduciary capacity to deal fairly, and not fraudulently, and to disclose the true facts. Where, as here, the Defendants, and each of them, refused to reveal the truth while denying Ms. Mallet any opportunity at hearing or otherwise for adequate representation, and where the fiduciary (or lawyer) personally profits by his fraudulent conduct, the justification in a collateral proceeding to set aside the judgment is

1 appropriate. *Id.* There is no dispute in the present matter that the accounting records
2 were not made fully available for examination in a timely manner, nor were
3 documents shared advising as to the hemorrhaging of the estate to and for the benefit
4 of assigned attorneys and fiduciaries. The preceding evidence is overwhelming that
5 the attorneys in collusion with the fiduciaries prevented Plaintiff from knowing the
6 status of the probate proceedings, and that access was denied to any documents or
7 information concerning the financial status of the estate preventing assertion of any
8 claims regarding estate assets. *In re Thurston, supra.* Such self-serving and deceptive
9 conduct is actionable.
10

11 134. The Court, under Rule 60, has inherent power to relieve a party from a
12 judgment, order, or a proceeding for fraud on the court by officers of the court. Where
13 the fraud rises to the level of an unconscionable plan or scheme designed to
14 improperly influence the court, courts can and “should” act. *Dixon v. Comm’r of*
15 *Internal Revenue Service*, 316 F.3d 1041, 1046 (9th Cir. 2003). *Cf. Levander v.*
16 *Prober*, 180 F.3d 1114, 1119 (9th Cir. 1999) (recognizing the power of the court to
17 amend a judgment or order under its inherent power for extinguishment of the
18 judgment or order obtained by fraud on the court); *Cf. Pumphrey v. K.W. Thompson*
19 *Tool Co.*, 62 F.3d 1128 (1132-1133) (9th Cir. 1995).
20

21 WHEREFORE, Plaintiff having fully pled the claims against Defendants under
22 Count V, respectfully request that this Court enter judgment in favor of Plaintiff
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1 setting aside all tainted underlying judgments, orders, and minute entries obtained in
2 the underlying proceedings.

3 **COUNT VI**
4 **Breach of Fiduciary Duty**

5 135. Plaintiff reincorporates each and every allegation contained in the
6 foregoing paragraphs as though fully set forth herein.

7 136. Relative to the fiduciaries and attorneys *In re Estate of Shano*, 177 Ariz.
8 550, 869 P.2d 1203 (Ct. App. 1993) and *In re Estate of Fogelman*, 197 Ariz. 252, 3
9 P.3d 1172 (Ct. App. 2000) define the fiduciary duties and obligations owed by
10 Defendants to the Plaintiff.

11 137. The duty owed to Plaintiff by Defendant attorneys is defined under
12 Arizona law. *See, Paradigm Ins. Co. v. Langerman Law Offices, P.A.*, 200 Ariz. 146,
13 24 P.3d 593, 201 (2001); *See also, Associated Aviation Underwriters v. Wood*, 209
14 Ariz. 137, 98 P.3d 572 (Ct.App. 2004).

15 138. Evidence that Plaintiff was invited to rely on Defendant Attorneys' legal
16 services and representations subjects Defendant Attorneys and law firms to liability.
17 *See, generally, Kremser v. Quarles & Brady, L.L.P.*, 201 Ariz. 413, 418, 36 P.3d 761
18 (Ct. App. 2001); *Cf. Chalpin v. Snyder*, 220 Ariz. 413, 207 P.3d 666 (Ct. App. 2009).

19 139. Defendants, and each of them, intentionally breached their professional
20 and fiduciary duties.
21

22 WHEREFORE, Plaintiff, having fully pled the claims against Defendants under
23 Count VI, respectfully requests that this Court enter judgment in favor of Plaintiff and
24

1 against these Defendants, individually, jointly and severally and against their
2 respective marital communities, if any, as follows:

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

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

8 C. Such other or further relief as the Court deems just and proper
9 under the circumstances, including attorney's fees and costs.
10

11 **JURY DEMAND**

12 Plaintiff demands a trial by jury for all issues so triable.
13

14
15 RESPECTFULLY SUBMITTED this 30th day of July, 2010.
16

17 **GOODMAN PA**

18
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CERTIFICATE OF SERVICE

I hereby certify that on the 30th 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:

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VERIFICATION

STATE OF ARIZONA)
)
County of Maricopa)

GOODMAN P.A. in the above-entitled action affirms that the contents of the attached First Amended 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 30th day of July, 2010.

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