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CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

BY _____
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8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS**

9
10 TRELIS MAE PYLE,

11 Plaintiff,

12 vs.

13 JIM LANKFORD, CENTURY 21 APOLLO,
14 DOES 1 TO 50,

15 Defendants.

) Case No.: 313035
)
)

) **FIFTH AMENDED COMPLAINT FOR**
) **DAMAGES FOR BREACH OF SALES**
) **CONTRACT, FRAUD, NEGLIGENT**
) **MISREPRESENTATION;**
) **ALTERNATIVELY, FOR RESCISSION**
) **OF PURCHASE AGREEMENT AND FOR**
) **VIOLATION OF WELFARE AND**
) **INSTITUTIONS CODE SECTION 15600,**
) **ET SEQ.**
)
)
)

16
17 Plaintiff alleges:

18 **GENERAL ALLEGATIONS**

19 I.

20 1. Defendant JIM LANKFORD was a friend of Leonard Pyle and knew Leonard's wife,
21 Plaintiff TRELIS MAE PYLE, since before 1990. In 1990, the long series of wrongful acts,
22 including fraud, undue influence, breach of contract, and breach of fiduciary duties began.
23 Leonard Pyle died in 1995. Immediately after Leonard Pyle's death, Defendant JIM
24 LANKFORD often came over to Plaintiff's residence and started calling her on the telephone.
25 Defendant worked his way into her confidences, established a close personal relationship with

Summons issued 7/19/04

1 her, and took over as her advisor regarding her business affairs. He influenced her to name him
2 as her heir, beneficiary and joint tenant on her properties. Defendant alienated Plaintiff from her
3 family, stating they were only after her money. Plaintiff was 74 years old and alone. Defendant
4 JIM LANKFORD, who is a licensed real estate broker, and is the owner of Defendant
5 CENTURY 21 APOLLO, used his carefully crafted close relationship with Plaintiff to handle
6 her business affairs and to unduly influence her to invest in and to do acts for his exclusive
7 benefit by buying and selling various properties and naming himself as her beneficiary of her
8 insurance policies. Defendant JIM LANKFORD had Plaintiff nominate him as her Conservator
9 and talked Plaintiff into signing a will leaving Plaintiff's substantial assets to him. Defendant
10 JIM LANKFORD also influenced Plaintiff to grant him general power of attorney over her
11 person and estate and unduly influenced Plaintiff to name Defendant LANKFORD as a joint
12 tenant on her various substantial savings and checking accounts. Defendant LANKFORD knew
13 of Plaintiff's mental problems that lead to her memory lapses and confusion and that she was
14 substantially unable to manage her own affairs. Defendant using his status as a fiduciary used
15 his influence to misrepresent facts to Plaintiff and fraudulently misappropriated her property and
16 assets by the following acts:

17 **The Crows Landing Road Property (Corner of Crows Landing Road**
18 **and Whitmore Avenue)**

19 2. Defendant JIM LANKFORD began his interest in the Pyle properties when he acted
20 as both Real Estate Agent and Purchaser of the Crows Landing Road property belonging to
21 Plaintiff and her husband, Leonard Pyle. The contract of sale is dated January 12, 1990. The
22 sales price is \$1,300,000.00 Defendant JIM LANKFORD used his commission of ten percent
23 (10%) or the sum of \$130,000.00 for the down payment of the Crows Landing property, which
24 consisted of six parcels of real property located at the Northwest corner of Crows Landing Road
25 and Whitmore Avenue. It was sold to himself and others who later sold their interest to
Defendant LANKFORD. (See Exhibit A, straight note dated January 12, 1990 in the amount of

1 \$1,070,000.00, payable to Leonard and Trellis Pyle, interest only payment of \$8,916.67 per
2 month, payable in full in ten (10) years, attached hereto and incorporated herein by this
3 reference.)

4 3. Defendant JIM LANKFORD established a close personal relationship with Plaintiff in
5 order to defraud Plaintiff and to obtain her properties and money and to become her heir. He had
6 Plaintiff keep all her important documents and papers in a safe that he brought into her home and
7 using his confidential position retained access to both the house and the safe with keys. On
8 information and belief Plaintiff thereon alleges these important documents in Plaintiff's safe
9 were removed by Defendant JIM LANKFORD without Plaintiff's permission to hide his
10 fraudulent acts. Plaintiff had a few copies of some of the documents that were not kept in the
11 safe and these documents are used herein as exhibits.

12 4. Prior to Leonard Pyle's death, Defendant JIM LANKFORD did not pay the entire
13 amount of interest and penalties due on the Crows Landing property 1990 note to Plaintiff and
14 her husband. After the death of Leonard Pyle, Defendant continued to pay less than the then
15 interest only contract price in an amount according to proof. There is also a ten percent (10%)
16 penalty due for each late payment which is still due and owing in an amount according to proof.
17 In March 1998, Defendant applied for a loan from DANBE CORPORATION in the amount of
18 \$297,500.00. The problem was Plaintiff had a note and deed of trust which was in first position.
19 Despite owing interest and penalties from late or underpaid payments on the Crows Landing
20 property amounting to far more than \$10,000.00, Defendant LANKFORD unduly influenced
21 Plaintiff to accept a \$10,000.00 payment on the principle.

22 The fraudulent purpose of Defendant was by his making a new note for \$1,060,000.00
23 signed by him supported by a new deed of trust. The original note of \$1,070,000.00 and deed of
24 trust (which was still due in its entirety) was extinguished. Defendant LANKFORD between the
25 short period of time of when the \$1,070,000.00 note and supporting deed of trust were

1 extinguished and the new note for \$1,060,000.00 and deed of trust thereon was filed in its place,
2 Defendant LANKFORD had the property in his name only without any liens on the Crows
3 Landing property.

4 It was during this period of time that Defendant LANKFORD obtained the loan from the
5 DANBE CORPORATION in the amount of \$297,500.00. (See Exhibit B, a deed of trust filed
6 March 27, 1998, signed by LANKFORD March 23, 1998 and in favor of the DANBE
7 CORPORATION in the amount of \$297,500.00, attached hereto and incorporated by this
8 reference.) Obviously, DANBE CORPORATION would not loan such a large amount of money
9 without its loan being secured by a deed of trust in first position. Plaintiff was not told of
10 Defendant's actions and was not aware her new (termed replacement note by Defendant) note
11 and deed of trust was subordinate to the DANBE CORPORATION's note and deed of trust in
12 the amount of \$297,500.00. Plaintiff did not give her permission and LANKFORD did not
13 prepare and have Plaintiff sign a subordination agreement reflecting the above transactions by
14 Defendant LANKFORD. LANKFORD also defrauded the DANBE CORPORATION by
15 informing them he owned the property without any liens. The DANBE CORPORATION's note
16 and deed of trust was filed on or about March 23, 1998 and thereafter on or about April 2, 1998,
17 the \$1,060,000.00 deed of trust in support of the new note in favor of Plaintiff TRELIS MAE
18 PYLE was filed. Defendant LANKFORD using his trust and as a fiduciary violated California
19 Business and Professions Code §§ 10175(i), 10177(j), 1017(g), 1076(a) and 1076(b) by making
20 false misrepresentations to Plaintiff and fraudulently preparing new loan and deed of trust
21 documents with new terms and conditions in favor of Defendant concerning the Crows Landing
22 Road property. (See Exhibit C, the April 1, 1998 straight Note and short form 1998 Deed of
23 Trust, attached hereto and incorporated herein by this reference as though set forth in full.) It
24 was filed April 6, 1998. Defendant JIM LANKFORD is the Trustor and Plaintiff TRELIS
25 MAE PYLE is the Beneficiary. Subsequent to the April 1, 1998 Note, Defendant JIM

1 LANKFORD at times made monthly payments in an amount below the contract price or he
2 didn't make the monthly payments at all. Said interest and penalty payments are owed to
3 Plaintiff in an amount according to proof. On or about October 15, 2001, Defendant JIM
4 LANKFORD presented to Plaintiff a "BENEFICIARY DEMAND" document for her to sign.
5 (See Exhibit D, BENEFICIARY DEMAND, attached hereto and incorporated by this reference
6 as though set forth in full.) Plaintiff did not know or understand the significance of the
7 BENEFICIARY DEMAND and its significance was not explained to her by Defendant
8 LANKFORD. Defendant LANKFORD unduly influenced Plaintiff to sign the BENEFICIARY
9 DEMAND and to write in the term that she wanted the \$500,000.00 in five \$100,000.00 checks.
10 This was done at the insistence of LANKFORD to indicate to anyone who might read it that
11 Plaintiff knew what she was signing. Defendant told Plaintiff he would give her another
12 \$500,000.00 in cash for a total of \$1,000,000.00, but first she had to sign the BENEFICIARY
13 DEMAND. Plaintiff signed the BENEFICIARY DEMAND. The first \$500,000.00 was paid by
14 the title company in five (5) \$100,000.00 checks. A receipt was given for the \$500,000.00 paid
15 through escrow and JIM LANKFORD wrote "paid in full" on the receipt. Plaintiff's copy of the
16 receipt disappeared from her safe. When Plaintiff received the five (5) \$100,000.00 checks,
17 Plaintiff demanded the remaining \$500,000.00. Defendant said he would pay the other
18 \$500,000.00 at the bank. Thereafter Plaintiff and Defendant went to Plaintiff's bank to deposit
19 the five (5) \$100,000.00 checks. Defendant LANKFORD unduly influenced Plaintiff into
20 naming Defendant as a joint tenant on Plaintiff's account in which the \$500,000.00 was
21 deposited. Defendant LANKFORD did not pay Plaintiff the remaining \$500,000.00 as he said
22 he would. Plaintiff signed various documents that Defendant had prepared. Plaintiff did not
23 realize and was not told that she no longer had a deed of trust for the balance of her money that
24 was owed by LANKFORD on the Crows Landing property. Defendant owed interest and
25 penalty payments, plus the entire balance of \$1,060,000.00 on the 1998 note and deed of trust.

1 At the time the BENEFICIARY DEMAND was signed by Plaintiff, the amount owed by
2 Defendant to Plaintiff is believed to be in excess of \$1,500,000.00 with interest and penalties.
3 Defendant fraudulently obtained the Crows Landing property from Plaintiff for only
4 \$500,000.00. Defendant had Plaintiff sign a Substitution of Trustee and Full Reconveyance of
5 her note and deed of trust on the Crows Landing property October 5, 2001, before she received
6 the \$500,000.00. (See Exhibit E, Substitution of Trustee and Full Reconveyance, dated October
7 5, 2001, attached hereto and incorporated by this reference.) On or about October 11, 2001,
8 Defendant LANKFORD, using the Crows Landing property as collateral, executed a note and
9 deed of trust in favor of DANBE CORPORATION to secure a loan of \$975,000.00. Again,
10 Defendant had to remove Plaintiff's deed of trust in the amount of \$1,060,000.00 in order to
11 obtain the loan from DANBE CORPORATION. DANBE CORPORATION would only loan
12 \$975,000.00 with a first deed of trust. Therefore, both transactions were done together so as to
13 remove Plaintiff's deed of trust prior to obtaining the loan with a new first deed of trust in favor
14 of the DANBE CORPORATION. (See Exhibit F Deed of Trust with Hazardous Substance
15 Rider and Absolute Assignment of Rents Rider, filed October 15, 2001, JIM LANKFORD,
16 Trustor and DANBE CORPORATION as Beneficiary, dated October 11, 2001 in the amount of
17 \$975,000.00, attached hereto and incorporated herein by this reference.)

18 Not only did Defendant LANKFORD use his close personal relationship with Plaintiff in
19 handling her business affairs and as her real estate agent defrauded Plaintiff out of the Crows
20 Landing property, he unduly influenced her regarding the following:

21 **321 Crater, Modesto, California**

22 5. Defendant JIM LANKFORD on July 10, 1996, had Plaintiff sign an exclusive
23 authorization and right to sell Plaintiff's Crater property for \$72,000.00. Defendant JIM
24 LANKFORD uses intentional misrepresentation, as evidenced by his worksheet, informing
25 Plaintiff she will receive \$100,499 to induce her into selling the Crater property to him. On

1 November 20, 1997, Defendant JIM LANKFORD purchased the property from Plaintiff for
2 \$80,000 and paid himself a \$4,800 real estate commission fee for selling the property to himself.
3 He pays himself another \$2,700 for some unknown work and paid himself \$52,700.00 from
4 escrow. Defendant JIM LANKFORD signs a \$50,000.00 Note at 8% interest to be paid to
5 Plaintiff. The Note was never paid. On May 14, 2001, Defendant JIM LANKFORD signed a
6 Grant Deed in favor of Jon V. McDade. The amount of money Defendant JIM LANKFORD
7 obtained from Plaintiff's Crater property is approximately \$60,200.00. Defendant JIM
8 LANKFORD never paid Plaintiff the full amount for the Crater property. Plaintiff was unaware
9 of Defendant JIM LANKFORD receiving this money and Defendant JIM LANKFORD did not
10 disclose his financial interest to Plaintiff. Something apparently went wrong with the sale and
11 the property was returned to Plaintiff. (See Exhibit G, attached hereto and incorporated herein as
12 though set forth in full, is the sales agreement, Century 21 Apollo worksheet, residential
13 purchase agreement, \$50,000.00 Note, and a loan document indicating Defendant JIM
14 LANKFORD had paid to himself real estate commission for buying the property himself in the
15 amount of \$4,800.00.) Defendant unduly influenced Plaintiff to sign instructions to the title
16 company to pay \$52,700.00 and \$2,700.00 to Defendant LANKFORD. Plaintiff was unaware
17 of Defendant JIM LANKFORD's fraudulently obtaining money from the Crater property, using
18 it to make money and then returning the Crater property to Plaintiff without his paying for it and
19 fraudulently using it as a payment for the Crows Landing Road property of which Plaintiff was
20 not informed of and did not understand.

21 **206 Olivero Road, Modesto, California**

22 6. As another example of Defendant's undue influence over Plaintiff, Plaintiff owns her
23 own home located at 206 Olivero Road, in Modesto, California. On March 23, 1998, Defendant
24 JIM LANKFORD unduly influenced Plaintiff to put Defendant JIM LANKFORD on the Deed to
25 her home as a Joint Tenant without consideration. Later, on June 27, 2000, after he was

1 contacted by Attorney Robert Wildman, Defendant JIM LANKFORD took himself off the Deed
2 and transferred his interest back to Plaintiff. (See Exhibit H, attached hereon and incorporated
3 herein by this reference as though set forth in full, Grant Deed from Plaintiff to Defendant JIM
4 LANKFORD and Plaintiff, and Grant Deed from Defendant JIM LANKFORD to Plaintiff.)

5 **225 Pecos, Modesto, California**

6 7. Defendant JIM LANKFORD unduly influenced Plaintiff to purchase the Pecos
7 property on his and her behalf using Plaintiff's money. Defendant JIM LANKFORD is on the
8 Title. On October 7, 1998, the property was sold to Charles R. McConnico for \$35,000.00. Mr.
9 Charles R. McConnico made a down payment of \$3,000.00 and signed a Note for \$32,000.00.
10 On July 14, 1999, Mr. Charles R. McConnico deeded the property back to Defendant JIM
11 LANKFORD and Plaintiff. On June 27, 2000, Defendant JIM LANKFORD deeded the property
12 back to Plaintiff. (See Exhibit I, attached hereto and incorporated by this reference, contract of
13 sale, title insurance, evidence of insurance, grant deed, substitution of trustee and FULL
14 RECONVEYANCE, Grant Deed back to Plaintiff, as though set forth in full.) The amount of
15 money that Defendant JIM LANKFORD received, or what illicit profits Defendant JIM
16 LANKFORD received is unknown. Plaintiff did receive \$1,759.51 of the funds. Plaintiff on
17 information and belief and thereon alleges that Defendant JIM LANKFORD received money,
18 using Plaintiff's Crater property, without Plaintiff's consent or knowledge in an amount
19 according to proof.

20 **Insurance Policies**

21 8. On January 20, 1999, Defendant JIM LANKFORD influenced Plaintiff to make him
22 the sole beneficiary on her insurance policies, including her life insurance policy. Defendant
23 JIM LANKFORD filled out a Change of Beneficiary form in his own handwriting and had
24 Plaintiff sign it. On August 30, 2000, Plaintiff removed Defendant JIM LANKFORD as
25

1 beneficiary of her life insurance. (See Exhibit J, Change of Beneficiary form, attached hereon
2 and incorporated by this reference as though set forth in full.)

3 **Conservatorship**

4 9. In furtherance of his undue influence over Plaintiff and to make certain he had control
5 of Plaintiff's assets, on January 7, 1998, Defendant JIM LANKFORD took Plaintiff to his
6 Attorney, Francis Riggieri, and had Plaintiff sign a nomination form naming Defendant JIM
7 LANKFORD as Conservator of her person and estate, at such time as it is deemed to be in
8 Plaintiff's best interest, and it was later revoked on June 29, 2000. (See Exhibit K,
9 NOMINATION OF CONSERVATOR, and REVOCATION OF CONSERVATOR, attached
10 hereon and incorporated by this reference as though set forth in full.)

11 **Petition for Guardianship**

12 10. Further evidence of Defendant LANKFORD's fiduciary relationship and undue
13 influence over Plaintiff is that Defendant JIM LANKFORD had himself named as co-guardian
14 with Plaintiff of Plaintiff's grandson, Brandon Lee Creel (date of birth, May 31, 1994). (See
15 Petition for Guardianship, Order, letters of guardianship, attached hereto as Exhibit L and
16 incorporated herein by this reference as though set forth in full.)

17 **Plaintiff's Will**

18 11. On October 12, 1998, a new will for Plaintiff TRELIS MAE PYLE, was prepared
19 by Defendant JIM LANKFORD or by someone at his direction. Defendant JIM LANKFORD
20 unduly influenced Plaintiff to sign the new will that revokes an earlier will prepared by Attorney
21 Mark Jensen, which provides for Plaintiff's children and grandchildren. The will Defendant JIM
22 LANKFORD had prepared, provides for specific bequests that total only \$95,000 to one
23 daughter and three grandchildren. All other heirs were purposely omitted. The remainder of the
24 estate is left to Defendant JIM LANKFORD. Defendant had his business partner, STELLOS
25 PAPADOPOULOS, named as Executor of Plaintiff's estate. The witnesses to the will were

1 escrow officers who are regularly used by Defendant LANKFORD. In the event Plaintiff died,
2 Defendant JIM LANKFORD would have received the following:

- 3 A. Lankford's Crows Landing Road property Note, past due payments, etc.
- 4 B. Lankford's \$50,000 Note on the 321 Crater property.
- 5 C. Lankford's \$35,000 Note on the 1649 Eureka property.
- 6 D. Plaintiff's residence at 206 Olivero Road.
- 7 E. Plaintiff's property at 225 Pecos.
- 8 F. Plaintiff's substantial cash in savings and checking accounts.

9 Plaintiff had a new will made on November 30, 2000 removing Defendant JIM
10 LANKFORD from Plaintiff's will. (See Exhibit M Last Will and Testament of Trellis M. Pyle
11 dated October 12, 1998, incorporated herein by this reference as though set forth in full.)

12 **Joint Bank Accounts**

13 12. Defendant LANKFORD, using his confidential relationship with Plaintiff, unduly
14 influenced her to name him on all her bank accounts at Union Safe Deposit Bank as a joint
15 tenant. The Account Numbers are as follows: 06 84 56506, 06 10486811, 2 06 2706 (1997,
16 1998, 1999, 2000), and 06 8456 506. (See Exhibit N, copies of the above mentioned bank
17 statements in the name of TRELIS MAE PYLE or JIM LANKFORD from Union Safe Deposit
18 Bank, attached hereto and incorporated herein by this reference as though set forth in full.)

19 13. The various real properties that are the subject of this action as mentioned above
20 consists of office buildings, car lots, land, and residential properties located in Stanislaus County,
21 California. The properties and transactions, including the bank accounts, conservatorship, will,
22 guardianship, insurance policies and other actions by Defendant, hereinabove alleged, were
23 abuses of Defendant's fiduciary relationship with Plaintiff and used to misappropriate her assets.

24 14. Defendant JIM LANKFORD carefully crafted a confidential relationship with
25 Plaintiff since the death of her husband in order to defraud Plaintiff of her properties.

1 15. Defendant JIM LANKFORD carefully developed an ongoing fraud to obtain
2 Plaintiff's assets from when Plaintiff's husband died in December 1996 until the ongoing fraud
3 was discovered on July 1, 2002 or thereafter through the efforts of Plaintiff's attorneys.

4 16. Plaintiff actually discovered the facts constituting the fraud, undue influence,
5 breach of fiduciary relations, negligent representation, rescission and violations of Welfare and
6 Institutions Code § 15600, et seq., on or after July 1, 2002.

7 17. Plaintiff relied upon defendant JIM LANKFORD and his fiduciary relationship
8 with Plaintiff, and did what he said, and signed what he told her to sign, and because of this she
9 reasonably did not investigate what he told her or what he told her to sign.

10 18. That defendant JIM LANKFORD failed to disclose to Plaintiff all materials and
11 information in his possession that would have affected the decisions of Plaintiff herein.

12 19. That from 1995 until the present, because of Plaintiff's mental problems causing
13 memory lapses and confusion, she is and has been substantially unable to manage her own affairs
14 and her financial resources, and as a result is susceptible to undue influence of defendant
15 LANKFORD, although she is not entirely without understanding.

16 20. Plaintiff, TRELIS MAE PYLE, was born December 18, 1920, and is and has
17 been an elder person at all times herein mentioned.

18 21. Because of Plaintiff's mental condition and reliance upon Defendant JIM
19 LANKFORD's statements, she would not know and did not know of Defendant's fraud until she
20 was informed by her counsel after July 1, 2002.

21 22. Defendants CENTURY 21 APOLLO and its owner/agent, JIM LANKFORD
22 were retained by Plaintiff as her real estate agent/broker and both defendants accepted real estate
23 fees from Plaintiff and were her real estate agent/broker at all times mentioned herein.

24 23. Plaintiff TRELIS MAE PYLE is, and at all times, relevant to this complaint
25 is an individual who resides in Stanislaus County, California. Plaintiff was the owner of the

1 properties set forth in this complaint and entitled to possession of the properties at all relevant
2 times mentioned herein.

3 24. Plaintiff is informed and believes and on that basis alleges that at all times
4 relevant to this complaint Defendant JIM LANKFORD is and was a real estate broker, licensed
5 to do business in the State of California. Defendant CENTURY 21 APOLLO is and was at all
6 time relevant to this complaint was a real estate office, licensed to do business in the State of
7 California. Defendant JIM LANKFORD is associated, owns, and/or is employed by Defendant
8 CENTURY 21 APOLLO. Defendant LANKFORD did the acts alleged hereinabove individually
9 and/or under the auspices of Defendant CENTURY 21 APOLLO as regards to the real property.

10
11 25. Plaintiff does not know the true names or capacities of Defendants sued in this
12 complaint as Does 1 through 50, inclusive, and who are sued by such fictitious names. Plaintiff
13 will amend this complaint to allege said names and capacities when the information has been
14 ascertained. Plaintiff is informed and believes and on that basis alleges that each of the
15 fictitiously named Defendants is legally responsible in some manner for the acts or omissions
16 alleged and the injuries and damages claimed in this complaint, or in some manner claims an
17 ownership, security, or other interest in the Property.

18 26. Plaintiff is informed and believes and on that basis alleges that at all times
19 relevant to this complaint, unless otherwise stated, each Defendant, including those fictitiously
20 named, was the agent, servant, employee, partner, joint venturer, and/or co-conspirator of each
21 remaining Defendant. Each Defendant was acting within the course and scope of such agency,
22 employment, partnership, joint venturer, and/or conspiracy with the permission and consent or
23 ratification of each remaining Defendant, in doing the things alleged in this complaint.

1 FIRST CAUSE OF ACTION

2 (The Crows Landing Road Property)

3 **DAMAGES FOR BREACH OF CONTRACT**
4 **BY PLAINTIFF TRELIS MAE PYLE**
5 **AGAINST DEFENDANTS JIM LANKFORD,**
6 **CENTURY 21 APOLLO AND DOES 1 THROUGH 10**

7 27. Plaintiff realleges and incorporates by reference each and every allegation of
8 Paragraphs 1 through 26 of the General Allegations, inclusive, as if fully set forth in this cause of
9 action.

10 28. Plaintiff has performed all conditions, covenants, and promises required on her part to
11 be performed in accordance with the agreement for the sale of the Property, except those terms
12 for which performance was excused and/or waived by the conduct of Defendants.

13 29. As a result of Defendants' breach of the agreement as stated above, Plaintiff has been
14 damaged in an amount according to proof at trial. Plaintiff has also been required to engage the
15 assistance of an attorney to represent her in the lawsuit, and has and will spend money for
16 attorney fees in that action in an amount according to proof.

17 30. The agreement provides for reasonable attorney fees to the prevailing party in the
18 event of litigation. As a result of Defendants' breach of contract, Plaintiff has and will continue
19 to incur attorney fees in the above-entitled action, the amount of which shall be established on a
20 motion after trial.

21 WHEREFORE, Plaintiff prays judgment as set forth below.
22
23
24
25

1 SECOND CAUSE OF ACTION

2 (Crows Landing Road Property)

3 **DAMAGES FOR FRAUDULENT MISREPRESENTATION**
4 **BY PLAINTIFF TRELIS MAE PYLE**
5 **AGAINST DEFENDANTS JIM LANKFORD,**
6 **CENTURY 21 APOLLO, AND DOES 1 THROUGH 10**

7 31. Plaintiff realleges and incorporates by reference each and every allegation of
8 Paragraphs 1 through 30, inclusive, as if fully set forth in this cause of action.

9 32. In connection with the agreement to purchase the Crows Landing Road property, and
10 in addition to the misrepresentations set forth above, Defendants JIM LANKFORD and
11 Defendant CENTURY 21 APOLLO orally represented to Plaintiff that Plaintiff's best interests
12 would be served to have Defendants JIM LANKFORD and CENTURY 21 APOLLO take care
13 of her and her business dealings.

14 33. The true facts were as stated in the general allegations hereinabove and no Defendant
15 or any of its agents disclosed the true facts to Plaintiff at any time that Plaintiff was being
16 defrauded out of her Crows Landing Road property and money.

17 34. Said Defendants, and each of them, had knowledge of the true facts. The failure to
18 disclose the true facts as well as the intentional representations described above and described in
19 the general allegations by said Defendants were done with the intent to induce Plaintiff to enter
20 into the 1990, 1998 and 2001 agreements for Defendants to purchase the property, and to take
21 other acts described herein above, ultimately to own the property, paying to Plaintiff
22 substantially less than the purchase price.

23 35. Plaintiff, at the time of Defendants' misrepresentations and failure to disclose the true
24 facts, and at the time Defendants took the actions alleged herein, Plaintiff was ignorant of the
25 existence of the facts that said Defendants, and each of them, suppressed and failed to disclose.

1 Had Plaintiff known the true facts, she would not have entered into the 1990 agreement as
2 amended in 1998 and amended again through the BENEFICIARY DEMAND of October 2001;
3 and would not have entered into the security agreements under which the real property was held
4 as security by her; Plaintiff would not have accepted payments on the 1990 and amended 1998
5 note and deed of trust below the contract price; and the property would not have been taken from
6 Plaintiff for only \$500,000.00. Plaintiff's reliance was justified in that Plaintiff was misled by
7 false misrepresentations and undue influence of Defendant and even after reasonable inquiry, she
8 did not have knowledge of those facts that were suppressed because Defendants JIM
9 LANKFORD and CENTURY 21 APOLLO lulled her into believing everything was all right and
10 in her best interest. Furthermore, Plaintiff trusted and relied on the superior knowledge of
11 Defendants JIM LANKFORD and CENTURY 21 APOLLO, its agents, and Does 1 through 10,
12 who were more familiar with real estate than Plaintiff and were in a superior position to advise
13 Plaintiff regarding the contracts for sale that would affect its sale. Due to their fiduciary
14 relationship with Plaintiff and their superior position, Plaintiff relied upon Defendant JIM
15 LANKFORD's fraudulent representations.
16

17 36. As a proximate result of the misrepresentations and the failure to disclose the true
18 facts, Plaintiff has been damaged in that she never received what was owed on the 1990 contract
19 and the second note and deed of trust made in April 1998. The exact amount by which Plaintiff
20 has been damaged is unknown at this time but it is at least the amount mentioned herein. Plaintiff
21 has also suffered consequential damages in the form of closing costs, escrow fees, loan
22 origination fees, title insurance, realtor fees, rents, and other expenses, for selling the Crows
23 Landing Road property to Defendant JIM LANKFORD and the other Defendants, among other
24 damages, according to proof at trial.
25

1 property, and the Promissory Notes executed by Defendants and Plaintiff with the agreements
2 and the Deeds of Trust as stated above.

3 50. Plaintiff hereby offers to restore to said Defendants, and each of them, all
4 consideration that has passed to Plaintiff on the condition that said Defendants restore to Plaintiff
5 all that she has given to said Defendants, and each of them, including rents and incidental or
6 consequential damages. The grounds for rescission are the claims for fraud, fraudulent
7 concealment, negligent misrepresentation and fraudulent misrepresentation asserted in this
8 complaint by Plaintiff against said Defendants, and each of them, and, in addition, or, in the
9 alternative, material breach of contract, failure of consideration and/or mistake of fact.
10

11 51. Accordingly, Plaintiff is entitled to rescission based on fraud, negligent and
12 fraudulent misrepresentation, mistake of fact, material breach of contract and/or failure of
13 consideration, or any or all of them, each of which provides a separate and independent basis for
14 full rescission under law and/or equity.

15 WHEREFORE, Plaintiff prays judgment as follows.

16 SIXTH CAUSE OF ACTION
17 (The Crater Property)

18 **DAMAGES FOR BREACH OF CONTRACT**
19 **BY PLAINTIFF TRELIS MAE PYLE**
20 **AGAINST DEFENDANT JIM LANKFORD AND**
21 **CENTURY 21 APOLLO, AND DOES 11 THROUGH 20**

22 52. Plaintiff realleges and incorporates each and every allegation of paragraphs 1 through
23 51, inclusive, as though set forth in full in this cause of action.

24 53. Plaintiff has performed all conditions, covenants and promises required on her part to
25 be performed in accordance with the agreement for sale of the Crater property, except those
terms for which performance was excused or waived by defendants.

1 54. As a result of Defendant JIM LANKFORD's breach of the agreement by his actions
2 as alleged above, Plaintiff has been damaged in an amount according to proof at trial. Plaintiff
3 has also been required to engage the assistance of an attorney to represent her in this action and
4 has and will pay attorneys fees in this action in an amount according to proof.

5 55. The agreement provides for reasonable attorneys fees to the prevailing party in the
6 event of litigation.

7 WHEREFORE, Plaintiff prays judgment as follows.

8
9 SEVENTH CAUSE OF ACTION

10 (The Crater Property)

11 **DAMAGES FOR FRAUDULENT MISREPRESENTATION**
12 **BY PLAINTIFF TRELIS MAE PYLE**
13 **AGAINST DEFENDANTS JIM LANKFORD,**
14 **CENTURY 21 APOLLO, AND DOES 11 THROUGH 20**

15 56. Plaintiff realleges and incorporates by reference each and every allegation of
16 paragraphs 1 through 55, inclusive, as if fully set forth in this cause of action.

17 57. In connection with the agreement to purchase the property and in addition to the
18 misrepresentations as set forth above, Defendant JIM LANKFORD, Defendant CENTURY 21
19 APOLLO, and Does 11 through 20, orally misrepresented to Plaintiff that it would be in
20 Plaintiff's best interest to have Defendant JIM LANKFORD take care of her in her business
21 dealings and her best interests would be served to sell the Crater property to Defendant JIM
22 LANKFORD.

23 58. The true facts as alleged above regarding the Crater property were unknown to
24 Plaintiff and she was unaware Defendant JIM LANKFORD received the large sums of money as
25 alleged above.

1 59. Said Defendants, and each of them, had knowledge of the true facts. That Plaintiff
2 was not going to earn money from her property and that only Defendant JIM LANKFORD
3 would earn money from Plaintiff's property. Their failure to disclose the true facts, as well as
4 the intentional misrepresentations described above and in the general allegations by said
5 Defendants, was intended to induce Plaintiff to enter into the agreement to sell the Crater
6 property to Defendant JIM LANKFORD. Defendant CENTURY 21 APOLLO aided Defendant
7 JIM LANKFORD's acts described above to complete the transaction and was aware of
8 Defendant JIM LANKFORD's taking substantial profits which were unknown to Plaintiff.
9

10 60. Plaintiff, at the time of Defendants' misrepresentations and failure to disclose the
11 true facts, and at the time Plaintiff took the actions alleged herein, was ignorant of the existence
12 of those facts that said Defendants, and each of them, suppressed and failed to disclose. Had
13 Plaintiff known the true facts, she would not have entered into the agreement to sell the Crater
14 property. Plaintiff's reliance was justified in that Plaintiff was misled by false representations
15 and misrepresentations and misled by Defendant LANKFORD's undue influence, and even
16 after reasonable inquiry did not have knowledge of those facts that were suppressed.
17 Furthermore, Plaintiff trusted and relied on the superior knowledge of Defendant JIM
18 LANKFORD and Defendants CENTURY 21 APOLLO, and Does 11 through 20, who were
19 more familiar with real estate than Plaintiff and were in a superior position due to their fiduciary
20 relationship with Plaintiff to advise Plaintiff regarding the contracts for sale that would affect its
21 sale.
22

23 61. As a proximate result of the misrepresentations and the failure to disclose the true
24 facts, Plaintiff has been damaged in that she never received what was owed on the sales contract,
25 and her property was used to earn Defendant LANKFORD large sums of money. The exact

1 amount by which Plaintiff has been damaged is unknown at this time and will be according to
2 proof at trial. Plaintiff has also suffered consequential damages in the form of closing costs,
3 escrow fees, loan origination fees, title insurance realtor fees, and other expenses, among other
4 damages, according to proof at trial.

5 62. In doing the things alleged in this complaint, said Defendants, and each of them,
6 acted with oppression, fraud, and malice, and said acts were approved and/or ratified by each of
7 the remaining Defendants. Plaintiff is therefore entitled to punitive damages in a sum according
8 to proof.

9 WHEREFORE, Plaintiff prays judgment as set forth below.

10
11 EIGHTH CAUSE OF ACTION

12 (The Crater Property)

13 **DAMAGES FOR FRAUDULENT CONCEALMENT**
14 **BY PLAINTIFF TRELIS MAE PYLE**
15 **AGAINST DEFENDANTS JIM LANKFORD,**
16 **CENTURY 21 APOLLO, AND DOES 11 THROUGH 20**

17 63. Plaintiff realleges and incorporates by reference each and every allegation of
18 Paragraphs 1 through 62, inclusive, as if fully set forth in this cause of action.

19 64. At the time Plaintiff entered into the agreement to purchase the Crater property,
20 Defendants JIM LANKFORD, CENTURY 21 APOLLO, and Does 11 through 20, and each of
21 them, had an obligation to disclose to Plaintiff terms and conditions of the escrow instructions,
22 and disbursements of funds to Defendant JIM LANKFORD, as well as facts alleged above, that
23 would materially affect Plaintiff's decisions.

24 65. Said Defendants, and each of them, had knowledge of the true facts as set forth
25 above and deliberately concealed and failed to disclose said facts.

1 66. As a proximate result of said intentional concealment, Plaintiff has been damaged as
2 alleged hereinabove, which are hereby incorporated by reference and for purposes of this eighth
3 cause of action shall refer to acts that constitute fraudulent concealment.

4 WHEREFORE, Plaintiff prays judgment as set forth below.

5 NINTH CAUSE OF ACTION

6 (Welfare and Institutions Code §15600, et seq. Violation)

7 **VIOLATION OF WELFARE AND INSTITUTIONS**
8 **CODE SECTIONS 15600, ET SEQ.**

9 BY PLAINTIFF TRELIS MAE PYLE AGAINST
10 DEFENDANTS JIM LANKFORD, AND CENTURY 21
11 APOLLO, AND DOES 1 THROUGH 20

12 67. Plaintiff realleges and incorporated by reference each and every allegation of
13 paragraphs through 66, inclusive, as though set forth in full in this cause of action.

14 68. Plaintiff is now 83 years of age and was age 65 or older at all times relevant to
15 this action.

16 69. Defendant LANKFORD individually and doing business as Century 21 Apollo
17 had a confidential and fiduciary relationship with Plaintiff and that Defendant LANKFORD was
18 the agent for himself and CENTURY 21 APOLLO and also the agent for Plaintiff in his actions
19 with the various properties alleged above and he charged and received fees for said services.

20 70. Defendant LANKFORD, individually and doing business as CENTURY 21
21 APOLLO as hereinabove alleged fraudulently used his fiduciary position to misappropriate
22 Plaintiff's property.

23 71. JIM LANKFORD also established a close personal relationship with Plaintiff,
24 handling her affairs, advising her and having himself named on all of her assets. Defendant's
25

1 action was to such an extent as to constitute a fiduciary relationship between Plaintiff and
2 Defendant.

3 72. Defendants, and each of them, knew or should have known that Plaintiff had the
4 right to full payment for her properties including, but not limited to, the Crows Landing and
5 Crater properties, and that based upon information supplied and/or available to defendants, it was
6 obvious to a reasonable person that Plaintiff had this right and was having her properties
7 misappropriated by Defendant JIM LANKFORD, individually and doing business as CENTURY
8 21 APOLLO.

9 73. Defendants' conduct constituted financial abuse under Welfare and Institutions
10 Code §15657 as defined in Welfare and Institutions Code §15610.30.

11 74. Defendants were guilty of recklessness, oppression, fraud and malice in the
12 commission of the abuse described above.

13 75. Under Welfare and Institutions Code §15657(a), defendants are liable to Plaintiff
14 for reasonable attorney fees and costs.

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

16 WHEREFORE, Plaintiff prays judgment as follows.

17 PRAYER

18 A. For compensatory damages according to proof;

19 B. For general damages in tort according to proof;

20 C. For special damages according to proof;

21 D. Alternatively, on the Fifth cause of action for a judicial declaration that the
22 Agreements as set forth in Paragraphs 2, and 4 alleged above between Plaintiff and Defendants
23 JIM LANKFORD, individually, and Defendant JIM LANKFORD doing business as CENTURY
24
25

1 21 APOLLO are rescinded, and ordering restitution, incidental damages, and other appropriate
2 awards consistent with the remedy of rescission in an amount according to proof;

3 E. For punitive damages according to proof;

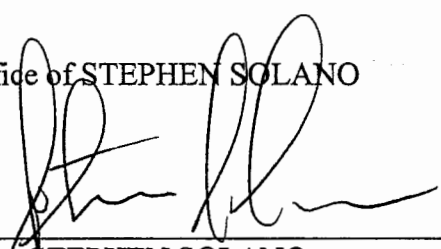
4 F. For reasonable attorney fees and costs incurred in this action, according to proof;

5 G. For costs of suit incurred herein; and

6 H. For such other and further relief as the Court deems just and proper.
7

8 Dated: September 8, 2004

9 Law Office of STEPHEN SOLANO

10
11 By 
12 STEPHEN SOLANO

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