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10 Attorneys for Plaintiff

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13 LAW OFFICES OF PHILIP R.
14 SHELDON, APC, a California
15 professional corporation, PHILIP R.
16 SHELDON, an individual, LAW
17 OFFICES OF ROBERT P. FINN, a
18 California sole proprietorship, and
19 ROBERT P. FINN, an individual,

20 Plaintiffs,

21 v.

22 THOMAS V. GIRARDI, an individual;
23 GIRARDI & KEESE, a California law
24 firm; ERIKA GIRARDI a/k/a ERIKA
25 JAYNE, an individual, EJ GLOBAL,
26 LLC, a California limited liability
27 company, 1126 WILSHIRE
28 PARTNERSHIP, a California general
partnership, GIRARDI FINANCIAL,
INC., a Nevada corporation, DAVID
LIRA, an individual, ROBERT
FINNERTY, an individual, and DOES
1-100, inclusive,

Defendants.

Case No. 20STCV47160

[Hon. Richard L. Fruin, Dept. 15]

FIRST AMENDED COMPLAINT FOR:

- 1. **BREACH OF CONTRACT;**
 - 2. **BREACH OF FIDUCIARY DUTY;**
 - 3. **FRAUD;**
 - 4. **MONEY HAD AND RECEIVED;**
 - 5. **ACCOUNTING;**
 - 6. **FRAUDULENT TRANSFER;**
 - 7. **CONVERSION;**
 - 8. **FINANCIAL ELDER ABUSE;**
- DEMAND FOR JURY TRIAL.**

1 COME NOW PLAINTIFFS LAW OFFICES OF PHILIP R. SHELDON, APC, and
2 LAW OFFICES OF ROBERT P. FINN, and for their First Amended Complaint (“FAC”),
3 complain, aver, and allege as follows:

4 **INTRODUCTION**

5 1. Attorneys Philip Sheldon and Robert Finn referred thousands of cases to Tom
6 Girardi and his law firm Girardi & Keese (“GK”) pursuant to an agreement to share in the
7 attorneys’ fees paid when the cases settled. Plaintiffs are both seniors who devoted the
8 twilight years of their careers to working on these cases with the promise and expectation that
9 they would have the resources necessary to retire once Girardi paid them for the services they
10 performed. However, when the cases ultimately settled, Girardi concealed from Plaintiffs his
11 receipt of the settlement funds, lulled Plaintiffs into believing they would soon be paid, and
12 then refused to pay them. Instead of paying Plaintiffs, Girardi embezzled and redirected the
13 funds to family members, friends, partners, lenders, and creditors, and used the money to fund
14 outrageously lavish lifestyles for himself and his wife Erika Jayne, who is better known as one
15 of *The Real Housewives of Beverly Hills*. To avoid paying Plaintiffs the amounts owed,
16 Girardi and his firm “loaned” millions of dollars to Girardi’s wife, and then filed a sham
17 “divorce” to fraudulently keep the money from Plaintiffs and other vulnerable victims.

18 2. The other defendants in this case, who are some of those individuals and
19 entities who received money, have not simply been passively receiving funds that could
20 plausibly be construed as valid repayments for loans or other obligations. Rather, with
21 Girardi’s and GK’s financial woes and years of fraudulent tactics in full view, these
22 individuals and entities knowingly conspired with Girardi and GK to redirect to themselves
23 monies received into the bank accounts of GK and embezzled by Girardi that they knew or
24 should have known belonged to Plaintiffs and other victims of Girardi’s fraud schemes.

25 3. With this action, Plaintiffs seek to recover the funds they are owed that were
26 embezzled and misappropriated by Defendants and seek to punish the Girardi defendants and
27 their co-conspirators for their fraudulent conduct and contemptible elder abuse of Plaintiffs.
28

THE PARTIES

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2 4. Plaintiff Law Offices Philip R. Sheldon, APC (the “Sheldon Firm”) is, and at
3 all times relevant to this action was, a law firm and a California professional corporation with
4 its principal place of business in the County of Los Angeles.

5 5. Plaintiff Philip R. Sheldon is, and at all times relevant to this action was, a
6 resident of the State of California. Sheldon is a solo practitioner and the sole owner of the
7 Sheldon Firm. (The Sheldon Firm and Mr. Sheldon are collectively referred to as the
8 “Sheldon Plaintiffs.”)

9 6. Plaintiff Law Offices of Robert P. Finn (the “Finn Firm”) is, and at all times
10 relevant to this action was, a law firm and a California sole proprietorship with its principal
11 place of business in the County of Los Angeles.

12 7. Plaintiff Robert P. Finn is, and at all times relevant to this action was, a resident
13 of the State of California. Finn is a solo practitioner and the sole owner of the Finn Firm.
14 (The Finn Firm and Mr. Finn are collectively referred to as the “Finn Plaintiffs” and the
15 Sheldon Plaintiffs and the Finn Plaintiffs are collectively referred to herein as “Plaintiffs”).

16 8. Defendant Thomas V. Girardi (“Girardi”) is, and at all times relevant to this
17 action was, a resident of the State of California. Girardi is, and at all times relevant to this
18 action was, an attorney licensed to practice law in the State of California and is a principal and
19 owner of Defendant Girardi & Keese.

20 9. Defendant Girardi & Keese (“GK”) is, and at all times relevant to this action
21 was, a California law firm and general partnership with its principal place of business in the
22 County of Los Angeles. (Defendants Girardi and GK are collectively referred to as the
23 “Girardi Defendants”).

24 10. Defendant Erika Girardi, also known as Erika Jayne (“Defendant Jayne”), is,
25 and at all times relevant to this action was, a resident of the State of California. Jayne is the
26 wife of Defendant Girardi. On information and belief, Jayne has a legal and financial interest
27 in a community property interest in GK and the actions of her husband, taken for the benefit of
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1 their marital community property. Jayne is also a principal owner of Defendants EJ Global,
2 LLC and Girardi Financial, Inc.

3 11. Defendant EJ Global, LLC is, and at all times relevant to this action was, a
4 California limited liability company, with its principal place of business located at 1126
5 Wilshire Boulevard, Los Angeles, California 90017.

6 12. Defendant 1126 Wilshire Partnership is, and at all times relevant to this action
7 was, a California general partnership, with its principal place of business located at 1126
8 Wilshire Boulevard, Los Angeles, California 90017. Defendant 1126 Wilshire Partnership is
9 the owner of the real property commonly known as 1126 Wilshire Boulevard, Los Angeles,
10 California 90017, Assessor's Parcel Number 5143-022-012, with the legal description of:

11 LOTS 48 AND 49 OF THE SUBDIVISION OF THAT PART OF LOT 1 IN
12 BLOCK 37 OF HANCOCK'S SURVEY, LYING SOUTH OF ORANGE
13 STREET AND WESTERLY FROM WILLIAM STREET, IN THE CITY OF
14 LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,
15 AS PER MAP RECORDED IN BOOK 9 PAGE 95 OF MISCELLANEOUS
16 RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID
17 COUNTY. EXCEPT THEREFROM ALL OIL, GAS, MINERALS AND
18 OTHER HYDROCARBONS, BELOW A DEPTH OF 500 FEET, WITHOUT
19 THE RIGHT OF SURFACE ENTRY, AS RESERVED IN INSTRUMENTS
20 OF RECORDS.

21 (the "1126 Wilshire Property").

22 13. Defendant Girardi Financial, Inc. ("Girardi Financial") is, and at all times
23 relevant to this action was, a Nevada corporation, with its principal place of business located at
24 1126 Wilshire Boulevard, Los Angeles, California 90017. The President of Girardi Financial
25 is Defendant Girardi, the Secretary is Defendant Jayne, and the Treasurer and Director is
26 Defendant Lira.

27 14. Defendant David Lira is, and at all times relevant to this action was, a
28 California resident. Lira was a partner at GK until in or about May 2020. Lira is also
29 Defendant Girardi's son-in-law.

30 15. Defendant Robert Finnerty is, and at all times relevant to this action was, a
31 California resident. Finnerty was a partner at GK until in or about May 2020.

GENERAL ALLEGATIONS

The Girardi Defendants Scheme to Defraud Plaintiffs

20. In or about 2008 and 2009, Plaintiffs entered into written retainer agreements with a substantial number of individuals who each retained Plaintiffs to represent them in connection with claims arising from their or their loved one’s personal injuries sustained from exposure to toxic chemicals emanating from several cement manufacturing facilities in California; one facility in Riverside, California operated by Riverside Cement Holdings Company, Texas Industries, Inc., TXI Riverside, Inc., TXI Cement Company, and TXI California, Inc., and another facility operated in Colton, California by California Portland Cement Company and CalPortland Company (collectively, the “TXI Cases”). Plaintiffs referred all of the clients to the Girardi Defendants, and Plaintiffs and the Girardi Defendants then jointly represented the clients in the TXI Cases and agreed to share the fees recovered. Pursuant to their agreements with the Girardi Defendants, Plaintiffs were also entitled to be reimbursed for all costs incurred by Plaintiffs in connection with the prosecution of the TXI Cases. In addition to initially retaining the clients, Plaintiffs also performed significant work and provided services in connection with the prosecution of the TXI Cases

21. The TXI Cases were ultimately resolved with a cash settlement, and the Girardi Defendants received fees, a portion of which should have been held in trust for Plaintiffs in addition to the amount owed Plaintiffs for costs. Rather than honoring their obligation under the contract to pay Plaintiffs the fees plus costs due, the Girardi Defendants kept that money for themselves, and on information and belief, funds that belong to Plaintiffs were paid to each of the Defendants named in this FAC.

22. Since settling the TXI Cases, the Girardi Defendants have not paid Plaintiffs any of the fees owed pursuant to the fee sharing agreements and have not reimbursed Plaintiffs for their costs. The Girardi Defendants executed a scheme to keep Plaintiffs unaware that they had received fees from the TXI Cases and prevented Plaintiffs from learning that the money for fees and costs had been received by the Girardi Defendants. When Plaintiffs inquired, the Girardi Defendants responded that the fees owed to Plaintiffs would not be received,

1 calculated or disbursed until liens claimed by the litigation administrator, KCC, were first
2 resolved. The Girardi Defendants then promised to make preliminary disbursements to
3 Plaintiffs, but after fabricating one reason or another to postpone the disbursements,
4 Defendants failed to fulfill those promises and have made no disbursements to Plaintiffs of any
5 kind and have provided no accounting of the amounts owed. Plaintiffs are informed and
6 believe that the Girardi Defendants took the attorneys' fees from the settlement amount,
7 retained for themselves the fees and costs owed to Plaintiffs, and distributed portions of the
8 amounts owed to the other Defendants and/or paid debts and obligations of the other
9 Defendants with the funds. Plaintiffs are also informed and believe that the Girardi
10 Defendants misallocated and misappropriated funds by unlawfully claiming entitlement to
11 reimbursement for purported costs that are either overstated, misstated, unlawful to claim as
12 costs and/or that were used for the personal expenditures of Defendants, and the Girardi
13 Defendants have refused to provide an accounting.

14 **The Girardi Defendants' Lulling Efforts with Respect to the Sheldon Plaintiffs**

15 23. In a September 19, 2018 letter to Mr. Sheldon, the Girardi Defendants affirmed
16 the fee sharing agreement, and assured Mr. Sheldon that payment would soon be made. In the
17 letter, which contained the subject line "TXI Referrals," Defendant Girardi wrote to Mr.
18 Sheldon: "My dear pal . . . I know you do not believe this but we are getting close." The
19 Girardi Defendants did not make any payment to the Sheldon Plaintiffs and, on December 20,
20 2018, Defendant Girardi again wrote another letter to Mr. Sheldon with the subject line "TXI
21 Referrals," stating: "My dear pal: I know you will never believe this, but we are getting much
22 closer. I hope to have a little something for you." Again, despite these assurances, the Girardi
23 Defendants did not make any payment to the Sheldon Plaintiffs.

24 24. On February 7, 2019, Defendant Girardi wrote another letter to Mr. Sheldon in
25 which he falsely claimed that payment to the Sheldon Plaintiffs was delayed because "[t]hese
26 idiots from KCC are making outrageous claim[s] of million of dollars." Defendant Girardi
27 claimed that he was "meeting with the Special Master to blow them out of the water." Three
28 weeks later, Defendant Girardi sent Mr. Sheldon another letter with the subject line "TXI

1 Referrals” in which he again falsely claimed that the payment owed to the Sheldon Plaintiffs
2 was delayed because of claims being made by the litigation administrator, KCC. Defendant
3 Girardi wrote: “We are in an unbelievable fight with KCC. They are claiming \$5 million. It is
4 total B.S., but we are attempting to set a hearing in front of the Special Master.” The Girardi
5 Defendants’ false claims were designed to lull the Sheldon Plaintiffs into believing payment
6 would be made once the issues involving KCC were resolved by the Special Master, but on
7 information and belief, Defendants were already in possession of the settlement funds and
8 were wrongfully withholding and misappropriating the funds, disbursing the funds to the other
9 Defendants and converting the funds.

10 25. On July 20, 2020, Defendant Girardi wrote a letter to Mr. Sheldon with the
11 subject line “Attorney Fees – TXI Riverside Cement Litigation” in which he again falsely
12 claimed that payment was not being made because of KCC’s unresolved claims. Defendant
13 Girardi stated: “I think I will have some very good news in about 30 days. Right now as you
14 know, everything is tied up by the fraudulent claims of KCC.”

15 26. On October 8, 2020, Defendant Girardi spoke to Mr. Sheldon by telephone and
16 promised: “I am going to send you a partial distribution tomorrow,” meaning October 9, 2020.
17 Defendant Girardi also promised that he would provide Mr. Sheldon with a breakdown and
18 timeline regarding the TXI Cases’ final distribution. In reliance on Defendant Girardi’s
19 promises, Mr. Sheldon expended funds of his own that he otherwise would have delayed
20 expending. On October 15, 2020, Mr. Sheldon received a letter from Defendant Girardi, dated
21 October 13, 2020, but the letter did not contain any payment. Rather, the letter, which bore the
22 subject line “Attorney Fees Due for TXI Lawsuit” stated “We still have 150 issues on TXI. I
23 promise you I’ll be fair to you as soon as we can distribute.”

24 27. On October 21, 2020, Defendant Girardi sent another letter to Mr. Sheldon with
25 the subject line “Attorney Fees Due for TXI Lawsuit” in which Defendant Girardi falsely
26 stated: “We are down to 60 loopholes before we can distribute. I am attempting to get
27 authority for at least a partial distribution before the end of the month. I am also going to
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1 make a loan to you out of my own pocket to hopefully tide you over.” The Girardi Defendants
2 did not make the promised distribution, and Girardi did not make the promised loan.

3 **The Girardi Defendants’ Lulling Efforts with Respect to the Finn Plaintiffs**

4 28. Defendant Lira expressly informed Mr. Finn that the amount of fees the Girardi
5 Defendants owed Mr. Finn for the TXI Cases was \$3.94 million. However, after being
6 advised of this, the Girardi Defendants failed to make any payment to the Finn Plaintiffs.

7 29. In a March 18, 2020 letter to Mr. Finn, the Girardi Defendants affirmed the fee
8 sharing agreement and the Girardi Defendants promised to pay the Finn Plaintiffs the amounts
9 owed. Defendant Girardi claimed that he had only recently “found out the large number of
10 cases that you had sent, and the large amount of money you are entitled to.” Defendant
11 Girardi promised to soon “begin a partial settlement resolution,” however, he did not make any
12 payment to the Finn Plaintiffs.

13 30. On April 17, 2020, Defendant Girardi again affirmed by letter to Mr. Finn the
14 fee sharing agreement with the Finn Plaintiffs and promised to “get back” to Mr. Finn on April
15 22, with a report about “three meetings” he was scheduled to have with the settlement judge
16 for the TXI Cases. Defendant Girardi represented that the attorneys’ fees had not yet been
17 disbursed and Defendant Girardi further promised to make an “advance” payment to Plaintiff
18 “out of [Defendant Girardi’s] own pocket.” Defendant Girardi then did not “get back” to
19 Plaintiff on April 22 or make the promised payment.

20 31. On May 14, 2020, Defendant Girardi sent Mr. Finn another letter in which he
21 again affirmed the fee sharing agreement and claimed, “I am trying desperately to get you
22 decent legal fee.” [sic]. Defendant Girardi further claimed that on May 22, 2020, he was
23 scheduled to have an “important meeting, that I think will solve everything.” Defendant
24 Girardi then sent Mr. Finn a letter on May 27, 2020, in which he indicated that the
25 disbursement of the fees owed would be forthcoming. Defendant Girardi stated, “Dear Mr.
26 Finn: You will end up loving me. With kind regards, Tom.”

27 32. The Girardi Defendants did not make any payment to Plaintiff, and on June 11,
28 2020, Defendant Girardi sent Mr. Finn a letter stating that the “fraud and deceit of KCC” was

1 delaying disbursement of the fees to the Finn Plaintiffs. Defendant Girardi claimed that the
2 Girardi Defendants would be filing a class action lawsuit against KCC, and that disbursement
3 of the fees would now be delayed for years until that lawsuit was resolved. Mr. Finn then
4 again asked Defendant Girardi to provide an accounting of the attorneys' fees owed, but the
5 Girardi Defendants ignored the request and failed to provide an accounting. The Girardi
6 Defendants' false claims were designed to lull the Finn Plaintiffs into believing payment
7 would be made once the issues involving KCC were resolved, but on information and belief,
8 the Girardi Defendants were already in possession of the settlement funds and were wrongfully
9 withholding and misappropriating the funds, disbursing the funds to the other Defendants, and
10 converting the funds.

11 **The Girardi Defendants Fraudulently Transfer Plaintiffs' Funds to Defendants.**

12 33. For years, Defendant Girardi was aided and abetted in his schemes to defraud
13 by GK employees and partners such as Defendants Lira and Finnerty, who were intimately
14 involved in all of the Girardi Defendants' affairs and were well aware that Girardi was
15 effectively operating a Ponzi scheme. When Defendants Lira and Finnerty received funds
16 conveyed by Defendants Girardi and GK, they received those funds with full knowledge that
17 the funds they were receiving belonged to Plaintiffs or other creditors.

18 34. Similarly, Defendants Girardi and GK fraudulently transferred funds to
19 Defendant Jayne and her company Defendant EJ Global, LLC. On information and belief,
20 Defendant Girardi used GK to "loan" more than \$20 million to EJ Global. Defendants Girardi
21 and Jayne then used those stolen funds to support their notoriously lavish lifestyles, which
22 have been chronicled on the reality series *The Real Housewives of Beverly Hills*. On
23 information and belief, Defendants Girardi's and Jayne's divorce is a sham proceeding
24 designed to further their scheme to place assets outside the reach of creditors like Plaintiffs and
25 to convert the funds.

26 35. Plaintiffs are informed and believe that Defendant 1126 Wilshire Partnership
27 and its partners received and misappropriated funds that belong to Plaintiffs, with knowledge
28 that the funds belong to and were owed to Plaintiffs and used those funds for the benefit of the

1 1126 Wilshire Property and the partners, including to pay debts and/or obligations incurred by
2 the partnership with respect to the property. Defendants Girardi and GK fraudulently
3 conveyed the funds to the partnership and its partners to place the funds outside the reach of
4 Plaintiffs and to allow the funds to be converted by the partnership and its partners.

5 36. Similarly, Plaintiffs are informed and believe that Girardi Financial, Inc. and its
6 owners, directors, officers, and shareholders, received and misappropriated funds that belong
7 to Plaintiffs, with knowledge that the funds belong to and were owed to Plaintiffs and used
8 those funds for the benefit of Girardi Financial, Inc. and its owners, directors, officers, and
9 shareholders. Defendants Girardi and GK fraudulently conveyed the funds to Girardi
10 Financial, Inc. and its owners, directors, officers, and shareholders to place the funds outside
11 the reach of Plaintiffs and to allow the funds to be converted by the corporation and its owners,
12 directors, officers, and shareholders.

13 **FIRST CAUSE OF ACTION**

14 **(Breach of Contract – Against the Girardi Defendants and Does 1-20)**

15 37. Plaintiffs re-allege and incorporate herein by this reference each and every
16 allegation set forth in paragraphs 1 through 36 of this FAC as though set forth fully herein.

17 38. Plaintiffs and the Girardi Defendants orally agreed to jointly represent clients in
18 the TXI Cases and share any fee recovery in addition to reimbursement to Plaintiffs of
19 Plaintiffs' costs. The Girardi Defendants then repeatedly reaffirmed the agreement by
20 promising to pay the amounts due to Plaintiffs. The Sheldon Plaintiffs' contract damages are
21 \$900,000, and the Finn Plaintiffs' contract damages are \$3.94 million.

22 39. Plaintiffs performed as required by jointly representing, with the Girardi
23 Defendants, clients in the TXI Cases. Plaintiffs also incurred costs in connection with the
24 prosecution of the TXI Cases.

25 40. The Girardi Defendants have breached the fee sharing agreement and the
26 subsequent promises to pay amounts owed by refusing to pay Plaintiffs the portion of the
27 attorneys' fees and the costs that Plaintiffs are entitled to receive in connection with the TXI
28 Cases.

1 46. In doing these acts, the Girardi Defendants acted with oppression, fraud, or
2 malice as defined by California Civil Code section 3294(c), and Plaintiffs are therefore also
3 entitled to punitive and/or exemplary damages in addition to the damages set forth above.

4 **THIRD CAUSE OF ACTION**

5 **(Fraud – Against the Girardi Defendants and Does 1-20)**

6 47. Plaintiff re-alleges and incorporates herein by this reference each and every
7 allegation set forth in paragraphs 1 through 46 of this FAC as though set forth fully herein.

8 48. The Girardi Defendants knowingly made false representations to Plaintiffs and
9 made promises without any intent to perform the promises when the Girardi Defendants
10 represented and promised to Plaintiffs that they would share any fee recovery with respect to
11 the TXI Cases referred to the Girardi Defendants by Plaintiffs. Then, after the TXI Cases were
12 settled, Defendants made additional promises to make payments to Plaintiffs that the Girardi
13 Defendants had no intention of keeping, as the promises were made for the purpose of lulling
14 Plaintiffs into believing Plaintiffs would be paid and stringing Plaintiffs along to enable the
15 Girardi Defendants to avoid making the payments owed to Plaintiffs and to fraudulently
16 transfer the funds to the other Defendants beyond the reach of Plaintiffs to enable Defendants
17 to convert the funds. On information and belief, the Girardi Defendants also made
18 misrepresentations regarding the effect of the alleged lien claims by third party KCC. The
19 Girardi Defendants misrepresented to Plaintiffs that the attorneys’ fees for the TXI Cases
20 referred to the Girardi Defendants by Plaintiffs had not yet been disbursed to the Girardi
21 Defendants when, in fact, the Girardi Defendants had received the payments from the TXI
22 Cases referred by Plaintiff and had fraudulently transferred the funds to the other Defendants.
23 At the time of making the representations and promises, the Girardi Defendants had no
24 intention of paying Plaintiffs the amounts owed to Plaintiffs by the Girardi Defendants after
25 the Girardi Defendants had received attorney’s fees and costs for the TXI Cases referred to the
26 Girardi Defendants by Plaintiffs.

27 49. It was justifiable for Plaintiffs to rely on the Girardi Defendants’
28 representations that they would share any fee recovery because Defendant Girardi is an

1 attorney and a member of the State Bar, and it was justifiable for Plaintiff to presume that the
2 Girardi Defendants would not breach the legal and ethical duties that they ultimately in fact
3 breached.

4 50. As a direct and proximate result of Defendants' fraud, the Sheldon Plaintiffs
5 have been damaged in the amount of \$900,000, plus interest at the legal rate, and the Finn
6 Plaintiffs have been damaged in the amount of \$3.94 million, plus interest at the legal rate.

7 51. In doing these acts, Defendants acted with oppression, fraud, or malice as
8 defined by California Civil Code section 3294(c), and Plaintiff is therefore also entitled to
9 punitive and/or exemplary damages in addition to the damages set forth above.

10 **FOURTH CAUSE OF ACTION**

11 **(Money Had And Received – Against the Girardi Defendants and Does 1-20)**

12 52. Plaintiffs re-allege and incorporate herein by this reference each and every
13 allegation set forth in paragraphs 1 through 51 of this FAC as though set forth fully herein.

14 53. On information and belief, the Girardi Defendants have received money that
15 was intended to be held by the Girardi Defendants for the benefit of Plaintiffs.

16 54. The money that the Girardi Defendants received was not used for the benefit of
17 Plaintiffs, and the Girardi Defendants have not given the money to Plaintiffs.

18 55. Accordingly, Plaintiffs are entitled to recover the money that was received by
19 Defendants to which the Sheldon Plaintiffs and the Finn Plaintiffs are entitled, which is in the
20 amount of \$900,000, plus interest at the legal rate, and \$3.94 million, plus interest at the legal
21 rate, respectively.

22 **FIFTH CAUSE OF ACTION**

23 **(Accounting – Against All Defendants)**

24 56. Plaintiffs re-allege and incorporate herein by this reference each and every
25 allegation set forth in paragraphs 1 through 55 of this FAC as though set forth fully herein.

26 57. Plaintiffs and the Girardi Defendants orally agreed to jointly represent clients in
27 the TXI Cases and share any fee recovery. A fiduciary relationship existed between Plaintiffs
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1 and the Girardi Defendants that required the Girardi Defendants to act with the utmost good
2 faith for the benefit of Plaintiffs with respect to the parties' fee-sharing agreement.

3 58. The Girardi Defendants recovered fees paid in the TXI Cases pursuant to the
4 settlement agreements in those cases, and a portion of those attorneys' fees are the rightful
5 property of Plaintiff under the fee-sharing agreement between Plaintiffs and the Girardi
6 Defendants. The Girardi Defendants transferred the fees owed to Plaintiffs to each of the
7 remaining Defendants.

8 59. The amount of money due from Defendants is unknown to Plaintiffs and cannot
9 be ascertained without an accounting of the settlement amounts received by the Girardi
10 Defendants and disbursed by the Girardi Defendants to the parties' clients and the remaining
11 Defendants, the costs actually incurred by the Girardi Defendants in connection with the TXI
12 Cases, and the attorneys' fees and costs reimbursements received by the Girardi Defendants in
13 connection with the TXI Cases, therefore making an accounting necessary.

14 **SIXTH CAUSE OF ACTION**

15 **(Fraudulent Transfer – Against All Defendants)**

16 60. Plaintiffs re-allege and incorporate herein by this reference each and every
17 allegation set forth in paragraphs 1 through 59 of this FAC as though set forth fully herein.

18 61. The Sheldon Plaintiffs had a right to payment from the Girardi Defendants in
19 the amount of \$900,000, plus interest at the legal rate, and the Finn Plaintiffs had a right to
20 payment from the Girardi Defendants in the amount of \$3.94 million, plus interest at the legal
21 rate.

22 62. With the intent to hinder, delay, and/or defraud Plaintiffs' receipt of the
23 amounts they are owed, and/or without receiving reasonably equivalent consideration in
24 exchange, the Girardi Defendants transferred the amounts owed to Plaintiffs to Defendants
25 Jayne, EJ Global, LLC and its owners, managers and/or members, 1126 Wilshire Partnership
26 and its partners, Girardi Financial, Inc. and its owners, directors, officers, and/or shareholders,
27 Lira, Finnerty, and each of the Doe Defendants. Each of the transferee Defendants actually
28 knew or should have known that they were receiving funds that belonged to Plaintiffs.

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63. Plaintiffs were harmed by the fraudulent transfers in the amounts stated and Defendants' conduct was a substantial factor in causing Plaintiffs' harm.

SEVENTH CAUSE OF ACTION

(Conversion – Against All Defendants)

64. Plaintiffs re-allege and incorporate herein by this reference each and every allegation set forth in paragraphs 1 through 63 of this FAC as though set forth fully herein.

65. The Sheldon Plaintiffs had a right to possess funds in the amount of \$900,000, plus interest at the legal rate, and the Finn Plaintiffs had a right to possess funds in the amount of \$3.94 million, plus interest at the legal rate.

66. Defendants substantially interfered with Plaintiffs' property by knowingly or intentionally taking possession of Plaintiffs' property, preventing Plaintiffs from having access to the property, spending the funds, and refusing to return the funds after numerous demands by Plaintiffs.

67. On information and belief, Defendant 1126 Wilshire Partnership and its partners converted Plaintiffs' property by using the funds for the 1126 Wilshire Partnership's expenditures including expenditures for the 1126 Wilshire Property.

68. Plaintiffs did not consent to the conversion and Defendants' conduct was a substantial factor in causing Plaintiffs' harm.

EIGHTH CAUSE OF ACTION

(Financial Elder Abuse – Individual Plaintiffs Sheldon and Finn Against Defendants Girardi, GK, Lira, Finnerty and Does 21-40)

69. Plaintiffs re-allege and incorporate herein by this reference each and every allegation set forth in paragraphs 1 through 68 of this FAC as though set forth fully herein.

70. Defendants Girardi, GK, Lira, Finnerty and Does 21-40, and each of them, took, hid, misappropriated, obtained, and/or retained Plaintiffs Sheldon's and Finn's property with the intent to defraud Plaintiffs Sheldon and Finn and/or assisted in taking, hiding, misappropriating, obtaining, and/or retaining Plaintiffs Sheldon's and Finn's property with the

1 intent to defraud Plaintiffs Sheldon and Finn, specifically \$900,000 with respect to Mr.
2 Sheldon and \$3.94 million with respect to Mr. Finn.

3 71. Mr. Sheldon and Mr. Finn were each older than 65 years of age at the time of
4 the conduct, and Defendants Girardi's, GK's, Lira's, Finnerty's and Does 21-40's conduct was
5 a substantial factor in causing Plaintiffs Sheldon's and Finn's harm.

6 72. In doing these acts, Defendants Girardi, GK, Lira, Finnerty and Does 21-40,
7 and each of them, acted with recklessness, oppression, fraud, or malice, as defined by
8 California Civil Code section 3294(c), and Plaintiffs Sheldon and Finn are therefore also
9 entitled to punitive and/or exemplary damages, and damages for pain and suffering as provided
10 in California Welfare and Institutions Code section 15657.5.

11 73. Plaintiffs Sheldon and Finn are also entitled to enhanced remedies, including
12 without limitation their attorneys' fees and costs, as provided in California Welfare and
13 Institutions Code section 15657.5.

14 **PRAYER FOR RELIEF**

15 Wherefore, Plaintiffs pray for judgment against Defendants, and each of them, as
16 follows:

17 **FIRST CAUSE OF ACTION**

18 **(Breach of Contract – Against the Girardi Defendants and Does 1-20)**

- 19 1. For compensatory damages and other special, general and consequential
20 damages in the amount of \$900,000 for the Sheldon Plaintiffs and \$3.94 million for the Finn
21 Plaintiffs;
- 22 2. For specific performance of the agreement;
- 23 3. For an award of interest, including prejudgment interest, according to law;
- 24 4. For an award of costs of suit;
- 25 5. For such other and further relief as this Court deems just and proper.
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SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty – Against the Girardi Defendants and Does 1-20)

1. For compensatory damages and other special, general and consequential damages in the amount of \$900,000 for the Sheldon Plaintiffs and \$3.94 million for the Finn Plaintiffs;
2. For punitive and exemplary damages;
3. For a constructive trust for the benefit of Plaintiffs;
4. For an award of interest, including prejudgment interest, according to law;
5. For an award of costs of suit;
6. For such other and further relief as this Court deems just and proper.

THIRD CAUSE OF ACTION

(Fraud – Against the Girardi Defendants and Does 1-20)

1. For compensatory damages and other special, general and consequential damages in the amount of \$900,000 for the Sheldon Plaintiffs and \$3.94 million for the Finn Plaintiffs;
2. For punitive and exemplary damages;
3. For a constructive trust for the benefit of Plaintiffs;
4. For an award of interest, including prejudgment interest, according to law;
5. For an award of costs of suit;
6. For such other and further relief as this Court deems just and proper.

FOURTH CAUSE OF ACTION

(Money Had And Received – Against the Girardi Defendants and Does 1-20)

1. For return of the money had and received by Defendants in the amount of \$900,000 for the Sheldon Plaintiffs and \$3.94 million for the Finn Plaintiffs;
2. For a constructive trust for the benefit of Plaintiffs;
3. For an award of interest, including prejudgment interest, according to law;
4. For an award of costs of suit;
5. For such other and further relief as this Court deems just and proper.

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FIFTH CAUSE OF ACTION

(Accounting – Against the All Defendants)

1. For an accounting;
2. For an award of costs of suit;
3. For such other and further relief as this Court deems just and proper.

SIXTH CAUSE OF ACTION

(Fraudulent Transfer – Against All Defendants)

1. For an order that the fraudulent transfers be set aside and/or voided to the extent necessary to satisfy the Sheldon Plaintiffs’ claims in the amount of \$900,000, plus interest at the legal rate, and the Finn Plaintiffs’ claims in the amount of \$3.94 million, plus interest at the legal rate;
2. For an order enjoining Defendant 1126 Wilshire Partnership from selling, encumbering, or disposing of the real property commonly known as 1126 Wilshire Property, a description of which is provided in paragraph 12 of this FAC;
3. For a constructive trust for the benefit of Plaintiffs;
4. For an award of interest, including prejudgment interest, according to law;
5. For an award of costs of suit;
6. For such other and further relief as this Court deems just and proper.

SEVENTH CAUSE OF ACTION

(Conversion – Against All Defendants)

1. For compensatory damages and other special, general and consequential damages in the amount of \$900,000 for the Sheldon Plaintiffs and \$3.94 million for the Finn Plaintiffs;
2. For punitive and exemplary damages;
3. For a constructive trust for the benefit of Plaintiffs;
4. For an award of interest, including prejudgment interest, according to law;
5. For an award of costs of suit;
6. For such other and further relief as this Court deems just and proper.

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EIGHTH CAUSE OF ACTION

**(Financial Elder Abuse – Individual Plaintiffs Sheldon and Finn Against Defendants
Girardi, GK, Lira, Finnerty and Does 21-40)**

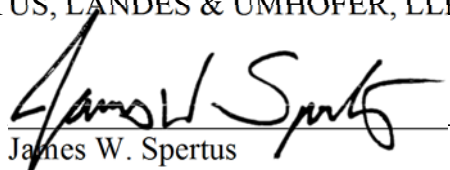
1. For compensatory damages and other special, general and consequential damages in the amount of \$900,000 for the Sheldon Plaintiffs and \$3.94 million for the Finn Plaintiffs;
2. For punitive and exemplary damages;
3. For pain and suffering damages as provided in California Welfare and Institutions Code section 15657.5;
4. For attorneys’ fees and costs as provided in California Welfare and Institutions Code section 15657.5;
5. For an award of interest, including prejudgment interest, according to law;
6. For such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial.

Dated: December 16, 2020

SPERTUS, LANDES & UMHOFFER, LLP

By:  _____
James W. Spertus
Ezra D. Landes
Attorneys for Plaintiffs