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6 **UNITED STATES DISTRICT COURT**  
7 **SOUTHERN DISTRICT OF NEVADA**

8 GUADALUPE OLVERA, an individual; and  
9 THE GUADALUPE OLVERA FAMILY  
10 TRUST, by and through its Trustee, Rebecca  
11 Schultz,

11 Plaintiffs,

12 vs.

13 JARED E. SHAFER, an individual;  
14 PROFESSIONAL FIDUCIARY SERVICES  
15 OF NEVADA, INC., a Nevada corporation;  
16 AMY VIGGIANO DEITTRICK, individually  
17 and doing business as AVID BUSINESS  
18 SERVICES; PATIENCE BRISTOL, an  
19 individual; WELLS FARGO BANK, N.A., a  
20 National Association; EVE S. MILLS, an  
21 individual; SUSAN BULL, an individual;  
22 FIRSTSERVICE RESIDENTIAL, NEVADA,  
23 LLC, a Nevada limited liability company;  
24 CATHY ELLIOT, an individual;  
25 MARGARET JOHNSON, aka MARGO  
26 JOHNSON, an individual; DOES I through  
27 XX and DOE ENTITIES I through XX,  
28 inclusive,

21 Defendants.

CASE NO.: 2:14-cv-01298-GMN-NJK

**SECOND AMENDED COMPLAINT**

**JURY TRIAL DEMANDED**

23 COME NOW the Plaintiffs, GUADALUPE OLVERA (hereinafter "Plaintiff" or  
24 "Olvera") and the GUADALUPE OLVERA FAMILY TRUST, Rebecca Olvera Schultz, Trustee,  
25 by and through their attorney, D. Brian Boggess, Esq. and Boggess & Harker, and for causes of  
26 action against JARED E. SHAFER (hereinafter "Shafer"), PROFESSIONAL FIDUCIARY  
27 SERVICES OF NEVADA, INC. (hereinafter "PFSN"), AMY VIGGIANO DEITTRICK,  
28 (hereinafter "Deittrick") AVID BUSINESS SERVICES (hereinafter "Avid"), PATIENCE

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1 BRISTOL (hereinafter “Bristol”), WELLS FARGO BANK, N.A. (hereinafter “Wells Fargo”),  
2 EVE S. MILLS (hereinafter “Mills”), SUSAN BULL (hereinafter “Bull”), FIRTSERVICE  
3 RESIDENTIAL, NEVADA, LLC (hereinafter “FSR”), CATHY ELLIOT (hereinafter “Elliot”),  
4 and MARGARET JOHNSON also known as MARGO JOHNSON, complain, aver and allege as  
5 follows and hereby file their complaint and allege the following causes of action against the  
6 above- named Defendants:

7 **GENERAL ALLEGATIONS**

- 8 1. Plaintiff GUADALUPE OLVERA is a resident of Santa Cruz County, California.
- 9 2. Plaintiff GUADALUPE OLVERA FAMILY TRUST is a Trust, organized on or about  
10 February, 2007. The Trust appears by and through its current Trustee, Rebecca Olvera Schultz.
- 11 3. Any reference to “Plaintiff” or “Plaintiffs” herein shall be deemed to apply to both Mr.  
12 Olvera individually and the Trust.
- 13 4. Upon information and belief, Defendant JARED E. SHAFER (“Shafer”) is and has been a  
14 resident of Clark County, Nevada at all times material hereto.
- 15 5. Upon information and belief, Defendant PROFESSIONAL FIDUCIARY SERVICES OF  
16 NEVADA, INC. (“PFSN”) is and was a corporation licensed under the laws of the State of  
17 Nevada and doing business in Clark County, Nevada at all times material hereto.
- 18 6. Upon information and belief, Defendant AMY VIGGIANO DEITTRICK (“Deittrick”) is  
19 and has been a resident of Clark County, Nevada at all times material hereto and is and was  
20 doing business as AVID BUSINESS SERVICES in Clark County, Nevada (“Avid”).
- 21 7. During the times relevant hereto, Avid was not licensed to do business, but was transacting  
22 business illegally.
- 23 8. Upon information and belief, Defendant PATIENCE BRISTOL (“Bristol”) is and has been  
24 a resident of Clark County, Nevada at all times material hereto.
- 25 9. Upon information and belief, Defendant WELLS FARGO BANK, N.A. (“Wells Fargo”) is  
26 and has been a national association authorized to do business in Clark County, Nevada at all  
27 times material hereto.
- 28

1 10. Upon information and belief, Defendant EVE S. MILLS (“Mills”) is a trust and fiduciary  
2 specialist at Wells Fargo and is and has been a resident of Clark County, Nevada at all times  
3 material hereto.

4 11. Upon information and belief, Defendant SUSAN BULL (“Bull”) is a trust administrator at  
5 Wells Fargo and is and has been a resident of Clark County, Nevada at all times material hereto.

6 12. Upon information and belief, Defendant FIRTSERVICE RESIDENTIAL, NEVADA,  
7 LLC (“FSR”) is and was a limited liability company licensed under the laws of the State of  
8 Nevada and doing business in the State of Nevada at all times material hereto.

9 13. Upon information and belief, Defendant CATHY ELLIOT (“Elliot”) is and was an  
10 employee of FSR and is and has been a resident of Clark County, Nevada at all times material  
11 hereto.

12 14. Upon information and belief, Defendant MARGARET JOHNSON, also known as  
13 MARGO JOHNSON (“Johnson”) is and was an employee of FSR and is and has been a resident  
14 of Clark County, Nevada at all times material hereto.

15 15. The true names and capacities, whether partnership, individual, corporate, associate or  
16 otherwise of Defendants Does I through XX and Doe Entities I through XX, inclusive, are  
17 unknown to Plaintiff at this date; that said Defendants are named herein by fictitious names, but  
18 may be responsible or liable to the Plaintiff by virtue of the actions hereinafter described and  
19 Plaintiff reserves the right to amend their Complaint to insert any additional charging allegations,  
20 together with their true identities and capacities, when the same have been ascertained.

21 16. Plaintiff is informed, believes and therefore alleges that at all times herein mentioned,  
22 Defendants and each of them, were the agent, partner, employee and/or alter-ego of each other,  
23 and in doing the things herein alleged, were acting within the course and scope of said agency,  
24 partnership, or relation, with the permission and consent of their co-defendants, and that each of  
25 them were working as a single entity and enterprise.

26 17. The jurisdiction of this court is invoked pursuant to diversity of citizenship 28 U.S.C. §  
27 1332.

28 18. The amounts in controversy exceed \$75,000.00.

1 19. Jurisdiction is further vested in this Court pursuant to 18 U.S.C. § 1964(a), as a Civil  
2 RICO action forms part of the basis of this Complaint.

3 **GENERAL FACTUAL ALLEGATIONS**

4 20. In 2008 and 2009, Plaintiff Olvera was a resident in Sun City Anthem, and regularly  
5 interacted with Defendants Elliot, Johnson and their employer, FSR.

6 21. Sun City Anthem is a senior residential community that is limited to households  
7 consisting of at least one person over the age of 55.

8 22. Plaintiff Olvera resided in Sun City Anthem because he and his wife both qualified as  
9 seniors during the time of their residence there.

10 23. FSR knew, or should have known, that the many of the residents of Sun City Anthem  
11 were seniors who would be in the position of being exploited by FSR employees or others.

12 24. Because of this unique relationship between FSR employees and the senior residents of  
13 Sun City Anthem, FSR had a heightened duty to screen its potential employees and to conduct  
14 sufficient background checks to ensure that its employees would not be of such character to be a  
15 risk to the Sun City Anthem residents.

16 25. Plaintiff believe and thereon allege that FSR failed to conduct background checks  
17 sufficient to alert FSR as to the potential danger posed by Defendants Elliot and Johnson.

18 26. In late 2009, Defendants Elliot and Johnson, with the knowledge of Defendant FSR,  
19 kidnaped Olvera, removed him from his home and proceeded to convert much of his assets to  
20 their own use and benefit.

21 27. Defendants Elliot and/or Johnson kept Mr. Olvera hidden from his family, and did not  
22 give up control of Olvera until early November, 2009.

23 28. Defendant FSR knew or should have known that Defendants Elliot and Johnson had  
24 kidnaped and otherwise taken advantage of Olvera, and taken some action to protect Olvera from  
25 its predatory employees.

26 29. From the formation of the Trust through the events and occurrences which form the basis  
27 of this Complaint, the Trust's assets were administered by Defendants Wells Fargo, Mills and  
28 Bull, and perhaps others employed by Defendant Wells Fargo.

1 30. On or about December 2, 2009, the Family Court Division of the Clark County, Nevada  
2 District Court appointed Shafer as guardian over Plaintiff in the Matter of the Guardianship of  
3 the Person and Estate of Guadalupe Olvera, an adult ward, in Case No. G028163.

4 31. Upon information and belief, on or about December 2, 2009 Shafer was an employee  
5 and/or agent of PFSN.

6 32. Shafer acted as Guardian of Plaintiff as an agent and/or employee of PFSN from  
7 November 17, 2009 to at least April 26, 2013, when the Nevada Guardianship was terminated.

8 33. Between approximately December 2, 2009 and approximately April 26, 2013, PFSN  
9 billed and collected hundreds of thousands of dollars for services and reimbursements from the  
10 Estate of Guadalupe Olvera without court approval, accounting or oversight, in violation of NRS  
11 159.183.

12 34. Upon information and belief, many of the reimbursements paid by the Guardianship,  
13 Estate and/or Trust benefitting Guadalupe Olvera to PFSN were for charges made to the personal  
14 credit card(s) of Jared E. Shafer.

15 35. Upon information and belief, the Guardianship was charged for expenses completely  
16 unrelated to Plaintiff's well being and care.

17 36. Of the reimbursements paid from the Guardianship Estate to PFSN, the vast majority of  
18 expenses are unsupported by any verifying documentation, such as receipts or invoices.

19 37. Between approximately November 17, 2009 and April 26, 2013, several law firms billed  
20 and collected tens of thousands of dollars for services and reimbursements from the Estate of  
21 Guadalupe Olvera without court approval, accounting or oversight, in violation of NRS 159.183.

22 38. Between approximately November 17, 2009 and April 26, 2013, Avid billed and collected  
23 tens of thousands of dollars from the Guardianship and Estate of Guadalupe Olvera for simple  
24 book keeping services without court approval, accounting or oversight, in violation of NRS  
25 159.183.

26 39. Avid charged the Guardianship Estate benefitting Guadalupe Olvera outrageous amounts  
27 of as much as approximately \$40.00 per individual bill/invoice it paid on behalf of the  
28 Guardianship, for services for Plaintiff's residence.

1 40. Avid charged \$40-\$125, arbitrarily, per hour to pay recurring bills.

2 41. During the period of Plaintiff's Guardianship, including during the period in which Shafer  
3 acted as an agent and/or employee of PFSN, Defendants failed to file regular, annual accountings  
4 with the Court as required by NRS 159.176.

5 42. Upon information and belief, throughout 2010, 2011 and 2012, while Shafer was  
6 simultaneously acting as a Guardian and the agent/employee of PFSN, Shafer embezzled funds  
7 from the bank accounts of the Guardianship Estate of Guadalupe Olvera, by submitting false or  
8 inflated invoices for payment and by taking possession of social security and pension funds  
9 without rendering an accounting of how those funds were kept and utilized.

10 43. Shafer was ineligible to be appointed Guardian for Mr. Olvera at the time he was  
11 appointed.

12 44. Olvera is a Veteran who served in the United States Army from August 15, 1941 through  
13 October 4, 1945. He also served in the United States Air Force between August 29, 1946 and  
14 August 28, 1949.

15 45. Shafer and his various entities and employees knew of Olvera's veteran status early on in  
16 the Guardianship proceedings. As early as November 25, 2009, Shafer billed for time conversing  
17 with Mr. Olvera regarding "How he is doing, how does he like his caregiver, **WWII**, his  
18 daughter, etc. . . ."

19 46. Shafer never served a citation upon the United States Department of Veterans' Affairs, as  
20 required by NRS 159.0475(4).

21 47. Shafer's failure to properly notify the Department of Veterans' Affairs resulted in Mr.  
22 Olvera receiving extra payments to which he was no longer entitled, and which he was or will be  
23 required to repay, with interest and fees attached thereto.

24 48. Nevada has adopted the Uniform Veterans' Guardianship Act, which places private  
25 professional guardians such as Shafer under additional requirements and scrutiny when they are  
26 appointed or seek to be appointed guardians over veterans.

27

28

1 49. Shafer was legally ineligible to serve as Mr. Olvera’s guardian. NRS 160.040 places a  
2 jurisdictional limitation on the number of wards to which a private, professional guardian of a  
3 Veteran may oversee.

4 50. That section provides, in pertinent part, as follows:

5 Except as otherwise provided in this section, *it is **unlawful** for any person to*  
6 *accept appointment as guardian of any ward if the proposed guardian is at that*  
7 *time acting as guardian for **five** wards.* In any case, upon presentation of a  
8 petition by an attorney of the Department of Veterans Affairs pursuant to this  
9 section alleging that a guardian is acting in a fiduciary capacity for more than five  
10 wards and requesting his or her discharge for that reason, *the court, upon proof*  
11 *substantiating the petition, **shall require a final accounting** from the guardian*  
12 *and shall discharge the guardian in the case.*

13 *N.R.S. § 160.040 (emphasis added).*

14 51. During the course of his guardianship of Olvera, Shafer acted in a fiduciary capacity for  
15 more than five wards.

16 52. Before the Guardianship Commissioner had entered an Order appointing Mr. Shafer as  
17 Successor General Guardian, Shafer knew that he was not legally qualified to assume that post,  
18 pursuant to the jurisdictional limitations of NRS 160.040. Yet no mention of Mr. Olvera’s  
19 veteran status was raised in Shafer’s pleadings nor in oral argument at the hearings appointing  
20 him General Guardian. He did not revise his Affidavits or pleadings to make the Court aware of  
21 this critical fact.

22 53. On November 16, 2009, Shafer verified and signed his Petition for Appointment of  
23 Successor Temporary and Successor General Guardian. In paragraph 10 of that Petition, Shafer  
24 stated that he “is competent and capable of acting as the Temporary and General Guardian of the  
25 person and estate of Guadalupe Mena Olvera . . . .”

26 54. Even if Shafer believed that statement to be true as of November 16, 2009, he knew that  
27 the statement was patently false as of November 25, 2009, when he learned that Mr. Olvera was a  
28

1 Veteran and that Shafer was no longer “competent and capable” of serving as Mr. Olvera’s  
2 guardian pursuant to NRS 160.040 due to the number of Wards under his guardianship.

3 55. He patently failed to demonstrate candor before the Court, assuming that he could “pull a  
4 fast one” on the Guardianship Commissioner and Mr. Olvera’s family. Shafer’s silence in the  
5 face of such damning facts—knowing that the Guardianship Commissioner was relying upon his  
6 verified Petition at the December 2, 2009 hearing to consider him as Successor General  
7 Guardian—constitutes perjury.

8 56. This callous disregard for Mr. Olvera, his estate, his family and the express mandates of  
9 NRS Chapter 160 should have automatically and immediately disqualified Shafer from  
10 continuing as the Guardian for Mr. Olvera. It also should subject Shafer to sanctions, including  
11 disgorgement of any fees earned or funds wrongfully diverted from Mr. Olvera’s estate.

12 57. Shafer’s compensation was dramatically higher than that authorized by statute. NRS  
13 160.120 provides in pertinent part that

14 Compensation payable to a guardian *must not exceed 5 percent of the income of*  
15 *the ward* during any year. In the event of extraordinary services rendered by any  
16 guardian, the court may, upon petition and after hearing thereon, authorize  
17 additional compensation therefor payable from the estate of the ward. Notice of  
18 such petition and hearing must be given to the proper office of the Department of  
19 Veterans Affairs in the manner provided in NRS 160.100. *No compensation may*  
20 *be allowed on the corpus of an estate* received from a preceding guardian. The  
21 guardian may be allowed from the estate of the ward of the guardian reasonable  
22 premiums paid by him or her to any corporate surety upon his or her bond.

23 *N.R.S. 160.120 (emphasis added).*

24 58. Plaintiff contends that Shafer’s compensation vastly exceeds five (5) percent of Olvera’s  
25 income. Accordingly, this Court should Order that Shafer disgorge any funds received above and  
26 beyond this statutory compensation limit.

27 59. Upon information and belief, Shafer and the other Defendants herein are responsible for  
28 embezzling, taking under wrongful pretenses and otherwise fraudulently or wrongfully



1 diminishing the value of Olvera's and the Trust's assets in an amount to be proved at trial, but in  
2 excess of \$420,000.00.

3 60. Defendants Wells Fargo, Mills and Bull were specifically and knowingly complicit in the  
4 wrongful actions taken by the other Defendants, particularly those wrongful actions of Shafer,  
5 PFSN, Bristol, Deitrick and Avid.

6 61. Defendants Wells Fargo, Mills and Bull failed or refused to inform the beneficiaries of the  
7 Trust that they were beneficiaries, or to provide them with statements and other information  
8 pertaining to the Trust which would have allowed the beneficiaries to bring the wrongful actions  
9 of the Defendants herein to the attention of proper Court's and authorities.

10 62. Defendants Wells Fargo, Mills and Bull failed or refused to provide account statements to  
11 the lawful beneficiaries of the Trust, ignoring repeated requests that they do so.

12 63. Defendants Wells Fargo, Mills and Bull provided false information to the Guardianship  
13 Commissioner and to the other Defendants, which affected the ability of Olvera's family to  
14 assume the guardianship and take care of Olvera.

15 64. Defendants Wells Fargo, Mills and Bull knew or should have known, as early as 2007,  
16 that Olvera was not in need of a guardian and could govern his own affairs, yet they continued to  
17 support the claims and attempts of Defendants Shafer and the other Defendants to maintain the  
18 guardianship strangle-hold they had on Olvera and the Trust.

19 65. Defendants Wells Fargo, Mills and Bull knew or should have known that bills and  
20 invoices being paid by them for Olvera's care were inflated, inappropriate, duplicated and  
21 fraudulent, and yet they continued to pay such bills.

22 66. Defendants Wells Fargo, Mills and Bull caused checks to be issued to Defendants Shafer  
23 and Bristol in their individual names, rather than to Defendants PFSN for which they were both  
24 employed.

25 67. Defendants Wells Fargo, Mills and Bull falsified documentation submitted to the  
26 Veteran's Administration, changing beneficiary status without authority to do so.

27 68. Defendants Wells Fargo, Mills and Bull engaged in a pattern of hiding information from  
28 the beneficiaries of the Trust and covering for the wrongful actions of the other Defendants.

1 69. Defendants Wells Fargo, Mills and Bull have failed or refused to provide a complete  
2 accounting to Mr. Olvera or the Trust, and it is believed that additional causes of action may arise  
3 upon their receipt of the complete accounting sought through discovery herein.

4 70. Specifically, Wells Fargo has refused to provide copies of the invoices for which payment  
5 was processed and made from the Trust's funds and accounts.

6 **FIRST CLAIM FOR RELIEF**  
7 **(Conversion)**  
8 **Against All Defendants**

9 71. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 70 above  
10 as if set forth in full herein.

11 72. Defendants committed a distinct act of dominion wrongfully exerted over Guadalupe  
12 Olvera's property by embezzling monies from the Guardianship bank accounts.

13 73. These acts were in denial of, or inconsistent with, Plaintiff's title or rights therein.

14 74. These acts were in derogation, exclusion, or defiance of Plaintiff's title or rights in the  
15 personal property.

16 75. At the time of the acts of conversion by Defendants, Bristol was an employee, agent  
17 and/or servant of PFSN and Shafer. Bristol was acting within the course and scope of her  
18 employment with PFSN at the time of the acts of conversion which are the basis of this claim. As  
19 such, PFSN and Shafer are responsible for the conduct of Bristol under the doctrine of  
20 *respondent superior* due to the master-servant relationship which existed at the time of the acts  
21 of conversion made the basis of this claim.

22 76. At the time of the acts of conversion by Defendants, Deittrick and Avid employees, agents  
23 and/or servants of PFSN and Shafer. They were acting within the course and scope of their  
24 employment and/or agency with Shafer and/or PFSN at the time of the acts of conversion which  
25 are the basis of this claim. As such, PFSN and Shafer are responsible for the conduct of Deittrick  
26 and Avid under the doctrine of *respondent superior* due to the master-servant relationship which  
27 existed at the time of the acts of conversion made the basis of this claim.

28 77. As a direct and proximate result of the Defendants conduct, Plaintiff is entitled to  
compensatory damages in an amount in excess of \$75,000.00 to be proven at trial.

1 78. Plaintiff has been compelled to secure the services of Boggess & Harker to prosecute this  
2 action and is entitled to recover costs and legal expenses including reasonable attorney's fees.

3 **SECOND CLAIM FOR RELIEF**

4 **(Breach of Fiduciary Duty)**

5 **Against Defendants Shafer, Bristol, PFSN, AVID, Dietrick, Wells Fargo, Mills and Bull**

6 79. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 78 above  
7 as if set forth in full herein.

8 80. Defendants owed various fiduciary duties to the Plaintiffs.

9 81. Defendants Shafer, Bristol and PFSN breached their respective duties by taking money  
10 from the Guardianship assets for their own personal use and without authority to do so, by  
11 commingling Guardianship funds with other funds, and by otherwise misappropriating and  
12 misusing Guardianship assets.

13 82. Defendants PFSN, Shafer, Bristol, AVID and Dietrick breached their respective duties by  
14 charging fraudulent and/or excessive fees to the Guardianship, in violation of NRS 159.193.

15 83. Defendants Wells Fargo, Mills and Bull breached their respective duties by knowingly  
16 allowing funds belonging to the Plaintiff to be withdrawn, utilized and taken by other Defendants  
17 in violation of Nevada and Federal law and without due regard to the property rights of Plaintiff.

18 84. At the time of the above referenced breaches of fiduciary duty by Defendants Bristol,  
19 Shafer and Dietrick, Bristol and Dietrick were employees, agents and/or servants of Defendant  
20 PFSN. Defendants Bristol, Shafer and Dietrick were acting within the course and scope of their  
21 employment with PFSN at the time of the acts of conversion which are the basis of this claim. As  
22 such, PFSN is responsible for the conduct of Defendants Bristol, Shafer and Dietrick under the  
23 doctrine of *respondiat superior* due to the master-servant relationship which existed at the time  
24 of the breaches of fiduciary duty, described herein.

25 85. As a direct and proximate result of the Defendants' conduct, Plaintiff is entitled to  
26 compensatory damages in an amount in excess of \$75,000.00 to be proven at trial.

27 86. Plaintiff has been compelled to secure the services of Boggess & Harker to prosecute this  
28 action and is entitled to recover costs and legal expenses including reasonable attorney's fees.

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**THIRD CLAIM FOR RELIEF**  
**(Civil RICO, Fraud)**

**Against Defendants Bristol, Shafer, PFSN, Deittrick and AVID only**

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3 87. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 86 above  
4 as if set forth in full herein.
- 5 88. Defendants, in concert and with intent, absconded with an amount to be proved at trial but  
6 in excess of \$75,000.00 from the Plaintiffs by means of multiple crimes of the same or similar  
7 pattern that are interrelated and not isolated incidents.
- 8 89. By Defendants' multiple fraudulent acts of embezzlement of funds and receiving  
9 possession of money in excess of \$250.00, Defendants committed predicated racketeering acts.
- 10 90. Plaintiffs suffered injury by reason of Defendants' commission of predicated racketeering  
11 acts.
- 12 91. Defendants violations proximately caused the Plaintiffs' injuries.
- 13 92. Plaintiffs did not participate in the racketeering activities.
- 14 93. The proceeds of these racketeering activities (multiple crimes) have, on information and  
15 belief, been used in operation of at least one enterprise.
- 16 94. Under NRS 207.470, the Plaintiffs are entitled to damages from the Defendants in the  
17 amount of three times the actual damages.
- 18 95. Plaintiffs are entitled to damages from the Defendants and remedies set forth in 18 U.S.C.  
19 §§ 1961-1968, et seq., including an award of damages in the amount of three times the actual  
20 damages.
- 21 96. Plaintiffs are entitled to an award of punitive damages.
- 22 97. In violation of NRS 207.400 and various federal statutes, Defendants conspired together to  
23 commit this racketeering activity.
- 24 98. As a result of this racketeering activity, Plaintiffs have been damaged in an amount in  
25 excess of \$75,000.00 to be proven at trial.
- 26 99. Plaintiff has been compelled to secure the services of Bogess & Harker to prosecute this  
27 action and is entitled to recover costs and legal expenses including reasonable attorney's fees.
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**FOURTH CLAIM FOR RELIEF**  
**(Negligence)**

**Against Defendants PFSN, Shafer, Wells Fargo and FSR**

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2  
3 100. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 99 above  
4 as if set forth in full herein.

5 101. Defendants owed a duty of care to Plaintiffs.

6 102. Defendants PFSN and Shafer breached their duty by hiring Bristol even though the  
7 Defendants knew or should have known of Bristol's dangerous propensities, specifically that  
8 Bristol had declared Chapter 13 Bankruptcy in 2006, and, at the time she was appointed  
9 Guardian, was in the middle of a repayment plan.

10 103. Defendants PFSN and Shafer were also aware or should have been aware of Bristol's  
11 gambling addiction.

12 104. Defendant Wells Fargo owed a duty of care to Plaintiffs.

13 105. Defendant Wells Fargo breached its duty by hiring and/or failing to properly supervise  
14 the activities of Defendants Mills and Bull, each of whom assisted Shafer and the other  
15 Defendants in carrying out their unlawful and fraudulent schemes.

16 106. Defendant FSR Anthem breached its duty by hiring and/or failing to properly supervise  
17 Defendants Elliot and Johnson.

18 107. Defendant FSR, as the employer of individuals dealing with potentially vulnerable senior  
19 residents of Sun City Anthem, owed a duty of care to protect Plaintiff Olvera and similarly-  
20 situated seniors in FSR's employee-screening, training and supervisory practices.

21 108. Defendant FSR breached its duty by failing to conduct a reasonable background check on  
22 FSR employees Elliot and Johnson to ensure that said employees were fit for their respective  
23 positions, in which they would be interacting with the potentially-vulnerable senior residents of  
24 Sun City Anthem.

25 109. By failing to conduct a reasonable background check on Defendants and FRS employees  
26 Elliot and Johnson, FSR placed those employees in a position in which they could harm Plaintiff  
27 Olvera and others.

28

1 110. FSR knew, or should have known and would have known with a sufficient background  
2 check on Defendants and FRS employees Elliot and Johnson, that these individual Defendants  
3 were unfit to interact with Plaintiff Olvera and the similarly-situated senior residents of Sun City  
4 Anthem.

5 111. These breaches, by each Defendant listed in this cause of action, were the legal cause of  
6 Plaintiffs' injuries.

7 112. Plaintiffs suffered damages as a result of the breaches set forth in this cause of action.

8 113. As a direct and proximate result of the Defendants conduct, Plaintiff is entitled to  
9 compensatory damages in an amount in excess of \$75,000.00 to be proven at trial.

10 114. Plaintiff has been compelled to secure the services of Boggess & Harker to prosecute this  
11 action and is entitled to recover costs and legal expenses including reasonable attorney's fees.

12 **FIFTH CLAIM FOR RELIEF**  
13 **(Negligent Performance of an Undertaking)**  
14 **Against All Defendants**

15 115. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 114 above  
16 as if set forth in full herein.

17 116. Defendants, and each of them, undertook, gratuitously or for consideration, to render  
18 services to Plaintiff which the Defendants should have recognized as necessary to the protection  
19 of Plaintiff or his things and/or property.

20 117. Defendants Shafer, Bristol, PFSN, Diettrick and AVID undertook, for consideration, to  
21 provide guardianship and/or guardianship-related services to the Plaintiffs which they should  
22 have recognized as necessary to the protection of Plaintiff Olvera or his things and/or property.

23 118. Defendants Wells Fargo, Mills and Bull undertook, for consideration, to provide banking  
24 services for the Plaintiffs which they should have recognized as necessary to the protection of the  
25 Plaintiffs or their respective things and/or property.

26 119. Defendant FSR undertook, for consideration, to provide employee screening, training  
27 and supervision obligations over employees who would interact with the senior residents of Sun  
28 City Anthem, including Plaintiff Olvera, for which it should have recognized as necessary to the  
protection of the Plaintiffs or their respective things and/or property.

1 120. Defendants Elliot and Johnson, as FSR employees interacting with the senior residents of  
2 Sun City Anthem, undertook, for consideration, to provide various general services to the  
3 Plaintiffs which they should have recognized as necessary to the protection of Plaintiff Olvera or  
4 his things and/or property.

5 121. Each of the Defendants failed to exercise reasonable care and increased the risk of harm  
6 to the Plaintiffs.

7 122. As a direct and proximate result of the Defendants conduct, Plaintiffs are entitled to  
8 compensatory damages in an amount in excess of \$75,000.00 to be proven at trial.

9 123. Plaintiff has been compelled to secure the services of Boggess & Harker to prosecute this  
10 action and is entitled to recover costs and legal expenses including reasonable attorney's fees.

11 **SIXTH CLAIM FOR RELIEF**  
12 **(Unjust Enrichment)**

13 **Against all Defendants Except FSR, Wells Fargo, Mills and Bull**

14 124. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 123  
15 above as if set forth in full herein.

16 125. As described herein, by charging fraudulent and/or exaggerated expenses to Plaintiff's  
17 account, the Defendants unjustly retained the money and/or property of Plaintiff against  
18 fundamental principles of justice or equity and good conscience.

19 126. As a direct and proximate result of the Defendants conduct, Plaintiff is entitled to  
20 compensatory damages in an amount in excess of \$75,000.00 to be proven at trial.

21 127. Plaintiff has been compelled to secure the services of Boggess & Harker to prosecute this  
22 action and is entitled to recover costs and legal expenses including reasonable attorney's fees.

23 **SEVENTH CLAIM FOR RELIEF**  
24 **(Intentional Infliction of Emotional Distress)**  
25 **Against Defendants Bristol, Shafer, Elliot and Johnson**

26 128. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 127  
27 above as if set forth in full herein.

28 129. Defendants' conduct was extreme or outrageous with either the intention of, or reckless  
disregard for causing emotional distress to Plaintiff.

1 130. Plaintiff suffered severe or extreme emotional distress as the actual or proximate result of  
2 the defendant’s conduct.

3 131. As a direct and proximate result of the Defendants conduct, Plaintiff is entitled to  
4 compensatory damages in an amount in excess of \$75,000.00 to be proven at trial.

5 132. Plaintiff has been compelled to secure the services of Boggess & Harker to prosecute this  
6 action and is entitled to recover costs and legal expenses including reasonable attorney’s fees.

7 **EIGHT CLAIM FOR RELIEF**  
8 **(Violation of NRS 41.1395)**  
9 **Against All Defendants Except FSR**

10 133. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 132  
11 above as if set forth in full herein.

12 134. Plaintiff, at all relevant times herein, was a “vulnerable person” within the meaning of  
13 NRS 41.1395(e).

14 135. Plaintiff suffered a loss of money or property caused by exploitation of Shafer, Bristol  
15 and Deitrick, as described herein within the meaning of NRS 41.1395.

16 136. In exploiting Plaintiff, Shafer, Bristol and Deitrick acted with recklessness, oppression,  
17 fraud and/or malice.

18 137. As a direct and proximate result of the Defendants conduct, Plaintiff is entitled to  
19 compensatory damages in an amount in excess of \$75,000.00 to be proven at trial.

20 138. Plaintiff has been compelled to secure the services of Boggess & Harker to prosecute this  
21 action and is entitled to recover costs and legal expenses including reasonable attorney’s fees.

22 WHEREFORE, Plaintiff prays for judgment against the Defendants, as follows:

- 23 1. For general damages in an amount in excess of \$75,000.00;
- 24 2. Double damages against all defendants pursuant to NRS 41.1395;
- 25 3. Treble damages against all Defendants pursuant to Nevada and United States  
26 Civil RICO statutes;
- 27 4. Cost of suit, prejudgment interest and attorney’s fees and costs;
- 28 5. For compensatory damages in an amount in excess of \$75,000;
6. For punitive damages in an amount in excess of \$75,000.00; and

**BOGCESS & HARKER**  
7495 West Azure Drive, Suite 250  
Las Vegas, Nevada 89130  
(702) 233-5040 - Fax 233-2209





**CERTIFICATE OF SERVICE**

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2 1. On this 8<sup>th</sup> day of December, 2015, I served the following document:

3 **SECOND AMENDED COMPLAINT**

4 2. I served the above-named document(s) by the following means to the persons as listed  
5 below: (check all that apply)

- 6  a. **ECF System** (You must attach the Notice of Electronic Filing, or list all persons  
7 and addresses and attach additional paper if necessary)

8 Attorney for Defendants Wells Fargo Bank, N.A., Eve S. Mills and Susan Bull:

9 John R. Mugan, Esq.  
10 Michael D. Lum, Esq.  
11 Jeffrey Burr, Ltd.  
12 2600 Paseo Verde Parkway  
13 Henderson, Nevada 89074  
14 [john@jeffreyburr.com](mailto:john@jeffreyburr.com)  
15 [michael@jeffreyburr.com](mailto:michael@jeffreyburr.com)

16 Attorney for Defendant Cathy Elliot:

17 Robert S. Larsen, Esq.  
18 Gordon & Rees, LLP  
19 3770 Howard Hughes Pkwy., Ste. 100  
20 Las Vegas, Nevada 89169  
21 [rlarsen@gordonrees.com](mailto:rlarsen@gordonrees.com)

22 Attorney for Defendant First Service Residential Nevada, LLC:

23 David R. Koch, Esq.  
24 Koch & Scow, LLC  
25 11500 South Eastern Avenue, Suite 210  
26 Henderson, Nevada 89052  
27 [dkoch@kochscow.com](mailto:dkoch@kochscow.com)

- 28  b. **United States mail**, postage fully prepaid (List persons and addresses. Attach  
additional paper if necessary)

Margaret Johnson  
2076 Central Falls Court  
Henderson, Nevada 89052

- c. **Personal Service** (List persons and addresses. Attach additional paper if  
necessary)

I personally delivered the document(s) to the persons at these addresses:

For a party represented by an attorney, delivery was made by handing the  
document(s) at the attorney's office with a clerk or other person in charge, or if no  
one is in charge by leaving the document(s) in a conspicuous place in the office.

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7495 West Azure Drive, Suite 250  
Las Vegas, Nevada 89130  
(702) 233-5040 - Fax 233-2209

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For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

**None.**

d. **By direct email** (as opposed to through the ECF System)  
(List persons and email addresses. Attach additional paper if necessary)

I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**None.**

e. **By fax transmission**  
(List persons and fax numbers. Attach additional paper if necessary)

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

**None.**

f. **By messenger**  
(List persons and addresses. Attach additional paper if necessary)

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service. (A declaration by the messenger must be attached to this Certificate of Service)

**None.**

g. **By overnight delivery.**

By sending by FEDERAL EXPRESS (standard next day delivery) to the addressee(s) as indicated on the attached list

**None.**

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 8, 2015 at Las Vegas, Nevada.

D. Brian Boggess, on behalf of  
Boggess & Harker

/s/ D. Brian Boggess  
(Signature of Declarant)