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STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

**HENRY WILLIAM DAILEY,**

Licensee.

Order No. 14-0114

OFFICE OF THE INSURANCE  
COMMISSIONER'S MOTION  
FOR SUMMARY JUDGMENT

**I. REQUEST FOR RELIEF**

The Office of the Insurance Commissioner revoked Mr. Dailey's insurance producer license by Order dated June 4, 2014 (Exhibit 1). The bases for the revocation were that Mr. Dailey sold annuities that were not filed with and approved for sale in Washington, and that he made false statements in annuity applications regarding where the applications were signed and whether the applicants had property in another state. Mr. Dailey demanded a hearing by letter dated June 15, 2014 (Exhibit 2). A hearing on his demand is scheduled for October 2, 2014.

The Office of the Insurance Commissioner respectfully asks that the Presiding Officer grant a motion for summary judgment affirming the Order Revoking License on the basis of collateral estoppel as a bar to relitigating the issues in this matter. The Superior Court of King County, Washington granted the State of Washington's Motion for Summary Judgment by Order dated July 25, 2014 in No. 13-2-27535-0 SEA, *State of Washington v. William Dailey, et al.* (Exhibit 3). The Court found that as a matter of law, Mr. Dailey and his

1 codefendants submitted annuity applications to insurance companies with false  
2 information, including claims that the applicants, or Mr. Dailey, had signed  
3 documents in locations other than the locations where the documents were  
4 actually signed, and that applicants owned property outside of the state of  
5 Washington, when in fact, the applicants did not own property in those states.  
6 The Court Order is a final judgment on the merits. Mr. Dailey had a full and fair  
7 opportunity to litigate the issues decided by the court, which include the  
8 allegations in the Order Revoking License. Having been conclusively litigated in  
9 a court of competent jurisdiction, the issues of whether Mr. Dailey made material  
10 misrepresentations in annuity applications and sold non-approved annuities to  
11 Washington residents should be precluded from the administrative hearing and  
12 result in a judgment affirming the revocation.

## 13 14 15 **II. PROCEDURAL HISTORY**

16 On July 29, 2013, the State of Washington, by and through the Office of  
17 the Attorney General, filed a complaint for injunctive and other relief under the  
18 Consumer Protection Act (Exhibit 4). Paragraph 5.26 of the Complaint alleges  
19 that the false information was put into the applications in order to get them  
20 approved by the insurer to which they were submitted. This is recognition that  
21 the state of residence of a consumer applying for an annuity determines which  
22 annuity policy the insurer can legally issue. An annuity issued to a Washington  
23 resident must have been filed with and approved by the Office of the Insurance  
24 Commissioner under RCW 48.18.100(1), as alleged in the Order Revoking  
25 License. The First and Second Causes of Action in the Complaint mirror the  
26 allegations in the Order Revoking License.

1 On September 3, 2013, Mr. Dailey filed an Answer to the Attorney  
2 General's Complaint, denying all of the allegations, but without substantive  
3 factual or legal explanation or argument (Exhibit 5).

4 On June 27, 2014, the State of Washington moved for summary judgment  
5 against Mr. Dailey and his codefendants (Exhibit 6). As noted in the Motion at  
6 pages 9-10, the Office of the Insurance Commissioner regulates the sale of  
7 certain annuities, and only certain forms of annuities are approved for sale in  
8 Washington. Selling a California-approved or an Arizona-approved annuity to a  
9 Washington resident is, with a few exceptions that do not apply here, prohibited  
10 by the Insurance Code.

11 On July 14, 2014, Mr. Dailey filed a Declaration in Support of a Motion to  
12 Shorten Time, wherein he asked for a continuance from the Superior Court in  
13 order to get legal counsel to represent his interests at the hearing on the Motion  
14 for Summary Judgment scheduled for July 25, 2014 (Exhibit 7).

15 On July 21, 2014, the State of Washington filed a reply brief in support of  
16 its Motion for Summary Judgment and in reply to the defendants' motions for  
17 continuance (Exhibit 8). The State noted that Mr. Dailey had not responded  
18 substantively to the Motion for Summary Judgment, therefore failing to create a  
19 genuine issue of material fact for resolution at trial. Mr. Dailey had taken no  
20 discovery, filed no witness lists or "otherwise hint at any opposition to the State's  
21 allegations." (Exhibit 8 at p. 3, line 22). The online Superior Court Case  
22 Summary for Cause No. 13-2-27535-0 supports the assertion that Mr. Dailey did  
23 not file any substantive rebuttal to the State's allegations prior to the granting of  
24 the Motion for Summary Judgment (Exhibit 9).

1 On July 23, 2014, Mr. Dailey filed yet another Declaration in support of  
2 his motion to continue the Summary Judgment hearing (Exhibit 10). It should be  
3 noted that in his sworn declaration to the Superior Court, Mr. Dailey says that he  
4 had a "preliminary hearing" on the Commissioner's Order Revoking License  
5 scheduled with the Office of the Insurance Commissioner for July 29, 2014. He  
6 claimed that "The outcome of the Hearing will provide evidence relevant to this  
7 Complaint and summary judgment motion." (Exhibit 10, paragraph 3.) In  
8 reality, the proceeding on July 29, 2014 was but a short telephonic pre-hearing  
9 conference that did not address the merits of his Order Revoking License. It was  
10 held only to set a hearing date and answer any questions or deal with any other  
11 preliminary matters. The hearing was set for October 2, 2014 (Exhibit 11).  
12 There is no evidence that Mr. Dailey ever corrected his sworn declaration in  
13 regard to the nature and extent of the so-called "preliminary hearing" held by the  
14 Office of the Insurance Commissioner on July 29, 2014.

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17 **III. DISCUSSION**

18 Summary judgment is appropriate where there are no genuine issues of  
19 material fact and the moving party is entitled to judgment as a matter of law. CR  
20 56. Summary judgment is designed to do away with unnecessary trials when  
21 there is no genuine issue of material fact. *LaPlante v. State*, 85 Wn.2d 154, 158,  
22 531 P.2d 299 (1975). "A material fact is one upon which the outcome of the  
23 litigation depends." *Jacobsen v. State*, 89 Wn.2d 104, 108, 569 P.2d 1152  
24 (1977).  
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1 The burden is on the moving party to demonstrate there is no genuine issue  
2 of material fact and, as a matter of law, summary judgment is proper. *Jacobsen*,  
3 89 Wn.2d at 108. If the moving party satisfies its burden, then the non-moving  
4 party must present evidence demonstrating material facts are in dispute. *Atherton*  
5 *Condo Ass'n v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990). The  
6 non-moving party must "set forth specific facts showing there is a genuine issue  
7 for trial." *LaPlante*, 85 Wn.2d at 158. A non-moving party may not oppose a  
8 motion of summary judgment by nakedly asserting there are unresolved factual  
9 questions. *Bates v. Grace United Meth. Church*, 12 Wn. App. 111, 115, 529 P.2d  
10 466 (1974).

11 The doctrine of collateral estoppel promotes judicial economy and prevents  
12 inconvenience to and harassment of parties. The doctrine also implicates  
13 concerns about the resources expended in repetitive litigation. Collateral  
14 estoppel provides for finality in adjudications. The doctrine of collateral estoppel  
15 precludes the relitigation of issues necessarily and finally determined in prior  
16 proceedings in which the party against whom the doctrine is asserted had a full  
17 and fair opportunity to litigate.

18 Collateral estoppel, or issue preclusion, bars relitigation of an issue in a  
19 subsequent proceeding involving the same parties and is distinguished from  
20 claim preclusion, or *res judicata*, in that instead of preventing a second assertion  
21 of the same claim or cause of action, it prevents a second litigation of issues  
22 between the parties, even though a different claim or cause of action is asserted.  
23 *Christensen v. Grant County Hospital District No. 1*, 152 Wn.2d 299, 305, 96  
24 P.3d 957 (2004); *Mangat v. Snohomish County*, 2013 Wash App. LEXIS 2034  
25 (Wash. Ct. App. Aug. 26, 2013).

1 As the Supreme Court of Washington held in *Christensen*, the party  
2 seeking application of the doctrine must establish that (1) the issue decided in the  
3 earlier proceeding was identical to the issue presented in the later proceeding, (2)  
4 the earlier proceeding ended in a judgment on the merits, (3) the party against  
5 whom collateral estoppel is asserted was a party to, or in privity with a party to,  
6 the earlier proceeding, and (4) application of collateral estoppel does not work an  
7 injustice on the party against whom it is applied. *Reninger v. Department of*  
8 *Corrections*, 134 Wn2d 437, 449 (1997). All four have been satisfied by the  
9 Superior Court judgment vis-a-vis the Office of the Insurance Commissioner's  
10 administrative proceeding.

11 Here, the allegations against Mr. Dailey in the administrative proceeding  
12 are identical to two crucial allegations in the preceding Motion for Summary  
13 Judgment and their corresponding findings nos. 8. and 9. in the Order Granting  
14 Motion for Summary Judgment. The earlier proceeding in Superior Court ended  
15 in a judgment on the merits. See *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v.*  
16 *Northwest Youth Services*, 97 Wash.App. 226, 233 (1999); *Lee v. Ferryman*, 88  
17 Wn. App. 613, 622, 945 P.2d 1159 (1997); see also *Nielson v. Spanaway Gen.*  
18 *Med. Clinic, Inc.*, 135 Wn.2d 255, 264, 956 P.2d 312 (1998).

19 Mr. Dailey was a party to the earlier proceeding. Application of collateral  
20 estoppel does not work an injustice to Mr. Dailey. His failures to respond to the  
21 State's allegations in the Attorney General's action were longstanding and  
22 persistent. He had every opportunity to address and confront the alleged  
23 violations of the Consumer Protection Act, including the violations of the  
24 Insurance Code outlined in the Order Revoking License. Instead, he chose to  
25 seek delay after delay, mischaracterizing his hearing status with the Insurance  
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1 Commissioner's Office in the process. That he never actually went to trial was  
2 his choice due to inaction.

3 The online Case Summary indicates that on August 1, 2014, Mr. Dailey  
4 asked the Superior Court to Reconsider its Order Granting Summary Judgment.  
5 It appears that on August 8, 2014, the Superior Court denied the Motion (See  
6 Exhibit 9, page 4).

7 Mr. Dailey recently informed the Office of the Insurance Commissioner  
8 that he is in the process of appealing the Order Granting Summary Judgment.  
9 Any pending appeal should have no effect on this motion to dismiss. *Lejeune v.*  
10 *Clallam Cy.*, 64 Wn. App. 257, 823 P.2d 1144 (1992). In *Lejeune*, the court held  
11 that a judgment becomes final for res judicata purposes at the beginning, not the  
12 end, of the appellate process, although res judicata can still be defeated by later  
13 rulings on appeal. *Lejeune*, 64 Wn. App. at 265-66. See also *Winchell's Donuts*  
14 *v. Quintana*, 65 Wn. App. 525, 530, 828 P.2d 1166 (1992); RESTATEMENT  
15 (SECOND) OF JUDGMENTS § 13 cmt. f (1982) ("[A] judgment otherwise final  
16 remains so despite the taking of an appeal"). Although *Lejeune* dealt with res  
17 judicata, the principles are the same with respect to collateral estoppel. *City of*  
18 *Des Moines*, 87 Wn.App. 689; 943 P.2d 669; 1997 Wash. App. LEXIS 1459.

19 Based on the foregoing, Mr. Dailey's administrative hearing contesting  
20 the Office of the Insurance Commissioner's Order Revoking License should  
21 result in a judgment in favor of the Office of the Insurance Commissioner,  
22 affirming the Order Revoking License.  
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3 DATED this 28<sup>th</sup> day of August, 2014.  
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6 \_\_\_\_\_  
7 MIKE KREIDLER  
8 INSURANCE COMMISSIONER

9  
10 BY:   
11 Marcia Stückler  
12 Insurance Enforcement Specialist  
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14 EXHIBITS

- 15 Exhibit 1: Order Revoking License dated June 4, 2014, effective June 23,  
16 2014. (4 pgs.)
- 17 Exhibit 2: Mr. Dailey's Demand for Hearing dated June 15, 2014. (1 pg.)
- 18 Exhibit 3: King County Superior Court Order Granting State of Washington's  
19 Motion for Summary Judgment dated July 25, 2014. (10 pgs.)
- 20 Exhibit 4: State of Washington's Complaint for Injunctive and Other Relief  
21 under the Consumer Protection Act dated July 25, 2013. (20 pgs.)
- 22 Exhibit 5: Mr. Dailey's Answer to Complaint for Injunctive and Other Relief  
23 dated September 3, 2013. (7 pgs.)
- 24 Exhibit 6: State of Washington's Motion for Summary Judgment dated June  
25 27, 2014. (26 pgs.)  
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Exhibit 7: Defendant Dailey's Declaration in Support of Motion to Shorten Time dated July 14, 2014. (3 pgs.)

Exhibit 8: State of Washington's Reply Brief in Support of Summary Judgment and Response to Defendants' Motions for Continuance of Motion for Summary Judgment dated July 21, 2014. (6 pgs.)

Exhibit 9: Washington Courts Online Superior Court Case Summary for Case No. 13-2-27535-0, State of Washington v. William Dailey, et al. as of August 18, 2014. (4 pgs.)

Exhibit 10: Defendant Dailey's Supplemental Declaration in Support of Motion for Continuance of Motion for Summary Judgment dated July 23, 2014. (3 pgs)

Exhibit 11: Office of the Insurance Commissioner's Notice of Hearing dated July 29, 2014. (4 pgs.)



STATE OF WASHINGTON

MIKE KREIDLER  
STATE INSURANCE COMMISSIONER



P.O. BOX 40255  
OLYMPIA, WA 98504-0255  
Phone: (360) 725-7000

OFFICE OF  
INSURANCE COMMISSIONER

*In The Matter of*

HENRY WILLIAM DAILEY,

Licensee.

NO. 14-0114

NPN 676296

WAOIC 9967

ORDER REVOKING LICENSE

To: Henry William Dailey  
16130 SE 42<sup>nd</sup> Street  
Bellevue, Washington 98006

**IT IS ORDERED AND YOU ARE HEREBY NOTIFIED** that your Washington State insurance producer license is **REVOKED**, effective **June 23, 2014**, pursuant to RCW 48.17.530 and RCW 48.17.540(2).

**THIS ORDER IS BASED ON THE FOLLOWING:**

Henry William Dailey ("Dailey") is a licensed producer of life and disability insurance residing in Bellevue, Washington. He was first licensed in 1974.

This matter involves Forethought Life Insurance Company annuities sold between 2008 and 2010. Mr. Dailey contracted with Forethought through an Annuity Selling Agreement from July 1, 2009 until Forethought terminated his contract effective November 11, 2011. The reason given was that Mr. Dailey was replacing Forethought annuities he had sold previously with competitors' annuities, behavior prohibited by the Agreement. Forethought did not have any consumer complaints against Mr. Dailey.

The OIC was informed that Dailey sold senior consumers Forethought annuities that were not approved for sale in Washington, and the applications indicate that they were signed by Mr. Dailey and completed in Arizona or California. The senior consumers were not in the state noted on the application during the presentation or completion of the Forethought annuity applications. The OIC investigation utilized a limited market conduct survey (MCS) letter that was sent to ten (10) consumers, with nine (9) responding. Those responding to the OIC MCS letter said that their transactions took place in Washington and that they had not traveled to the state shown on the application. The consumers also stated that they were asked by Mr. Dailey if they had family or friends in the state that is shown on the application, and if they did, then that state was shown on the application. The responding consumers also said that the Forethought product was

presented to them by Mr. Dailey. One consumer was contacted by phone and told the OIC investigator that they actually were in Arizona when they purchased the annuities, because they reside there part of the year.

On February 20, 2014, the OIC investigator spoke with Mr. Dailey who stated that the transactions did take place in Washington and all of the applications were completed in Washington. Also, Mr. Dailey said that an underwriter at Forethought told him that if the clients had property in the other states, they could apply for the policy and show that it was done in the other state. This is why the applications show Arizona or California. The clients had property or some other contact in those states. He further stated that he has not done anything wrong and all of the annuities benefited each of the consumers.

Nigel Riggins, Associate General Counsel for Forethought Life, provided comment addressing Mr. Dailey's remarks writing Mr. Dailey's comments could not be further from the truth. Mr. Riggins had provided information that shows that the annuity forms in question were not approved for sale in Washington, although they were, apparently, approved in California and Arizona, respectively. He also provided information noting that in January 2009, Forethought issued a Compliance Bulletin to its agents regarding cross-border solicitations and requirements for so soliciting across state lines. Mr. Daily's sales to Washington residents do not comport with Forethought's policy.

#### **APPLICABLE LAW:**

By selling annuities that were not filed and approved for sale in Washington, Dailey violated RCW 48.18.100(1).

By knowingly making a false or misleading statement or impersonation, or willfully failing to reveal a material fact, in or relative to an application for insurance to an insurer, Dailey violated RCW 48.30.210.

RCW 48.17.530(1) allows the Commissioner to place on probation, suspend, revoke, or refuse to issue or renew an adjuster's license, an insurance producer's license, a title insurance agent's license, or any surplus line broker's license, or may levy a civil penalty in accordance with RCW 48.17.560 or any combination of actions, for any one or more of the following causes:

(b) Violating any insurance laws, or violating any rule, subpoena, or order of the Commissioner or of another state's insurance Commissioner;

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

ORDER REVOKING LICENSE

No. 14-0114

Page 2 of 4

EXHIBIT 1 PAGE 2

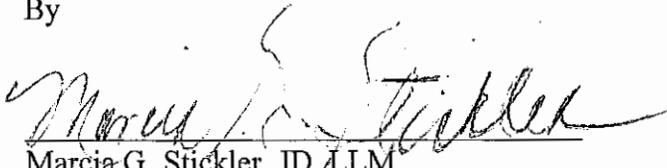
(g) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

**IT IS FURTHER ORDERED** that, if you have not already done so, you return your insurance producer license certificate to the Commissioner on or before the effective date of the revocation of your license, as required by RCW 48.17.530(4). Return your license to: Licensing Manager, Office of the Insurance Commissioner, P. O. Box 40257, Olympia, WA 98504-0257.

ENTERED AT TUMWATER, WASHINGTON, this 4<sup>th</sup> day of June, 2014.

MIKE KREIDLER  
Insurance Commissioner

By



Marcia G. Stickler, JD, LL.M.  
Staff Attorney  
Legal Affairs Division

**NOTICE OF YOUR RIGHT TO A HEARING**

If you are aggrieved by this Order, RCW 48.04.010 permits you to demand a hearing. Pursuant to that statute and others: You must demand a hearing, in writing, within 90 days after the date of this Order, which is the day it was mailed to you, or you will waive your right to a hearing. Your demand for a hearing must specify the reasons why you think this Order should be changed. Upon receipt of your demand for hearing, you will be contacted by an assistant of the Chief Hearing Officer to schedule a teleconference with you and the Insurance Commissioner's Office to discuss the hearing and the procedures to be followed.

Please send any demand for hearing to:  
Office of the Insurance Commissioner  
Attention: Hearings Unit  
P.O. Box 40255  
Olympia, WA 98504-0255

ORDER REVOKING LICENSE  
No. 14-0114  
Page 3 of 4

EXHIBIT 1 PAGE 3

CERTIFICATE OF MAILING

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing ORDER REVOKING LICENSE on the following individual via US Mail.

Henry William Dailey  
16130 SE 42<sup>nd</sup> Street  
Bellevue, Washington 98006

SIGNED this 3<sup>rd</sup> day of June, 2014, at Tumwater, Washington.

Christine Tribe  
Christine Tribe

Henry William Dailey  
16130 SE 42<sup>nd</sup> Street  
Bellevue, Washington 98006

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June 15, 2014

Office of the Insurance Commissioner  
Attention: Hearings Unit  
P.O. Box 40255  
Olympia, WA 98504-0255

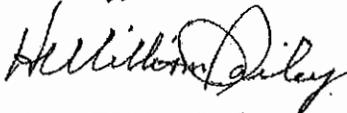
Re: Order Revoking License  
No. 14-0114  
NPN: 676296  
WAOIC: 9967

Dear Sir or Madam:

Please consider this letter my formal written demand for a hearing pursuant to the above referenced revocation.

The reason I believe this Order should be changed / withdrawn is because I was following the procedures outlined by Forethought Life. I received no complaints from Forethought quality control department throughout the term of my contract with them.

Sincerely,



Henry William Dailey

EXHIBIT 2 PAGE 1

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Honorable Kenneth Schubert  
Plaintiff's Motion for Summary Judgment  
Date 07-25-2014 @ 11:00 am

STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,  
  
Plaintiff,  
  
v.  
  
WILLIAM DAILEY, individually and  
his marital community; CATHERINE A.  
DAILEY, individually and her marital  
community; JANET SPARKS,  
individually and her marital community;  
JOHN DOE SPARKS, individually and  
his marital community; DEBORAH A.  
HIGGINS, individually and her marital  
community; MICHAEL P. HIGGINS,  
individually and his marital community;  
T.E.A.M. SERVICES LLC,  
  
Defendants.

NO. 13-2-27535-0 SEA  
  
ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT

~~PROPOSED~~ *ZU*

This matter, having come before the Court on the State of Washington's Motion for Summary Judgment, and the Court having heard the arguments, if any, of the parties, and considered the following material:

- 1. The State of Washington's Motion for Summary Judgment
- 2. The Declaration of Jason E. Bernstein and the exhibits attached thereto;
- 3. The Declaration of Neil Granger and the exhibits attached thereto;
- 4. The Declaration of Renee Shadel and the exhibits attached thereto;

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5. The Declaration of Nigel Riggins and the exhibits attached thereto;
6. The Declaration of Doris Lacock and the exhibits attached thereto;
7. The Declaration of Elizabeth Odle and the exhibits attached thereto;
8. The Declaration of Beverly Cox and the exhibits attached thereto;
9. The Declaration of Nina D'Aoust and the exhibits attached thereto;
10. The Declaration of Nellie Fortier and the exhibits attached thereto;
11. The Declaration of Yoko Hamasaki and the exhibits attached thereto;
12. The Declaration of Catherine Tharp and the exhibits attached thereto;
13. The Declaration of Elinor Carter and the exhibits attached thereto;
14. The Declaration of Lovina Schindel and the exhibits attached thereto;
15. The Declaration of Romaine Walstad and the exhibits attached thereto;
16. The Declaration of Loretta Benson and the exhibits attached thereto;
17. The Declaration of Karen Moore and the exhibits attached thereto;
18. The Declaration of Connie Griffin and the exhibits attached thereto;
19. The Declaration of Joy Starwalt and the exhibits attached thereto;
20. The Declaration of Annabelle Peterson and the exhibits attached thereto;
21. Defendants' Response to Plaintiff's Motion for Summary Judgment, if any;
22. The State of Washington's Reply in Support of its Motion for Summary Judgment;
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27. \_\_\_\_\_;

It is therefore ORDERED that the State of Washington's Motion for Summary Judgment is GRANTED.

The Court DECLARES that Defendants have violated the Consumer Protection Act, RCW 19.86 by engaging in the following unfair or deceptive acts or practices, which impacted the public interest and occurred in trade or commerce within the State of Washington:

1. Defendants illegally acted as investment advisors by providing financial advice to senior citizens without being licensed with Department of Financial Institutions as required by RCW 21.20.040.
2. Defendants misrepresented their qualifications to provide financial advice and estate distribution documents by creating the impression that they were credible and competent to provide such advice through the use of deceptive business cards, confident demeanors, deceptive statements and omissions of fact, and the actual sale and provision of financial products and estate distribution documents.
3. Defendants made misrepresentations during the sale of reverse mortgage to particularly vulnerable senior populations including, but not limited to, the following:
  - a. That the seniors could use the money for travel, bills, household repairs when Defendants would immediately convince them to use the money for annuities instead;
  - b. That a preexisting line-of-credit would somehow expire upon the death of the homeowner, denying that money to the homeowner's heirs;

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- c. That Defendants were somehow affiliated with various financial institutions or that the senior victim's reverse mortgage was being serviced by a company affiliated with Defendants.
- 4. Defendants omitted material facts during the sale of reverse mortgages, including, but not limited to, the following:
  - a. That reverse mortgage proceeds could be disbursed as monthly payments or as an easily accessible line-of-credit;
  - b. That the costs of reverse mortgages were substantial, and often cost thousands of dollars in fees;
  - c. That any preexisting reverse mortgage payments would cease upon a refinance.
- 5. Defendant Sparks gathered information for and prepared living trust estate distribution documents without a license to practice law, thereby committing a *per se* violation of the Consumer Protect Act pursuant to RCW 19.295.030.
- 6. Defendant Sparks also misrepresented to consumers the cost, time and nature of the probate process in the Washington State.
- 7. Defendant Sparks unfairly sold insurance products, such as annuities, to consumers in Washington without being licensed as an insurance agent as required by RCW 48.17.060.
- 8. Defendants made misrepresentations or omitted material facts during the sale of annuities to vulnerable seniors including, but not limited to, the following:

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- a. That the rules and policies of many reverse mortgage loan origination companies expressly prohibited agents from using reverse mortgage funds to purchase annuities, which Defendants did;
- b. The existence, size, and importance of surrender penalties on deferred annuities;
- c. The inability to retrieve money from immediate annuities once purchased in the event that funds became needed; and
- d. The fact that the monthly payments for some annuities would cease upon death, leaving no funds for the annuitant's heirs.

9. Defendants submitted annuity applications to insurance companies with false information, including claims:

- a. That consumers (or Defendants) had signed documents in locations other than the locations where the documents were actually signed; and
- b. That consumers owned property outside of the State of Washington, including in California and in Arizona, when in fact, the consumers did not own property in those locations.

10. Defendants engaged in an unfair scheme to sell annuity products to vulnerable senior citizens by using reverse mortgage proceeds as a source of liquid funds.

The Court hereby PERMANENTLY ENJOINS Defendants and all persons acting in concert with them , including but not limited to owners, directors, officers, employees, heirs, assigns, volunteers, independent contractors, or anyone else in active participation with Defendants, from engaging in the following practices:

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- a. Receiving any compensation or thing of value for providing services or products to consumers in Washington State who are over the age of 62;
- b. Receiving any compensation or thing of value for providing services or products to consumers in Washington State who are considered to be vulnerable adults, as defined by RCW 74.34.020(13).
- c. Making the following misrepresentations directly or by implication:
  - i) That the defendant is qualified and authorized to sell, solicit or negotiate insurance if he/she is not licensed by the Washington State Office of Insurance Commissioner as an insurance producer, agent or broker.
  - ii) That the defendant is qualified and authorized to advise consumers on financial planning and investments if he/she is not registered with the Washington State Department of Financial Institutions as an investment advisor.
  - iii) That the defendant is qualified and authorized to advise consumers on estate planning matters and estate distribution documents and to market estate distribution documents if he/she is not licensed as an attorney with the Washington State Bar Association.
  - iv) That the defendant is qualified and authorized to advise consumers on mortgages and/or to originate mortgages if he/she is not registered with the Washington State Department of Financial Institutions as a mortgage loan originator or broker.
  - v) That the defendant is employed by, under contract with, represents or is affiliated in any way with a company when the defendant does not have

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such a relationship with that company.

- vi) That the defendant is the loan officer or originator on a reverse mortgage unless the defendant actually performs the services of a loan officer or originator in the transaction.
- vii) That the consumer is signing documents for a reverse mortgage, or any other product or service unrelated to an annuity, when the documents are actually application or contract documents for an annuity.
- viii) That a consumer or the defendants have signed any documents in a location other than the location where the documents were actually signed.
- ix) That a consumer owns property in a location if he/she does not actually own property in that location.
- x) That a defendant, claiming to act as a notary public and to notarize and/or witness the signature of a consumer, is present at the time a document is signed by the consumer.
- xi) Providing information regarding the probate of an individual's estate in Washington State unless the defendant is an attorney licensed to practice law in the State of Washington.
- xii) That lawyers dissuade their clients from having living trusts or don't explain the probate process to clients because the lawyers profit from probate.

d. Engaging in the following practices without being authorized to practice law or without a statutory exemption:

- i) Soliciting persons, or receiving compensation directly or indirectly, for services related to marketing estate distribution

1 documents, including but not limited to wills or trusts, as defined  
2 by RCW 19.295.010;

3 ii) Agreeing to prepare or gather the information necessary for the  
4 creation of a will, a trust, or an estate distribution document as  
5 defined by RCW 19.295.010;

6 iii) Advising a person regarding his or her legal rights or obligations  
7 under a will, a trust, or an estate distribution document as defined  
8 by RCW 19.295.010;

9 iv) Advising a person regarding the qualities, attributes or  
10 deficiencies of a will, a trust, or an estate distribution document  
11 as defined by RCW 19.295.010; and

12 v) Selecting, modifying or completing a will, a trust, or an estate  
13 distribution document as defined by RCW 19.295.010.

14 e. Discussing with consumers any information about estate planning;

15 f. Engaging in fee-splitting or unauthorized practice of law with a Washington-  
16 licensed attorney.

17 g. Failing to inform consumers of material facts regarding reverse mortgages,  
18 including: the settlement fees that are charged; and that the proceeds of the  
19 mortgage can be received in monthly payments, a line of credit or in a lump  
20 sum.

21 h. Advising consumers to invest reverse mortgage proceeds in an insurance  
22 product or any investment when the lender, loan origination company, and/or  
23 the insurance company the defendant represents prohibits this practice.

24 i. Failing to inform consumers of material facts regarding annuities, including:  
25 that substantial surrender penalties may be charged if funds are withdrawn  
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within a specific time period after the annuity was purchased; that payments from a single premium immediate annuity will end at a specific time or at the death of the payee, and no benefits of that annuity can be bequeathed to heirs of the annuitant or payee.

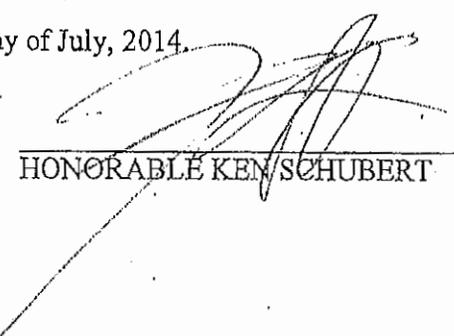
- j. Making any false statements in applications or associated documents for reverse mortgages or insurance products.
  - k. Forging signatures in any application, contract or associated documents for reverse mortgages or insurance products.
  - l. Receiving any compensation or thing of value pursuant to any agreement or understanding that the defendant will provide services for which he/she is not licensed or authorized to provide to consumers in Washington State.
- Failing to provide consumers with copies of contracts and receipts for products or services the consumers have purchased from the defendants.

Pursuant to RCW 19.86.080(2), the Court ORDERS Defendants to pay restitution in the amount of \$29,125.00 to be distributed to those who purchased living trusts.

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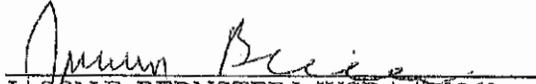
1 Pursuant to RCW 19.86.080(1), the Court ORDERS that Plaintiff has leave to move for  
2 its costs and reasonable attorneys' fees.

3  
4 DONE IN OPEN COURT this 25<sup>th</sup> day of July, 2014.

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6   
HONORABLE KEN SCHUBERT

7 Presented by:

8 ROBERT W. FERGUSON  
9 Attorney General

10   
11 JASON E. BERNSTEIN, WSBA-#39362  
12 Assistant Attorney General  
Attorneys for the State of Washington

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**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

HENRY WILLIAM DAILEY, individually  
and his marital community; CATHERINE  
A. DAILEY, individually and her marital  
community; JANET SPARKS,  
individually and her marital community;  
JOHN DOE SPARKS, individually and his  
marital community; DEBORAH A.  
HIGGINS, individually and her marital  
community; MICHAEL P. HIGGINS,  
individually and his marital community;  
T.E.A.M. SERVICES LLC; and T.E.A.M.  
INSURANCE SERVICES LLC,

Defendants.

NO.

COMPLAINT FOR INJUNCTIVE  
AND OTHER RELIEF UNDER  
THE CONSUMER PROTECTION  
ACT

Plaintiff, State of Washington, by and through its attorneys Robert Ferguson, Attorney  
General, Elizabeth J. Erwin, Senior Counsel, Assistant Attorney General, and Jason Bernstein,  
Assistant Attorney General, brings this action against the defendants named below. The State  
alleges the following on information and belief:

**I. PLAINTIFF**

1.1 The Plaintiff is the State of Washington.

1.2 The Attorney General is authorized to commence this action pursuant to  
RCW 19.86.080 and RCW 19.86.140, the Washington State Consumer Protection Act.



1           2.5    Defendant DEBORAH HIGGINS was the operations, licensing, and compliance  
2 manager of T.E.A.M. SERVICES LLC and T.E.A.M. INSURANCE SERVICES LLC at all  
3 times relevant to this matter. She resides at 28827 21<sup>st</sup> Avenue S, Federal Way, Washington  
4 98003. Defendant HIGGINS was licensed as an insurance agent/producer with the  
5 Washington State Office of Insurance Commissioner during the relevant time period of this  
6 action until the license was cancelled in October, 2011. Defendant HIGGINS was licensed as  
7 a notary public with the Washington State Department of Licensing during the relevant time  
8 period of this action until the license expired in July 2011.

9           2.6    Defendant MICHAEL HIGGINS is married to Defendant DEBORAH  
10 HIGGINS. He resides at 28827 21<sup>st</sup> Avenue S., Federal Way, Washington 98003. This action  
11 is filed against him individually and in his marital capacity.

12           2.7    Defendants T.E.A.M. SERVICES LLC and T.E.A.M. INSURANCE  
13 SERVICES LLC are Washington companies with addresses of 800 Bellevue Way NE,  
14 Suite 400, Bellevue, Washington 98004, 28827 21<sup>st</sup> Avenue South, Federal Way, Washington  
15 98003, 9822 NE 190<sup>th</sup> Street, A104, Bothell, Washington 98011, and 16130 SE 42<sup>nd</sup> Street,  
16 Bellevue, Washington 98006. These Defendants are owned and operated by Defendant  
17 DAILEY.

18           2.8    Defendants, individually and together, for the benefit of their marital  
19 communities and each other, formulated, directed, executed, controlled, had the authority to  
20 control, or participate in, and had knowledge of the acts and practices set forth in this  
21 Complaint.

22           2.9    All Defendants operated as a common enterprise while engaging in the unfair,  
23 deceptive acts and practices and other violations of law alleged herein. The Defendants have  
24 conducted the business practices described herein through an interrelated network of business  
25 practices including offering and selling reverse mortgages, insurance, estate distribution  
26 documents, financial planning advice, and related services, including but not limited to notary

1 services. Because the Defendants have operated as a common enterprise, each of them is  
2 jointly and severally liable for the deceptive acts and practices and violations of laws alleged  
3 herein.

### 4 III. JURISDICTION AND VENUE

5 3.1 The State files this complaint and institutes these proceedings under the  
6 provisions of the Consumer Protection Act, RCW 19.86, and under the Estate Distribution  
7 Document Act, RCW 19.295. A violation of RCW 19.295 is a *per se* violation of the  
8 Consumer Protection Act.

9 3.2 The authority of the Attorney General to commence this action is conferred by  
10 RCW 19.86.080 and RCW 19.86.140.

11 3.3 The Defendants engaged in the conduct set forth in this complaint in  
12 King County and elsewhere in the state of Washington.

13 3.4 Venue is proper in King County pursuant to RCW 4.12.020 and RCW 4.12.025.  
14 Many, if not all, of the defendants, their assets and their businesses are located in King County  
15 and the individual defendants reside in King County. Many of the business transactions at  
16 issue in this matter occurred in and around King County.

17 3.5 This Court has subject matter jurisdiction over this Complaint under the laws of  
18 the State of Washington pursuant to RCW 2.08.010.

### 19 IV. NATURE OF TRADE OR COMMERCE

20 4.1 Defendants are now, and have been at all times relevant to this lawsuit, engaged  
21 in trade or commerce within the meaning of RCW 19.86.010 and RCW 19.86.020 by offering  
22 and selling reverse mortgages, insurance, estate distribution documents, financial planning  
23 advice, and related services.

24 4.2 Defendants have been at all times relevant to this action in competition with  
25 others engaged in similar business in the State of Washington.

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V. FACTS

5.1 At all times relevant to this action, the Defendants have been in competition with others engaged in similar activities in the state of Washington and engaged in the acts below as a matter of practice.

**Introduction**

5.2 Since 2007 and up to the present day, Defendants have been in the business of selling reverse mortgages, annuities and living trusts to senior citizens. Typically, they went to seniors' homes unannounced, claiming to provide financial and estate planning services, including reverse mortgage and annuity products that would allegedly improve the seniors' financial status. These sales were conducted in a series of meetings in their senior victims' homes—without relatives, friends, or advisors of the seniors present—because Defendants know that seniors are more vulnerable to sales pitches made in their homes and without support. When seniors have to arrange for meetings and travel to a professional office for such transactions, they may be more likely to discuss the transactions with relatives or friends before going to the appointment or committing to the transactions.

5.3 Most of Defendants' victims are elderly. The Defendants targeted Washington senior citizens, typically widows in their 80's who were living alone, and who had or were eligible for reverse mortgages.

5.4 Defendants utilize techniques to lull seniors into a false sense of security. For example, seniors report that Defendants are very friendly and engaging. Defendants repeatedly represent to seniors the Defendants have the seniors' best interests in mind as the Defendants advise them regarding financial matters and sell them numerous complex financial products. Defendants used business cards that stated "Assisting seniors in all aspects of financial and estate planning," "Reverse Mortgage Specialist," and "Estate Planning/Trust Services."

5.5 In truth and in fact, Defendants promoted and executed these transactions to maximize the commissions they received in the sale of each reverse mortgage, annuity and

1 living trust, to the detriment of their senior citizen victims. Defendants abused the seniors'  
2 trusting nature and lack of sophistication regarding complex financial products to maximize  
3 their sales and commissions at their victims' expense.

4 **Defendants' Deceptive Reverse Mortgage and Annuity Schemes**

5 5.6 A reverse *mortgage* is a loan for senior homeowners (62 years of age or older)  
6 that uses the home's equity as collateral. The loan generally does not have to be repaid until  
7 the last surviving homeowner who was a party to the loan permanently moves out of the  
8 property or passes away. At that time, the balance of the reverse mortgage must be paid or the  
9 lender on the reverse mortgage sells the home to pay off the loan balance. The borrowing  
10 senior can receive cash proceeds from the mortgage as a series of monthly payments to  
11 supplement their Social Security or pension. Or, they can take out a larger sum, typically as a  
12 line of credit, to perform needed repairs on their home or for medical or other expenses. Many  
13 seniors indicated they took out the reverse mortgage as they needed cash for daily living  
14 expenses.

15 5.7 However, a reverse mortgage is one of the most expensive ways for a senior  
16 citizen to borrow money because of the high fees charged, including mortgage insurance,  
17 origination fee, title fees, appraisal, closing costs, interest, and a monthly service fee. A  
18 reverse mortgage does provide some safety though, because the borrower does not have to  
19 make a mortgage payment while living in the home. Instead, each month the loan principal  
20 grows by the amount of money the borrower received, plus initial settlement charges, and the  
21 monthly fees associated with the reverse mortgage. Commissions are paid to loan originators,  
22 including Defendants, when the transaction is approved and funded by a lender.

23 5.8 Defendants used a variety of ways to gain access to reverse mortgage proceeds  
24 from consumers in Washington State. In some cases, they assisted seniors in completing  
25 documents to request a line of credit withdrawal on an existing reverse mortgage; in other  
26 cases, they assisted seniors in refinancing existing reverse mortgages and withdrawing the

1 remaining equity as a lump sum. Some seniors were even induced to apply for two reverse  
2 mortgage refinances within a short period of time. These practices resulted in many seniors  
3 cashing out all or most of their home equity, incurring substantial interest and settlement costs,  
4 while the defendants received significant commissions as loan originators for these reverse  
5 mortgages.

6 5.9 Immediately upon the senior receiving the lump sum reverse mortgage  
7 proceeds, defendants would return to seniors' homes to sell them single-premium deferred or  
8 single-premium immediate annuities. A single-premium deferred annuity is an annuity  
9 purchased with a lump sum payment by the consumer who does not begin to receive payments  
10 from the annuity until after the lengthy deferral period. During the deferral period, consumers  
11 are prohibited from withdrawing more than a nominal amount of the annuity's value in any  
12 given year without incurring surrender penalties. The surrender penalties are as high as 9 to  
13 10% of the withdrawal amount if funds are withdrawn from the annuity within the first several  
14 years. Typical lengths of the terms of these annuities are ten years.

15 5.10 A single-premium immediate annuity is an annuity in which the consumer  
16 invests a lump sum and receives payments for a specific time period or for as long as the  
17 consumer lives, depending on the terms of the annuity. With most immediate annuities, the  
18 payments end upon the death of the payee and cannot be bequeathed to the heirs of the payee.  
19 The insurance company retains any remaining money that was not paid to the payee in monthly  
20 payments. Defendant Dailey sold single-premium annuities to widows in their 80's, using the  
21 proceeds of a reverse mortgage refinance to fund the annuities. In those transactions the  
22 consumers will not recover the amount of their principal investment until they are in their 90's.

23 5.11 In some cases, the defendants misrepresented to consumers they *had to invest*  
24 *reverse mortgage proceeds in annuities*, when this was not true. The sales of complex annuity  
25 products were made to consumers without full disclosure of the terms of the policies and the  
26 costs and benefits to the consumers.

1           5.12 Defendants failed to disclose to some consumers that deferred annuities are a  
2 long-term investment and they would incur substantial surrender penalties if they withdrew the  
3 money from the annuities within the first several years after the annuity purchases. In fact, the  
4 consumers did incur substantial surrender penalties. Defendants' uses of Annuity Suitability  
5 Acknowledgement Forms or Replacement Forms did not compensate for the failure of the  
6 defendants to disclose material information in the course of selling the annuities.

7           5.13 In many cases, a year or two after selling an annuity to a senior citizen, the  
8 Defendants would advise the senior to surrender an annuity and to reinvest in another annuity  
9 with a different insurance company. The Defendants failed to disclose the substantial  
10 surrender penalties consumers would incur as a result of churning annuity products.  
11 Defendants' uses of Annuity Suitability Acknowledgement Forms or Replacement Forms do  
12 not compensate for the defendants' failure to disclose material information in the course of  
13 selling the annuities. This practice generated additional lucrative commissions for Defendants.

14           5.14 Defendants, through their deceptive acts and practices, received multiple  
15 commissions on both reverse mortgages and annuities. They received commissions for  
16 originating the reverse mortgages and/or refinances and for the subsequent sales of annuities.  
17 Finally, in some circumstances, they returned to the consumers' homes a year or two later to  
18 convince them to exchange annuity products, again incurring commissions for themselves and  
19 having consumers incur significant surrender penalties because they followed the financial  
20 advice of defendants to surrender annuities and purchase new annuities.

21           5.15 The defendants made multiple visits to the seniors' homes while they were  
22 selling reverse mortgages, annuities and estate distribution documents. After those sales were  
23 made, defendants refused to answer or delayed in returning seniors' calls when the senior had  
24 questions or complaints about the products sold by defendants.  
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1 **Defendant HIGGINS Violated the Notary Act**

2 5.16 Defendant HIGGINS was licensed as a notary public by the Washington State  
3 Department of Licensing from July 27, 2007 to July 27, 2011.

4 5.17 Pursuant to RCW 42.44.160 (1), a notary public engages in official misconduct  
5 when she signs a certificate evidencing a notarial act, knowing that the contents of the  
6 certificate are false.

7 5.18 In the process of the Defendants' marketing of reverse mortgage refinances and  
8 estate distribution documents, Defendant HIGGINS claimed to witness or attest to signatures  
9 without being present at the time the consumers signed the documents.

10 **Defendant HIGGINS' Claims to be the Loan Originator or Insurance Agent in**  
11 **transactions**

12 5.19 Defendant HIGGINS claimed to be the loan originator of reverse mortgages and  
13 the insurance agent on annuities sold to the Defendants' victims, when in fact she had no  
14 involvement in the solicitation, negotiation, execution or sale of these products. In fact, the  
15 consumers had never met or talked with Defendant HIGGINS as the solicitation and sale was  
16 made by Defendant SPARKS or Defendant DAILEY.

17 **Defendant SPARKS' Illegal Living Trust Scam**

18 5.20 Due to past abuses in "trust mill scams," the Washington State Legislature  
19 passed the Washington Estate Distribution Documents Act, RCW 19.295, that prohibits non-  
20 attorneys from advising or selling services related to estate planning and estate distribution  
21 documents including living trusts.

22 5.21 Defendant SPARKS illegally advised consumers on estate planning matters, and  
23 sold inter vivos revocable trusts without being licensed to practice law in Washington.

24 5.22 During the process of marketing reverse mortgages and annuities, Defendant  
25 SPARKS falsely represented to consumers that they needed living trusts. She made false or  
26

1 misleading representations including that settling an estate with a living trust would be less  
2 expensive and faster than the probate process.

3 5.23 Defendant SPARKS failed to inform consumers that title to major assets have to  
4 be transferred to the living trusts in order for an estate to be settled without being probated.  
5 Many consumers who purchased the living trusts from Defendant SPARKS have not  
6 transferred their major assets to the trusts and therefore their estate will likely need to be  
7 probated. In essence, they paid for a "living trust" document that will not provide the service  
8 represented by Defendant SPARKS.

9 5.24 Defendant SPARKS inserted in trust documents names of individuals as  
10 witnesses to the consumers' signatures when, in fact, these individuals did not witness the  
11 signatures and the consumers had never met these individuals.

12 5.25 Defendant SPARKS collected payments from consumers for estate planning  
13 documents, specifically revocable living trusts, and failed to provide any documents to these  
14 consumers or to refund their payments.

15 **Additional Specific Unfair and Deceptive Practices**

16 5.26 Defendants induced consumers to sign annuity application documents that  
17 included false information in order to have annuity applications approved by the insurance  
18 companies. The Defendants were motivated by the commissions they received for the annuity  
19 sales. Without the false information, these annuity applications would have been rejected by  
20 the insurance companies.

21 5.27 In some cases, Defendants submitted applications to insurance companies in  
22 which the consumers' signatures were falsely and deceptively obtained, including one set of  
23 application documents for a \$100,000 single premium deferred annuity that falsely stated the  
24 consumer had a second home in Arizona and had signed the application in Arizona when  
25 neither of these statements were true.  
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1           5.28 In some cases, the Defendants arranged to have agent Danni Bracci sign annuity  
2 applications as the Primary Agent for annuity policies issued to Washington State consumers.  
3 Defendant DAILEY falsely claimed in the applications that the policies were sold in Arizona.  
4 In fact, agent Bracci had never met the Washington State consumers and he was not involved  
5 in any way in the solicitation, negotiation or sale of the annuities to consumers.

6           5.29 The Defendants' sale of deferred annuities using reverse mortgage proceeds  
7 severely restricted the seniors' ability to use their money to pay for medical expenses, property  
8 taxes, insurance, and daily living expenses including food and gas. In many cases, these  
9 expenses were the primary reason seniors sought access to their reverse mortgage funds. By  
10 having funds tied up in deferred annuities through the deceptive business practices of the  
11 Defendants, consumers were forced to severely limit their budgets, delayed paying bills,  
12 borrowed cash from family members, or received public assistance. Several consumers lost  
13 thousands of dollars from surrendering the annuities within the first year or two after the  
14 purchase because they needed the money to pay living expenses.

15                           **VI. FIRST CAUSE OF ACTION--MISREPRESENTATIONS**

16           6.1 Plaintiff realleges paragraphs 1.1 through 5.29 and incorporates them herein as if  
17 set forth in full.

18           6.2 In the course of conducting their business Defendants made numerous  
19 misrepresentations as alleged in paragraphs 1.1 through 5.29. Specifically, Defendants made the  
20 following misrepresentations:

- 21           a. Defendant SPARKS, on her own behalf and on behalf of Defendants T.E.A.M.  
22 Services LLC and T.E.A.M. Insurance Services, LLC, misrepresented her  
23 qualifications and authority to sell annuities in the State of Washington.  
24 Defendants SPARKS was not licensed with the Washington State Office of the  
25 Insurance Commissioner to sell annuities as required by RCW 48.17.060 at the  
26 time period alleged herein.

- 1 b. Defendant SPARKS, on her own behalf and on behalf of Defendants T.E.A.M.  
2 Services LLC and T.E.A.M. Insurance Services, LLC, misrepresented her  
3 qualifications and authority to advise consumers for financial planning and  
4 investment purposes when she was not registered with the Washington State  
5 Department of Financial Management as an investment advisor as required by  
6 RCW 21.20.040.
- 7 c. Defendant SPARKS, on her own behalf and on behalf of Defendants T.E.A.M.  
8 Services LLC and T.E.A.M. Insurance Services, LLC, misrepresented her  
9 qualifications and authority to advise consumers on estate planning matters and  
10 estate distribution documents without being licensed as an attorney in the State of  
11 Washington as required by RCW 19.295.
- 12 d. Defendant HENRY WILLIAM DAILEY, on his own behalf and on behalf of  
13 Defendants T.E.A.M. Services LLC and T.E.A.M. Insurance Services LLC,  
14 misrepresented his qualifications and authority to advise consumers on financial  
15 planning and investments when in fact he is not registered with the Washington  
16 State Department of Financial Institutions as an investment advisor as required by  
17 RCW 21.20.040.
- 18 e. Defendant SPARKS, on her own behalf and on behalf of Defendants T.E.A.M.  
19 Services LLC and T.E.A.M. Insurance Services LLC, had consumers sign an  
20 Advisory Services Agreement while misrepresenting that she was a loan officer or  
21 broker. Defendant SPARKS would then submit the Agreement to the loan  
22 origination company in order to receive a Brokers Fee. In fact, Defendant  
23 SPARKS was not the loan officer or broker on these mortgages.
- 24 f. Defendant SPARKS, on her own behalf and on behalf of Defendants T.E.A.M.  
25 Services LLC and T.E.A.M. Insurance Services LLC, misrepresented that she was  
26 a Reverse Mortgage Specialist with Republic Mortgage and distributed business

1 cards that stated "Janet Sparks, Reverse Mortgage Specialist, Republic Mortgage,  
2 Reverse Mortgage Home Loans, 1100 Dexter Avenue North, Suite 100, Seattle,  
3 WA 98109, T: 425-499-6929, F: 206-273-0213, debhiggins@comcast.net." In  
4 fact, Defendant SPARKS was not an employee, agent or contractor of Republic  
5 Mortgage and was not authorized to represent that she was employed by or  
6 represented Republic Mortgage.

- 7 g. Defendant SPARKS, on her own behalf and on behalf of Defendants T.E.A.M.  
8 Services LLC and T.E.A.M. Insurance Services LLC, misrepresented directly and  
9 by implication to consumers the effect of the Bank of America, N.A. purchase of  
10 reverse mortgages from Seattle Mortgage Company in 2007, including that  
11 consumers would receive more money from their existing reverse mortgages when  
12 Defendant SPARKS was in fact promoting reverse mortgage refinances that were  
13 optional for the consumer and were not a requirement of any lender.
- 14 h. Defendant SPARKS, on her own behalf and on behalf of Defendants T.E.A.M.  
15 Services LLC and T.E.A.M. Insurance Services LLC, misrepresented to  
16 consumers the reasons for refinancing their reverse mortgages, including that the  
17 mortgage would be serviced by a local bank which would make it easier to access  
18 the money, or that the transfer of the mortgage to Bank of America resulted in the  
19 homeowner qualifying to receive more money from their mortgage.
- 20 i. Defendants DAILEY and SPARKS individually, and on behalf of Defendants  
21 T.E.A.M. Services LLC and T.E.A.M. Insurance Services LLC, misrepresented to  
22 consumers that documents those consumers were signing were for a reverse  
23 mortgage when in fact, they were applications for annuities.
- 24 j. Defendants SPARKS and DAILEY, individually and on behalf of Defendants  
25 T.E.A.M. Services LLC and T.E.A.M. Insurance Services LLC, misrepresented to  
26 consumers the cost, time and nature of the probate process in the State of

1 Washington in order to market estate distribution documents, specifically  
2 revocable living trusts. The Defendants made verbal misrepresentations to  
3 consumers about probate and provided written materials that represent probate as  
4 "costly and time-consuming" and that claim lawyers don't explain the probate  
5 process to clients because "probate usually represents a nice profit for them with  
6 little effort." The written materials given to consumers by the Defendants also  
7 dissuade consumers from consulting with lawyers about a living trust.

8 6.3 Defendants' misrepresentations made in the course of their business affect the  
9 public interest and are unfair or deceptive acts or practices in trade or commerce and unfair  
10 methods of competition in violation of RCW 19.86.020 and are not reasonable in relation to the  
11 development and preservation of business.

12 **VII. SECOND CAUSE OF ACTION—UNFAIR PRACTICES**

13 7.1 Plaintiff realleges the facts alleged in paragraphs 1.1 through 6.3 as if fully set out  
14 herein.

15 7.2 Defendants committed numerous unfair acts or practices during the conduct of  
16 their business. Specifically, the following acts were contrary to public policy, unconscionable, or  
17 caused consumer harm that was not reasonably avoidable and that was not outweighed by benefits  
18 to competition:

- 19 a. Defendant SPARKS, on her own behalf and on behalf of Defendants T.E.A.M.  
20 Services LLC and T.E.A.M. Insurance Services LLC, advised Washington consumers  
21 on the benefits of insurance annuities, markets and solicits insurance annuities to  
22 Washington consumers, and completed annuity application documents in the process  
23 of selling annuities. Defendant SPARKS is not licensed by the State of Washington  
24 Office of Insurance Commissioner to sell insurance for the time period alleged herein.  
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- 1 b. Defendants DAILEY and SPARKS had consumers sign application documents for  
2 annuities when the consumers had expressly stated to the Defendants that they did not  
3 want an annuity.
- 4 c. Defendant DAILEY individually and on behalf of Defendants T.E.A.M. Services LLC  
5 and T.E.A.M. Insurance Services LLC, failed to provide consumers with copies of  
6 annuity contracts purchased and owned by the consumers. Failing to provide the  
7 contract copies eliminated the consumers' right to examine the contract and cancel the  
8 annuity. In some cases, the consumers who were not provided with copies of their  
9 annuity contracts were the same consumers who had expressly stated to Defendants  
10 that they did not want to purchase an annuity, but were misled to sign annuity  
11 applications which were represented to consumers as reverse mortgage documents.
- 12 d. Defendants SPARKS and DAILEY sold annuity products to consumers using the  
13 proceeds of reverse mortgages that had been sold by Defendants SPARKS, DAILEY  
14 or HIGGINS despite the express prohibitions by the loan origination companies and  
15 insurance companies the Defendants represented from engaging in that specific  
16 practice. The companies' rules and policies prohibiting this practice was designed to  
17 protect the consumer from unsuitable transactions and/or to comply with federal law  
18 and/or with guidance of the National Reverse Mortgage Lenders Association  
19 regarding the cross-selling of financial and investment products to reverse mortgage  
20 borrowers.
- 21 e. Defendant DEBORAH HIGGINS, on her own behalf and on behalf of Defendants  
22 T.E.A.M. Services LLC and T.E.A.M. Insurance Services LLC, signed reverse  
23 mortgage applications stating that Defendant HIGGINS was the loan officer on the  
24 reverse mortgage. She also falsely stated in the applications that she conducted face-  
25 to-face interviews with the consumers when Defendant HIGGINS had no contact with  
26 those consumers. In fact, the consumers never met or talked to Defendant HIGGINS

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and it was Defendant SPARKS who met with the consumers and acted as the loan officer.

f. Defendant HIGGINS, on her own behalf and on behalf of Defendants T.E.A.M. Services LLC and T.E.A.M. Insurance Services LLC, signed annuity applications stating that Defendant HIGGINS was the agent on the annuity. In fact, the annuity purchasers had never met or talked to Defendant HIGGINS, and Defendant HIGGINS was not involved in the solicitation, negotiation, or execution of the sale of the annuities. It was Defendant SPARKS and Defendant DAILEY who met with these consumers and negotiated and executed the sale of the annuities.

g. Defendant HIGGINS, individually and on behalf of Defendants T.E.A.M. Services LLC and T.E.A.M. Insurance Services LLC, engaged in unfair practices as a licensed notary public by claiming to witness or attest to signatures without being present at the time at the time the individuals signed the documents.

h. Defendant DAILEY, individually and on behalf of Defendants T.E.A.M. Services LLC and T.E.A.M. Insurance Services LLC, falsely stated in annuity applications that consumers signed the applications outside of Washington State, including in Arizona and California, when in fact the consumers signed the applications at their homes in Washington State.

i. Defendant DAILEY and Defendant SPARKS, individually and on behalf of Defendants T.E.A.M. Services LLC and T.E.A.M. Insurance Services LLC, falsely stated in annuity applications that the Defendants witnessed the consumers' signatures on the applications outside of Washington State, including in California, when in fact the consumers signed the applications at their homes in Washington State.

j. Defendant DAILEY, individually and on behalf of Defendants T.E.A.M. Services LLC and T.E.A.M. Insurance Services LLC, falsely stated in annuity applications that consumers had a second home or owned property outside the State of Washington,

1 including in California and in Arizona, when in fact the consumers did not own  
2 property in those locations.

3 7.3 Defendants' unfair practices engaged in during the course of their business affect  
4 the public interest and are unfair or deceptive acts or practices in trade or commerce and unfair  
5 methods of competition in violation of RCW 19.86.020 and are not reasonable in relation to the  
6 development and preservation of business.

7 **VIII. THIRD CAUSE OF ACTION—FAILURE TO DISCLOSE MATERIAL TERMS**

8 8.1 Plaintiff realleges the facts alleged in paragraphs 1.1 through 7.3 as if fully set out  
9 herein.

10 8.2 In the course of their business, Defendants routinely failed to disclose material  
11 terms that could have caused a reasonable consumer to decide not to do business with them.  
12 Specifically, Defendants failed to disclose the following material terms:

13 a. Defendant SPARKS, individually, and on behalf of Defendants T.E.A.M. Services  
14 LLC and T.E.A.M. Insurance Services LLC, failed to disclose material facts in the  
15 marketing and origination of reverse mortgages, including that reverse mortgage  
16 refinances were optional, that consumers had a choice of whether to receive the  
17 mortgage proceeds in a line of credit, or monthly payments or in a lump sum.  
18 Defendant Sparks failed to disclose that current monthly payments or the line of  
19 credit from the consumers' original reverse mortgages would no longer be  
20 available after the reverse mortgage was refinanced.

21 b. Defendants SPARKS and DAILEY, individually and on behalf of Defendants  
22 T.E.A.M. Services LLC and T.E.A.M. Insurance Services LLC, failed to disclose  
23 that the rules and policies of the loan origination companies and insurance  
24 companies they represented expressly prohibit the Defendants from  
25 recommending and selling annuity products using reverse mortgage proceeds.  
26 The companies have these rules and policies to protect the consumer from

1 unsuitable transactions such as using reverse mortgage loan proceeds to purchase  
2 annuities. Also, companies refuse such transactions in order to comply with  
3 federal law and/or with guidance of the National Reverse Mortgage Lenders  
4 Association regarding the cross-selling of financial and investment products to  
5 reverse mortgage borrowers.

6 c. Defendants DAILEY and SPARKS, individually and on behalf of Defendants  
7 T.E.A.M. Services LLC and T.E.A.M. Insurance Services LLC, in the course of  
8 marketing single-premium deferred annuities to seniors, failed to disclose that  
9 substantial surrender penalties would be charged if consumers withdrew funds  
10 from the annuities within the first several years after the annuity was purchased.

11 d. Defendants DAILEY and SPARKS, individually and on behalf of Defendants  
12 T.E.A.M. Services LLC and T.E.A.M. Insurance Services LLC in the course of  
13 selling single-premium immediate annuities, failed to disclose that with some  
14 policies the monthly payments from these annuities end at a certain time period or  
15 upon the death of the payee and no funds from the annuity will be available for the  
16 heirs of the consumer. Defendant DAILEY also failed to disclose to consumers  
17 that the terms of the single-premium annuity policies prohibit consumers from  
18 withdrawing any more money from the annuity than the designated monthly  
19 payment.

20 8.3 Defendants' failure to disclose the above material terms in the course of their  
21 business affects the public interest and constitutes unfair or deceptive acts or practices in trade or  
22 commerce and unfair methods of competition in violation of RCW 19.86.020 and is not  
23 reasonable in relation to the development and preservation of business.

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1 **IX. FOURTH CAUSE OF ACTION—VIOLATIONS OF WASHINGTON STATE**  
2 **ESTATE DISTRIBUTION DOCUMENTS ACT**

3 9.1 Plaintiff realleges the facts alleged in paragraphs 1.1 through 8.3 as if fully set out  
4 herein.

5 9.2 Defendant SPARKS, individually and on behalf of Defendants T.E.A.M. Services  
6 LLC and T.E.A.M. Insurance Services LLC, created, marketed and sold estate distribution  
7 documents to Washington consumers. The estate distribution documents include inter vivos  
8 revocable trusts (also known as "living trusts"). In the context of originating reverse mortgage  
9 loans, refinancing reverse mortgages, marketing annuities and the other business aspects of  
10 T.E.A.M. Services LLC and T.E.A.M. Insurance Services LLC, Defendants violate the Estate  
11 Distribution Documents Act, RCW 19.295.020, by marketing estate distribution documents  
12 without being exempted from the requirements of that Act. Pursuant to RCW 19.295.030,  
13 violations of the Estate Distribution Documents Act are per se violations of the Consumer  
14 Protection Act, RCW 19.86.

15 9.3 Defendants' conduct affects the public interest and has the capacity to mislead a  
16 substantial number of consumers and constitutes unfair or deceptive acts or practices in trade or  
17 commerce and unfair methods of competition in violation of RCW 19.86.020.

18 **X. PRAYER FOR RELIEF**

19 10.1 That the Court adjudge and decree that Defendants have engaged in the conduct  
20 complained of herein.

21 10.2 That the Court adjudge and decree that the Defendants' conduct complained of  
22 violated The Estate Distribution Documents Act, RCW 19.295.020 and the Consumer Protection  
23 Act, RCW 19.86.020.

24 10.3 That the Court issue a permanent injunction enjoining and restraining Defendants  
25 and their agents, servants, employees, and all other persons acting or claiming to act for, on behalf  
26 of, or in active concert or participation with Defendants from continuing or engaging in the sale of

1 estate planning and insurance products, as Defendants have engaged in such sales in an unlawful  
2 manner.

3 10.4 That the Court make such orders pursuant to RCW 19.86.080 as it deems  
4 appropriate to provide for consumer restitution.

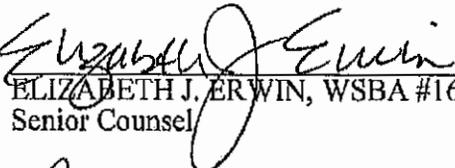
5 10.5 That the Court assess a civil penalty, pursuant to RCW 19.86.140, of Two  
6 Thousand Dollars (\$2,000) per violation against Defendants for each and every violation of  
7 RCW 19.86.020.

8 10.6 That Plaintiff, State of Washington, recover from Defendants the costs of this  
9 action, including a reasonable attorneys' fee, pursuant to RCW 19.86.080.

10 10.7 For such other relief as the Court may deem just and proper to fully and effectively  
11 dissipate the effect of the conduct complained of herein or which may otherwise seem proper to  
12 the Court.

13 DATED this 25<sup>th</sup> day of July, 2013.

14  
15 ROBERT W. FERGUSON  
Attorney General

16  
17   
18 ELIZABETH J. ERWIN, WSBA #16854  
Senior Counsel

19  
20   
21 JASON E. BERNSTEIN, WSBA #39362  
Assistant Attorney General  
Attorneys for Plaintiff  
22 State of Washington  
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KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON, )  
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 Plaintiff, )  
 )  
 HENRY WILLIAM DAILEY, individually )  
 and his marital community; CATHERYN A. )  
 DAILEY, individually and her marital )  
 community; JANET SPARKS, individually )  
 and her marital community; )  
 JOHN DOE SPARKS, individually and his )  
 marital community; DEBORAH A. )  
 HIGGINS, individually and her marital )  
 community; MICHAEL P. HIGGINS, )  
 individually and his marital community; )  
 T.E.A.M. SERVICES LLC; and T.E.A.M. )  
 INSURANCE SERVICES LLC, )  
 )  
 Defendants. )

No. 13-2-27535-0 SEA  
DEFENDANTS' ANSWER  
TO COMPLAINT FOR  
INJUNCTIVE AND OTHER  
RELIEF

COMES NOW the Defendants, HENRY WILLIAM DAILEY and CATHERYN A. DAILEY, Pro Se, and file their Answer in the above-entitled matter and in support thereof state, as follows:

VI FIRST CAUSE OF ACTION - MISREPRESENTATIONS

6.1 Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 6.1 of Plaintiff's Complaint

6.2 Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 6.2 of Plaintiff's Complaint

a. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 6.2a of Plaintiff's Complaint

b. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 6.2b of Plaintiff's Complaint

c. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 6.2c of Plaintiff's Complaint

d. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 6.2d of Plaintiff's Complaint

e. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 6.2e of Plaintiff's Complaint

f. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 6.2f of Plaintiff's Complaint

g. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 6.2g of Plaintiff's Complaint

h. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 6.2h of Plaintiff's Complaint

i. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 6.2i of Plaintiff's Complaint

j. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 6.2j of Plaintiff's Complaint

6.3 Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 6.3 of Plaintiff's Complaint

## VII. SECOND CAUSE OF ACTION – UNFAIR PRACTICES

7.1 Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 7.1 of Plaintiff's Complaint

7.2 Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 7.2 of Plaintiff's Complaint

a. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 7.2a of Plaintiff's Complaint

b. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 7.2b of Plaintiff's Complaint

c. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 7.2c of Plaintiff's Complaint

d. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 7.2d of Plaintiff's Complaint

e. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 7.2e of Plaintiff's Complaint

f. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 7.2f of Plaintiff's Complaint

g. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 7.2g of Plaintiff's Complaint

h. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 7.2h of Plaintiff's Complaint

i. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 7.2i of Plaintiff's Complaint

j. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 7.2j of Plaintiff's Complaint

**VIII. THIRD CAUSE OF ACTION – FAILURE TO DISCLOSE MATERIAL TERMS**

8.1 Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 8.1 of Plaintiff's Complaint

8.2 Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 8.2 of Plaintiff's Complaint

a. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 8.2a of Plaintiff's Complaint

b. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 8.2b of Plaintiff's Complaint

c. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 8.2c of Plaintiff's Complaint

d. Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 8.2d of Plaintiff's Complaint

8.3 Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 8.2e of Plaintiff's Complaint

**IX      FOURTH CAUSE OF ACTION – VIOLATIONS OF WASHINGTON  
STATE ESTATE DISTRIBUTION DOCUMENTS ACT**

9.1 Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 9.1 of Plaintiff's Complaint

9.2 Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 9.2 of Plaintiff's Complaint

9.3 Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY deny the allegations found in paragraph 9.3 of Plaintiff's Complaint

PRAYER

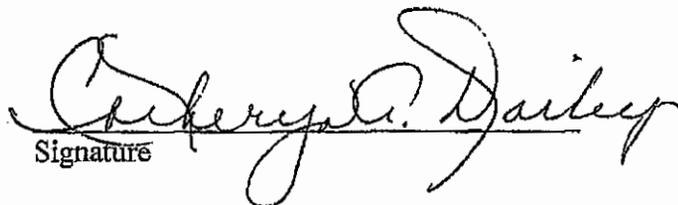
Defendants HENRY WILLIAM DAILEY and CATHERYN A. DAILEY pray that the Court deny Plaintiff's Complaint and for all other relief just and proper in the premises.

DATED this 3<sup>rd</sup> day of September, 2013.

HENRY WILLIAM DAILEY

  
Signature

CATHERYN A. DAILEY

  
Signature

FILED

14 JUN 27 PM 4:01

KING COUNTY  
SUPERIOR COURT CLERK

Honorable Kenneth Schubert E-FILED  
Plaintiff's Motion for Summary Judgment  
Date 07-25-2014 @ 11:00 a.m.

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STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

NO. 13-2-27353-0 SEA

Plaintiff,

PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT

v.

HENRY WILLIAM DAILEY,  
individually and his marital community;  
CATHERINE A. DAILEY, individually  
and her marital community; JANET  
SPARKS, individually and her marital  
community; JOHN DOE SPARKS,  
individually and his marital community;  
DEBORAH A. HIGGINS, individually  
and her martial community; MICHAEL  
P. HIGGINS, individually and his marital  
community; T.E.A.M. SERVICES LLC;  
and T.E.A.M. INSURANCE SERVICES,  
LLC, ASSOCIATES, LLC,

Defendants.

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**I. INTRODUCTION**

Under cover of two corporate entities, TEAM Services, LLC ("TEAM Services") and TEAM Insurance Services, LLC ("TEAM Insurance Services"), Defendants Janet Sparks, Henry William Dailey, and Deborah A. Higgins supposedly provided financial advice to senior citizens, which included the sale by Sparks of useless "living trusts" that allowed Defendants to access seniors' financial information. However, the "advice" Defendants offered was a scam, leaving their vulnerable victims, many of whom were widows, confused and without access to their hard-earned money. At least fifty-eight seniors lost equity in their homes, and money from expensive reverse mortgage loans Defendants peddled was funneled into annuities that locked up seniors' funds. As set forth below, there are no disputed issues of material fact as to whether Defendants violated the Consumer Protection Act (CPA), RCW 19.86 and the State's summary judgment motion should be granted.

**II. RELIEF REQUESTED**

The State requests the following relief: (1) A declaration that certain acts and practices violate the CPA; (2) a permanent injunction enjoining and restraining Defendants from engaging such unlawful conduct; (3) an order that Defendants pay \$29,125.00 in restitution to consumers; and (4) reasonable costs and attorneys' fees.

**III. STATEMENT OF FACTS**

**A. Defendants' Corporate Structure**

Defendants Henry William Dailey, Janet Sparks, and Deborah Higgins, organized themselves into two corporate entities: TEAM Services and TEAM Insurance Services. Dailey's now deceased partner, Ron McClain, managed TEAM Services, which handled the reverse mortgage portion of Defendants' scheme. Dailey managed TEAM Insurance Services,

1 which sold annuities. Bernstein Decl., Ex. D., Dailey Dep., 27:18-28; *Id.*, Ex. A. Dailey  
2 admits to sole control over TEAM Insurance Services' policies, actions, and practices.  
3 Bernstein Decl. Ex. D, 28:21-23. He was also present at the sale of most reverse mortgages.  
4 All acts performed by Dailey described herein were in furtherance of TEAM Services and  
5 TEAM Insurance Services, both owned and operated by Dailey.  
6

7 Sparks sold living trusts and annuities and was not directly employed by either TEAM  
8 entity. Bernstein Decl., Ex. E, Sparks Dep., 15:21-16:16. At times, she was also an employee  
9 of Senior American Funding, Inc., a mortgage originator. *Id.* at 14:7-19. She also assisted  
10 Dailey by filling out his annuity paperwork. Bernstein Decl., Ex. D, 32:11-24.  
11

12 Higgins was employed by TEAM Services as an administrative assistant and notary.  
13 Bernstein Decl., Ex. F, Higgins Dep., 9:9-23. She was also employed by Republic Mortgage, a  
14 mortgage originator, as a loan originator between March 26, 2007 and March 14, 2008. *Id.* at  
15 25:9-13; Bernstein Decl. Ex. B. Higgins occasionally went out "in the field" with Sparks and  
16 Dailey to notarize documents and to finalize sales of reverse mortgages. Bernstein Decl. Ex. F,  
17 13:7-14. Finally, she allegedly sold several annuity products during a brief stint as a licensed  
18 insurance agent.<sup>1</sup> *Id.* at 23:14-22. Higgins has been defaulted in this action.  
19

## 20 **B. The Reverse Mortgage-Trust Mill Scheme**

21 Defendants have systematically drained assets from senior victims through the use of a  
22 confusing reverse mortgage-trust mill scheme. Granger Decl., ¶ 3. The scheme features several  
23 phases, which are all designed to maximize Defendants' commissions, and which show no  
24 regard for the financial well-being of the senior victims. *Id.* at ¶ 5.  
25

26 <sup>1</sup> Higgins's "client" on these annuities denies ever meeting her. See Griffin Decl. ¶ 8.

1 Dailey used a simple and effective tool to locate victims: he purchased data from  
2 CoreLogic, a company that sells information on reverse mortgages owners. Bernstein Decl.,  
3 Ex. D, 47:16-48:4. Dailey testified that he used a call center to make appointments with  
4 potential victims, *id.* at 48:7-20, but many victims have said they do not remember receiving  
5 any calls and that Dailey and Sparks seemed to just show up out of the blue. *Id.* at 48:7-20;  
6 *See, e.g.*, Decl. of Lacock, ¶ 4; D'Aoust, ¶ 3; Peterson, ¶ 3. Regardless, CoreLogic provided  
7 Dailey with a ready list of seniors, all of whom had reverse mortgages that he could "review"  
8 with them.<sup>2</sup> Bernstein Decl., Ex. D, 49:17-50:5.

10 **1. Phase One: Gaining the Trust of Senior Citizens**

11 Building trust and a friendship with a senior is a cornerstone of the senior scammer's  
12 strategy. Granger Decl., ¶¶ 3, 5. And indeed, almost without exception, Defendants' senior  
13 victims report that Dailey and Sparks are kind, enjoyable, and engaging people. *See* D'Aoust  
14 Decl., ¶¶ 5, 6; Walstad Decl., ¶¶ 7, 8; Carter Decl., ¶¶ 5, 15; Hamasaki Decl., ¶ 7. Dailey states  
15 that he and Sparks "very rarely did business the first time around when we saw people."  
16 Bernstein Decl., Ex. D, 22:16-17. He further explained that they would not talk finances with  
17 first-time clients, focusing instead on "how are they doing...what's going on with them?" and  
18 about "their fears." *Id.* at 23:8-10 and 25:4.

19 Sparks exhibited similar behavior. She explained that she would often "chitchat" with  
20 the clients, engaging with them about their family photos and their lives. Bernstein Decl. Ex. E,  
21 80:8-17. She also followed Dailey's lead and avoided discussing business at the first meeting,  
22 going so far as to state that they "never" signed papers on the first meeting. *Id.* at 80:18-16.

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26 <sup>2</sup> The few victims who did not have reverse mortgages were referrals from other clients. *See* Cox Decl.;  
Tharp Decl.

1 Both Sparks and Dailey paint themselves as “servicers” and friends of the elderly and imply  
2 that the distress experienced by seniors with reverse mortgages is caused by the failure of  
3 banks to properly “service” their reverse mortgage clients. *Id.* at 82:9-83:12. This is one of  
4 Defendants’ openings and on occasion, victims report that Sparks claimed to be “with Bank of  
5 America” or working on behalf of the bank. Schindel Decl., ¶ 4. Sparks never had an affiliation  
6 with Bank of America. Bernstein Decl. Ex. C at 3.  
7

8 **2. Phase Two: Reverse Mortgages**

9 The second phase of Defendants’ scheme revolved around reverse mortgages. A  
10 reverse mortgage is a loan for senior homeowners that uses the home’s equity as collateral.  
11 Granger Decl. ¶ 4. Unlike traditional mortgages, a *reverse* mortgage pays the homeowner their  
12 home’s equity in either a monthly payment or lump-sum amount, which can be paid out  
13 immediately or structured as a line-of-credit (“LOC”). Bernstein Decl. Ex. G. at 13, 28-29.  
14 Most seniors who obtain reverse mortgages do so because they need ready access to liquid  
15 funds for home repairs, medical expenses, or even for daily living expenses. *Id.* at 44.  
16

17 Despite the apparent advantages of reverse mortgages, they are a very expensive way  
18 for senior citizens to borrow money due to a bevy of fees, including mortgage insurance,  
19 origination fees, title fees, appraisal fees, closing costs, interest, and a monthly service fee. *Id.*  
20 at 33-34. While seniors using a reverse mortgage need not make mortgage payments to live in  
21 their property, the property is being drained of equity, as the principal loan amount grows by  
22 the amount of each monthly payment, plus initial settlement charges, and monthly fees  
23 associated with the reverse mortgage and interest. *Id.* at 13. Commissions are paid to loan  
24 originators, including Defendants Sparks and Higgins, for both initial and refinanced reverse  
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1 mortgages. *Id.* at 33-34.

2           Importantly, the costs of reverse mortgages are often hidden from view because, much  
3 like with traditional mortgage refinances, all the fees are simply incorporated into the loan  
4 amount, and the customer isn't incurring any obvious out-of-pocket expenses to obtain the  
5 reverse mortgage. *See e.g.* Odle Decl., Ex. B at SAFI 014095-097. Indeed, rather than writing  
6 a check, as is commonly done when making a down payment associated with a traditional  
7 mortgage, seniors only *receive* funds from a reverse mortgage. Dailey and Sparks relied on  
8 this, failing to disclose the true cost of refinancing to their victims, and ensuring that they could  
9 easily gain access to seniors' liquid funds. Fortier Decl., ¶ 5; Benson Decl., ¶ 6.

10           Defendants approached every victim with the same plan of attack. If the victim had  
11 funds in a preexisting reverse mortgage line of credit, those funds would be drained and used  
12 to purchase an annuity. Decl. of Lacock, ¶¶ 4-6; D'Aoust, ¶¶ 7-8. If a LOC was not available  
13 (often because the reverse mortgage was structured to provide monthly income), then the  
14 Defendants would suggest to their victims that they refinance their reverse mortgage, telling  
15 people they could get a better interest rate or more money than their existing reverse mortgage.  
16 Decl. of Fortier, ¶¶ 4-5; Hamasaki, ¶ 4; Peterson, ¶¶ 4-5; Carter, ¶ 4. Defendants failed to  
17 disclose the suite of options for obtaining money from a reverse mortgage, requiring every  
18 "client" to receive a lump sum payment from the reverse mortgage, rather than a monthly  
19 income stream. Schindel Decl., ¶¶ 8-9; Odle, ¶¶ 6, 8-9; Peterson, ¶ 5; Carter, ¶ 7; Benson, ¶ 6.  
20 The lump sum payment was crucial to Defendants' scheme and often worse for borrowers  
21 because of the faster accumulation of interest compared to monthly payments or unused LOC.  
22

23           When victims had preexisting LOCs, Defendants told them that if they passed away  
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26

1 with money in their LOCs, the remaining funds would be forfeited and unavailable to their  
2 heirs.<sup>1</sup>Bernstein Decl., Ex E., 144:19-22; Lacock Decl., ¶ 4. Dailey admits this was simply  
3 incorrect. Bernstein Decl. Ex. D, 259:9-19. Even though the reverse mortgages were not the  
4 end goal of Defendants, they were still paid \$49,053.03 in commissions. Shadel Decl., ¶ 4.

5  
6 **3. Phase Three: Living Trust Sales**

7 In Phase Three, Sparks marketed, gathered information for the preparation of, and sold  
8 estate distribution documents, including inter vivos “living” trusts and associated wills and  
9 supporting documents to people she met through Dailey. Bernstein Decl., Ex. E, 16:6-16,  
10 17:10–18:4. Sparks sold 22 trusts to victims between July 22, 2007 and the present. Shadel  
11 Decl., ¶ 5. Sparks used the sale of trusts as a supplemental source of income, Bernstein Decl.  
12 Ex. E, 17:10-14, but they were even more useful in the context of Defendants’ overall scheme.  
13 Granger Decl. ¶ 4. A classic trust mill combines the sale of a living trust with the cross-selling  
14 of annuities—once elder financial predators learn where the money is, they can sell various  
15 products to turn those funds into commission paydays for themselves. Granger Decl., ¶ 4. This  
16 is what Sparks and Dailey did. *Id.* at ¶ 5. A representative example is the “advice” given to  
17 Doris Lacock and her husband Larry to liquidate a life insurance policy and a certificate of  
18 deposit that Sparks and Dailey referenced only after Sparks sold them a trust. Lacock Decl., ¶¶  
19 12-13. This cash was used to sell the Lacocks a \$100,000 Forethought Destination Indexed  
20 Annuity Destination Income 15 product, which generated a commission of \$8,250 to  
21 Defendants. Shadel Decl. ¶ 7.

22  
23  
24 In addition, Sparks was not remotely qualified to sell living trusts. She has never been  
25 licensed to practice law in Washington, Bernstein Decl., Ex. E, 36:7-11, and admitted that she  
26

1 has no education or training relevant to the sale of living trusts. *Id.* at 39:13-15. She handed out  
2 information she collected from the Internet to numerous consumers, without knowing if that  
3 information was correct. *Id.* at, 40:21-41:5. Sparks failed to fund the trusts she sold, rendering  
4 them useless, but nonetheless charged her victims up to \$1,600 for the documents. Schindel  
5 Decl., ¶¶ 15-18; Peterson Decl., ¶ 6; Benson Decl., ¶ 9-10; Starwalt Decl. ¶¶ 10-13. She  
6 received approximately \$29,125.00 from trust sales. Shadel Decl. ¶ 5.

8 Sparks and Dailey had a symbiotic relationship. Sparks relied on Dailey's system of  
9 generating leads to find her customers for inter vivos trusts, while Dailey relied on Sparks to  
10 assist with the sale of annuities and reverse mortgages, particularly with respect to the  
11 information gathering inherent to her trust mill business. Granger Decl., ¶ 5.

#### 12 4. Phase Four: High Commission Annuities

14 Defendants made most of their money during the fourth phase: the sale of complicated,  
15 high commission annuities. There are two main categories of annuity: immediate and deferred.  
16 An immediate annuity is a policy that guarantees a series of payments for a fixed term of years  
17 or for a life. These often pay out monthly, providing a type of secured income. A deferred  
18 annuity accumulates savings and is then distributed either monthly or via a lump-sum payment.  
19 Deferred annuities require some time (often ten years) to reach a "break even" point, before  
20 which money cannot be withdrawn without paying a cost, referred to as a surrender penalty.  
21 Deferred annuities come in several variants, one of which is called an "indexed deferred  
22 annuity." Indexed annuities are among the most complex, and tie the return of the annuity to  
23 some kind of index, such as the performance of the S&P 500 stock index. Granger Decl., ¶ 4.

25 Annuities have extremely complex mathematical equations that determine the flow of  
26

1 cash between the insured, the insurance agent, and the company itself. Granger Decl., ¶ 4.  
2 Annuities are sold on a commission basis. As a rule of thumb, annuities that pay the highest  
3 commissions generally have the most egregious surrender terms. *Id.* Annuities that promise  
4 “bonuses” often have arcane terms that few in the industry understand. *Id.* Indeed, Dailey sold  
5 numerous annuities without fully understanding how the products worked! *Id.* at ¶ 5.  
6

7 Finally, as insurance products, annuities are regulated by the Office of the Insurance  
8 Commissioner (OIC). RCW 48.02.060. Not all annuity products are permitted to be sold in  
9 Washington. *See generally* RCW 48.23; WAC 284-23. In certain cases, people with property  
10 in other states may be able to purchase annuities approved in those states despite residing in  
11 Washington. The insurance agent is responsible for collecting all information on residency and  
12 out-of-state property for transmittal to the insurance company. Riggins Decl. ¶ 7.  
13

14 Here, Defendants sold a variety of annuities, mostly deferred, to a number of seniors  
15 living in Washington. During the course of these sales, Defendants sold annuities of  
16 questionable value to people who would benefit from the purchase only under certain  
17 circumstances. Decl. of Odle, ¶¶ 10-12, 15, 17; Walstad, ¶ 19; Granger, ¶ 5. They sold  
18 annuities to Washingtonians that were not approved for sale in Washington by lying on the  
19 annuity applications, telling their victims to claim property in other states when no such  
20 property existed and representing that the applications were signed outside Washington. Decl.  
21 of Lacock, ¶13; Cox, ¶ 8; Tharp, ¶¶ 8-9; Moore, ¶¶ 13-16 . Defendants did this because they  
22 claimed that those out-of-state products had “bonuses” that would offset any penalties from  
23 surrendering other annuities to fund them. *See* Tharp, ¶¶ 6-7. Defendants made \$464,821.66 in  
24 commissions from annuities sold throughout the time relevant to this action. Shadel Decl. ¶ 6.  
25  
26

1 Defendants also submitted false information on annuity applications when it suited  
2 their needs. For example, several consumers appear to have purchased Forethought annuities  
3 from Danny Bracci, an insurance agent licensed in Arizona and California. *See* Lacock Decl. ¶  
4 13; Moore Decl. ¶ 17. However, the victims unequivocally deny meeting Mr. Bracci and state  
5 that all the annuities they purchased were sold by Sparks and Dailey. *See id.*  
6

7 In addition to the Bracci irregularities, Dailey routinely witnessed and submitted false  
8 information to insurance companies in annuity applications. This occurred when Dailey sold  
9 annuities to his victims that were not approved for sale in Washington by the OIC. Riggins  
10 Decl. ¶ 5. These applications appear to have been signed in locations outside of Washington,  
11 yet each consumer involved has declared that they never signed any of those applications in  
12 other states. *See* Lacock Decl., ¶ 13; Moore Decl., ¶ 14; Cox, ¶ 7; Walstad, ¶ 18.  
13

14 **5. Phase Five: Repeat, Repeat, Repeat**

15 The final “phase” of Defendants’ scheme was simply to repeat it as much as possible.  
16 Sparks could only sell one living trust per victim, of course, but together with Dailey, the  
17 Defendants sold as many reverse mortgage refinances as the value of the house allowed. Then  
18 they focused on “twisting” annuities, often selling one annuity to a client and then coming back  
19 just a few years later to surrender it and use the same money to buy a different annuity. Decl.  
20 of Walstad, ¶¶ 14-16, 19; Lacock, ¶¶ 15-16; Griffin Decl. ¶¶ 10, 15. This practice was  
21 particularly harmful to the financial well-being of Defendants’ senior victims because most of  
22 the “twisted” annuities had severe surrender penalties. *See* Granger Decl. ¶ 5; Decl. of Lacock;  
23 Walstad, ¶¶ 20-25. Another victim was convinced to withdraw money from a separate insurance  
24 policy, not knowing about the huge surrender fee. D’Aoust Decl., ¶ 9-11. She used the money  
25  
26

1 for annuity investments. *Id.*

2 **C. Defendant Higgins Was Defaulted**

3 On August 20, 2013, Plaintiff filed a Motion for Default Judgment against Defendants  
4 Deborah A. Higgins and Michael P. Higgins. The same day, the Court entered an Order for  
5 Entry of Default Against Defendants Deborah A. Higgins and Michael P. Higgins. Because  
6 Defendants Deborah A. Higgins and Michael P. Higgins have been ordered to be in default in  
7 this case, the State does not address their activities in this motion, and will request appropriate  
8 relief against them in a later Motion for Entry of Default Judgment.  
9

10 **IV. STATEMENT OF THE ISSUES**

- 11 1. Did Defendants violate the Washington State Consumer Protection Act through the  
12 following acts and practices:
- 13 a. By failing to disclose material facts to consumers during the sale of reverse  
14 mortgages and annuity products to vulnerable senior citizens?
  - 15 b. By misrepresenting their qualifications, the utility of reverse mortgages and  
16 annuity products, and facts on annuity applications during the sale of reverse mortgages  
17 and annuities to vulnerable senior citizens?
  - 18 c. By gathering information for and actually producing and selling estate  
19 distribution documents to vulnerable senior citizens without a license to practice law in  
20 violation of RCW 19.295?
  - 21 d. By advising their clients to withdraw from, surrender, or sell investments other  
22 than insurance products for the purpose of purchasing annuities from Defendants without  
23 being licensed as investment advisors pursuant to RCW 21.20.040?  
24  
25  
26

1 e. By engaging in a general pattern or practice of using reverse mortgage  
2 proceeds, living trusts, and annuities to financially prey upon vulnerable senior citizens?

3 **V. EVIDENCE RELIED UPON**

4 This motion is based on:

- 5  
6 1. Plaintiff's Motion for Entry of Default and Order Granting Entry for Default Motion;  
7 2. Decl. of Jason E. Bernstein and Exhibits attached thereto;  
8 3. Decl. of Neil Granger and Exhibits attached thereto;  
9 4. Decl. of Rence Shadel and Exhibits attached thereto;  
10 5. The following consumer Declarations and Exhibits attached thereto: Doris Lacock,  
Elizabeth Odie, Beverly Cox, Annabelle Peterson, Nina D'Aoust, Nellie Fortier,  
Yoko Hamasaki, Catherine Tharp, Elinor Carter, Lovina Schindel, Romaine  
Walstad,<sup>3</sup> Loretta Benson, Karen Moore, Joy Starwalt, and Connie Griffin  
11 6. Decl. of Nigel Riggins and Exhibits attached thereto;

12 **VI. ARGUMENT**

13 **A. Summary Judgment Should Be Granted Because There Are No Issues of Material  
14 Fact and Only Questions of Law Remain to be Determined.**

15 Summary judgment is appropriate when no issue of material fact exists and only  
16 questions of law remain to be determined. *State Farm Ins. Co. v. Emerson*, 102 Wn.2d 477,  
17 480, 687 P.2d 1139 (1984). The non-moving party must produce actual facts that dispute the  
18 movant's material facts. *Young v. Key Pharm.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989).  
19 Mere allegations, conclusions, and opinions are insufficient to create a triable issue.  
20 *Grimwood v. Univ. of Puget Sound*, 110 Wn.2d 355, 360, 753 P.2d 517 (1988).

21 **B. The Consumer Protection Act Prohibits Unfair or Deceptive Acts or Practices.**

22 The CPA declares "unfair or deceptive acts or practices in the conduct of any trade or  
23 commerce...unlawful." RCW 19.86.020. The statute mandates that the CPA be "liberally  
24 construed that its beneficial purposes may be served." RCW 19.86.920. The purpose of this  
25

26 <sup>3</sup> Unfortunately, Ms. Walstad passed away in November 2013. Shadel Decl. ¶ 10.

1 liberal construction is to ensure protection of the public and the existence of fair and honest  
2 competition. See *State v. Ralph Williams Northwest Chrysler Plymouth Inc.*, 82 Wn.2d 265,  
3 274, 510 P.2d 233 (1973).

4 The State brings must prove three elements to prevail on its CPA claim: (1) an unfair  
5 or deceptive act or practice, (2) occurring in trade or commerce, (3) that affects the public  
6 interest. See *Hangman Ridge Training Stables v. Safeco*, 105 Wn.2d 778, 719 P.2d 531  
7 (1985). The State is not required to prove causation or injury. *Robinson v. Avis Rent-A-Car*,  
8 106 Wn. App. 104, 22 P.3d 818 (2001).

9  
10 **1. Unfair or Deceptive Act or Practice**

11 Whether a particular act is unfair or deceptive is a question of law. *Panag v. Farmers*  
12 *Ins. Co. of Washington*, 166 Wn.2d 27, 47, 65, 204 P.3d 885 (2009). The only question of  
13 fact is whether an act or practice occurred. *Id.*

14  
15 An act or practice is deceptive under the CPA if it has “the capacity to deceive a  
16 substantial portion of the public.” *Hangman Ridge*, 105 Wn.2d at 785. “The purpose of the  
17 capacity-to-deceive test is to deter deceptive conduct *before* injury occurs.” *Id.* Intent to  
18 deceive is not required nor is actual deception. *Id.*

19 Moreover, “in evaluating a tendency or capacity to deceive, it is appropriate to look not  
20 at the most sophisticated consumer, but the least sophisticated consumer.” *FTC v. Crescent*  
21 *Publ’g*, 129 F. Supp 2d. 311, 321 (S.D.N.Y. 2001) (citing *Exposition Press v. FTC*, 295 F.2d  
22 869 (2nd Cir. 1961)). If as little as 10% of the general public might be deceived, that is enough.  
23 See *Firestone Tire & Rubber Co. v. FTC*, 481 F.2d 246, 249 (6th Cir. 1973).

24 A practice is deceptive if it misleads or misrepresents something of material  
25  
26

1 importance. *Holiday Resort Comty. Ass'n v. Echo Lake Assocs., LLC*, 134 Wn. App. 210, 226,  
2 135 P.3d 499 (2006). Omissions of material fact also can be deceptive. *See id.*; *Griffith v.*  
3 *Centex Real Estate Corp.*, 93 Wn. App. 202, 214, 969 P.2d 486 (1998).

4 An act or practice can also violate the CPA if it is unfair, even if it is not deceptive. *See*  
5 *Klem v. Wash. Mut. Bank*, 176 Wn.2d 771, 787, 295 P.3d 1179 (2013). An act is unfair under  
6 the CPA if it (1) offends public policy in a general sense; (2) is immoral, unethical, oppressive,  
7 or unscrupulous; or (3) causes substantial injury to consumers, competition, or other  
8 businesses. *Magney v. Lincoln Mut. Sav. Bank*, 34 Wn. App. 45, 57, 659 P.2d 537 (1983). As  
9 demonstrated below, Defendants engaged in unfair or deceptive acts in each phase of their  
10 overall scheme.

## 11 12 **2. Trade or Commerce.**

13 The CPA broadly defines "trade" and "commerce" to include "the sale of assets or  
14 services, and any commerce directly or indirectly affecting the people of the State of  
15 Washington." RCW 19.86.010(2), and includes conduct during the course of performance. *See*  
16 *Salois v. Mutual of Omaha Ins. Co.*, 90 Wn.2d 355, 359-60, 581 P.2d 1351 (1978). There is no  
17 dispute that the sale of living trusts, insurance products and reverse mortgages takes place in  
18 trade or commerce.<sup>4</sup>

## 19 20 **C. Defendants Committed Unfair or Deceptive Acts in Phase 1 of Their Scheme.**

### 21 **1. Defendants Illegally Acted As Investment Advisors without Being Licensed.**

22 An "investment adviser" is defined as any person who holds himself or herself out as a  
23 financial planner. RCW 21.20.005(8). It is unlawful to transact business as an investment  
24

25 <sup>4</sup> With respect to the sale of annuities and other insurance products, see also RCW 19.86.170. This  
26 section specifically notes that acts or practices regulated by the insurance commissioner are subject to the CPA as long as acts or practices alleged to have violated the CPA are not required pursuant to Title 48 RCW.

1 advisor without being licensed or exempt from the licensing requirements of RCW 21.20.040.  
2 Defendants Sparks and Dailey were neither licensed nor exempt. Despite this, they routinely  
3 provided investment advice to their victims, advising Doris and Larry Lacock to liquidate a  
4 separate life insurance policy and several certificates of deposit in order to purchase another  
5 \$100,000 Forethought indexed annuity. Lacock Decl. ¶ 15-16. Defendants also advised  
6 Catherine Tharp to transfer funds from her stock accounts into annuities. Tharp Decl ¶ 4.  
7 Similarly, Sparks and Dailey advised Connie Griffin to liquidate her Raymond James stock  
8 accounts because annuities were safer. Griffin Decl. ¶ 5.

10 Acting as an investment advisor without being licensed is an unfair act under the CPA  
11 because it is against public policy as defined by state licensing requirements. RCW 21.20.040.  
12 Moreover, Defendants only provided such advise to perpetrate their damaging financial scam  
13 upon elderly victims, a practice which is immoral, unethical, and unscrupulous. *See Klem*, 176  
14 Wn.2d at 787; *Magney*, 34 Wn. App. at 57. The Court should find that the Defendants  
15 committed unfair or deceptive acts by acting as investment advisors without a license.

17 **2. Defendants Misrepresented Their Qualifications to Provide Financial**  
18 **Advice.**

19 Sparks and Dailey also misrepresented their qualifications to provide financial advice.  
20 They handed out business cards that created the impression they were credible and competent  
21 to provide financial advice. For example, Dailey used a business card from "Next Generation  
22 Financial Services: A Division of Mariner Bank." Odle Decl. Ex A. Similarly, Sparks  
23 commonly used two business cards, one that included "Estate Planning/Trust Services" as her  
24 area of expertise, and another claiming she was a Reverse Mortgage Specialist for Republic  
25 Mortgage. *Id.*; Hamasaki Dec. Ex. A.  
26

1 Sparks also illegally sold annuities to many clients without being licensed as an  
2 insurance agent.<sup>5</sup> RCW 48.17.060. Many victims reported that Sparks did the majority of the  
3 talking—and therefore, the selling—of the insurance products they purchased, even after  
4 Sparks's insurance agent license had expired. *See, e.g.,* D'Aoust Decl. ¶ 6-9; Griffin Decl. ¶ 6.

5  
6 Deception under the CPA requires only that the practice have the capacity to deceive a  
7 substantial number of consumers. *Hangman Ridge*, 105 Wn.2d at 785. Courts look to the "least  
8 sophisticated consumer" when making this determination. *Crescent Publ'g*, 129 F. Supp. 2d at  
9 321. Here, Sparks and Dailey's business cards and confident attitude as they dispensed  
10 "advice" not only had the capacity to deceive: many victims were, in fact, deceived. Walstad  
11 Decl. ¶ 7 ("I considered Janet to be my financial planner."); D'Aoust, ¶ 3-7. The Court should  
12 find Defendants misrepresented their qualifications to provide financial advice to vulnerable  
13 seniors and therefore committed unfair or deceptive acts.

14  
15 **3. Defendants Unfairly Abused the Trust of Their Senior Victims**

16 Defendants knew that gaining the trust of their victims was essential for their overall  
17 plan to succeed. Granger Decl. They built up trust, first by intentionally avoiding business in  
18 the first meeting, and later by spending ample time "chitchatting" with their victims, getting to  
19 know them and showing interest in their lives and families. *See* All Consumer Decl. Many  
20 seniors are often particularly vulnerable to this strategy due to loneliness and a trusting nature.

21  
22 Defendants' abuse of their victims' trust is an unfair or deceptive practice. A fiduciary  
23 relationship arises where "any person whose relation with another is such that the latter  
24 justifiably expects his welfare to be cared for by the former." *Goodyear Tire & Rubber Co. v.*

25  
26 

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<sup>5</sup> Sparks was a licensed insurance agent between 4/8/1994 and 1/23/2007. Shadel Decl. ¶ 8.

1 *Whiteman Tire, Inc.*, 86 Wn. App. 732, 741 (1997). Here, Sparks and Dailey created fiduciary  
2 relationships-in-fact by convincing vulnerable seniors that they were trustworthy financial  
3 planners who were out to protect them. The seniors had a “foundation for [their] belief that the  
4 one giving advice or presenting arguments is acting not in his own behalf, but in the interests  
5 of the other party.” *Id.* at 742. Indeed, Sparks and Dailey worked hard to create such a  
6 foundation. *See* Hamasaki Decl. ¶ 7; Walstad Decl. ¶ 7, 8. As in *State v. Kaiser*, where the  
7 court found the defendant violated the CPA by violating his fiduciary duties when he acted as  
8 both beneficiary and trustee of property trusts in his “partial interest deals,” *see* 161 Wn. App.  
9 705, 723-25 (2011), Defendants breached their fiduciary duty to the seniors whose trust they  
10 worked so hard to earn.

11  
12 Here, Defendants targeted and preyed upon vulnerable seniors. Sparks and Dailey  
13 created a fiduciary relationship with their victims and systematically abused and violated it.  
14 The Court should therefore find that Defendants’ strategy of gaining the trust of vulnerable  
15 seniors in order to exploit them financially is an unfair or deceptive act.

16  
17 **D. Defendants Committed Unfair and Deceptive Acts in Phase 2 of Their Scheme.**

18 1. **Sparks and Dailey misrepresented the purpose of refinancing reverse**  
19 **mortgages in order to convince their victims it was a good decision.**

20 Sparks and Dailey sold reverse mortgages to vulnerable seniors in order to later sell  
21 them annuities. Sparks and Dailey did not hesitate to misrepresent the purpose of the reverse  
22 mortgage to their victims. For example, Defendants would often tell their victims that the  
23 reverse mortgage money could be used to travel, pay for household repairs, or for various bills.  
24 *See* D’Aoust Decl. ¶ 4; Odle Decl., ¶ 6; Fortier Decl. ¶ 4-5. Defendants also misinformed  
25 consumers about the nature of the LOC that they had from preexisting reverse mortgages by  
26

1 telling victims that any unused portion of the LOC would be “lost” and that their children  
2 would not inherit it. Lacock Decl. ¶ 4. As Dailey admitted, that information was incorrect,  
3 Sparks, in particular, even lied about her affiliation to put potential customers at ease, falsely  
4 informing at least one victim that she was a mortgage counselor with Bank of America.  
5 Schindel Decl. ¶ 4; Bernstein Decl., Ex. C. Sparks also falsely implied that her company was  
6 “taking over” victims’ reverse mortgages. Walstad Decl. ¶ 5.  
7

8 Such misrepresentations have the capacity to deceive a substantial number of  
9 consumers, and relatively unsophisticated consumers (such as the vulnerable senior victims in  
10 this case) are even more susceptible to these lies. The Court should find that Sparks and Dailey  
11 made material misrepresentations in the sale of reverse mortgages and, as such, committed  
12 unfair or deceptive acts.  
13

14 **2. Defendants omitted material facts when selling reverse mortgages.**

15 Washington cases recognize a “general duty on the part of a seller to disclose facts  
16 material to a transaction when the facts are known to the seller but not easily discoverable by  
17 the buyer.” *Griffith*, 93 Wn. App. at 214. Moreover, even the truth can be deceptive if it is  
18 only a partial truth. *Kaiser*, 161 Wn. App. at 719. Here, Sparks and Dailey sold reverse  
19 mortgages, which are extremely complicated financial products. Bernstein Decl. Ex. G, 111-  
20 112. Deciphering such documents takes years of training and experience, neither of which  
21 Defendants’ typical victims had. These elderly victims had no choice but to rely on Sparks and  
22 Dailey to inform them of the material terms of these products. Defendants failed to do so,  
23

24 Sparks and Dailey routinely failed to disclose or omitted the following material terms  
25 with respect to the sale of reverse mortgages: (1) the true costs of reverse mortgage refinances,  
26

1 including the origination fee, (2) the option to receive reverse mortgage proceeds on a monthly  
2 basis or as a LOC, and (3) the fact that preexisting reverse mortgage monthly payments would  
3 cease upon refinance. *See* Section B.2, *supra*. These omissions of material fact have the  
4 capacity to deceive, and are therefore violations of the CPA.

5  
6 **E. Phase 3: Sparks Sold Living Trusts Without a License to Practice Law and  
Committed a Per Se Violation of the Consumer Protection Act.**

7 In 2007, the Washington legislature passed the Estate Distribution Documents Act in  
8 response to the unlicensed practice of law often associated with the marketing and sale of  
9 living trusts and other estate planning documents. The Act prohibits those not licensed to  
10 practice law from marketing estate distribution documents in Washington. RCW 19.295.020.  
11 "Marketing" is defined as "every offer, contract, or agreement to prepare or gather information  
12 for the preparation of, or to provide, individualized advice about an estate distribution  
13 document." RCW 19.295.010(4). The Act further defines "gathering information for the  
14 preparation of an estate distribution document" as the collection of "data, facts, figures,  
15 records, and other particulars about a specific person for the preparation of an estate  
16 distribution document." RCW 19.295.010(3). A violation of RCW 19.295.020 is a matter  
17 vitally affecting the public interest, is not reasonable in relation to the development of business,  
18 and is an unfair or deceptive act in trade or commerce, giving rise to a per se violation of the  
19 CPA. RCW 19.295.030.

20  
21  
22 Sparks marketed estate distribution documents by gathering information for, and then  
23 preparing, the documents. Sparks used questionnaires on income, assets, debts, and other  
24 information salient to the production of estate distribution documents. Bernstein Decl., Ex. E  
25 (Ex. 7 to Sparks Dep.) Sparks then actually prepared those trusts. Bernstein Decl., Ex. E, 54-  
26

1 67 (admitting to sale of trusts to various clients).

2 Sparks was never licensed to practice law, and admits she had no specific training or  
3 experience that qualified her to market or prepare living trusts. Dep of Sparks, 39:13-15.  
4 Indeed, many victims discovered later that their trusts were worthless because Sparks had  
5 failed to fund the trusts and, without property, they served no real function. See Section B.3,  
6 *supra*. Sparks has therefore violated RCW 19.295.020, and thus violated the CPA.  
7

8 **F. Defendants Committed Unfair or Deceptive Acts in Phase 4 of Their Scheme.**

9 **1. Defendants misled seniors and omitted material facts in the sale of**  
10 **annuities to vulnerable seniors.**

11 With respect to the sale of annuities, Defendants routinely failed to disclose several  
12 material terms: (1) the existence, size, and importance of surrender penalties on deferred  
13 annuities, (2) the inability to retrieve money from immediate annuities once purchased in the  
14 event that funds became needed, (3) that the rules and policies of many reverse mortgage loan  
15 origination companies expressly prohibited agents from using reverse mortgage funds to  
16 purchase annuities, (4) that with some varieties of annuity, the monthly payments cease upon  
17 death, leaving no funds for the annuitant's heirs. See Section B.4, *supra*. Dailey and Sparks  
18 also failed to inform their senior victims that the use of reverse mortgage proceeds for the  
19 purchase of annuities often makes little financial sense. As Mr. Granger explains:  
20

21 [It is]...foolhardy for a senior to use proceeds from a reverse mortgage to  
22 purchase a financial product, especially an expensive product like an  
23 indexed annuity. Using the proceeds from an expensive loan such as a  
24 reverse mortgage to fund a product with negligible returns such as an  
25 indexed annuity often can result in a situation where the amount of interest  
26 owed on the mortgage far outstrips the interest credited to the annuity... A  
senior is taking out a high-interest loan on their home, then taking those  
proceeds and converting them into a stream of income in a product with  
yet another set of costs and fees. The reverse mortgage alone can be  
structured to create a stream of income if desired, without the need for an

1 immediate annuity.  
2 Granger Decl., ¶ 4.d. The *only* people to benefit from the use of reverse mortgage proceeds to  
3 fund annuities were Sparks and Dailey, who reaped commissions on the sale of both.

4 Betty Odle's story is illustrative. The 80+ year old widow and her late husband had  
5 obtained a reverse mortgage in 1997 that paid them \$492.04 per month. Odle Decl., ¶ 3. After  
6 her husband passed away in 2005, she refinanced the reverse mortgage on her own to increase  
7 her monthly income to \$1,070.48. *Id.* at ¶ 5. Sparks and Dailey sold Ms. Odle a refinance on  
8 her reverse mortgage on February 9, 2009. According to the HUD HECM Anti-Churning  
9 Disclosure, the total *up-front* cost of the refinance was \$13,077.39. Odle Decl., Ex. B. She  
10 received a lump sum payment of \$143,769.52. Odle Decl., ¶ 9. Only 10 days later, Ms. Odle  
11 wrote a check to Genworth Financial upon Sparks's request in the amount of \$114,251.24. *Id.*  
12 at ¶ 11. Ms. Odle did not understand the purpose of this check, Odle Decl., ¶ 12, but the end  
13 result was that Sparks and Dailey sold her a single premium immediate annuity that pays Ms.  
14 Odle \$1,418.58 each month. Including the up-front cost of the reverse mortgage, but *ignoring*  
15 the interest on the loan, Ms. Odle would need to collect *90 months* of payments to merely  
16 break even.<sup>6</sup> Ms. Odle was 84 when the Genworth annuity was purchased and would therefore  
17 need to live until she is almost 92 years old for this transaction to start paying off.  
18 Additionally, the payments from the annuity will end upon her death and leave nothing for  
19 heirs. Odle Decl., Ex. E, pg 4. If Ms. Odle needed more monthly income, she could have  
20 simply refinanced her reverse mortgage, as she had done, and received a larger payment  
21 without wasting money on the single premium immediate annuity. Again, the only person to  
22  
23  
24  
25

26 <sup>6</sup> Calculated by totaling the annuity premium (\$114,251.24) and the up-front cost of the reverse mortgage (\$13,077.39) and dividing by the monthly payout (\$1,148.58).

1 benefit from the annuity sale was Dailey, who pocketed a \$3,427.54 commission.

2 Sparks and Dailey had a duty to disclose information that they had and that could not  
3 be easily discoverable by the buyer. *See Griffith*, 93 Wn. App. at 214. Their senior victims  
4 were not sophisticated in financial matters, the annuity products were extremely complicated  
5 financial contracts, and the victims had no choice but to rely on Defendants' "advice." Sparks  
6 and Dailey withheld information and misled their customers instead of disclosing key facts.  
7 Such omissions of material fact are unfair or deceptive acts or practices.  
8

9 **2. The Cross Sale of Annuities with Reverse Mortgages is an Unfair Practice.**

10 The Legislature allows the Courts to define violations of the CPA with a great deal of  
11 flexibility. The United States Supreme Court has even recognized this unique facet of  
12 consumer law by quoting the House Conference Report from the debate surrounding the  
13 Federal Trade Commission Act: "It is impossible to frame definitions which embrace all unfair  
14 practices. There is no limit to human inventiveness in this field. Even if all known unfair  
15 practices were specifically defined and prohibited, it would be at once necessary to begin over  
16 again..." *Klem*, 176 Wn.2d at 786. The concept remains true today.  
17

18 Washington courts have continued to use the *Sperry & Hutchinson* standard when  
19 addressing unfairness. *See Klem*, 176 Wn.2d at 785-86; *see also supra* Section VI.B.1. For  
20 example, in *Kaiser*, the Court of Appeals found that a series of agreements as part of a tax  
21 foreclosure overage scam were unconscionable and unfair by examining "the manner in which  
22 the contract[s] were] entered, whether [a party] had a reasonable opportunity to understand the  
23 terms of the contract[s], and whether the important terms were hidden in a maze of fine print."  
24 161 Wn. App. at 722. In that case, the defendants targeted people about to lose homes to tax  
25  
26

1 foreclosure and “induced them to enter into agreements that misrepresent material facts.”  
2 Here, Sparks and Dailey targeted vulnerable seniors, many of whom needed money, and then  
3 induced them to enter into reverse mortgages and annuity contracts but failed to disclose  
4 material terms of those agreements.

5  
6 Additionally, the use of reverse mortgage proceeds to purchase annuities from *the same*  
7 *person* who sold the reverse mortgage is itself an unfair practice. Unfairness includes acts or  
8 practices that offend public policy as established by statutes or the common law or that are  
9 unethical, oppressive, or unscrupulous. *Magney*, 34 Wn. App. at 57 (quoting *Sperry*, 405 U.S.  
10 at 244 n.5). Here, Dailey and Sparks were each directly involved in the sale of reverse  
11 mortgages and reverse mortgage refinances *and* the sale of annuities. This is directly against  
12 public policy as codified in the Housing and Economic Recovery Act of 2008, Pub. Law 110-  
13 289 (July 30, 2008), 122 Stat 2654, which prohibits any mortgagee and any other party that  
14 *participates* in the origination of a mortgage from being associated with or employing any  
15 party that participates in or is associated with any other financial or insurance activity. 12  
16 U.S.C. § 1715z-20(n)(1) (2013). Defendants and the mortgage companies with whom they  
17 worked maintained no firewalls between the insurance and mortgage businesses as required by  
18 12 USC § 1715z-20(n)(1)(B)—they simply conducted two types of businesses that are so  
19 dangerous when linked that Congress took action to prohibit precisely the actions that  
20 Defendants engaged in here. In addition, as described throughout this memorandum,  
21 Defendants actions cannot be described as anything other than unethical, oppressive, and  
22 unscrupulous. The Court should find Defendants’ routine cross-sale of annuities with reverse  
23 mortgages to be an unfair practice.  
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**3. Defendants' Submitted Annuity Applications with False Information.**

Defendants also submitted annuity applications to insurance companies on behalf of their senior victims containing false information about where the application was signed and statements regarding the ownership of property outside of Washington. *See* Section B.4, *supra*. Defendants induced their victims to make these misrepresentations to sell annuities that were not authorized for sale in Washington. This practice is unfair because such a sale violates public policy as dictated by the regulations promulgated by the Office of Insurance Commissioner, which protects the public by carefully considering what annuity products may be sold in this state. *See* Riggins Decl. ¶ 5-7. Defendants' unfairly encouraged their clients to misrepresentations to evade the protections of Washington law.

In addition, misrepresentations on an annuity or other insurance product may cause the annuity or other policy to be canceled, or result in litigation with the insurer – which would be disruptive and expensive for seniors. *See, e.g.* Lacock Decl., Ex. H at SAFI009955. Finally, each of those annuity applications noted that potential criminal penalties could result for those who submit false information on the applications. *Id.* Insofar as Defendants exposed their clients to criminal liability in order to maximize their own commissions, such acts are unfair and deceptive.

**G. Defendants' Violations of the CPA Affected the Public Interest.**

In determining whether unfair or deceptive conduct occurring in trade or commerce affects the public interest, courts will look to whether the following factors are present: (1) were the alleged acts committed in the course of defendants' business; (2) was there a pattern or generalized course of conduct; (3) were the acts repeated or (4) was there a real and

1 substantial potential for repetition; and, (5) if the act complained of involved a single  
2 transaction, were many consumers affected or likely to be affected by it? *Hangman Ridge*, 105  
3 Wn.2d at 790. None of these factors is dispositive, nor must all of them be present to establish  
4 the public interest. *Id.* at 791.

5  
6 All four of these factors are present here. As described above, Defendants' violations of  
7 the CPA were committed in the course of Defendants' reverse mortgage and annuity sales  
8 business. The violations were part of a generalized course of conduct of Defendants which  
9 continued for years, between 2006 and up to 2011. Defendants repeatedly committed the same  
10 violations through transactions with numerous senior victims. They would repeat phases 2 and  
11 4 as much as possible with each victim; some victims purchased just one or two annuities and a  
12 reverse mortgage, *see* Benson Decl.; Fortier Decl.; Hamasaki Decl., while others were sold  
13 multiple refinances and as many as five annuities, *see* Lacock Decl.; Walstad Decl. Defendants  
14 repeated their overall scheme dozens of times over an approximately five year period. Shadel  
15 Decl. ¶ 9. The acts and practices described herein were not isolated instances of misjudgment,  
16 but rather an intentional and deliberate scheme designed to line Defendants' pockets at the  
17 expense of their vulnerable senior victims. In sum, Defendants' violations affected the public  
18 interest.  
19

## 20 21 VII. CONCLUSION

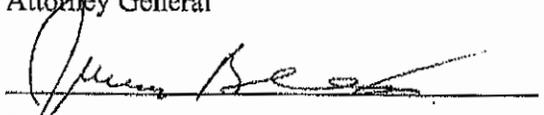
22 For the above-stated reasons, the State respectfully requests that the Court grant  
23 summary judgment against Defendants.

24 A proposed order is submitted herewith.  
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DATED this 27<sup>th</sup> day of June, 2014.

Presented by:  
ROBERT W. FERGUSON  
Attorney General



JASON E. BERNSTEIN, WSBA No. 39362  
ELIZABETH J. ERWIN, WSBA No. 16548  
Assistant Attorney General  
Attorneys for Plaintiff  
State of Washington

FILED  
KING COUNTY, WASHINGTON

JUL 14 2014

SEA  
SUPERIOR COURT CLERK

The Honorable Kenneth Schubert  
Defendant Dailey's Declaration in Support  
of Motion to Shorten Time  
Date: 07-25-2014 without Oral Argument

STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

HENRY WILLIAM DAILEY, individually  
and his marital community; CATHERYN A.  
DAILEY, individually and her marital  
community; JANET SPARKS, individually  
and her marital community;  
JOHN DOE SPARKS, individually and his  
marital community; DEBORAH A.  
HIGGINS, individually and her marital  
community; MICHAEL P. HIGGINS,  
individually and his marital community;  
T.E.A.M. SERVICES LLC; and T.E.A.M.  
INSURANCE SERVICES LLC,

Defendants.

No. 13-2-27535-0 SEA

DEFENDANT DAILEY'S  
DECLARATION IN  
SUPPORT OF MOTION  
TO SHORTEN TIME

HENRY WILLIAM DAILEY, Defendant, pro se, declares as follows:

1. My name is Henry William Dailey. I am over the age of 18 years and I am competent to make this declaration and have personal knowledge of the facts stated herein. I am a Defendant in this matter.

DEFENDANT DAILEY'S DECLARATION IN SUPPORT  
OF MOTION TO SHORTEN TIME

PAGE 1

EXHIBIT 7 PAGE 1

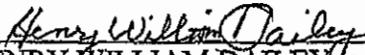
2. I was served with the Motion for Summary Judgment on or about June 27, 2014. I have filed a Motion for Continuance of Motion for Summary Judgment with this Court to seek the time necessary to complete retaining legal representation and then prepare for the motion hearing. The hearing on the Motion for Summary Judgment is scheduled for Friday, July 25, 2014. Because the volume of paperwork which accompanies the Motion for Summary Judgment is so large (approximately five-thousand (5,000) pages, in total) I am asking for a continuance of the hearing to September 26, 2014 to allow legal representative enough time to prepare for a hearing.

3. In addition to the hearing scheduled for July 25, 2014 on the Motion for Summary Judgment, I have a Preliminary Hearing scheduled for July 29, 2014 with representatives of the Office of the Insurance Commissioner. The hearing directly relates to issues set forth in Plaintiff's Complaint, herein. The Insurance Commissioner's hearing conflicts with the scheduled hearing on the Motion for Summary Judgment. I also believe having the hearing on the Motion for Summary Judgment on July 25, 2014 without representation would compromise my position in this matter.

4. Due to the timing of the hearing on the Motion for Summary Judgment, I have found it necessary to ask this Court to shorten the time to hear the Motion for Continuance of the Motion for Summary Judgment.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Bellevue, Washington this 14 day of July, 2014.

  
HENRY WILLIAM DAILEY, pro se  
Defendant

KING COUNTY  
SUPERIOR COURT CLERK  
The Honorable Kenneth Schubert  
Plaintiff's Motion for Summary Judgment  
Date 07-25-2014 w/ Oral Argument  
Case Number: 13-2-27535-0 SEA

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STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

NO. 13-2-27535-0 SEA

Plaintiff,

PLAINTIFF'S REPLY BRIEF IN  
SUPPORT OF SUMMARY  
JUDGMENT AND RESPONSE TO  
DEFENDANTS' MOTIONS FOR  
CONTINUANCE OF MOTION  
FOR SUMMARY JUDGMENT

v.

HENRY WILLIAM DAILEY,  
individually and his marital community;  
CATHERINE A. DAILEY, individually  
and her marital community; JANET  
SPARKS, individually and her marital  
community; JOHN DOE SPARKS,  
individually and his marital community;  
DEBORAH A. HIGGINS, individually  
and her martial community; MICHAEL  
P. HIGGINS, individually and his marital  
community; T.E.A.M. SERVICES LLC;  
and T.E.A.M. INSURANCE SERVICES,  
LLC, ASSOCIATES, LLC,

Defendants.

I. INTRODUCTION

Defendants Dailey and Sparks have not substantively responded to the State's Motion for Summary Judgment. Defendants Deborah and Michael Higgins have not responded at all.

1 Instead of a substantive response, Dailey and Sparks moved to continue the summary judgment  
2 hearing.

3 The motions to continue should be rejected and summary judgment should be granted  
4 because (1) Defendants fail to meet the requirements of CR 56(f) and have otherwise meritless  
5 arguments in support of their request for a continuance, and (2) the Defendants have failed to  
6 create a genuine issue of material fact for resolution at trial.<sup>1</sup>

## 8 II. ARGUMENT

### 9 A. Defendants Have Failed to Rebut the State's Showing That No Genuine Issues of 10 Material Fact Exist to be Contested at Trial.

11 Defendants must respond to a properly supported CR 56 motion for summary judgment  
12 with facts of their own in order to create a genuine issue of material fact. "[A]n adverse party  
13 may not rest upon the mere allegations or denials of his pleadings, [and] his response, by  
14 affidavits or as otherwise provided in this rule, must set forth *specific facts* showing that there  
15 is a genuine issue for trial." CR 56(e) (emphasis added). If an adverse party does not respond,  
16 "summary judgment, if appropriate, shall be entered against him." CR 56(e). Here, Defendants  
17 have failed to respond to the State's properly supported motion for summary judgment and the  
18 State's motion should be granted.

19  
20 Defendants Dailey and Sparks have failed to rebut any of the State's legal arguments  
21 and have made their motions without citation to legal authority. When a party cites to no  
22 authority, courts will presume it has found none. *King County v. Seawest Inv. Associates, LLC*,  
23 141 Wn. App. 304, 317 (2007). Indeed, issues cannot even be considered "absent argument  
24 and citation to legal authority." *Id.*

25  
26 <sup>1</sup> Defendants have also filed Motions to Shorten Time. The State does not object.

1 **B. Defendants Have No Grounds for a CR 56(f) Continuance**

2 Instead of filing a substantive opposition, Defendants filed motions to continue the  
3 summary judgment hearing. To the extent Defendants request this continuance pursuant to CR  
4 56(f), the request fails at every level. As an initial matter, Defendants fail to submit an  
5 affidavit supporting their motion stating the reasons they cannot present facts to oppose the  
6 State's motion, as required by CR 56(f). This failure is fatal to the request, and any  
7 continuance should be denied. *See State v. Vermillion*, 112 Wn. App. 844, 858, 51 P.3d 188  
8 (2002) ("pro se litigants are held to the same standard as lawyers").

9  
10 Even if the Court were to entertain the request for continuance, it is without merit. "A  
11 court may deny a motion for a continuance under [CR 56(f)] when (1) the requesting party  
12 does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting  
13 party does not state what evidence would be established through the additional discovery; or  
14 (3) the desired evidence will not raise a genuine issue of material fact." *Tellevik v. Real*  
15 *Property*, 120 Wn.2d 68, 90, 838 P.2d 111 (1992) (quoting *Turner v. Kohler*, 54 Wn. App.  
16 688, 693, 775 P.2d 474 (1989)). Each of these reasons applies here:

17  
18 First, Defendants can offer no good reason for delay in obtaining the desired evidence.  
19 A trial court must be shown "good reason why an affidavit of a material witness cannot be  
20 obtained in time for summary judgment." *Carr v. Deking*, 52 Wn. App. 880, 886, 765 P.2d 40  
21 (1988). This case was filed nearly a year ago, on July 29, 2013. Defendants have taken no  
22 discovery whatsoever and have failed to file any witness lists or otherwise hint at any facts in  
23 opposition to the State's allegations. Moreover, Defendants have known since approximately  
24 April 24, 2014 that the State would be moving for summary judgment, and that the hearing  
25  
26

1 date would be July 25. Brooke Decl., ¶¶ 2-3. They could have, but have not, sought discovery  
2 in the interim.

3 Second, Defendants do not state what discovery they intend to take, or what evidence  
4 would be established. Third, because Defendants have declined to describe the evidence they  
5 may seek, the Court cannot determine whether such evidence would raise a genuine issue of  
6 material fact.  
7

8 **C. Defendants' Motions for Continuance Are Meritless**

9 To the extent that the Court considers Defendants' motions for continuance outside the  
10 context of CR 56(f), all such motions should be denied. First, the Court has already rejected  
11 Defendants' "lack of counsel" argument. In March 2014, Defendants Dailey and Sparks  
12 moved for continuances of their respective depositions. In support of their motions, they  
13 claimed that their inability to find counsel would "irreparably compromise" their defenses in  
14 this action and requested a sixty day extension to locate counsel. This court rejected their  
15 requests, noting, "there is nothing in the declarations of [D]ailey or Sparks that suggests any  
16 change in circumstances, such as promising leads or improving finances, will occur to enable  
17 them to retain an attorney." Bernstein Decl., Ex. A.  
18

19 Nearly four months later, nothing has changed.<sup>2</sup> Defendants have provided no evidence  
20 that they are any closer to retaining counsel now than they were in March. Moreover, since that  
21 March 20 Order, Defendants have engaged in litigation without counsel by responding to  
22 discovery, attending their own depositions and filing motions.  
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26 <sup>2</sup> One attorney called the State's counsel and informed him that he was *considering* representing  
Defendants in this matter, but never followed up and never appeared in this case. Bernstein Decl. ¶ 2.

1 Second, Defendants request a continuance because of the sheer volume of evidence  
2 submitted with the State's motion for summary judgment. However, approximately 90-95% of  
3 the papers filed in support of the State's motion are the Defendants' own business records, with  
4 which the Defendants are already familiar.<sup>3</sup> Bernstein Decl. ¶ 3.

5  
6 Finally, the State would be prejudiced by delay. The discovery deadline will have  
7 passed, denying the State the ability to gather additional facts it may need for trial, and the  
8 State will need to prepare *completely* for trial, without benefit of a ruling on its Motion for  
9 Summary Judgment. Indeed, the purpose of summary judgment is to avoid unnecessary trials.  
10 *Young v. Key Pharmaceuticals*, 112 Wn.2d 216, 226, 770 P.2d 182 (1989). This will require  
11 the State to meet with and inconvenience dozens of Defendants' vulnerable elderly victims,  
12 something that the State hoped to mitigate by filing an early Motion for Summary Judgment.

### 13 III. CONCLUSION

14  
15 Instead of responding substantively, Defendants once again attempt to delay the State's  
16 attempts to reach an efficient resolution of this matter, something this Court should reject.  
17 Accordingly, Defendants Motions for Continuance of Motion for Summary Judgment should  
18 be denied and the State's Motion for Summary Judgment should be granted.

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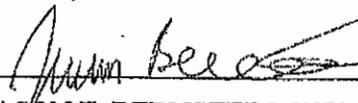
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25  
26 <sup>3</sup> The state cites to the specific pages in the record supporting its claims, and included the full documents to provide the Court with appropriate context, and so that the Defendants could cite to *any* portion of those documents that Defendants believed supported their case.

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DATED this 21<sup>st</sup> day of July, 2014.

Presented by:  
ROBERT W. FERGUSON  
Attorney General

  
\_\_\_\_\_  
JASON E. BERNSTEIN, WSBA No. 39362  
Assistant Attorney General  
Attorney for Plaintiff  
State of Washington



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## Superior Court Case Summary

## About Dockets

**Court:** King Co Superior Ct  
**Case Number:** 13-2-27535-0

### About Dockets

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

Sub	Docket Date	Docket Code	Docket Description	Misc Info
1	07-29-2013	COMPLAINT	Complaint	
2	07-29-2013	SET CASE SCHEDULE JDG0053	Set Case Schedule Judge Mariane C Spearman Dpt 53	10-13-2014ST
3	07-29-2013	CASE INFORMATION COVER SHEET LOCS	Case Information Cover Sheet Original Location - Seattle	
4	07-29-2013	SUMMONS	Summons	
5	07-29-2013	INVOICE VOUCHER	Invoice Voucher	
6	08-08-2013	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
7	08-08-2013	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
8	08-20-2013	ANSWER	Answer To Complaint /higgins	
9	08-20-2013	ORDER OF DEFAULT EXP0007	Order Of Default V Higgins Ex-parte, Dept. Seattle - Clerk	
10	08-20-2013	DECLARATION	Declaration Of Jason Bernstein	
11	08-20-2013	MOTION FOR DEFAULT JUDGMENT	Motion For Default Judgment/pla	
12	08-26-2013	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
13	08-26-2013	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
14	08-26-2013	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
15	08-26-2013	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
16	08-26-2013	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
17	09-03-2013	ANSWER	Answer To Complaint /sparks	
18	09-03-2013	ANSWER	Answer To Complaint /team Ins	
19	09-03-2013	ANSWER	Answer To Complaint /dailey	
20	09-03-2013	ANSWER	Answer To Complaint /team Svcs	
21	09-03-2013	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
22	09-03-2013	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
23	09-03-2013	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
24	09-03-2013	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	

### Directions

King Co Superior Ct  
 516 3rd Ave, Rm  
 C-203  
 Seattle, WA 98104-  
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### Disclaimer

**PAGE 1**  
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**EXHIBIT 9**

25	12-12-2013	ORDER FOR CHANGE OF JUDGE	Order For Change Of Judge Judge Kenneth L. Schubert Dpt 40 JDG0040	
26	02-13-2014	NOTICE OF HEARING	Notice Of Hearing /compel Response	02-21-2014
27	02-13-2014	MOTION TO COMPEL	Motion To Compel /pla	
28	02-13-2014	DECLARATION	Declaration Of Jason E Berstein	
29	03-03-2014	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
30	03-05-2014	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
31	03-19-2014	RESPONSE	Response /pla	
32	03-19-2014	RESPONSE	Response /pla	
33	03-19-2014	RESPONSE	Response /pla	
34	03-19-2014	RESPONSE	Response /pla	
35	03-19-2014	DECLARATION	Declaration Of Jason E. Bernstein	
36	03-19-2014	DECLARATION	Declaration Of Jason E. Bernstein	
37	03-19-2014	DECLARATION OF MAILING	Declaration Of Mailing	
38	03-19-2014	MOTION TO CONTINUE	Motion To Continue Deposition /def	
39	03-19-2014	MOTION	Mtn To Shorten Time/def	
40	03-19-2014	MOTION TO CONTINUE	Mtn To Continue Deposition/def	
41	03-19-2014	MOTION	Mtn To Shorten Time/def	
42	03-20-2014	ORDER SHORTENING TIME	Order Shortening Time	
43	04-14-2014	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
44	04-22-2014	NOTICE OF HEARING	Notice Of Hearing /summ Jdgt	07-25-2014
45	05-12-2014	WITNESS LIST	Witness List /pla	
46	06-23-2014	DISCLOSURE	Dis Of Supple Witnesses/pla	
47	06-27-2014	DECLARATION	Declaration/yoko Hamasaki /sealed Per Sub 73	
48	06-27-2014	DECLARATION	Declaration/loretta Benson /sealed Per Sub 73	
49	06-27-2014	DECLARATION	Declaration/doris Lacock /sealed Per Sub 73	
49A	06-27-2014	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket Summ Jdgt	07-25-2014MX
49B	06-27-2014	MOTION FOR SUMMARY JUDGMENT	Motion For Summary Judgment/pla	
49C	06-27-2014	DECLARATION	Declaration Of Jason Bernstein	
49D	06-27-2014	DECLARATION	Declaration Of Elinor Carter /sealed Per Sub 73	
49E	06-27-2014	DECLARATION	Declaration Of Beverly Cox /sealed Per Sub 73	
49F	06-27-2014	DECLARATION	Declaration Of Nina D'aust /sealed Per Sub 73	
49G	06-27-2014	DECLARATION	Declaration Of Nellie Fortier /sealed Per Sub 73	
49H	06-27-2014	DECLARATION	Declaration Of Neil Granger /sealed Per Sub 73	

search engine of cases filed in the municipal, district, superior, and appellate courts of the state of Washington. The search results can point you to the official or complete court record.

**How can I obtain the complete court record?**  
You can contact the court in which the case was filed to view the court record or to order copies of court records.

**How can I contact the court?**  
Click [here](#) for a court directory with information on how to contact every court in the state.

**Can I find the outcome of a case on this website?**  
No. You must consult the local or appeals court record.

**How do I verify the information contained in the search results?**  
You must consult the court record to verify all information.

**Can I use the search results to find out someone's criminal record?**  
No. The Washington State Patrol (WSP) maintains state criminal history record information. Click [here](#) to order criminal history information.

**Where does the information come from?**  
Municipal, district, superior, and

**EXHIBIT 9 PAGE 2**

50	06-30-2014	DECLARATION	Declaration Of Annabelle Peterson		appellate courts across the state enter information on the cases filed in their courts. The search engine will update approximately twenty-four hours from the time the clerks enter the information. This website is maintained by the Administrative Office of the Court for the State of Washington.
51	06-30-2014	DECLARATION	Declaration Of Nigel Riggins		
52	06-30-2014	DECLARATION	Declaration Of Renee Shadel		
53	06-30-2014	DECLARATION	Declaration Of Catherine Tharp		
54	06-30-2014	DECLARATION	Declaration Of Lovina Shindel /sealed Per Sub 73		
55	06-30-2014	DECLARATION	Declaration Of Joy Starwalt /sealed Per Sub 73		
56	06-30-2014	DECLARATION	Declaration Of Romaine Walstad /sealed Per Sub 73		
57	06-30-2014	DECLARATION	Declaration Of Connie Griffin /sealed Per Sub 73		
58	07-10-2014	NOTICE OF HEARING	Notice Of Hearing /redact File	07-18-2014	
59	07-10-2014	MOTION	Motion To Redact /state		<b>Do the government agencies that provide the information for this site and maintain this site:</b> <ul style="list-style-type: none"> <li>▫ Guarantee that the information is accurate or complete? NO</li> <li>▫ Guarantee that the information is in its most current form? NO</li> <li>▫ Guarantee the identity of any person whose name appears on these pages? NO</li> <li>▫ Assume any liability resulting from the release or use of the information? NO</li> </ul>
60	07-14-2014	NOTICE OF HEARING	Notice Of Hearing /shorten Time	07-25-2014	
61	07-14-2014	NOTICE OF HEARING	Notice Of Hearing /summ Jdgt	07-25-2014	
62	07-14-2014	NOTICE OF HEARING	Notice Of Hearing /shorten Time	07-25-2014	
63	07-14-2014	NOTICE OF HEARING	Notice Of Hearing /cont Summ Jdgt	07-25-2014	
64	07-14-2014	MOTION TO CONTINUE	Motion To Continue /dailey		
65	07-14-2014	MOTION	Motion To Shorten Time /dailey		
66	07-14-2014	MOTION	Motion To Shorten Time /sparks		
67	07-14-2014	MOTION TO CONTINUE	Motion To Continue /sparks		
68	07-14-2014	MOTION TO CONTINUE	Motion To Continue /dailey		
69	07-14-2014	AFFIDAVIT IN SUPPORT	Affidavit In Support /dailey		
70	07-21-2014	REPLY	Reply Brief/pla		
71	07-21-2014	DECLARATION	Declaration/jason E Bernstein		
72	07-21-2014	DECLARATION	Declaration/donnelle Brooke		
73	07-21-2014	ORDER OF REDACTION	Order Of Redaction (subs 47,48,49, Dclr Of K Moore (nof) & Dclr Of 49d,49e,49f,49g,49h,54,55,56,57/ E Odle (nof) /certain Dclrs		
74	07-23-2014	DECLARATION	Declaration Of Janet Sparks		
75	07-23-2014	DECLARATION	Declaration Of Def		
76	07-25-2014	SUMMARY JUDGMENT HEARING	Summary Judgment Hearing Judge Kenneth L. Schubert Dpt 40 JDG0040		
-	07-25-2014	AUDIO LOG	Audio Log Dr W-941		
77	07-25-2014	ORDER GRANTING SUMMARY JUDGMENT	Order Granting Summary Judgment		
78	07-25-2014	APPEARANCE PRO SE	Appearance Pro Se /h Dailey		
79	07-25-2014	APPEARANCE PRO SE	Appearance Pro Se /j Sparks		
80	08-01-2014	NOTICE OF APPEARANCE	Notice Of Appearance /cert Defs		
81	08-01-2014	NOTICE OF HEARING	Notice Of Hearing /reconsideration	08-11-2014	
82	08-01-2014	MOTION FOR	Motion For Reconsideration /daily		

EXHIBIT

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RECONSIDERATION			
83	08-01-2014	DECLARATION	Declaration Of Kenneth H. Kato
84	08-04-2014	DECLARATION	Declaraton/ellnor Carter
85	08-04-2014	DECLARATION	Declaration Of Beverly Cox
86	08-04-2014	DECLARATION	Declaration Of Nina D'aust
87	08-04-2014	DECLARATION	Declaration Of Nellie D. Fortier
88	08-04-2014	DECLARATION	Declaration Of Neil Granger
89	08-04-2014	DECLARATION	Declaration Of Connle Griffin
91	08-04-2014	DECLARATION	Declaration Of Yoko Hamasaki
92	08-04-2014	DECLARATION	Declaration Of Loretta Benson
93	08-05-2014	DECLARATION	Declaration/ D Lacock
94	08-05-2014	DECLARATION	Declaration/ K Moore
95	08-05-2014	DECLARATION	Declaration/ E Odle
96	08-05-2014	DECLARATION	Declaration/ L Shindel
97	08-05-2014	DECLARATION	Declaration Of Joy Starwalt
98	08-05-2014	DECLARATION	Declaration Of Catherine M Tharp
99	08-05-2014	DECLARATION	Declaration Of Romaine Walstad
100	08-08-2014	DECLARATION	Declaration Of Lovina R Shindel
101	08-08-2014	ORDER ON MTN FOR RECONSIDERATION	Order On Mtn For Reconsideration /denied

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FILED

14 JUL 23 PM 2: 08  
KING CO. CNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA.

The Honorable Kenneth Schubert  
Defendant Dailey's Supplemental  
Declaration in Support of Motion for  
Continuance of Motion for Summary  
Judgment  
Date: 07-25-2014 without Oral Argument

STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,	)	
	)	No. 13-2-27535-0 SEA
Plaintiff,	)	
	)	DEFENDANT DAILEY'S
	)	SUPPLEMENTAL
HENRY WILLIAM DAILEY, individually	)	DECLARATION IN
and his marital community; CATHERYN A.	)	SUPPORT OF MOTION
DAILEY, individually and her marital	)	FOR CONTINUANCE OF
community; JANET SPARKS, individually	)	MOTION FOR SUMMARY
and her marital community;	)	JUDGMENT
JOHN DOE SPARKS, individually and his	)	
marital community; DEBORAH A.	)	
HIGGINS, individually and her marital	)	
community; MICHAEL P. HIGGINS,	)	
individually and his marital community;	)	
T.E.A.M. SERVICES LLC; and T.E.A.M.	)	
INSURANCE SERVICES LLC,	)	
	)	
Defendants.	)	

HENRY WILLIAM DAILEY, Defendant, pro se, declares as follows:

1. My name is HENRY WILLIAM DAILEY. I am over the age of 18 years, am competent to make this declaration and have personal knowledge of the facts stated herein. I am a Defendant in this matter.

DEFENDANT DAILEY'S SUPPLEMENTAL  
DECLARATION IN SUPPORT OF MOTION FOR  
CONTINUANCE OF MOTION FOR SUMMARY JUDGMENT

PAGE 1

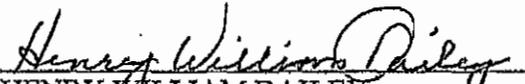
2. I am retaining counsel in this matter. I am retaining KENNETH H. KATO, WSBA # 6400, of Spokane, Washington, to represent me. Counsel will make a notice of appearance in this matter next week. Mr. Kato will need the continuance I have requested to prepare a defense for the hearing on the Summary Judgment motion.

3. I am in receipt of Mr. Bernstein's Reply Brief supporting his Motion for Summary Judgment wherein he states I do "not offer a good reason for the delay in obtaining the desired evidence". My second "good reason" for continuing the Summary Judgment hearing is to allow me to defend against the revocation of my 40 year insurance license with the OIC. My insurance practice is a large part of the Attorney General's complaint against me. Therefore, the revocation action, and the result, is intertwined with and relevant to my defense against the Summary Judgment motion. I have a preliminary hearing with the OIC on July 29, 2014.

Nowhere in Mr. Bernstein's Reply Brief or his Declaration in support has he mentioned my upcoming OIC hearing. The outcome of the hearing will provide evidence relevant to this complaint and summary judgment motion. The hearing on July 29, 2014 is dividing my efforts. I am therefore seeking a continuance of the Summary Judgment Motion hearing to September 26, 2014.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Bellevue, Washington this 23<sup>rd</sup> day of July, 2014.

  
HENRY WILLIAM DAILEY, pro se  
Defendant

FILED

2014 JUL 29 P 12:44

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In the Matter of

**HENRY WILLIAM DAILEY,**

Licensee.

Docket No. 14-0114

**NOTICE OF HEARING**

**TO:** Henry William Dailey  
16130 SE 42<sup>nd</sup> Street  
Bellevue, WA 98006

**COPY TO:** Mike Kreidler, Insurance Commissioner  
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner  
John F. Hamje, Deputy Commissioner, Consumer Protection Division  
Marcia Stickler, Esq., Insurance Enforcement Specialist, Legal Affairs Division  
AnnaLisa Gellermann, Esq., Deputy Commissioner, Legal Affairs Division  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

This Notice is provided pursuant to RCW 48.04.010 and RCW 34.05.434.

On June 4, 2014, the Office of the Insurance Commissioner ("OIC") issued an Order Revoking License, No. 14-0114, effective June 23, 2014, revoking the Washington State insurance producer's license of Henry William Dailey. The Order was based upon the allegation that Mr. Dailey 1) sold annuity products that were not approved for sale in Washington State to senior consumers, in violation of RCW 48.18.100(1); and 2) knowingly made material false or misleading statements that the consumers were out of state when they completed the applications, in violation of RCW 48.30.210.

On June 17, 2014, Mr. Dailey filed a Demand for Hearing to contest the OIC's Order, asserting that he was following procedures outlined by Forethought Life, the company whose annuity

NOTICE OF HEARING

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products he was selling, and that he had received no complaints from that company's quality control department throughout the term of his contract.

On July 29, 2014, the undersigned held a first prehearing conference. The OIC was represented by Marla Stokler, Esq., Insurance Enforcement Specialist in the OIC's Legal Affairs Division. Mr. Dailey appeared pro se, but stated that he expected to be represented in the future by Kenneth Kato, Esq., a Spokane attorney. After considering the views of the parties as to hearing dates and procedures:

- 1) Neither party expects to seek further written or deposition discovery.
- 2) By August 29, 2014, the OIC shall serve and file its Motion, if any, related to the issue preclusion effect of a King County Superior Court dispositive order in a proceeding in which Mr. Dailey was a party. By September 12, 2014, Mr. Dailey shall serve and file a Response to such Motion. By September 19, 2014, the OIC shall serve and file a Reply to such Response. I expect to rule without oral argument as soon as possible after briefing is complete.
- 3) The evidentiary hearing is set for 10 AM October 2, 2014, subject to possible limited adjustment of the hearing date if Mr. Kato or other counsel appear for Mr. Dailey in the near future and have a conflict on October 2. (In such case, Mr. Dailey's counsel shall meet and confer with the OIC's counsel in an effort to agree on a new hearing date that is available on my calendar.)

**YOU ARE HEREBY NOTIFIED that a hearing will be held at the Office of the Insurance Commissioner, 5000 Capitol Blvd., Tumwater, WA, beginning on October 2, 2014, at 10:00 AM, Pacific Daylight Time.** The hearing is expected to conclude on October 2, 2014, but will continue until terminated. The purpose of the hearing is to consider whether the Order Revoking License, revoking Mr. Dailey's Washington State insurance producer's license, should be upheld, set aside, or modified.

The hearing will be governed by the Administrative Procedure Act, Chapter 34.05 RCW, and the model rules of procedure contained in Chapter 10-08 WAC. All parties may be represented and may examine witnesses, respond, and present evidence and argument on all relevant issues.

A party who fails to attend or participate in the hearing or another stage of this proceeding may be held in default in accordance with Chapter 34.05 RCW. See, RCW 34.05.434(2)(l).

Judge George Finkle (Ret.), Presiding Officer, has been designated by the Insurance Commissioner to hear and determine this matter. The hearing will be held under the authority granted by the Insurance Commissioner under Chapter 48.04 RCW.

Pursuant to WAC 10-08-040(2) and in accordance with Ch. 2.42 RCW, if a limited English speaking or hearing impaired or speech impaired party or witness needs an interpreter, a qualified interpreter will be appointed. There will be no cost to the party or witness therefore, except as may be provided by Ch. 2.42 RCW. A Request for Interpreter form, with instructions, is attached to the original of this Notice.

NOTICE OF HEARING

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All case related documents and correspondence shall be directed to the Hearings Unit, Office of Insurance Commissioner, P.O. Box 40255, Olympia, Washington 98504-0255. All interested individuals and entities who have questions or concerns concerning this proceeding should direct them to the Hearings Unit paralegal, Kelly Cairns, at the same address. Ms. Cairns' telephone number is (360) 725-7002.

Dated: July 29, 2014

  
\_\_\_\_\_  
JUDGE GEORGE FINKLE (Ret.)  
Presiding Officer

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Henry William Dailey, Milko Kreidler, James T. Odiorne, J.D., CPA, John F. Hamje, Esq., Marvin Stieklor, Esq., and AnnaLisa Gellermann, Esq.,

DATED this 29<sup>th</sup> day of July, 2014.

  
\_\_\_\_\_  
KELLY A. CAIRNS

OFFICE OF INSURANCE COMMISSIONER

HEARINGS UNIT

Fax: (360) 664-2782

To request an interpreter, complete and mail this form to:

Presiding Officer  
Hearings Unit  
Office of Insurance Commissioner

P.O. Box 40255  
Olympia, WA 98504-0255

**REQUEST FOR INTERPRETER**

I am a party or witness in Matter No. 14-0114 before the Insurance Commissioner. I NEED AN INTERPRETER and request that one be furnished.

Please check the statements that apply to you:

I am a non-English-speaking person. I cannot readily speak or understand the English language. My primary language is \_\_\_\_\_ (insert your primary language). I need an interpreter who can translate to and from the primary language and English.

I am unable to readily understand or communicate the spoken English language because:

I am deaf.

I have an impairment of hearing.

I have an impairment of speech.

[Please state below or on the reverse side any details which would assist the Commissioner or Presiding Officer in arranging for a suitable interpreter or in providing appropriate mechanical or electronic amplification, viewing, or communication equipment.]

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Please print or type your name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_