

2012 WL 4865378 (N.D.Cal.) (Trial Pleading)  
United States District Court, N.D. California,  
San Francisco Division.

ESTATE OF JOHNSON CLARK, Estate of Louise H. Clark, Peter Clark, Plaintiffs,

v.

WILLIAM HORWICH; Steve McKae; Gregory Brandt; Walter A. Turner; Jeanine DeBaker; Deanna Lyons; Elizabeth Burke Dryfus; Thiele Robin Dunaway; Timothy Williams; Gillian Ross, Leonard Marquez, Kevin R. Brodehl; Charles A. Hansen; Howard Lind; Daniel Rapaport, and the law office of Wendel Rosen Black and Dean, LLP C. (Wendel); Charles Clark; (Wendel); Charles Clark; Margaret Clark; Jack Clark, aka Johnson Clark Jr.; Steve Clark; Sarah Clark, Jon Berkley Management, Inc., Jon Berkley, Josh Berkley; Schoenholtz and Spiegel; Jeff Spiegel; Candice Wozniak, Mark Hurst, Linda Hurst. Doe Agents 1-100 Defendants.

No. CV12 0137.  
January 6, 2012.

Re: Bankruptcy Case # Oak-10-1422-EJ, & Adversarial Case # 10-4377

Jury Trial Demanded for All Matters Not Adjudicated by State Bar, U.S. Attorney, or Binding Arbitration

American Arbitration Association: Case # 74 194 Y 1440 07 Jemo,

**Verified Complaint to Compel Binding Arbitration for Bankruptcy Fraud and Identity Fraud Unjust Enrichment; Racketeering; and Unfair Business Practices, **Financial Elder Abuse**; Tortuous Interference with Business Advantage and/or Family Affairs; Constructive Trust B.) Stay, Specific Performance and Injunctive Relief for Mitigation; Order of Accounting D.) Appointment of Trustee/Receiver**

Peter C. Clark, Lafayette, CA, Plaintiff in pro per.

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Comes now Plaintiff, Peter Clark, to allege and state the following Complaint:

A.) to compel Binding Arbitration for *Bankruptcy Fraud Unjust Enrichment*<sup>1</sup> violating [18 U.S.C. §152](#) and/or [18 U.S.C. §157](#); Identity Fraud in violation of TITLE 18 PART I CHAPTER 47 § 1028, and a post bankruptcy continuation of racketeering activity within the meaning of [18 U.S.C. §§ 1961\(1\), 1961\(5\) and 1962\(c\)](#) and/or (d) - the Racketeer Influenced and Corrupt Organizations (RICO) Act; and Unfair Business Practices in violation of [Business and Professions Code §17200](#), and

B.) for a Stay of all actions and flow of funds to themselves by Defendants related to the assets, trusts, and entities in question until completion of the Binding Arbitration, Specific Performance, and Injunctive Relief for Mitigation, and to halt further Racketeering; Identity Fraud; Adverse Representation; Violations of Trust; and **Financial Elder Abuse**. All of the fees and costs that Wendel has paid themselves and their agents are in contention. Plaintiff asks that Wendel return said fees and costs to a Client Trust Account, which Contested Fees & Costs must be used for the Benefit of Wendel's contractual and de jure client, Peter Clark, as required by "Bar Rule" [4-100 \(Rule 4-100 of the Rules of Professional Conduct](#) of the California Bar) and Public Policy (see *Silver v. State Bar*). Said funds are required to pay to the Binding Arbitration an amount equal to the amount that Peter Clark has already paid to the Binding Arbitration, to pay for the accounting that is now required, for any bond that might be required, and for mitigation.

C.) For an order of Accounting. Such accounting is mandated by the Corporations Code and the Probate Code when the issues being currently adjudicated are at issue.

D.) Appointment of Trustee/Receiver to administer the accounting, and for Client Trust Account for Contested Fees & Costs, which must be used for the Benefit of the client (Plaintiff), Defendant's Contractual and De Jure Client, as required by [4-100 of the Rules of Professional Conduct](#) of the California Bar and Public Policy as supported by considerable case law.

Jury Trial Required for All Matters not Decided by Binding Arbitration o the California State Bar, as follows:

#### I. SUMMARY OF CLAIMS FOR ARBITRATION

1. This Complaint is required to

A) to compel Binding Arbitration as required by contract; B)to halt Defendant's continuing pattern of racketeering activity within the meaning of [18 U.S.C. §§ 1961\(1\), 1961\(5\) and 1962\(c\)](#) and/or (d) - the Racketeer Influenced and Corrupt Organizations (RICO) Act; and unfair business practices in violation of [California B.P.C. 17200](#), until the Binding Arbitration can make a determination of rights, and adjudicate alleged *Bankruptcy Fraud Unjust Enrichment*, and [California BPC §6106](#)- moral turpitude, involving Defendant attorneys associated with, and the law offices of, Wendel, Rosen, Black, and Dean, and their agents (herein also "Wendel," Plaintiff's contractual and de jure attorneys, and Wendel's Agents/alleged co-conspirators; and

B. to assist the Binding Arbitration by an order of accounting funded from the Client Trust Account that Wendel must maintain for disputed fees and costs; and to mitigate the damages so that the remainder of the family of the late Johnson Clark can move on with their lives, free of Defendant's continued vexatious litigation.

2 FACTS RE: WENDEL REPRESENTATION listed in Attachment I (Bar Complaint, which is incorporated herewith for reference, shows:

a.) Plaintiff, Peter Clark, is the only person in the family of the late Johnson Clark to have a legitimate Engagement Contract with Wendel. However, acting on their own, secret agenda,

b.) Wendel facilitated contention in the Johnson Clark family, shifted sides; falsified documents; despoiled evidence; falsified a database; caused their client's signature to be forged; concealed evidence; and used deceit to rationalize (but not justify) engaging in a laundry list of torts against their client to draw litigation for the alleged corrupt motive of self gain.

3. The evidence shows that Wendel arranged to pay themselves unconscionable fees and costs estimated to exceed seventeen million dollars, including by facilitating bribery and kickbacks to their agents and by:

a. Filing an avalanche of litigation against their client, Peter Clark in the name of entities of which Peter Clark was, and alleges is, the highest authority, using falsified documents in acts of alleged identity theft, thereby straddling their client with over a million dollars in costs, and defrauding Plaintiff, their client, and over two dozen other individuals, client trusts, beneficiaries, and entities of their fair share of the \$100 plus million combined estates created by Peter Clark and his now deceased parents;

b. Diverted the income that otherwise would have gone to their client to themselves, as part of a campaign of self-enrichment (estimated at \$17.5 million), and economic duress which forced their client into bankruptcy in 2010;

c. Created the Peter C. Clark Trust in secret from their client as a means to shunt money that otherwise would have gone to their client to themselves instead, thereby showing contempt for the letter and intent of the California Probate Code, their contract; professional ethics; and the American system of Justice.

d. Made filings; representation; and/or misrepresentations before the Bankruptcy Courts against their client and in the name of entities of which their client is the highest authority to cause complete their fraud in 2011 via **abuse** of process against their client, and in violation of 18 U.S.C. §152 &/ or 18 U.S.C. §157;

e. while using deceit and violations of due process including ex parte communications with judges, to prevent the issue of their adverse representation from being heard in the Binding Arbitration that is required by contract.

4. The evidence indicates *such acts are part of ongoing artifice to conduct or participate, directly or indirectly, in the conduct of the management enterprises of "Clark Family Enterprises" an intended LLC that Wendel used to seize and exploit in excess of one hundred million dollars of assets created by Plaintiff, Peter Clark, and his parents, the late Johnson Clark and the late Louise H. Clark; and/or conspiracy to engage in said management of Clark Family Enterprises' assets through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5) and 1962(c) and/or (d)-the Racketeer Influenced and Corrupt Organizations (RICO) Act as delineated more fully in Addendum I, filed and attached herewith.*

5. The evidence further indicates that such artifice has also involved Bank Fraud (18 U.S.C. §1344), and Mail Fraud related to Defendant's ongoing Constructive Fraud; Economic Duress; **Financial Elder Abuse**, and numerous other Violations of Trust and/or Fiduciary Duties against their benefactor(s) and wards.<sup>2</sup>

6. Defendant's torts are based on falsified documents; causing their client's signature to be forged, theft of documents; theft of a compute with databases; falsification of documents and databases; destruction o documents and databases;<sup>3</sup> Concealment;

violations of trust and law; and economic duress using an avalanche of litigation to shield themselves from liability therefrom, which can now all be shown to be aspects of the Bankruptcy Fraud at issue herewith.

7. The evidence indicates that in so doing, Defendants have engaged in ongoing violations of contract, numerous codes and statutes, law, and most the California (Bar) Rules of Professional Conduct related to client affairs (herein also "CRPC" or "Bar Rules"), as delineated in the Bar Complaint made by the Clark family Trust Parties, a true copy of which is filed herewith as ADDENDUM V.

8. Defendant's goal of "*bankrupting Peter Clark so we can buy back (his assets) for next to nothing,*" was admitted by Wendel attorney Gregory Brandt as shown by declar. of paralegal David Bryant EXHIBIT 3-I, the Declar. of Attorney Frank Ferris, EXHIBIT 3-J, and by the declars. of Ian Clark, Acacia Clark, Michael Monahan, Laura Crisp, and Diddo Clark, EXHIBITS 3-A to 3-H, respectively, in the Complaint by the Clark Family Trust Parties to the California Bar shown as ADDENDUM V, filed and incorporated herewith.

9. *Federal case law shows that said Wendel attorney's failing to disclose any of their numerous conflicts of interest to the Bankruptcy Court in their alleged Bankruptcy fraud itself requires Wendel's dismissal for cause and the disgorgement of fees with no quantum meruit.*

10. The evidence shows that by such actions, Defendants caused over \$50 million in direct damages (including interest), and hundreds of millions of dollars in loss of business opportunity to their client and client trusts, beneficiaries, and entities.

11. Wendel acted covertly at first, and now overtly, by stealing, concealing, and forging documents and violations of Trust and duty of loyalty, to cause the filing of seven lawsuits against their client to force him into bankruptcy; and three more lawsuits after causing said bankruptcy (and inducing a dozen other lawsuits), for the admitted goal of liquidating their client's assets "for next to nothing," for the alleged corrupt motive of self-gain, and thus involving moral turpitude in violation of [BPC §6106](#).

12. *In such ways, Defendants continued into the post-bankruptcy period their pattern of alleged racketeering and unfair business practices with new acts of racketeering, Bankruptcy Fraud, and unfair business practices involving identity theft, economic duress, constructive fraud, and other fraud, preventing mitigation so that they can complete the liquidation of their client's assets and their (alleged) fraud against their client.*

13. Wendel misrepresented debtor entities and creditors, claiming to act on behalf of their client's adversaries to capitalize on their Bankruptcy Fraud by taking the final pieces of their client's estate by acts which Plaintiff alleges only Wendel and their agents are benefitting, and which Plaintiff alleges are void or voidable. In so doing, Wendel concealed their conflicts of interest from the Bankruptcy Court in the bankruptcy that they forced upon their client, and before other courts.

14. The evidence indicates that by their alleged racketeering and Bankruptcy Fraud, Defendants caused in excess of \$40 million in direct costs and interest damages, and over \$160 million in damages from loss of business opportunity to their client.

15. Peter Clark had hired Wendel to facilitate said business in the face of sabotage and thefts by Wendel's erstwhile clients/ Agents and fiduciaries that Peter Clark had hired into positions of responsibility. Said fiduciaries include some of Plaintiff Peter Clark's siblings and spouses who, the evidence indicates, have been stealing from their own children. Said children, and Peter Clark's children, were to be the primary intended beneficiaries of the work that Peter Clark was doing on behalf of the Clark Family. When the Honorable Judge Flinn reviewed some of the evidence regarding Defendant's thefts from the children, he reacted with the statement "*There is something rotten in (the state of) Denmark...*" Wendel immediately attempted to disqualify Judge Flinn, and then engaged in ex parte conferencing and communications outside of the presence of opposing counsel violating the integrity of the court to the point that Judge Flinn recused himself See footnote #12.

16. Plaintiff will ask that all parts of Wendel acts and Agreements lacking the informed consent of their client, Peter Clark upon full review, be VOIDED. The Binding Arbitration shall be asked to decide if Status Quo Antebellum should be ordered to October 31, 1998 (a date chosen by attorney Diddo Clark which is consistent with other torts by Defendants as well), related to the Estates, properties, entities, and cases involving Wendel, including the bankruptcy.

## II. JURISDICTION

17. The Federal Arbitration Act (FAA) directs that an aggrieved party can petition District Courts to enforce arbitration clauses where a contract specifies arbitration; with a stay in proceedings referable to arbitration in the interim.

18. Support for the third party claims and wide scope of jurisdiction of the arbitration is provided by the United States Supreme Court in *Arthur Andersen, LLP v. Carlisle* from May 4, 2009 as follows:

“The Federal Arbitration Act (FAA) gives parties who sign arbitration agreements the right to request a stay of court proceedings while a dispute is resolved in arbitration, and to file for an immediate appeal if a request for a stay is refused. The question before the Supreme Court in *Carlisle* was whether these stay and appeal rights extended to third parties who could claim the benefit of an arbitration agreement under ‘third party beneficiary’ or other state law doctrines.” (Yes) The United States Supreme Court in *Arthur Andersen, LLP v. Carlisle*, in a May 4, 2009 decision.

19. This action is also brought under Bankruptcy Reform Act of 1978 (92 Stat. 2657), and the Bankruptcy Amendments and Federal Judgeship Act of 1984 (98 Stat. 333). These Acts confer jurisdiction regarding matters related to bankruptcy on the District Courts in each judicial district. Jurisdiction is further vested in this Court by virtue of [28 U.S.C. § 1331](#).

20. The Bankruptcy Act, and as amended, requires all issues related to Bankruptcy to be adjudicated via the U.S. District Courts in keeping with relevant provisions of the United States Constitution related to bankruptcy (Article 1, Section 8, Clause 4). The District Courts normally shunt these issues to the Bankruptcy Court, however *the Bankruptcy Court ruled in January, 2011, that it has no jurisdiction regarding even the pre-bankruptcy matters related to the current case because of the third party claims.* <sup>4</sup> , <sup>5</sup> , <sup>6</sup>

21. This action is further brought under the federal Racketeer Influenced and Corrupt Organization (“RICO”) statute, [18 U.S.C. § 1961 et seq.](#), and various California statutes and common law doctrines, including the Welfare and Institutions Code (Well & Inst.C.), The **Elder Abuse** Act, and Code of Civil Procedure (CCP). Because claims brought under California law are so related to Plaintiff’s federal claims, over which the Court has original jurisdiction, that they form part of the same case or controversy under Article III of the U. S. Constitution, the Court also has jurisdiction over Plaintiff’s California common law and statutory claims pursuant to [28 U.S.C. § 1367](#).

22. Venue is proper in this District and Division pursuant to [28 U.S.C. §§ 1391](#) and [18 U.S.C. § 1965\(b\)](#). Plaintiff’s Standing RE: the estates of Johnson Clark and Louise Clark, Petitioner’s parents, is vested in [CCP §§ 377.30-377.32](#); Well & Inst.C. §15657.3(d) and §15610.30(c), with “representatives” defined by §15610.30(d); and [Probate Code §48](#).

## II. PARTIES and AGENCY

23. Peter Clark is the “Plaintiff” of this action to order Binding Arbitration, because of Peter Clark’s contract with the Defendant law offices of Wendel, Rosen, Black, and Dean dated August 31, 1998, filed herewith as EXHIBIT 2-Aii

24. The associated arbitration that is required has numerous Third Party Beneficiaries, who, together with Peter Clark, are herein also known as “Clark Family Trust Parties.” Said Third Party Beneficiaries include the estates of the “**Elder** Clarks,” the late “Louise” H. Clark, and the late “Johnson” Clark, who were **elders** with such diminished capacity in 1997 that they withdrew

from their business affairs, and at all times after Peter Clark hired Wendel in 1998. Johnson Clark had a short term memory horizon of five minutes in 1998, and, from information and belief, was diagnosed with Alzheimer's Stage Five-Moderate to Severe Cognitive Decline.

25. Third Party Beneficiaries include Trustee Laura Crisp, herein also "Mrs. Crisp;" attorney "Diddo Clark;" Peter Clark's now adult children, Ian Clark and Acacia Clark;<sup>7</sup> the estate of said **Elder** Clarks, and over a dozen trusts and "Intended Beneficiaries" that include the heirs of the late Johnson Clark, and associated entities.

26. Third Party beneficiaries also include long term employees of the Clark family who worked above and beyond the call of duty on behalf of said trusts, and who Defendants rewarded their exemplary efforts by causing said employees to be fired and evicted from their homes of twelve years in some cases with only 72 hours notice, in violation of California tenancy laws. Said acts by Wendel destroyed the lives of many of these hard-working individuals, who deserved better, but who Wendel **abused** to punish them for refusing to engage in the (alleged) illegal acts that Wendel's agents tried to force them to perpetrate.<sup>8</sup>

### **Professional Defendants**

27. Defendants include the law offices of and listed attorneys who are, or have been, associated with the Law Offices of Wendel, Rosen, Black and Dean (Wendel), and who are thus bound by the Binding Arbitration paragraphs at the top of Page Three of the Engagement Letter portion of Plaintiff's contract with Wendel, dated August 31, 1998: William Horwich; Steven McKae; Gregory Brandt; Walter Turner; Jeanine DeBaker; Deanna Lyons; Elizabeth Burke Dryfus; Thiele Robin Dunaway; Timothy Williams; Gillian Ross, Leonard Marquez, Kevin R. Brodehl; Charles A. Hansen; Howard Lind; Daniel Rapaport, and Does 1-35.

28. The Wendel law offices are alleged to be operating under the laws of the State of California as a California Limited Liability Partnership with offices on the 24<sup>th</sup> floor of 1111 Broadway, Oakland, Alameda County, California.

29. Berkley Parties: Jon Berkley Management, Incorporated and Norman Jon Berkley and Josh Berkley are collecting money from Peter Clark's Fine Arts Limited Partnership and/or Peter Clark's 152 unit apartment development on Drew Circle in Davis, Yolo County, which Wendel is protecting despite the evidence of malfeasance, allegedly as a reward for their collusion if not conspiracy with the fraud against Wendel's client, Peter Clark, and the client trusts and entities. From information and belief, Wendel arranged for Norman Jon Berkley to receive a pay-off of one million dollars as well, allegedly from money from Clark Family Trust without approval from the Managing Trustee, Peter Clark.<sup>9</sup> Jon Berkley Management Incorporated is alleged to operate under the laws of the State of California as a California Corporation with offices at 630 Pena Dr # 400, Davis, CA 95618-7726, Yolo County, California (530) 753-5910, under the alleged current management of Josh Berkeley. The current address of Jon Berkley is unknown.

30. Schoenholtz and Spiegel, Spiegel Accountancy Corp (herein also "Spiegel"), is an active participant in the concealment of the true accounting, filing of allegedly false income tax returns, and the falsification of the accounting upon which Defendant's Bankruptcy Fraud caused damages. Peter Clark hired Spiegel to audit the books of Jon Berkley in 2001, and to set up books for La Playa Apartments Limited Partnership and the Johnson and Louise H. "Clark Partnership," however Spiegel did not do so. It will be interesting to see Spiegel attempt to rationalize his fraudulent accounting, and his billings, to the forensic accountant that now will now look at the books that Spiegel is alleged to have been cooking for the past decade in agency with, and under the protection of, Wendel attorneys.

31. Spiegel is alleged to be operating under the laws of the State of California as a California Corporation with offices at 2033 N Main Street # 365, Walnut Creek, CA 94596-3726, Contra Costa County, California-

## Non-Professional Defendants

32. Mark Hurst and Linda Hurst are alleged to be drug felon former maintenance workers whose children were taken from them as a result of alleged sexual **abuse**, and who the Wendel Parties elevated to the position of Manager/Assistant Manager of properties that are assets of trusts and entities which Mr. Hurst, and Wendel, know have Peter Clark as the highest authority, (non-withstanding Wendel's then secret acts against their client) to reward Mr. Hurst for engaging in torts against the trusts and entities and the person who had giving Mr. Hurst a second chance in life, Peter Clark. Such torts included towing Mr. Clark's car while Mr. Clark was out of the country; taking the tools of his trade; causing asbestos to be circulated in the living environment of Mr. Clark and his then fiancée to cause grave bodily harm in a constructive eviction to drive Mr. Clark from his home; and making false emergency police calls to prevent Mr. Clark from ascertaining the extent of the damages Defendants are causing to the property owned by said trusts and entities.

33. Sarah Clark and Margaret Clark married Steve Clark and Charles Clark, respectively, and are alleged to be engaged in collusion with "The Charles Parties", in hate-mongering, stealing from their own children by tortuous interference in the affairs of Clark Family Trust and other trusts and entities. They are alleged to be acting in collusion if not conspiracy with the Wendel Parties to destroy the Clark family as a social and economic unit in order to profit by raiding the pieces, and thereby kill the goose that was laying the golden eggs for the Clark Family, Peter Clark's management and development businesses. Each are alleged to be receiving funds derived from various Clark Family entities and/or trusts without benefitting said trusts and entities, and are thus presumed to be violating said trusts.

34. "Candice" Wozniak is alleged to be receiving unauthorized and unearned payments from Johnson Clark Associates, Incorporated, of which Peter Clark is the highest authority. It is alleged that said payments are being made to reward Candice for her acts damaging to the trusts and entities that Peter hired Wendel to protect. Candice is alleged to live in Santa Clara County.

35. Clark Family Enterprises is the name that Wendel attorneys and their agents and/or co-conspirators have called the (alleged) racketeering enterprise that Wendel attorneys created to seize control of the \$100 million dollars in assets created by Peter Clark and his parents, the **Elder** Clark (both now deceased, and both of whom suffered from diminished capacity at the time). The evidence indicates that Wendel attorneys have been operating this enterprise in a pattern of racketeering primarily for their own Benefit, in secret from their contractual client, Peter Clark, as shown by the documents that then Wendel attorney Horwich and Wendel attorney Turner drafted, dated September 10, 2002. Clark Family Enterprises is alleged to be operating as an unincorporated association under various assumed names and shell corporations, including Clark Property Management, Inc., (CPMI) Heritage Trust, Creekside Properties, and other names, however EXHIBIT 6 documents clearly show their intent, in then secret conspiracy with Wendel, "*to 'roll up' existing family owned enterprises (involving ownerships by trusts of which peter Clark is either the highest authority, beneficiary, or partner ), into an umbrella limited liability company..*"

36. Clark Family Enterprises is alleged to be operated from the 24<sup>th</sup> floor of 1111 Broadway, Oakland, Alameda County, California, under the over-all control of Wendel attorneys, primarily for their own benefit, and t the detriment of the de jure owners of the properties and intended beneficiaries.

37. The Peter C. Clark Trust and the Diddo H. Clark Trust were created for the express goal of diverting money due to Peter Clark and to Diddo Clark to Wendel attorneys instead, as verified by the e-mail from Steve Clark dated October 30, 2002 (EXHIBIT 9-A,

38. CPMI is alleged to be a shell corporation doing business in the State of California as an unlicensed management company in violation of several provisions of the Business and Professions Code. The evidence indicates that CPMI has been used as a conduit for Wendel paying itself and channeling money to its agents/co-conspirators. On information and belief, Wendel and their agents have been engaged in managing some of the multi-family apartments named in this complaint under CPMI without a real estate license in violation of the business and Professions Code, and have been holding property in Constructive Trust for various of the ownership trusts of which Peter was, and alleges, is, the Managing Trustee, and a partnership of which Peter was

the Managing Partner at the time that Peter hired Wendel to prevent such fraud, and no legal act has changed that. Because CPMI is not a partner, the funds channeled through CPMI to Wendel and/or Wendel's agents are alleged to constitute grand theft.

39. Thus, Wendel created CPMI and placed Steve Clark as the alleged owner of CPMI and one or more of the organizations set forth in this complaint, and thus the alleged straw man and fall guy for Wendel's fraud. CPMI is thus alleged to be merely another DBA for the Law Offices of Wendel, Rosen, Black and Dean.

40. "The Charles Parties", is alleged to be a drug cabal that consists of "Charles" Clark, "Steve" Clark, and "Jack" Clark (aka Johnson Clark Jr.). Jack is the alleged primary source of prescription drugs allegedly **abused** by the cabal, for which activity Jack was allegedly investigated by the American Medical Association during a time relevant to the current complaint). Steve, Jack, and Charles were once amphetamine **abusers** whose capacity to tell right from wrong became diminished as a consequence, and once relied on (the late) Johnson to make determinations about right and wrong for them. These brothers are alleged to be the primary hate-mongers who acted in collusion if not conspiracy with the Wendel Parties to destroy the Clark family as a social and economic unit in order to profit by raiding the pieces, and thereby kill the goose that was laying the golden eggs for them- Peter Clark's management and development businesses.

41. Each of these brothers are alleged to be stealing from their own children by their acts and omissions, tortuous interference in the affairs of Clark Family Trust and other trusts and entities, and arranging to pay themselves from money due to the Education Trusts and/or from Clark Family entities or trusts in excess of what is due to them. These brothers are represented by Wendel adverse to Wendel's contract with Peter Clark, and Wendel's alleged Bankruptcy Fraud provided benefits to them by helping to shield them from responsibility from their previous torts, for which they must now be held responsible for 36 times the damages or more times as a result of the various additional RICO Act counts and unfair business practices.

42. Steve is alleged to be a resident of Santa Clara County. From information and belief, Steve was a victim of fetal alcohol syndrome which the evidence indicates contributed to his behaving as a sociopath. Steve was known for going to elaborate lengths to avoid working, with acts that Johnson labeled "Steve's 'go-fasts,'" Steve was unemployed in 97 when Plaintiff offered Steve a management job that would have paid Steve approximately \$50,000 per year if Steve would show up once per week to learn how to manage properties from Jon Berkley. Steve refused because "it's too much work."

43. During times relevant to the current complaint, Steve is known to have ingested massive quantities of marijuana that he grew on land in Santa Cruz County. Steve is alleged to have been easy prey for the smooth talking by Charles and Wendel attorneys to convince him to let them act in his name, and thereby benefit themselves while Steve is left to hold the bag, however Steve is alleged to have been an eager recruit to the fraud.

44. Jack is alleged to be a resident of Sonoma County. Jack is alleged to be the most smooth talking of the hate mongers. As a teenager, Jack upset Johnson by driving "a good kid" out of the Boy Scout Troop that Johnson led. Peter became the Senior Patrol leader of said Troup because Peter protected the weak against Jack's bullying tactics, as Peter is attempting to do now.

45. Charles is alleged to be a resident of Alameda County. Charles was, and is alleged to continue to be a practicing and unrepentant alcoholic bully and drug **abuser** who failed at every business that he engaged in, and thus was desperate for money during the times relevant herein. Charles seized control of La Playa Apartments in 1985, and resigned in disgrace in 1990, leaving Peter to pick up the pieces. Charles has demonstrated that he never forgave Peter for saving that partnership from bankruptcy, and has acted vindictively ever since.

46. From information and belief, after patriarch (the late) Johnson lost capacity, the Charles Parties have been influenced by Wendel's abdicating their fiduciary responsibilities and duty of loyalty to Peter as a model for the role of the Charles Parties in the malfeasance, and thus Plaintiff alleges that Wendel must take full responsibility for the damages that have resulted, however Plaintiff asks the arbitration to make such a determination.



## Agency

47. Plaintiff is informed and believes and thereon alleges that, at all times herein mentioned, each of the defendants sued herein was the agent and employee of each of the remaining defendants and was at all times acting within the purpose and scope of such agency and employment.

48. Plaintiff is informed and believes and thereon alleges that during the time period herein mentioned, William Horwich became estranged from the other attorneys and the Wendel law offices for reasons that are relevant to this case. However Horwich and Wendel have continued to conceal documents and otherwise protect each other as if Horwich continues as an agent and employee, and the reverse, and Wendel has continued to benefit from that agency by continuing Horwich's fraudulent acts and omissions complained about herein to cause billing opportunities for themselves and otherwise to cause self-enrichment without the informed consent of their client in prima facie violation of the Rules of Professional Conduct of the California Bar (herein also "Bar Rules"), and thus law, and without benefiting the trusts and entities of which they are fiduciaries.

49. Peter is informed and believes and on that basis alleges that in doing the tortuous and other conduct hereinabove and hereinafter alleged, each of the named defendants controlled each other directly or indirectly and acted as agents for one another and within the course and scope of said agency. Peter is also informed and believes and so alleges that each Defendant is responsible for any acts or omissions of professionals working for such Defendants directly or indirectly, who may have been employed in various activities on Defendants' behalf.

50. In doing the acts hereinabove and hereinafter alleged, Peter is informed and believes and so alleges that all of the tortuous and other conduct by Defendants, and each of them, were done in the course and scope of their duties as agents/attorneys for the above-described entities, partnerships, and corporations and/or were done as personal acts by defendants, and each of them, outside the scope of their business pursuits, and outside the scope of their duties as agents or de facto officers, directors and partners in the above-described entities, partnerships and corporations.

51. Does 36-70 are alleged to be professional entities and natural born persons that have acted in agency relationship with Wendel related to the \$100 million fraud at issue herein, some of which may be additionally amended into the Binding Arbitration, as may be determined appropriate after a review of the documents related to the assets, which documents Wendel has concealed from their client as a key aspect of their alleged fraud.

52. Does 71-100 are alleged to be non-professional agents that Wendel has acted in agency relationship with, who are presently not part of the Binding Arbitration, and are not presently known if they should become part of said Binding Arbitration.

53. Defendants Doe I through Doe 100, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to plaintiff. When their true names and capacities are ascertained, plaintiff will amend this complaint by inserting their true names and capacities herein.

54. Together, Defendants are hereafter also referred to as "The Wendel Parties." Declaratory Relief; and "Post-Petition Damages" are sought.

55. Plaintiff is informed and believes, and thereon alleges that each of the fictitiously named defendants has acted in agency relationship with each other, and that each is responsible in some manner for the occurrences herein alleged and that plaintiff's damages as herein alleged were proximately caused by those defendants.

## FACTS

56. In 1997 and 1998 Peter Clark invested his life savings in his 152 unit Allegre Apartment Community Development on Drew Circle in Davis, Yolo County. Said development, which Peter designed and developed with only his own funds at risk (together with his then fiancée), was more than three times as large as any development ever attempted by Peter's father, Johnson Clark. Said "Allegre" development, which Peter instigated through his Fine Arts Limited Partnership and Allegre Associates Partnerships, was completed in 2000, and was phenomenally successful, making an estimated \$20 million dollars in equity and cash flow despite acts of alleged malfeasance by Charles Clark to prevent said development.

57. Because of the problems created by Charles, Peter required the services of a large, prestigious, law firm to protect his estate and businesses as Peter used said Allegre development as a vehicle for the distribution of assets from Clark Family Trust to Clark siblings, fairly and equitably, at least tax consequences.

58. In 1998, Peter hired Defendant law office of Wendel, Rosen, Black and Dean and associate attorneys (collectively, herein, "Wendel") in 1998, after Peter received the approvals necessary to complete said development. Peter hired Wendel to merge Johnson Clark Associates, Incorporated, with Peter's Fine Arts Limited Partnership and thereby provide a legal basis for **financing** Peter's Allegre Development. After the development was completed and appraised, Wendel was to divide the companies and facilitate Peter accomplishing further developments.

59. Peter hired Wendel not only to protect his businesses and cash flow, but also to build the foundation for further developments. Such further development were to include five involving assets associated with Clark Family Trust. Peter was to accomplish those developments starting in 2002, with profitability estimated from those developments to be in excess of \$160 million dollars, to be shared primarily with the Third Party Beneficiaries of the Binding Arbitration, that include the fourteen grandchildren of Johnson Clark. Including Peter Clark's now adult children, Ian and Acacia Clark, as well as Peter Clark and Diddo Clark.

60. Peter Clark was the only one of the Parties to this action to provide a net contribution to the wealth of the Johnson Clark Family then, or allegedly since.

61. However over the past decade, despite Peter hiring Wendel to protect his assets, businesses, and estate, Wendel arranged to take all of the fruits of their client's labor, investments, and estate away from Mr. Clark by such means as economic duress, causing Peter's signature to be falsified, and other alleged fraudulent means to transfer the ownership to Peter's adversaries, who contributed nothing, and to divert most of the cash flow, allegedly, for themselves.

62. Defendants, acting as an alleged criminal racketeering enterprise which Steve Clark called "Clark Enterprises," engaged in a campaign of economic duress against Wendel's client and many third party beneficiaries for the stated and now demonstrated goal of "*bankrupting Peter Clark so we can buy back (his assets) for next to nothing.*" (declar. of David Bryant filed and attached in Addendum IV as EXHIBIT 3-I.). Said acts, facilitated by Wendel, were taken in secret from their contractual client. Wendel followed up by filing an avalanche of alleged malicious prosecution and **abuse** of process against their client as an alleged preemptive strike which they have used as a shield for their ongoing Constructive Trust and concealment.

### III. COMPLAINT

#### Binding Arbitration Required

63. This case would have to be adjudicated in the primary District Court except for the requirement for binding arbitration with the American Arbitration Association due to the arbitration clause in Wendel's Engagement Letter portion of its contract with Peter Clark shown in Paragraph 1 of Page 3 of EXHIBIT 2-Aii, filed and attached herewith:

"Any... dispute arising out of or related to this engagement letter or our professional services, or *any dispute of any kind, shall be decided at Oakland, California by a single neutral arbitrator* appointed by the American Arbitration Association." Wendel's Engagement Letter portion of its contract with Peter Clark shown in Paragraph 1 of Page 3 of EXHIBIT 2-Aii (underline added).

64. Because of this broad wording of the arbitration clause, as well as the fiduciary responsibilities that Wendel took on in handling the affairs of trusts and drafting trust agreements, many at Peter Clark's request, Plaintiff alleges that said arbitration has jurisdiction related to damages that the Wendel Parties are causing to other beneficiaries of trusts of the Clark Family as well, which damages must be adjudicated simultaneously with Defendants post-bankruptcy damages to Plaintiff and client trusts and entities for judicial economy.

65. The authority for the jurisdiction of the arbitration is vested in *the Federal Arbitration Act (Title 9 CHAPTER 1,* <sup>10</sup> *which directs an aggrieved party to petition to the United States District Court to compel such arbitration.* A preference for arbitration is additionally supported by the [California Code of Civil Procedure, Sections 1280-1295](#) and public practice (*Finley v. Saturn of Roseville (2004) 117 Cal.App.4th 1253, 1259.*), “once a matter has been referred to arbitration, the court's involvement is strictly limited until the arbitration is completed.” Such cases favor Binding Arbitration to adjudicate issues when specified in a contract.

66. Said Binding Arbitration has already been set with the American Arbitration Association, Case # 74 194 Y 1440 07 JEMO.

67. Peter Clark filed for said arbitration in 2007 (American Arbitration Association Case #74 194 Y 1440 07 JEMO), and Wendel stipulated to said arbitration in a telephone conference with the Petitioner held by the American Arbitration Association in 2008. Said arbitration was set regarding some of the pre-petition damages that Wendel caused.

68. Defendants at first agreed to said Binding Arbitration, and then delayed said arbitration by various means until they caused the bankruptcy in which they are alleged to have engaged in Bankruptcy Fraud.

69. The American Arbitration Association assigned the Honorable Chris Cottle, retired Presiding Justice of the 6th District Court of Appeals as the Neutral, and Justice Cottle later agreed to bifurcate the issues, however Wendel has delayed said arbitration by various legal maneuverings and by not paying their portion of the fees, in alleged further violation of contract, allegedly as part of their continuing pattern of racketeering.

70. Wendel had filed their seventh lawsuit against their client earlier in Alameda County (Alameda County Case # RG10 504055) in an alleged attempt to further evade the Binding Arbitration that is required by Wendel's contract with Peter Clark. Said Alameda County lawsuit by Wendel against Mr. Clark is alleged to have constituted yet another in a series of Wendel's acts to delay the Arbitration and evade responsibility for their actions against their contractual client in direct conflict with their claim to represent the entities that Peter Clark hired Wendel to protect in Mr. Clark's capacity as a client who was at the time, and alleges is, and/or rightfully should be the highest authority except for the alleged vigilante acts of malfeasance of the Wendel Parties.

71. From information and belief, Wendel paid themselves an estimated 7.5 million dollars in fees and to have spent in the tens of millions dollars in costs without approval from their client, and all of these fees and costs are in contention. As a result, Bar Rules require that all of these fees and costs be placed in a Client Trust Account, and case law is rather definitive in requiring that this money be used for the benefit of their client, with disgorgement of fees and costs mandated in situations much milder than the current situation. Plaintiff's will ask that a portion of these funds to be used to pay the remaining costs of the Binding Arbitration.

72. Defendants caused said bankruptcy for their client by alleged intentional torts to draw litigation, and then an avalanche of vexatious litigation when Plaintiff did not “bite”). In doing so, Defendants acted in the name of entities and regarding trusts for which Plaintiff is the highest authority and/or for which Defendants have fiduciary duties to Plaintiff by contract; by the California Probate Code; the Business and Professions Code; and/or the Corporations Code, and by their duty of loyalty as required by American legal tradition and public practice. By their acts, Defendants are alleged to have engaged in numerous

violations of the Rules of Professional Conduct of the California Bar as delineated in the "Bar Complaint" that is now being submitted to the California Bar, a copy of which is filed herewith as EXHIBIT I.

73. Plaintiff filed for binding arbitration in 2007 to halt and mitigate Wendel's torts, however Wendel delayed the arbitration by various acts, until they forced Peter into Bankruptcy. Wendel then converted Peter Clark's CHAPTER 13 REORGANIZATION TO A Chapter 7 liquidation, acting without actual standing or capacity by claiming to be the attorneys for entities of which Peter Clark is the highest authority, and using falsified documents.

74. In these and other ways, Defendants have also continued to evade adjudication of the Bankruptcy Fraud that they caused to complete their alleged **Financial Elder abuse** and other fraud against their client related to a combined estate valued in excess of \$100 million dollars before their raids, an amount which is alleged to have been sufficient for Defendants to have neglected their oaths as attorneys and officers of the court.

75. Trustee's Attorney Dennis Davis announced his abandonment of the Binding Arbitration, and so Plaintiff made an added payment of fees to the American Arbitration Association to extend the arbitration to the post bankruptcy period. The current arbitration is thus in the hands of Peter Clark, and NOT under the jurisdiction of the Bankruptcy Trustee, including because of the third party claims, and the post bankruptcy claims that are currently at issue, including Bankruptcy Fraud and continued RICO ACT violations.

76. Plaintiff made a demand for arbitration of post-bankruptcy torts in April, 2011. Defendants refused to cooperate with said arbitration, and by collusion with attorney Denis Davis and by deception and concealment from Plaintiff of their communication to the Neutral, caused the assigned Neutral to believe that the arbitration would interfere with the federal authority. This is not the case, however, as the claims related to post-bankruptcy damages, including bankruptcy Fraud.

77. Defendants are continuing to add to the extensive list of Intentional Torts that they caused for their client, including by their causing two more cases to be filed in the Contra Costa Courts against their client regarding a trust, and an entity for which they have fiduciary duties to Plaintiff to prevent such acts of fraud.

78. Plaintiff seeks injunctive relief, and to enact mitigation RE: Defendant Attorney's continuing into the post-bankruptcy period their pattern of damaging acts against their contractual and de jure client that they began for the stated goal of "*bankrupting Peter Clark so we can buy back his assets for next to nothing.*"<sup>11</sup>

79. In a hearing on October, 2011, Diddo Clark attempted to have some of the issues heard in the Probate trial now scheduled for January, 2011, however Diddo Clark was informed that the trial could only deal with the very narrow issues of the Petition that Wendel put forward on behalf of Peter's adversaries.

80. Plaintiff made further demands for Binding Arbitration of the damages resulting from said Bankruptcy Fraud on November 4, 2011, as required by their contract with Peter Clark, a true copy of which is Attached herewith as Exhibit I, filed and attached herewith, however Defendants refused, and engaged in further acts of fraud to prevent said Binding Arbitration.

#### **Ai. Bankruptcy Fraud**

81. Defendants, misrepresenting themselves by acting in the name of entities of which Plaintiff is the highest authority, have acted adverse to their client and client trusts and entities under the color of law but without actual authority, including before the Bankruptcy Court, in acts that can now be shown to collectively constitute Bankruptcy Fraud. In so doing, Wendel has caused proximate damages to over two dozen associated client trusts, partnerships, and other entities and/or the interests of Wendel's contractual client, Peter Clark, and other associated beneficiaries, intended beneficiaries, owners, and trustees, all without the informed consent of, or waiver of, conflicts of interest by Wendel's contractual client, Plaintiff Peter Clark.

82. A finding of *Bankruptcy Fraud* under 18 U.S.C. §152 does not require a finding that Defendants made false representations before the Bankruptcy Court, merely that they made a filing *or* representations before the Bankruptcy court as part of other fraud. Defendants have unquestionably done both.

83. However Defendants are alleged to have also violated 18 U.S.C. §157 (also Bankruptcy Fraud) by their false representations before the Bankruptcy Court related to assets of the estates of their benefactor, Peter Clark and/or his parents, Louise and the late Johnson Clark, and aforementioned trusts and associated entities, all of whose *meaningful and previously phenomenally profitable* business affairs are alleged to have been halted in their tracks and damaged as a result of such artifice. In short-Defendants are alleged to have killed the goose that was laying golden eggs for the numerous entities, trusts, and beneficiaries that Defendants are alleged to have damaged by their actions.

### **Elements of the Bankruptcy Fraud**

84. Peter Clark filed for bankruptcy on February 10, 2010 or thereafter. Wendel, in agency relationship with each other and the other Wendel Parties, represented to the bankruptcy court that they were the legal and bona fide representatives of trusts and entities of which their client, Peter Clark, was the highest authority at the time that Mr. Clark hired Wendel, and/or which Mr. Clark caused Wendel to create and/or draft trust agreements for, and no legal act had changed that when Wendel made their allegedly false representations to the bankruptcy court, as will be shown in the Declaratory Relief sought herein.

85. In December, 2010, Wendel filed an Adversary Complaint in said bankruptcy against their client in the name of said entities of which Peter Clark was the highest authority when Peter hired Wendel, and no legal act has changed that. Said Adversary Complaint contained numerous falsehoods. One of said numerous falsehoods is stated in Paragraph 11 (c) and (d) under “Factual Background” in which Defendants state:

“(c) On or about June 9, 2002, the La Playa General Partner also voted to remove the Debtor as general partner and relieve him of his property management duties for the La Playa.” Paragraph 11 (c) and

(d) under “Factual Background” in Defendant's Complaint to Determine Dischargeability of Debts filed in or around December 7, 2010.

86. This statement by Defendants is a falsehood which Plaintiffs will show more completely in the Binding Arbitration. However a finding of falsehood is not necessary for a finding of Bankruptcy Fraud under the statute- only that Wendel made representations to the Bankruptcy Court as part of their larger fraud. However in fact, Plaintiff Peter Clark was and is the sole General Partner of La Playa Apartments, L.P. in 2002 and thereafter, and there was no vote by the General Partner or anyone related to La Playa Apartments then, or ever.

87. In their pre-petition artifice to defraud Peter Clark and the above listed Trusts and entities, Defendants have in the past stated falsehood in ways that were more difficult to show to constitute perjury and fraud. However they are now alleged to have so stated said falsehood, in a context that is alleged to constitute perjury, Bankruptcy Fraud and contempt for the legal system that they are sworn to uphold.

88. Wendel attorneys allegedly made their claims in agency relationship with the other Wendel Parties, as officers of the court, and allegedly without actual standing, basis, or authority except as fraudulently created by self-serving and circularly reinforcing opinions of counsel adverse to their contractual client, forgery, and other fraud, and in callus and knowing disregard for the truth.

89. In so doing, Wendel made false testimony using attorney-client privileged information gleaned from Wendel's representation of Peter Clark, to convert their client's Chapter 13 reorganization into a Chapter 7 liquidation in keeping with their previously stated and now demonstrated goal of “bankrupting Peter Clark so we can buy back (his assets) for next to nothing.” The Wendel Parties demonstrated that this was their goal by their Post-Petition acts before the bankruptcy court,

allegedly without de jure standing or authority and in alleged violation of contract and most of the Rules of Professional Conduct of the California Bar (Bar Rules) related to attorney-client conduct as will be shown in the arbitration that is now required by contract, as evidenced in part by the EXHIBIT I Complaint that is being provided to the Arbitration.

90. A true copy of the "Engagement Letter" portion of Mr. Clark's "Engagement Contract" with Wendel, signed and dated August 31 1998, is shown by Exhibit 2-Aii, filed and attached herewith. From information and belief, then Wendel attorney William Horwich drafted said Engagement Letter, which he signed and sent to Peter Clark, in the same envelope with the "Engagement Memo," Exhibit 2-Ai, filed and attached herewith.

91. The Wendel Parties are alleged to be violating the Bankruptcy Code and due process as vehicles for continuing the Constructive Fraud that the evidence now indicates the Wendel Parties began in secret against Wendel's client, Mr. Clark, prior to the time that Wendel signed their Engagement Letter with Mr. Clark, and that Wendel had no intention of delivering on their contract.

92. Wendel's Engagement Letter portion of Wendel's contract with Mr. Clark lists "*estate planning matters*" as the first in the list of the business and personal affairs of Mr. Clark for which Wendel represented Mr. Clark (with others listed in thereafter and in the other EXHIBIT 2-A documents and other documents. It is hard to imagine acts more related to estate planning matters or to Mr. Clark's personal and business affairs than the liquidation of Mr. Clark's assets, the activity in which Wendel is currently engaged with Dennis Davis.

93. Along the way, the Wendel Parties are alleged to be engaged in numerous Violations of Trust, and **Financial Elder Abuse** of Peter Clark's parents, Louise H. Clark and the late Johnson Clark and/or his estate (herein the **Elder** Clarks), in alleged violation of numerous provisions of the **Elder Abuse** and Dependent Adult Civil Protection Act, **Welfare and Institutions Code (Wel & I C) §§15600-15675**, as well as the Probate Code, all directly related to said "estate planning matters", and as a key element of their alleged Constructive Fraud and pattern of racketeering.

94. As part of their ongoing campaign of economic duress against Peter Clark; without their client's approval; and related to Mr. Clark, Wendel's client, and/or trusts that Mr. Clark hired Wendel to create and/or protect, including the ATK Trusts, the Wendel Parties are alleged to be taking money derived from the trusts without benefiting said trusts. By such action, Wendel is presumed to be violating the trusts by **§16004 (c) of the California Probate Code**, "*and such presumption is a presumption affecting the burden of proof.*"

95. Defendants' acts are alleged to further constitute tortuous Interference in the internal and business affairs of Clark Family Trust, Clark Children Trust, and close to two dozen other trusts and entities that Plaintiff had hired Wendel to protect, and **financial elder abuse** of the **Elder** Clarks. Defendants and their agents, which include some of Peter Clark's siblings, who Plaintiff hired Wendel for protection from, have contributed substantially nothing, and have taken everything, while harming Plaintiff, together with over two dozen associated client trusts partnerships, and other entities and associated beneficiaries, intended beneficiaries, partners, owners, and trustees as a direct and proximate result of their breaches of trust and fiduciary duty related thereto.

B. Injunctive Relief and Specific Performance to halt and mitigate Post Bankruptcy racketeering, violations of Trust, and **Financial Elder Abuse**;

96. Defendants are now attempting to capitalize on their bankruptcy fraud by their filing of further actions against their client regarding entities for which Defendants continue to have fiduciary duties to Plaintiff after the bankruptcy that Defendants caused for their client by their pre-bankruptcy avalanche of litigation that they filed against their client for the stated and now demonstrated goal of "*bankrupting Peter Clark so we can buy back (his assets) for next to nothing,*" as shown by the declaration of paralegal David Bryant, a true copy of which is shown by Exhibit 3-I, and which is supported by the declaration of Attorney

Frank Ferris shown by EXHIBIT 3-J. Plaintiff asks for injunctive relief to prevent such furtherance of Defendant's bankruptcy Fraud.

97. Wendel has caused three actions to be filed against Plaintiff since the bankruptcy. All of said actions, and the bankruptcy itself, must be undone as it is all part and parcel to the Bankruptcy Fraud.

#### C.) Accounting Required

98. One of the principle vehicles of Defendants' alleged fraud has been an avalanche of litigation that Defendants have caused to be filed without actual standing in the name of the partnerships and based upon an allegedly falsified accounting in which they allege without evidence that Peter Clark, who brought the partnerships to profitability for the first time, has caused damages to the partnership by Defendant use of trumped-up accounting from a database that they stole from Peter Clark and then falsified, and while preventing the accounting that will be necessary to ascertain the truth.

“(It would be inequitable, in a partnership accounting case, to require that some partners pay the claims of other partners before their own offsetting claims are adjudicated. The proper procedure is to resolve ALL of the competing claims, and then render a net judgment after offsets, in favor of the partners with the greater claims (See *Prince v. Harting*, (1960), 177 Cal.App.2<sup>d</sup> 720 at p. 733, [2 Cal.Rptr. 545]).

99. But alleged **abuse** of civil process Defendants have causing members of the Clark Family to, effectively, sue themselves, in litigation that is pointless because all issues could be resolved by an accounting that Defendants have prevented. In addition, even if Defendants' claims were legitimate, which is denied State partnership law precludes such an action, as follows:

“Partners cannot sue one another at law in respect to partnership business; remedy being by equity suit for dissolution and accounting.” *De Rigne v. Hart* (1928) 270 P. 1013, 94 C.A.209 (West's Annotated California Corporations Code, 2007 §15818 Note 20).

100. Wendel knew, or should have known this when they filed suit against their contractual client in June, 2002, and certainly knew this after paying themselves an estimated \$ 17.5 million dollars in fees to reward themselves for destroying and/or concealing the evidence that proves Peter Clark innocent of their charges as they brought forward after the bankruptcy that they caused for their client.

“Generally, a partner may not sue his co-partner in an action at law with respect to firm transactions until an accounting has been had and this rule is particularly applicable to claims for damages arising out of manner in which a partnership business has been conducted and in breaches of agreement as such, but the reasons for applying the rule are less forceful where wrongful acts complained of are not only a breach of contract but constitute a tort, especially where tort is of such a nature that it not only terminates partnership but wrongfully destroys it, as where erring partner converts the entire assets to his own use. *Barlow v. Colins* (1959) 333 P 2 64 166 C.A. 2d 274 (West's Annotated California Corporations Code, 2007 §15818 Note 23).

101. However, Defendants pay themselves through shell companies that are not partners, have taken their action to the extreme that they have, and, by their own admission in demanding the first ever call for contributions from the partners, created near bankruptcy conditions substantially similar to what all members of the Johnson Clark family other than Charles asked Peter to reverse in 1989 after four years of alleged I mismanagement by Charles: visited on the partnership after a decade of their malicious prosecution, Peter is allowed a remedy, as follows:

102. “A partnership accounting trial is an investigation of all affairs, all transactions, and all days events affecting the partnerships and the individual partners - and thereafter striking a balance, leaving nothing for the future” (*Prince v. Harting*

(1960) 177 Cal.App.2d 720, 733, [2 Cal.Rptr. 545]; *Rosenfelt, Meyer & Sussman v. Cohen* (1987) 191 Cal.App.3d 1035, 1049 [237 Cal.Rptr. 13]; “In addition to documentary evidence, the formal account includes testimony relevant to the various claims of the individual partners/members. It has been said that the account is the one great occasion for a comprehensive and effective settlement of all partnership affairs’ *Weidlich v. Weidlich* (1960) 147 Conn. 160, 165 [157 A.2d 910, 913]” *Bromberg & Ribstein on Partnership*, Vol. II, 6:08, p. 6:111.

103. Peter Clark caused Defendants' avalanche of litigation to be coordinated as The Clark Family Cases (Coordinated Case #4320), together with his “bill in equity to dissolve the partnership and obtain an account.” Defendants have prevented such a dissolution and accounting, however.

104. Defendants and/or their agents entered Peter Clark's office without permission and stole his computer and documents. Defendants destroyed documents including over one hundred megabytes of files on Peter's computer, and over-wrote them to prevent “un-erasure.” Said erased files included the database on Peter Clark's computer that showed Peter Clark to be innocent of their trumped-up charges.

105. Defendants including Spiegel then falsified a database in which they have mislabeled debits and selectively removed or mislabeled credits to trump up a case against Wendel and Spiegel's client from whole cloth.

106. Peter Clark stipulated to interim management by a licensed property management company because he believed that professional management is required for all of the properties. However Defendants then prevented Peter Clark from receiving the accounting from said licensed management company, and replaced said licensed management company with themselves via an unlicensed shell company that they admit is owned by Defendant Steve Clark, the alleged inventor of the term “Clark Enterprises,” and thereafter substantially refused to provide accounting, but only providing a tiny fraction of the accounting of their activities.

107. Defendants have provided only fractional aspects of accounting to Plaintiffs, and which accounting has excluded the money that Defendants have taken from the allegedly illegal liens that they have caused to be placed against the various properties, or from the accounts from which they have paid themselves, including the alleged kickbacks or other payments that they admit to have paid themselves (See EXHIBIT 5-B).

8. Wendel provided only a very small percentage of their bills to their client, and Peter Clark showed most of those bills to be padded and otherwise fraudulent.

109. Defendants have never provided an accounting of the money that they have paid themselves.

110. Since commencement of the partnerships and other entities, and in particular after seizing the properties by vigilante means, Defendants have, from time to time as a form of extortion and fraud, caused waste, conversion, and/or otherwise diverted cash flow and/or otherwise deprived Peter Clark trusts and others of their equitable distributions from the receipts of the various businesses, and have instead applied to themselves large sums of money to their own use via self-dealing.

111. In addition, Defendants have placed liens on properties in secret from the other owners, and have applied to themselves the proceeds, in gross violation of their fiduciary duties, and have refused, and continue to refuse, to even disclose the location and status of some funds, much less to make a complete accounting, even after the bankruptcy in violation of the Bankruptcy Act.

112. The **financial** books and records of the various partnerships and other entities are in the hands of Defendants and their agents, and what they have disclosed is known to be fraudulent. Peter has demanded an accounting from these Defendants, and each of them. Defendants, and each of them, in order to conceal misappropriation of the funds of the entities, have failed and refused to comply, and have never brought the accounts together so that an accounting can be made in accordance with



Generally Accepted Accounting Principles (GAAP), or disclosed the results of an audit by an independent public accountant or other third party. However, it appears that the aforementioned Defendants have caused considerable waste and/or overstated costs, and understated and/or caused losses of income, all to facilitate the withdrawal and use of the funds for Defendants' own personal purposes, and to deprive these funds to Plaintiff in acts that have continued after the bankruptcy that they caused by their malfeasance.

113. Since discovering the aforementioned defendants' engineered losses and/or misappropriation of funds, Peter has demanded that the books of account and background invoices and leases be delivered to an independent certified public accountant for examination and preparation of a balance sheet, **financial** statement, and forensic analysis, but those Defendants have refused to accede to Peter's request.

114. By reason of the fraudulent and otherwise wrongful manner in which the defendants, or any of them, obtained their alleged right, claim or interest in and to the property, defendants and, and each of them, have been unjustly enriched.

115. As a proximate result of defendants wrongful conduct alleged herein, Plaintiff Peter Clark and the trusts have lost income and familial relationships; Peter Clark's management and development businesses have been destroyed; and Peter was driven to bankruptcy, with his home foreclosed after investing his life savings and two years of his life in his phenomenally successful development of the 152 passive solar designed apartment units in the Allegre Apartment Community on Drew Circle in Davis, Yolo County.

116. An accounting is required to sort out the mess that Defendants have made of Clark Family business affairs.

117. Part of Wendel's false representations to the Bankruptcy Court have included regarding documents and an accounting database that they stole from Peter Clark, destroyed the original database on Peter Clark's computer, then falsified said database. Wendel then fraudulently misrepresented themselves as acting legitimately on behalf of the partnerships and trusts of which Peter Clark was the highest authority at the time Peter Clark hired Wendel to protect his position related thereto, and no legal act has changed that. HWendel then brought forward actions that by California Law, no partner (or partnership) can make against a partner, as follows:

118. For example, Wendel has represented to the bankruptcy court that they are the legitimate representatives of La Playa Apartments and the Johnson and Louise H. Clark Partnership (Clark Family Partnership), of which Peter Clark was, and alleges is, the highest authority. Then, on the basis of said falsified database, Wendel has made claims to the bankruptcy court which are pure fantasy, and by collusion with attorney Dennis Davis to prevent the Binding Arbitration that would adjudicate these issues, (see Paragraphs # \_\_\_\_\_, separated Peter Clark, and the trust estate from his and its defenses, and thereby received a default Judgment, which can now begin to quantify the damages that Wendel has caused to their client.

119. Defendants have also acted in secret from their client to place liens on properties without authority and/or otherwise acted in violation of banking laws, purchased other properties with the proceeds under assumed names rather than in the name of the partnership, provided themselves and/or their agents with kickbacks or other fees, sold said other properties and have applied to themselves the proceeds without providing accounting or disclosed equal benefits, or provided the funds that rightly belong to the Peter Clark Trust Estate to the Trustee in gross violation of their fiduciary duties, and have otherwise benefitted themselves by self-dealing without benefitting the other owners that include the Education Trusts and Clark Family Trust. These facts were discovered not by Defendant's disclosure as required by law, but from a title search of the properties.

120. Defendants have refused, and continue to refuse, to even disclose the location or status of some funds, much less to make a complete accounting, even after the bankruptcy that they caused by alleged economic duress (a form of extortion and/or fraud) in violation of the Bankruptcy Act and numerous other state and federal regulations and laws.

121. In this way, Wendel has violated numerous of the Rules of Professional Conduct of the California Bar including “Organization as Client,” as delineated more fully in the Addendum V Bar Complaint, a copy of which is filed herewith.

122. The **financial** books and records of the various partnerships and other entities are in the hands of Defendants and their agents. Plaintiff has demanded an accounting from these Defendants, and each of them. Defendants, and each of them, in order to conceal misappropriation of the funds of the entities, have failed and refused to comply, and have never brought the accounts together so that an accounting can be made in accordance with Generally Accepted Accounting Principles (GAAP), or disclosed the results of an audit by an independent public accountant or any other third party. However, it appears that the aforementioned Defendants have caused considerable waste and/or overstated costs, and understated and/or caused losses of income, all to facilitate the withdrawal and use of the funds for Defendants' own personal purposes, and to deprive these funds to Plaintiffs, to the **Elder** Clarks, and to the trusts to which Defendants have fiduciary duties.

123. Since discovering the aforementioned defendants' engineered losses and/or misappropriation of funds, Plaintiffs have demanded that the books of account and background invoices and leases be delivered to an independent certified public accountant for examination and preparation of a balance sheet, **financial** statement, and forensic analysis, but Defendants have refused to accede to Peter's request.

#### D. APPOINTMENT OF INTERIM TRUSTEE / LIMITED RECEIVER REQUIRED

124. Wendel has paid themselves via self-dealing, an estimated \$16 million in unauthorized and allegedly unconscionable fees regarding the “*estate planning matters*” and Peter Clark's business and personal affairs for which they were hired, but without oversight or approval by their client.

125. All of Wendel's fees and costs are in contention, and must be returned to their client trust account by [Rule 3-310 of the Rules of Professional Conduct](#) of the California Bar (Bar Rules), pending determination of proceedings which Plaintiff asks to be bifurcated and heard by the Office of the Chief Trial Counsel of the California State Bar for several reasons, including:

a. Plaintiff asks that some of the funds from the client trust account will be required to pay the Neutral in the Arbitration, and the Neutral has reportedly expressed reticence to adjudicate an issue where there might be the perception of a conflict of interest. Plaintiff has paid over \$11,000 for the arbitration, and Defendants have paid nothing.

b. Wendel attorneys have consistently engaged in violations of the Rules of Professional Conduct of the California Bar in acts prejudicial to the administration of justice, including ex parte communications with judges outside of the presence of opposing counsel and other improper acts in their adjudication adverse to their client.<sup>12</sup> By such acts, Wendel is alleged to have caused the Honorable Judge Flinn in Contra Costa County to remove himself from the case at a point where a mistrial was certain because of the violations of judicial canons Wendel had induced. It is hoped believed that by bifurcating the issue of Wendel's fees to the chief trial counsel, that Wendel's ability to compromise the integrity of the judiciary will be curtailed.

c. Wendel cannot declare bankruptcy to evade a ruling by the State Bar.

126. By public policy the funds in the client trust account are to be used for the benefit of their client in the interim ([Silver vs. State Bar \(1974\) 13 C3d 134, 142, 117 CR 821, 826](#)). This is fortunate, because said funds are necessary to pay for the accounting that is now necessary, and to mitigate the damages, which, because of the multiple counts of RICO ACT violations, would otherwise extend into the hundreds of millions of dollars, believed to be beyond the insurance coverage of these attorneys.

#### E. Violations of Contract, Trust, Constructive Trust, **Financial Elder Abuse**, & Racketeering

127. Plaintiff Peter Clark and the **Elder** Clarks placed Defendants and each of them in a position of trust related to parts of the \$100 million combined estate of Peter Clark and Louise and the late Johnson Clark from which each would benefit, and would

benefit even more by helping to facilitate Peter Clark's expansion of the combined trust estates.<sup>13</sup> However Defendants, once given an inch, took a mile - substantially the entire \$100 million+ combined estates of Peter Clark, Johnson Clark and Louise Clark which Defendants are alleged to be holding in Constructive Trust, and which taking is alleged to constitute one of the counts of **Financial Elder Abuse**.

128. Defendants have done so via vigilante means in some cases under the color of law but in violation thereof, but in other cases simply by bullying tactics backed by circularly reinforcing opinions of council by Wendel adverse to their contractual client in alleged violations of contract to create torts that allegedly fit a pattern of racketeering which pattern is continuing after the bankruptcy, including via Bankruptcy Fraud.

129. For example, Wendel is alleged to be continuing to pay themselves from funds derived from assets associated with Clark Family Trust and/or the Peter Clark Trust after the bankruptcy that they caused for their client, without oversight from their client, via an arrangement that then Wendel attorney Horwich announced to Their client, Peter Clark, in the EXHIBIT 2-Ai Engagement Memo that. As a result, all of the fees that Wendel has paid to themselves are in contention, and must be returned to a Client Trust Account, with the money used on behalf of their client, Peter Clark, until the issue is decided, however by Wendel's behavior they are presumed to be violating the trusts, and are also presumed to be engaged in **Financial Elder Abuse**, as is delineated more fully herein. And Wendel is barred from receiving any of those funds as well, as support not just by *Silver v. State Bar* and other case law related to attorney-client relations, but also by considerable case law related to trusts, including as follows:

The award of fees to a trustee's attorney (payable from trust proceeds) was an **abuse** of discretion where trustee had not remained neutral in litigation concerning management of trust, but rather had consistently favored her own interests and those of some beneficiaries over those of other beneficiaries. *Terry v. Conlan*, 131 Cal. App. 4th 1445 (2005):

#### Rule 4-100 Preserving Identity of Funds and Property of a Client

(A) All funds received or held for the benefit of clients by a member or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts labelled "Trust Account," "Client's Funds Account" or words of similar import, maintained in the State of California, or, with written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction.

130. Defendants are alleged, from time to time as a form of extortion and fraud, to have caused waste, conversion, and/or otherwise diverted cash flow and/or otherwise deprived Peter Clark, the **Elder** Clarks, trusts and their beneficiaries, and others of their equitable distributions from the receipts of the various businesses in alleged economic duress extending past the filing of the bankruptcy, and have instead applied to themselves large sums of money to their own use via self-dealing in violation of the **Elder Abuse** Act, [Probate Code §§16060, 16061, 16062, 17200, §21350](#), and other Sections of the Probate Code and Code of Civil Procedure (CCP), and violations of Trust by [Probate Code §§16004 and 16400](#), [Civil Code 1572](#).

131. Defendants have thus a. Committed a **financial** crime

b. involving property belonging in whole or in part to an **elder**,

c. while in a position of trust and/or fiduciary responsibility related to said **elder(s)** and/or

d. in full knowledge that the **Elder** Clarks are **elders** as defined by the Welfare and Institutions Code.

As such, Defendants are alleged to have engaged in **Financial Elder Abuse**.

132. However the extent of the alleged depravity reaches far deeper: The primary thing that Johnson and Louise Clark wanted in their final years was to enjoy the company of their children and grandchildren, and to pass on a legacy of peace and happiness. However by interceding and fostering contention in the family, Defendants destroyed the Clark Family as a social or economic unit for their private gain. Further, Defendants deprived the **elder** Clarks of care and comfort from the only of their children to have had any training or even interest in end-of-life counseling and spiritual principles.

133. Further, Defendants, and/or their agents used the opportunity of the death of Plaintiff's parents to further their agenda of hatred within the family and among family friends by placing messages of hate at the reception table and threatening to call the police when Jack's wife hugged Peter and started to introduce him to her children. In this way, Defendants are continuing their campaign of hatred-for-profit into the next generation, exactly the opposite of the legacy that Louise and Johnson sought for their family. In this way, Defendants are alleged to have caused severe emotional distress.

134. The main thing that Johnson Clark wanted before he died, was to work with his son, Peter Clark, in the development of land that he had acquired, as Peter and Johnson had worked together starting when Peter was eight years old, to build a room addition onto the family home. Johnson at first directed Peter in how to built that addition to create a place for a model train set-up.

135. Johnson and Peter shared a passion for trains, and Peter had found a way to construct rail systems at extremely low cost. Peter and Johnson planned to pay that off in a big way starting in 2002 by Peter constructing a demonstration "Ultra-light" mass transit system on land owned by Clark family Trust on Arnold Drive in Martinez, Contra Costa County, eventually to connect the Martinez Amtrak Station to Pleasant Hill BART. As the Clark Family Trust property is in the middle, at the corner of Highway 680 and Highway 4, the Arnold Drive Station would dramatically increase the value of the Clark Family Trust owned property.

136. Defendants quashed that by their greed, and in so doing broke an old man's heart. Defendant's also held back the development of ultra-light rail mass transit for the past decade, something that they now are obligated to mitigate by advancing the funds that Peter would have made in the interim, for projects that are now in tremendous demand, including to stimulate the economy and to provide jobs.

137. Instead, by using funds that belong in part to the Peter Clark Trust Estate after the bankruptcy caused by their alleged fraud, Defendants minimized the estate in violation of the Bankruptcy Code:

a. From information and belief, Wendel is paying off Jack Clark with money owed to Peter Clark from Peter's Fine Arts Limited Partnership Development Company without benefitting the allege ownership trusts that include the Peter Clark Trust Estate despite the requirements of the bankruptcy Code (Jack became a Trustee of the Andrew Clark Education Trust as well); Jack is alleged to be acting through a shell company which is not an actual partner, and thus is thus liable for the damages.

b. Steve Clark is continuing to collect money that he is not entitled to, and that instead belongs to Clark Children Trust and Clark family Trust, in violation of trust that is presumed by [section 16004 \(c\) of the probate code](#). Wendel is continuing to act in Steve's name without actual authority to do so in collecting income owed to Peter Clark from La Playa and the Johnson and Louise H. Clark Limited Partnership without benefitting the ownership trusts or their assets that Defendants hold in Constructive Trust, and while allegedly continuing to cause damages thereto to such an extent that these properties are being returned to the near-bankruptcy conditions that existed prior to Peter being asked to take over the management of family assets in 1989, and has diminished the value of the property by tearing out a swimming pool, and other malfeasant acts. Wendel is acting through a shell company which is not a partner, and thus is thus is liable for the damages.

c. The evidence indicates that Wendel continues to facilitate Charles pay himself from La Posada Apartments General Partnership without legal authority, also through a shell company which is not a partner, making them liable for the damages for acts that constitute grand theft. La Posada is owned in part by Clark Family Trust and the beneficiaries of trusts of which Charles now claims to be a trustee, and is paying himself without benefitting the trust. Charles also tore out the swimming pool of these family garden apartments (La Posada), using funds that belong, in part to the Peter Clark Trust Estate, in contempt of the federal authority, while decreasing the value of the apartments, and while continuing to cause damages to the beneficiaries

of trusts of which he is a trustee. after the bankruptcy, using funds that belong in part to the Peter Clark Trust Estate. In this way, he is contributing to minimizing the estate in violation of the Bankruptcy Code and completely changing the character of the apartments, all without actual authority to do so.

d. Candice Clark Wozniak, Wendel, and all other Defendants are also alleged to be receiving funds after the bankruptcy, at least some of which rightly belong to the Peter Clark Trust estate, and thus in violation of the Bankruptcy Code.

e. The Berkley and Spiegel Parties are also alleged to be receiving funds after the bankruptcy, at least some of which rightly belong to the Peter Clark Trust estate, and thus in violation of the Bankruptcy Code. They are not partners, and are thus liable for the damages.

138. Defendants have knowingly acted without standing or actual authority but certainly in violation of the Corporations Code and other law and Wendel's contract with Peter Clark to make allegedly false representations to the Bankruptcy Court to convert Wendel's contractual client's Chapter 13 reorganization to a Chapter 7 liquidation and by such alleged Bankruptcy fraud, attempted to evade responsibility for both their pre and post-petition acts.

139. Defendants are also alleged to have solicited personal information of the **Elder** Clarks to use said information for the unlawful purposes delineated herein. Said unlawful purposes are alleged to have started with Wendel Defendants and Spiegel using said personal information of the **elders** for the purpose of Bank Fraud that is alleged to have started with the "sub-prime" FHA loan **financing** of Peter Clark's 152 unit Allegre Apartment Community development in Davis, Yolo County without bringing in Johnson Clark Associates, Inc. (herein also "JC Inc.") as a Partner<sup>14</sup>, but instead with Clark Family Trust providing a loan (without approval of Peter Clark, Wendel's client, who was the Managing Trustee of Clark Family Trust at the time).<sup>15</sup>

140. However said alleged illegal acts using the personal information of the **Elder** Clarks continued with some variation of alleged Bank Fraud regarding a half a dozen allegedly illicit loans that Wendel arranged with Defendants Spiegel, Charles Clark, and Steve Clark, derived from equity that belonged in part to Peter Clark or trusts and secured by properties with some kind of common ownership (and allegedly also on the million dollar plus home that Charles Clark purchased using the allegedly illegally gained profits from his endeavors complained about, in part, herein) as will be shown in the loan applications that the forensic accountant can now attain (see also footnotes 21-34, herein).

141. Defendants (including Spiegel) are also alleged to have engaged in **Financial Elder Abuse** by taking money from the trusts but failing to perform the services contracted of them, which included to aid Peter Clark as he expanded the trust estates and arranged for the leveraged buy-outs of and/or gifting from Clark Family Trust, to the intended beneficiaries "*fairly and equitably, and with least tax consequences.*

142. Defendants are also alleged to have engaged in **Financial Elder Abuse** by making unauthorized or fraudulently obtained changes to the Trust Agreement for Clark Family Trust, which trust constitutes a major component of or substitute for the will, if not the actual will, of the late Johnson Clark, and of which Peter Clark was the de facto executor as the Managing Trustee who hired Wendel to defend the trust estate from the raids of the other Defendants<sup>16</sup>. Plaintiff Peter Clark can state with authority that the changes that Wendel made to the Trust Agreement of Clark Family Trust are unauthorized after the Fifth Amendment because all amendments to the trust agreement require the signatures of ALL trustees, including Peter Clark after the Second Amendment drafted by Settlor Louise Clark and then signed by the trustees, Louise and Johnson Clark, in 1990.<sup>17</sup> Defendants are also alleged to have engaged in **Financial Elder Abuse** by causing the **Elder** Clarks to donate to an allegedly fraudulent charity of Wendel's creation, as has been documented in part by attorney Diddo Clark and which may be documented further in a later part of the arbitration.

143. Each of the acts of alleged Bank Fraud are alleged to constitute part of Defendant's pattern of racketeering activities which pattern they continued in Wendel's alleged **Abuse** of Process and Malicious Prosecution of their client in an Adversary Action in the bankruptcy that Wendel and Spiegel trumped up from stolen and falsified database and documents after first causing these claims in an avalanche of state court actions without actual standing or authority, and which Peter Clark caused to be coordinated as The Clark Family Cases (Coordination Case #4320). By alleged violations of the Bankruptcy Code, Wendel brought their trumped up allegations from the state court to the Bankruptcy Court without authority.

144. Wendel is alleged to have engaged in Bankruptcy Fraud in this way to separate Peter Clark from the defenses that Peter Clark had been attempting to pursue in the arbitration as required by the Engagement Letter part of his contract with Wendel (Addendum IV EXHIBIT 2-Aii).<sup>18</sup> Wendel also prevented the full accounting that is required to ascertain the actual debts and credits of the Trust Estate, all despite the previous statements from the attorney for the trustee, Dennis Davis, that the case could have been settled easily in the state court.

145. Defendants also stole documents and Peter Clark's computer, destroyed over one hundred megabytes of documents that showed Peter Clark innocent of their trumped-up charges that Wendel has now brought forward in their alleged Bankruptcy Fraud related to their alleged **abuse** of process and malicious prosecution of Wendel's contractual client, Peter Clark, before the Bankruptcy Court in which they are alleged to have made false representations that now tie all of Defendants allegedly illicit acts together as Bankruptcy Fraud.

146. Defendants are alleged to be participating in various ways in the management of commonly held Clark Family assets as a criminal racketeering activity under various names including "*Clark Family Enterprises.*"<sup>19</sup> In addition to the Bank Fraud documented in part above, such participation is alleged to have previously involved repeated *Mail Fraud*, *Tax Fraud*, *Constructive Fraud* and/or other fraud and its cover-up related to ongoing **Financial Elder Abuse**, and other Violations of Trust and/or Fiduciary Duties; and/or Economic Duress against their benefactor(s); and/or Concealment to shield themselves from liability therefrom; and/or ongoing violations of contract, numerous codes and statutes, law, and/or and most of the Rules of Professional Conduct of the California Bar (herein also "CRPC" or "Bar Rules") related to client affairs in acts against their client for the stated goal of "*bankrupting Peter Clark so we can buy back (his assets) for next to nothing,*" (allegedly via Bankruptcy Fraud).<sup>20</sup> See Addendum I, Clark Family Enterprises for further information regarding the alleged criminal racketeering organization that Wendel has been operating primarily for their own benefit.

147. In so doing, Defendants are alleged to have caused extensive collateral damage to the trusts and their beneficiaries they had fiduciary and/or contractual obligations to protect from such fraud that has harmed dozens of people, including Plaintiffs.

148. Defendants are alleged to have caused said harm by their economic duress in part by diverting moneys due to said trusts and others (particularly to their client Peter Clark) to themselves instead by self dealing, by causing waste, including via an avalanche of litigation, and by delaying or destroying lucrative business opportunities worth an estimated \$100 million dollars to the various while **abusing** civil process by causing members of the Clark Family to, effectively, sue themselves, in litigation that is pointless because all issues could be resolved by the accounting that Defendants have prevented for the past decade.

149. Defendants veritably brag about the success of their campaign of economic duress in their filing of their ninth legal action filed by Wendel against their client, Peter Clark (Clark Children Trust Petition) shown by Addendum II.

150. *Wendel attorney Steve McKae sent an e-mail to Attorney Diddo Clark* dated April 8, 2009. In said e-mail, McKae describes what Wendel has done to their client and to Diddo by Wendel's instigating the avalanche of litigation between members of the Clark family. McKae clearly states Defendants' alleged intent in doing so in Paragraph 12 of said e-mail:

If I wanted someone in my family to hate me, I could build a checklist of ways to go about it from your example. Your notion that you can pursue lawsuits against your family members and that you can embarrass and defame them with their friends and business associates and still expect reconciliation is fantasy. You

believe that the more **abusive** you are toward them, the more they should love you and want you back in the family circle. They do not. No one but you thinks that way. You have exhausted any reservoir of love and goodwill you ever had with them. e-mail from Steve McKae to Attorney Diddo Clark dated April 8, 2009, ¶12.

151. However it was McKae/Wendel who began the lawsuits, with a no notice avalanche against Peter and Diddo. Thus, by the above, McKae states another reason why he chose to use said avalanche of litigation against their client, Peter Clark, to announce that Wendel had switched sides and was violating most of the Rules of Professional Conduct related to client relations for the stated goal of bankrupting their client: to destroy familial bonds to the point beyond reconciliation and only the lawyers would win. EXHIBIT 2-Av shows that Peter hired Wendel because McKae is wrong when stating that “no one but (Diddo)” confuses **abuse** for affection in the Clark Family. Continuing:

This means that you are not -- and have no right to expect to be -- included in the family estate. You are on your own. No one in the family is going to subsidize your living expense, so you must pay your own way. Your family wants no further contact from you, and I do not expect that to change.

152. The case law listed in the Points & Authorities already provide to the Arbitration suggests that if McKae or any Wendel attorney held such a legal opinion regarding “*estate planning matters*” or the Johnson Clark Family, he was, and is, obligated to keep it to himself.<sup>21</sup> One of numerous problems with Wendel attorney McKae's statement is that Peter Clark was, and alleges is, the de jure Managing Trustee of the “*family estate*,” and Peter hired Wendel, in part, to carry out Peter's father's desire for all of his heirs to benefit fairly and equitably from said estate, with the option for those who agreed to Peter's terms to have that wealth expanded. McKae also ignores the fact that well in excess of \$20 million dollars of said “family estate,” was created by Wendel's client, Peter Clark, who was the ONLY investor in Peter's Allegre Development, Diddo's part of which would have been the largest part of Diddo's estate absent Defendant's malfeasance.

153. However, by providing this “counsel,” McKae provides an admission against interest that by suing his client, Peter Clark, in an avalanche of litigation, he has destroyed the Clark family at a time when all Johnson wanted was to work with his son, Peter, and to enjoy the company of his family in his final years, while providing for their comfort after he passed.

154. Wendel's use of the wealth of the family to destroy the family, at a cost of tens of millions of dollars, in secret from, and thus without the informed consent of, their contractual client, and with Wendel paying themselves an alleged \$17.5 million dollars+ in unconscionable fees to litigate the very trusts that they drafted at Peter Clark's request adverse to their client can not only be shown to constitute violations of trust and Bar Rules, but also to constitute the ugliest possible form of **Financial Elder Abuse**- destruction of the family of the **Elder** Clarks, and unfair business practices of the lowest form. Wendel, clearly, acted contrary to the directives of their contractual client in this and other regards.

155. The case law listed in the Points and Authorities already provide to the arbitration suggests that McKae is obligated to speak, and act, solely at the directive of Peter Clark, Wendel's contractual client “*for estate planning matters*” (among other things). This would include any opinions regarding Johnson's intent, or regarding directives from Peter for implementing the unanimous agreement of the three Trustees of Clark Family Trust at a time when both Johnson and Louise are alleged to have had the mental capacity to understand the legal repercussions of their agreements as co-trustees: “*To pass on the maximum benefits to the descendents of Johnson Clark, fairly and equitably, at least tax consequences.*” To say that Wendel has been remiss in their duties in this regard would be a remarkable understatement.

### ***Defendants Unfair Business Practices and Racketeering***

156. Defendants Post-bankruptcy continuation of their pattern of alleged *Economic Duress, Constructive Fraud, Constructive Trust, Financial Elder Abuse, Violations of Trust, Fiduciary Duty*, and numerous *Rules of Professional Conduct of the California Bar* and *Duty of Loyalty of Attorney to Client* and *False Statements* (Title 18, U.S.C., §1001) allegedly made to cover up and evade responsibility for their previous frauds that included *Bank Fraud* related to in excess of one hundred million dollars in cash and assets created by Plaintiff, Peter Clark, and his elderly parents with diminished capacity (Elder Clarks), “Louise” Clark and the late “Johnson” Clark and other fraud has involved alleged multiple counts of *Wire Fraud* represented by each of Wendel's electronic postings to the Bankruptcy Court, as well as multiple counts of *Mail Fraud* reflected by their proofs of service for each of their mailings for their adverse representation that are alleged to constitute a pattern of *Racketeering* within the meaning of 18 U.S.C. §§ 1961(1), 1961(5) & 1962(c) and/or (d)- the Racketeer Influenced and Corrupt Organizations (*RICO*) Act. The pattern allegedly began with dozens of violations prior to Defendants causing the bankruptcy, which pattern continued with new and novel post-petition acts (after said bankruptcy on February 10, 2011).

157. With Defendant's pattern of activities presumed to violate the trust [*Probate Code 16004 (c)*], and to constitute **Financial Elder Abuse** (*Welfare and Institutions Code Section 15600*); the burden of proof the reverse of normal, and it becomes up to Defendants to prove that their presumed violations do not also constitute a pattern of criminal racketeering activity.

158. The multiple tripling of the damages mandated by the RICO Act for Defendant's post-bankruptcy damages resulting from their continuation of their alleged racketeering activity as part of their alleged Bankruptcy Fraud may make the damages beyond the ability of Defendants to pay unless steps are taken to mitigate the damages immediately, such as by the interim use of funds that Wendel must now place in their client trust account.

#### **G. ) Allegations On Information and Belief**

159. Allegations of this Complaint stated on information and belief are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery as may be defined in the Binding Arbitration.

#### **H.) Summary of Requested Action**

160. Wendel is alleged to have spent tens of millions of dollars and paid themselves an estimated \$17.5 million dollars in fees without approval from their client, and all of these fees and costs are in contention. As a result:

A.) Bar Rule 4-100 requires that all of these fees and costs must be placed in a Client Trust Account,

B.) Case law shows that such funds must be used for the benefit of their client unless and until the adjudication of the issues; and that

C.) Disgorgement of fees and costs is mandated, with no quantum meruit, even if Wendel had merely failed to disclose their conflicts-of-interest before the Bankruptcy Court, and in situations much milder than the current situation.

D.) An accounting will be required to unravel the mess that Defendants have made.

161. Along with the relief requested herein, Plaintiffs ask that this court order Wendel to make a good faith deposit of \$30 million against the estimated total amount of fees, costs, and interest estimated at \$50 million, with a portion of the funds to be used to pay the remaining costs of the contractually required Binding Arbitration (Peter has paid \$11,500, and Wendel has, from information and belief, paid nothing). The remainder to be made available to pay the costs required for the accounting, and to mitigate the damages by allowing Peter Clark to save the family properties from the near bankruptcy conditions that the evidence indicates Defendants have, once again, created for the family businesses, and to re-start his businesses.



162. In alternative, Wendel could make a lower deposit of \$15 million plus a \$700 million bond against a damages award that, without mitigation, would be higher because of the multiple trebling of damages mandated by the RICO Act. (If awarded in full, most of the funds will be donated to a non-profit corporation for sustainable infrastructure, senior housing, and/or social and economic justice for all.

### I.) Enforcing the Binding Arbitration

163. Depending on the findings of the arbitration, and Defendants, Plaintiffs may require this court to enforce the award of the arbitration.

### J.) LEGAL SUMMARY

164. Defendants have conducted, participated in, engaged in, conspired to engage in, or aided and abetted, the conduct of the affairs of “*Clark Family Enterprises*” through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5) and 1962(c) & (d), which pattern they have continued with new counts after they caused the bankruptcy of Peter Clark by their economic duress.

165. Defendants caused litigation for the improper purposes of fraud, for the stated and improper goal of “*bankrupting Peter Clark so we can buy-back (his assets) for next to nothing,*” and as a shield for concealment. Defendants then caused the conversion of Peter Clark’s Chapter 13 reorganization to a Chapter 7 liquidation by alleged fraudulent means alleged to constitute Bankruptcy Fraud. Defendants then caused litigation in the bankruptcy, allegedly without actual standing or authority, in the name of entities of which Peter Clark alleges he remains the highest authority, and without disclosing their conflicts of interest as being debtors rather than creditors.

166. The evidence now indicates that Wendel also did so to separate Peter Clark from his defenses by “lawyer tricks” that are alleged to have involved violations of the Bankruptcy Code by the attorney for the trustee, Dennis Davis. In so doing, Defendants have separated the trusts and entities from their defender, and have also separated themselves from their benefactor, who was producing wealth for the Clark Family at a previously unprecedented scale.

167. The entities are net Debtor to Peter Clark because of Defendant's taking of fees that rightly belong to Peter Clark, are thus are not the real parties in interest. Instead, Defendants have, by fraudulent misrepresentation, violations of contract, and failure to disclose conflicts of interest, etc., created a situation in which they have caused Peter Clark to sue himself, a legal, logical, and ethical impossibility of the sort that Wendel was hired to prevent, but where only the attorneys win, from information and belief a goal that was so tempting that Wendel attorneys ignored their professional ethics as defined by the Rules of Professional Conduct of the California Bar to pursue it, and the unconscionable fees that such pursuit provided for them,

168. As a result, there could not have been informed consent of Wendel's client [the entities, the **Elder** Clarks (with severely diminished capacity), or Peter Clark, Wendel's contractual and de jure client according to the cited case law] even if Wendel's client were the entities, as Wendel has previously allegedly fraudulently claimed [while concealing the conflict waivers that [Rule 3-310 of the California Rules of Professional Conduct](#) required them to have had signed, including from Peter Clark, and with Wendel required to recuse themselves if conflicts ever became actual, also by [Rule 3-310](#)]. Based upon the rulings of the State Court, Defendants actual recourse if they believed there was wrongdoing, was via a derivative action for dissolution of partnership, which required an accounting by an independent CPA, which action Defendants did not file, from information and belief because they knew that Peter Clark had not engaged in any actual wrongdoing, and it was they that had volumes to hide.

169. Wendel, the alleged primary “real party at interest” in their alleged **abuse** of process by said motion (in order to evade at least some responsibility for their pre-petition acts), is alleged to have no actual authority to file actions adverse their contractual

client and/or in the name of entities of which Peter Clark is the highest authority, an issue that must be decided in Binding Arbitration by contract specified at the top of Page 3 of Wendel's EXHIBIT 2-Aii Engagement Letter.

**Summation of Facts:**

170. Defendants, Led By Wendel, Have Used Bankruptcy Fraud to benefit from their Previous Wrongdoing.

A.) Peter Clark was phenomenally successful in his management and development businesses, however hihs jealous siblings, led by Charles, acted in numerous ways to sabotage Peter's success.

B.) Peter invested his life savings into his 152 unit Alleger Apartment Community Development in Davis, Yolo County.

C.) Peter hired Wendel for protection from his jealous siblings as one of several conditions of his contributing his

D.) Wendel, caused **financial** duress in agency relationship with other Defendants, for the admitted goal of forcing Plaintiff, their client into Bankruptcy.

E.) Wendel filed an avalanche of litigation against their client stole Peter Clark's computer, circulated asbestos in his living environment, towed his car, and engaged in a laundry list of other torts as key elements of their economic duress.

F.) Peter Clark filed for Binding Arbitration with Wendel in 2007. Wendel agreed, however has prevented arbitration since then. The American Arbitration Association assigned a Case Number- 74 194 Y 1440 07 JEMO, with Justice Chris Cottle, retired presiding Justice of the 6<sup>th</sup> District Court of Appeals as the Neutral.

G.) Said Arbitration was stayed because of the Bankruptcy that Wendel and their agents forced upon Wendel's client on February 10, 2010.

H.) Wendel, under the pretense of representing entities of which their client caused the (alleged) fraudulent conversion of their client's Chapter 13 reorganization to a Chapter 7 liquidation in alleged violation of contract and Bar Rules as a key element of alleged Bankruptcy Fraud; and,

I.) As a result, said Arbitration was transferred to the authority of the Chapter 7 Trustee; and

J.) The attorney for the Trustee failed to pursue the arbitration in alleged violation of [11 U.S.C. §558](#); and

K.) The Trustee, through its attorney, announced to the arbitration that it had abandoned the arbitration and in fact allowed a de facto abandonment of said arbitration, but failed to follow the procedures required by [11 U.S.C. §554](#) to allow the Debtor (Plaintiff) to take over the adjudication of the arbitration prior to the full adjudication of the bankruptcy, when mitigation can occur, rather than after completion of the bankruptcy, as also required by statute, as was the clear intent of Congress in enacting [11 U.S.C. §558](#) and [11 U.S.C. §554](#).

L.) This allowed Wendel to continue their Bankruptcy fraud, including filing an adversarial action against their client in which they alleged that they repr3esented entities of which their client is the highest authority, based upon stolen and falsified documents and a database that they had stolen with Peter Clark's Computer and then falsified, destroying the original that would have proved Peter Clark innocent of their trumped-up charges.

M.) Davis filed an additional adversarial action in which he tacitly admits that he had failed to defend the trust estate from ludicrous allegations for which Wendel now has a default judgment.

N.) Plaintiff paid additional fees to extend the arbitration to involve Post-Bankruptcy claims. Because of the continued pattern of alleged racketeering in violation of the RICO Act and unfair business practices in violation of the [Business and Professions Code 17200](#), the Pre-Bankruptcy arbitration was now effectively moot, because the damages caused by Wendel's Pre-Bankruptcy acts were now eclipsed by the Post-Bankruptcy damages which are alleged to encompass said pre-bankruptcy damages but to be at least six times as large, and arguably 18 times larger or more, potentially pushing the damages into the billions of dollars even without the punitive damages that are allegedly warranted; and

O.) Davis/Wendel made false representations to the Neutral of the arbitration while engaging in ex parte communications with the Neutral in secret from Peter Clark, in which they claimed that Peter Clark's Post-Bankruptcy claims were the property of the Trustee, thus preventing Plaintiff from engaging in Binding Arbitration of said post bankruptcy claims that would prevent Defendant's ongoing (post-bankruptcy) torts, including Wendel's alleged bankruptcy fraud and continued prosecution of their client without actual standing or authority in violation of the referenced codes, statutes, Bar Rules, and ethics; and

P.) Plaintiff has acted to restart his business during this early period of the new economic cycle, with a development opportunity that is of the scale that he had anticipated for this decade as a result of his previous successes, but which opportunity is unusual in absence of the developments that Defendants are alleged to have prevented since 2002, and which will be lost to Plaintiff and to the intended beneficiaries if the obstacles that Defendants have created by their alleged unfair business practices and racketeering are not removed. Such obstacles include damages caused by Defendants to Plaintiff's credit, equity, cash flow, development momentum, and the tightened credit market that now exists from the loss of a decade of his life due to Defendant's alleged malfeasance; and

Q.) It is thus essential that Defendants immediately act to mitigate the damages that they have caused to Plaintiff and to the dozens of trusts, entities, and intended beneficiaries in keeping with an order of Status Quo Antebellum by such means as Defendants halting and reversing their alleged identity theft of Peter Clark as the highest authority of various entities. 20 Specifically, Defendants can mitigate the damages by ceasing their pretense of authority regarding Education Trusts that Peter Clark hired Wendel to create, and attempted to have Wendel create for others; and Peter Clark's position as highest authority of Clark Family Trust, Clark Children Trust, and Johnson Clark Associates, Incorporated, and General Partner positions and authority regarding La Playa Apartments, L.P., the Clark Family Partnership (Johnson and Louise H. Clark Limited Partnership), and Fine Arts Limited Partnership, allowing Plaintiff to restart his management and development businesses based upon the credit and cash-flow that remains with the Acalanes Apartments and Plaintiff's Allegre Apartment Community Development in Davis, Yolo County, and what remains of La Playa Apartments, Alta Vista Apartments, and El Cerro Apartments. One of the acts that is now necessary is for Defendants to co-operate by their signing of LP-2s with the California Secretary of State and other filings to reverse their alleged forgery of Peter Clark's signature and other acts of alleged fraud, and thus undo their vigilante seizures of Clark Family Assets.

171. Defendants must not be allowed to benefit from their own wrongdoing. Immediate mitigation is required.

172. An accounting is necessary to establish the amount of damages to be awarded by Defendant's further acts of said racketeering and unfair business practices, etc., continuing their pattern into the Post-Bankruptcy period: and

173. Plaintiff alleges that the attorney for the Trustee (Davis) acted as an agent of Wendel in deceiving the Bankruptcy Court to prevent Plaintiff from mitigating the violations of 554 by engaging in Binding Arbitration of said Post-Bankruptcy violations (which the Bankruptcy Court ruled were not within the jurisdiction of the Bankruptcy Court.

Wherefore, Plaintiff's pray for relief according to proof as set forth hereinafter:

[Note:Page 64 missing in original document"]

**CAUSES OF ACTION****FIRST CAUSE OF ACTION****Financial Elder Abuse**

174. Plaintiffs Peter Clark (Peter), son of the late Johnson Clark and the late Louise Clark (together herein the **Elder** Clarks) and highest authority of Clark Family Trust at the time that Peter Clark hired Wendel, and no legal act has changed that, re-allege paragraphs 1 through 173 hereinabove and all other paragraphs hereinafter as though fully set forth herein. (Plaintiffs in particular, reference this cause of action, directs the parties to re-alleged Paragraphs, *supra* ¶¶ 9-23, (Summary i.- Wendel, ¶¶ 24-31, Summary ii. Other Defendants); ¶¶ 32-55, II.) JURISDICTION and STANDING (Arbitration Required) pg. 14; ¶¶ 56-83, III.) PARTIES and AGENCY pg. 27 ¶¶ 84-131, A.) Bankruptcy Fraud 29 ¶¶ 132- 181, B.) Violations of Contract, Trust, Constructive Trust, **Financial Elder Abuse**, & Racketeering 42 ¶¶ 182 C.). Defendants **Financial Elder Abuse** Constitutes a Pattern of Racketeering Violating the RICO Act pg. 57 ¶ 185; ¶¶ 186-204, E.) Accounting Required.

175. The late Johnson Clark and Louise H Clark were **elders** as defined by the Welfare and Institution s Code.

176. Defendants were at all relevant times relevant herein entrusted with the care and/or custody of plaintiff's business affairs and the business affairs of the estates of Plaintiff's parents and stand in a position of trust to Plaintiff as Plaintiff's attorneys as an individual and in Peter Clark's capacity as fiduciary and as a Trustee of various trusts, including Clark Family Trust and Clark Children Trust.

177. Defendants arranged to have their fees paid from Clark Family Trust and or entities that have been owned or derived from the estates of Johnson and Louise H Clark, however Plaintiff never gave permission for Defendants to have said fees paid without approval of all bills by Peter Clark, in keeping with standard business and legal practice. without plaintiffs knowledge or consent, Defendants , and each of them, acting in agency relationship, have withdrew funds from various accounts via self-dealing, without actual oversight, and transferred those funds to his/ her own personal account, and continues to use them for his/her personal use].

178. Peter was, and alleges is, the de jure highest authority “*for estate planning matters*” and/or primary “Executor/Fiduciary” for Clark Family Trust and trusts and entities associated with the estate of the late Johnson Clark and Louise Clark. In that capacity, Peter hired or caused to be hired Wendel Defendants and Spiegel Defendants to protect the assets of said trusts and entities from raids by others, so that Peter could continue his highly successful program of expanding the trust estate while transferring assets to all of the descendants of Johnson and Louise Clark, fairly and equitably, and with the least tax consequences, and with Peter Clark paid from profits that he generated rather than from the trusts in keeping with the agreement that Peter made with Johnson and Louise Clark at a time when they are alleged to have had sufficient capacity to understand the consequences of their acts. See *supra* ¶¶ 24-146 (Common Allegations), and more specifically *supra* ¶¶ 67-76-(Wendel's Violations of Trusts), ¶¶ 132-146 (Wendel's Violations of Other Entities).

179. By drafting the trust agreement and/or becoming a trustee of the Peter C. Clark Trust, the Diddo R. Clark Trust, and/or other trusts including the Constructive Trust related to the estates of the late Johnson Clark, and/or acting in agency relationship with Defendants who did, Defendants agreed to act with the highest level of fidelity and responsibility as defined by the Welfare and Institutions Code (Well & Inst. C.), The **Elder Abuse** Act, **Probate Code §§16060, 16061, 16062, 17200, §21350, §§16004 and 16400**, and other Sections of the Probate Code and Code of Civil Procedure (CCP), **Civil Code 1572**; the **Business and Professions Code Section 17200**) and other provisions thereof; and various California statutes and common law doctrines.

180. Defendants agreed to act in keeping with Peter's directives and the interests of the trusts and beneficiaries, but then failed to do so, instead using deceit and/or malicious innuendo to cause an alienation of affection within the Clark Family; unequal

distributions; unnecessary taxation that they used as a form of extortion; and otherwise acted contrary to the interests of the trust, beneficiaries, and intended beneficiaries in agency relationship with each other.

181. In this way Defendants have acted as de facto Trustees, Administrators, Agents, or other Authorities (herein “Self-Serving Fiduciaries”), of Clark Family Trust and other trusts and entities associated with and/or which have been funded in whole or in part with funds from the estate of the late Johnson Clark and Louise Clark or funds which have been commingled with funds derived therefrom. Defendants have controlled said trusts and entities and have thereby arranged to benefit themselves in the tens of millions of dollars without benefiting said Trusts and entities, as part of a now apparent campaign of **financial elder abuse**. See supra ¶1 ¶25, ¶¶ 77-85, 90-131, ¶¶ 180-192. As such, by [Section 16004 \(c\) of the California Probate Code](#), said Defendants/Self-Serving Fiduciaries are “presumed to be violating the trust”, “and such presumption is a presumption affecting the burden of proof.”

182. Defendants have engaged in an organized campaign of character assassination and fraud with other Self-Serving Fiduciaries by embroiling the Clark Family in civil litigation for the stated goal bankrupting Executor/ Fiduciary Peter Clark and the apparent similar goal regarding Diddo Clark. With said litigation and by a laundry list of other damaging acts, Defendants have **abused** their positions of trust with the Clark Family and as officers of the court by this laundry list of damaging acts while **abusing** civil process in innumerable ways in causing members of the Clark Family to, effectively, sue themselves, in litigation that is pointless because all issues could be resolved by an accounting that Defendants have prevented. ¶1, ¶¶ 90-131, ¶¶180-195

183. During a time in which at least the late Johnson Clark and, from information and belief, Louise Clark, suffered from diminished capacity, Defendants took control of the one hundred million dollars plus in assets associated with the estates of Peter Clark and the late Johnson Clark and Louise Clark without the informed of the highest authority with capacity, Peter Clark, Wendel's contractual client “*for estate planning matters*”, and in a manner which the evidence indicates constitutes **financial elder abuse**. ¶¶ 90-131, ¶¶173, 180-186

184. Defendants' acts caused great pain and suffering in Johnson Clark's final years, discord, **financial** hardship, and an alienation of affection in his family. From information and belief, Defendants have derived tens of millions of dollars and Wendel has paid themselves seventeen million five hundred thousand dollars without approval from Peter, their client, from funds derived from trusts and entities associated with the estates of Peter Clark and of the late Johnson Clark and Louise Clark.

185. Peter is informed and believes that Defendants designated in the re-alleged paragraphs to this cause of action, from time to time, have caused waste of large sums of money and otherwise deprived Johnson and/or Louise Clark of their equitable distributions from the receipts of family businesses, which receipts they have instead applied to themselves, greatly in excess of the proportion to which those Defendants were entitled, to Defendants' own use.

186. Defendants have at times kept the books of the estate, and in order to conceal misappropriation of the funds of the estate, have never allowed an independent accounting of the over-all affairs of the trusts, or disclosed the results of any audit by a public accountant or any other person. However, it appears that the aforementioned defendants have understated income and overstated costs, all to facilitate the withdrawal and use of the funds for defendants' own personal purposes, and to deprive these funds from the trusts, from Johnson and Louise Clark, from Plaintiff, and from other aggrieved Parties including the beneficiaries of Education Trusts that Peter hired Wendel to create in 1998 for Peter's now adult children and for the children of Peter's siblings in keeping with the goals of Clark Family Trust that were unanimously agreed-upon by all three Trustees (including Peter) in 1990 and shortly thereafter. See supra ¶¶ 90-132, ¶¶173, 180-186,

187. The **financial** books and records of the various partnerships and other entities are in the hands of Defendants, and each of them. Plaintiffs have demanded an accounting from these defendants, and each of them, but they, and each of them, have failed and refused to comply.

188. An order to return the status quo is required to restore the intended management of the affairs of Clark Family Trust and certain other trusts to Peter Clark, the only descendant of Johnson Clark that Johnson trusted to handle these affairs at a point where Johnson had the capacity to understand the legal consequences of his acts.

189. In addition to an order of status quo, Peter asks this court assign a Successor Trustee to act in place of Johnson Clark to restore the estate, to sort out the mess that Defendants have made of the affairs of the Clark Family, and to accomplish the goals of the estate that Peter hired Defendants to enact under his directives, fairly and equitably.

190. Unless the Trustee assigned by this arbitration acts with Peter to take possession of, care for, manage, and operate the assets and property that is not placed back into Peter's control as an interim receiver, such property and assets are in danger of being lost, removed, or materially destroyed for the reasons described above.

***Re intentional infliction of emotional distress:***

191. Plaintiff refers to and herein incorporates Paragraphs 91-132 as though fully set forth herein.

192. Defendants, as individuals or acting through their agents, deprived the **Elder** Clarks of the comfort of the counseling of their son, Peter Clark, the only one of their children to have any training or interest in care for the **elderly** or in end-of-life counseling. Defendants, and/or their agents then used the opportunity of the death of Plaintiff's parents to further their agenda of hatred within the family and among family friends, thus destroying the legacy of good will that Plaintiff had engendered for the Clark Family in the community.

193. Defendant's conduct, and each of them, was intentional and malicious and done for the purpose of causing the **Elder** Clarks, and their son, Peter Clark, to suffer humiliation, mental anguish, and emotional and physical distress as a proximate result of their acts..

194. The above described conduct of defendant[s, and each of them.] was willful and was intended to cause injury to the plaintiff. Plaintiff is therefore entitled to an award of exemplary or punitive damages.

WHEREFORE, Plaintiff prays for relief according to proof as set forth hereinafter:

A.) An Order assigning a Successor Trustee to act in the place of Clark Family Trust co-Trustee, Johnson Clark, deceased. Said Successor Trustee/Receiver shall be directed to collect funds on behalf of the estate, shall establish bank accounts for the deposit of all funds regarding assets not placed back into Peter's control by this arbitration, establish professional management oversight for all properties not managed by Peter Clark by order of Status Quo; help re-establish the Trust Estate; and to protect the interests of the estate of Louise Clark and the estate of Johnson Clark as authorized by the Probate Code and the [Welfare and Institutions Code Section 15600\(j\)](#); receive the originals of all files from Wendel, to be made available to Peter Clark; and to take charge of the following assets and/or the proceeds derived from the sale of the following assets, and to establish an accounting to establish the damages caused by Defendants RE:

Peter C. Clark Trust, Diddo R. Clark Trust and the following Education Trusts dated December 15, 1998: Alicia S. Clark Education Trust, Thomas D. Clark Education Trust, Kristina T. Clark Education Trust, Acacia Z. Clark Education Trust, Ian A. Clark Education Trust, Andrew Clark Education Trust and any other Trust drafted by Wendel since 1998 using funds derived from Peter Clark or Clark Family Trust and/or assets related to the estate of Johnson Clark, Peter Clark. Monte Cresta Limited Partnership, Orchard Square, LLC, Crystal Springs Apartments, LLC, Intelligent Investments, LLC; Property on Arnold Drive in Martinez, Contra Costa County; Property on Clayton Road in Concord, Contra Costa County; Stocks, bonds, mutual funds, railroad cars, and other assets that have been, or should have been, within Clark Family Trust; La Posada General Partnership; Trust Property on Deer Hill Road in Lafayette across the street from Lafayette BART and BART parking lot, Clark Family Trust; Johnson Clark & Associates, Inc. and Acalanes Apartments; Clayton Road Property; Clark Family Insurance Trust and Harvey/Clark Trust.

B.) Defendants to deliver to said Trustee the originals of all files and accounting related to the referenced assets, to take charge of the proceeds derived therefrom, and establish an accounting to establish the damages caused by Defendants RE: Sierra Sunrise Retirement Center in Carmichael, Sacramento County, Raddison Hotel in Dublin, Contra Costa County; Creekside Properties, and any other asset purchased or sold using funds in part produced from any entities associated with Peter Clark or Clark Family Trust.

C.) Wendel to pay into a Client Trust Account all moneys that they have arranged to pay themselves since September 1, 1998 related to Peter Clark, assets owned by Peter in whole or in part, or to the estate of Peter Clark or Johnson Clark. Said Client Trust Account to be used for mitigation to reduce the damages caused by Wendel's acts and omissions to Peter and to restore Peter's businesses and credit, including related to the management of assets which have belonged to Peter or Clark Family Trust.

D.) Wendel to pay to the Trustee an amount equal to all moneys that Wendel has facilitated paying to themselves or to others since October 31, 1998 related to Peter Clark or to the estate of Johnson Clark or Louise Clark. Wendel to make a deposit of all funds in lieu of return of said funds which Defendants may have taken or facilitated being taken from any trust or entity associated with the estate of Johnson Clark or Louise Clark since December 17, 1998, including via liens and loans made by banking institutions. Said funds to be used by Trustee for mitigation of damages caused by Wendel's acts and omissions to Clark Family Trust and to others that Peter hired Wendel to protect, and to restore the Trust estate for administration according to the desires of Johnson Clark and the unanimous approval of Clark Family Trust related to those who have not been engaging in **financial elder abuse** including related to assets not managed by Peter Clark.

Mitigation by Trustee to Peter Clark shall be with the consent of Peter Clark. Mitigation to Clark family Trust shall be by the unanimous consent of all three Trustees, which also includes Louise Clark and Peter, the Managing Trustee, in consultation with new counsel and Guardian ad litem assigned by this arbitration.

F Order a permanent injunction preventing Wendel from further representation adverse to their contractual client, Peter Clark or related to the estate of Johnson Clark or Louise Clark in any way except at the direction of their client, Peter Clark.

G Order a permanent injunction preventing Defendants from receiving funds derived from any individual, trust, or entity associated with the estate of Johnson Clark or Louise Clark in the future without permission from this court.

H An order of Status quo antebellum to the extent possible regarding Peter's ownership and management positions and income derived or to be derived by Peter as an individual or through Peter's various positions with La Playa Limited Partnership; Clark Family Trust; Fine Arts Limited Partnership (and Allegre Apartment Community); Johnson & Louise Clark Limited Partnership (Clark Family Partnership); Clark Children Trust Property on Arnold Drive in Martinez, Partial ownership interest in Concord Terminal Shopping Center, and to mitigated the loss of Sierra Sunrise Retirement Center in Carmichael, Sacramento County; and

I Appointment of independent counsel for Clark Family Trust and Louise H. Clark, with retainer to be paid for from Funds from Wendel Client Trust Account.

J Wendel to provide to Trustee/Receiver the originals of all files and accounting related to the above listed trusts and entities and to take charge of the assets and/or the proceeds derived from their assets that have not been distributed to the beneficiaries.

K Forensic Accounting of damages, with projection of value of lost business opportunities.

L Judgment against Defendants and each of them for damages and punitive damages.

M For costs of suit and defense of suits incurred; and

N. For general damages as may be determined after the accounting

O. For punitive damages;

P. For reasonable attorney's fees;

Q. For interest as allowed by law;

R. For costs of suit incurred herein; and

S For such other and further relief as this arbitration may deem proper.

***SECOND CAUSE OF ACTION ECONOMIC DURESS (EXTORTION, FRAUD) (By all Defendants)***

195. Plaintiff re-alleges paragraphs 1 through 194 hereinabove and all other paragraphs hereinafter as though fully set forth herein. (Plaintiffs in particular, reference this cause of action, directs the parties to re-alleged Paragraphs, ¶¶ 105-132,

196. Plaintiffs allege that Defendants that include attorneys with the Law Offices of Wendel, Rosen, Black and Dean (Wendel); and each of them, have seized control of an estimated \$100 million in assets associated with the estate of Peter Clark and/or Johnson Clark and/or Louise Clark contrary to their fiduciary duties and in a manner that is not supported by law, and derived funds for themselves therefrom even after they caused the bankruptcy of Peter Clark, Bankruptcy Case #Oak-10-41422-EJ, some of which funds rightfully belong to beneficiaries of trusts that include Peter Clark, and thereby caused economic duress to beneficiaries of trusts and/or to Peter Clark which extended past the point of their causing the bankruptcy of Peer Clark, Wendel's client.

197. Defendants have induced economic duress by such means as withholding distributions to trusts and individuals and/or diverting funds to themselves, and/or by filing litigation against Peter Clark, Wendel's client, including by filing an Adversary Action in the bankruptcy (Bankruptcy Adversarial Case # 10-4377) without actual standing or authority and/or in violation of contract, and which Adversary filing and other acts in Peter Clark's bankruptcy is alleged to have elevated Defendant's fraud to the federal offense of Bankruptcy Fraud.

198. Defendants are alleged to be continuing Defendant's pattern of fraud into the bankruptcy. With said pattern, Defendants have taken Peter's management and development business via forgery and other vigilante means; taken Peter's assets without just compensation and/or by other means of creating windfall profits for themselves; waste; malicious mischief; withholding of distributions; and, via **abuse** of process, straddled Peter Clark and others with immense legal bills for the stated goal of "bankrupting Peter Clark so (they can) buy back (Peter's assets) for next to nothing," as vehicles for their defrauding Plaintiff's and others as a proximate result of the **financial** hardships induced by Defendants in collusion if not conspiracy together, becoming unjustly enriched thereby. (see supra ¶¶ 1-30, ¶¶ 48-50, 70-111, 122).

199. Plaintiff alleges that Defendants engaged in one of:

- Using vigilante means, seized control of assets of which Peter was, and alleges is, the highest authority and other real estate associated with Peter Clark and/or the estate of Johnson Clark and trusts and entities related thereto with an estimated value in excess of \$100 million in ways not supported by law, and operated said assets for self-gain while withholding benefits to Peter Clark, their benefactor, contrary to their fiduciary duties in a manner that has caused economic duress to beneficiaries Peter Clark and to others (see in particular, *supra* ¶¶ 1-3, ¶¶ 25-34), and/or



- employed economic duress, including via **abuse** of process, as a means to profit from their having driven Peter Clark into bankruptcy and otherwise seize assets, (*supra* ¶¶54-57, ¶¶ 70-1), and/or
- are acting in collusion if not conspiracy with other Defendants and their alleged clients and agents to induce economic duress via their continued holding of assets, depriving Peter Clark of his income sources, straddling Peter Clark with expenses for his defense, and the use of his time, **abuse** of process, and/or extortion, and thereby unjustly profit at the expense of intended beneficiaries including Peter Clark and other heirs of Johnson Clark which continues after they caused the bankruptcy of Peter Clark. (see *supra* ¶¶ 1-30, ¶¶ 48-50, ¶¶70-111, ¶122). ¶2-192.

200. Since commencement of the partnerships and other entities, Defendants have, from time to time as a form of extortion and fraud, caused waste, conversion, and/or otherwise diverted cash flow and/or otherwise deprived trusts, the **Elder** Clarks, Peter Clark, and others of their equitable distributions from the receipts of the various businesses, and have instead applied to themselves large sums of money to their own use via self-dealing.

201. In addition, Defendants have placed liens on properties in secret from the other owners, and have applied to themselves the proceeds, in gross violation of their fiduciary duties, and have refused, and continue to refuse, to even disclose the location and status of some funds, much less to make a complete accounting even after the referenced bankruptcy in violation of the Bankruptcy Act.

202. The **financial** books and records of the various partnerships and other entities are in the hands of Defendants and their agents. Plaintiffs have demanded an accounting from these Defendants, and each of them. Defendants, and each of them, in order to conceal misappropriation of the funds of the entities, have failed and refused to comply, and have never brought the accounts together so that an accounting can be made in accordance with Generally Accepted Accounting Principles (GAAP), or disclosed the results of an audit by an independent public accountant or any other third party. However, it appears that the aforementioned Defendants have caused considerable waste and/or overstated costs, and understated and/or caused losses of income, all to facilitate the withdrawal and use of the funds for Defendants' own personal purposes, and to deprive these funds to Plaintiffs and to the trusts that Defendants have fiduciary duties to provide for.

203. Since discovering the aforementioned defendants' engineered losses and/or misappropriation of funds, Plaintiffs have demanded that the books of account and background invoices and leases be delivered to an independent certified public accountant for examination and preparation of a balance sheet, **financial** statement, and forensic analysis, but those Defendants have refused to accede to Plaintiffs requests.

204. By reason of the fraudulent and otherwise wrongful manner in which the defendants, or any of them, obtained their alleged right, claim or interest in and to the property, defendants and, and each of them, have been unjustly enriched.

205. As a proximate result of defendants wrongful conduct alleged herein, trusts have been deprived of distributions and Plaintiff Peter Clark has lost his income, his familial relationships, and management and development businesses have been destroyed, and Peter was driven to bankruptcy, with his home foreclosed after investing twelve years of his life to family businesses on the promise of lifetime income, and after investing his life savings and two years of his life in his phenomenally successful development of the 152 passive solar designed apartment units in the Allegre Apartment Community on Drew Circle in Davis, Yolo County.

206. An accounting is required to determine and settle the accounts of Wendel and as Wendel has arranged for Spiegel, and others, and contributions of principals pursuant to at least the Uniform Partnership Act of 1914 (as enacted and in effect in California at all material times), the Corporations Code, the Probate Code, the [Welfare and Institutions Code Section 15600](#);, and the Statute of Frauds, to determine the assets and liabilities of various defendants.

207. Plaintiff prays that this court order that the law offices of Wendel, Rosen, Black and Dean place funds into a Client Trust Account equal to all of the costs that they have induced, including for their fees, from liens that Wendel placed against properties illicitly and converted the funds produced by said liens, and otherwise as required by Bar Rules, with the ultimate disposition of the funds to be decided by trial by the State Bar and/or the Binding Arbitration. In the interim, said funds must be used to pay for the accounting that is now necessary and to mitigate the damages, including by allowing Peter Clark to re-start his businesses on behalf of himself and the trusts in lieu of the payment of interest on those funds so used, for the duration that the funds are used on behalf of Wendel's client, Peter Clark.

208. Plaintiffs prays that the arbitration order that its assigned Trustee establish bank accounts for the deposit of the funds of businesses not placed back into Peter Clark's control by an order of Status Quo Antebellum. Unless the Trustee assigned by this arbitration takes possession of and cares for as an interim receiver to manage and operate the assets and property that is not placed back into Peter Clark's control, such property and assets are in danger of being lost, removed, or materially destroyed for the reasons described herein.

WHEREFORE, Plaintiffs pray for relief according to proof as set forth hereinafter, and to order:

ii. An order of Status quo antebellum to the time of the signing of each of the trust agreements if after December 17, 1998 and, to the extent possible to December 17, 1998 regarding the ownership and income derived from properties commonly held between members of the Johnson Clark family or which used funds in whole or in part derived therefrom or which were due or to be derived by Peter as an individual or through Clark Family Trust: Johnson Clark & Associates, Inc. (and Acalanes Apartments); Fine Arts Limited Partnership (and Allegre Apartment Community), Johnson & Louise Clark Limited Partnership, La Playa Limited Partnership, La Posada General Partnership; Clark Children Trust. The fraudulent involuntary Chapter 7 Conversion of Mr. Clark's Chapter 13 Bankruptcy Action is thus to be ordered reversed, together with actions taken thereafter in Peter Clark's bankruptcy.

iii. Plaintiffs ask that this court assign a *Successor Trustee* to act in the place of Clark Family Trust co-Trustee, the late Johnson Clark, to help re-establish the Trust Estate to protect the interests of Louise Clark and the estate of Johnson Clark as authorized by the Probate Code and the [Welfare and Institutions Code Section 15600\(j\)](#) and other Sections; and for

iv. Defendants to provide the originals of all files and databases related to the above referenced entities to said Trustee assigned by this Court; and for

v. Wendel to pay into a Client Trust Fund all funds that they have arranged to pay to themselves, to their alleged agents, or for costs since December 17, 1998 related to the estates of Peter Clark, Louise H. Clark, or Johnson Clark., however in the interim, Wendel to make a deposit into said client trust account of \$40 million as a deposit against estimated fees, costs, and interest that Wendel has derived from the trusts and entities related to the estates of Peter Clark, Louise H. Clark, or Johnson Clark since December 17, 1998.

vi. In lieu of return of funds which Wendel may have facilitated Defendants taking from any trust or entity associated with the estate of Johnson Clark, Peter Clark, or Louise Clark since December 17, 1998, including via liens and loans made by banking institutions, Wendel to make a deposit of \$40 million and a re-assignment of those funds to mitigate the damages according to the directives of the Trustee assigned by this court and/or Peter, the Managing Trustee.

vii. This Court to order the appointment of a Trustee for the Wendel Client Trust Account different than the successor trustee for Clark Family Trust, which Client Trust Account Trustee shall hire independent counsel for said client trust account that is different than the counsel for the other Trusts associated with the estates of Peter Clark and Clark Family Trust and the various other trusts, with an initial retainer to be paid for from said Wendel Client Trust Fund; Said Trustee to administer the use of the funds provided to the Client trust account for the benefit of their client as required by the Rules and policies of the California State Bar. Such benefit shall include to pay for the accounting that is now necessary, to repay legitimate debts of Peter Clark

caused by Defendants actions, and other mitigation to reduce the damages caused by Wendel's acts and omissions to Peter such as to restore Peter's businesses and credit, and to allow Peter Clark to engage in the development on a scale which might have been anticipated from a projection of the scale of the developments in which Peter Clark was engaged at the time Defendants instigated their legal actions against Peter Clark, their Ward as Fiduciary and Wendel's client and for the benefit of the Trusts when those projects are re-established.

viii. This Court shall order the Client Trust Trustee to receive the originals of all files and accounting related to any trusts related to the estates of Peter Clark, Louise H. Clark, or Johnson Clark, and to take charge of the assets and/or the proceeds derived from their assets that have not been distributed to the beneficiaries, and to establish an accounting to establish the damages caused by Defendants, including but not limited to:

Peter C. Clark Trust, Diddo R. Clark Trust; Clark Family Insurance Trust; Harvey/Clark Trust, and the following Trusts dated December 15, 1998: Alicia S. Clark Education Trust, Thomas D. Clark Education Trust, Kristina T. Clark Education Trust, Acacia Z. Clark Education Trust, Ian A. Clark Education Trust, Andrew Clark Education Trust

Monte Cresta Limited Partnership, Orchard Square, LLC, Crystal Springs Apartments, LLC, Intelligent Investments, LLC; Property on Arnold Drive in Martinez, Contra Costa County; Property on Clayton Road in Concord, Contra Costa County; stocks, bonds, mutual funds, railroad cars, and other assets that have been, or should have been, within Clark Family Trust;

Said Trustee also to receive the originals of all files and accounting related to the following assets, and to take charge of the proceeds derived therefrom, and establish an accounting to establish the damages caused by Defendants: Sierra Sunrise Retirement Center in Carmichael, Sacramento County, Raddison Hotel in Dublin, Contra Costa County; Orchard Square; Crystal Springs; Creekside Properties

ix. The Trustee /Receiver assigned by this Court shall establish bank accounts for the deposit of all funds regarding assets not placed back into Peter Clark's control by this action, and shall cooperate in engaging in an accounting and appointment of independent counsel for the various entities.

x. Return of all funds that Defendants have taken or facilitated taking from any trust or entity associated with Peter Clark or the estate of Johnson Clark or commingled thereof since December 17, 1998; and for the order of

xi. A Restraining Order and injunction preventing defendants from receiving funds derived from any trust or entity associated with Peter Clark or the estate of Johnson Clark in the future without permission from this court.

xii. Judgment against Defendants and each of them for damages, for costs of suit and defense of all suits incurred;

xiii. For punitive damages, and

xiv. For such other and further relief as the court may deem proper.

***THIRD CAUSE OF ACTION - CONSTRUCTIVE TRUST (Against all Defendants)***

209. Plaintiffs re-allege paragraphs 1 through 208 hereinabove and all other paragraphs hereinafter as though fully set forth herein. (Plaintiffs in particular, reference this cause of action, directs the parties to re-alleged Paragraphs, *supra* ¶¶ 105-132

210. Plaintiffs allege that Defendants that include the Law Offices of Wendel, Rosen, Black and Dean; and each of them, have seized control of in excess of \$100 million in assets associated with the estate of Johnson Clark and/or Peter Clark in a manner that is not supported by law, and contrary to their fiduciary duties, and are operating these assets as a Constructive Trust and derived funds for themselves therefrom, some of which rightfully belong to trusts and to Peter Clark, and thereby

caused economic duress. Defendants continued such fraud even after they caused the bankruptcy of Peter Clark, and thus in violation of the Bankruptcy Act, which requires that funds that Defendants have derived be returned to Peter Clark, and, after Defendants caused the alleged fraudulent conversion of Mr. Clark's Chapter 13 reorganization to a Chapter 7 liquidation, to the Chapter 7 Trustee.

211. By nature of the Constructive Trust, Defendants are holding assets belonging to Peter Clark or which should rightfully belong to Peter, and income and distributions that Peter was to receive from Peter's ownerships and management and development businesses;

212. Plaintiffs allege that in a manner not supported by law, Defendants used vigilante means to seize control of assets of which Peter Clark was, and alleges is, the highest authority and other real estate associated with Peter Clark and/or the estate of Johnson Clark and/or trusts with an estimated total value of in excess of \$100 million, and operated these assets for self-gain contrary to their fiduciary duties in a manner that has caused economic duress to Plaintiffs and to others (see in particular, supra ¶¶ 1-3, ¶¶ 25-34), and/or in collusion if not conspiracy with other Defendants and their alleged clients and agents to induce economic duress via seizure of assets, **abuse** of process, malicious prosecution, and/or extortion, and thereby unjustly profit at Peter's expense and at the expense of other intended heirs of Johnson Clark. (see supra ¶¶ 1-30, ¶¶ 48-50, ¶¶70-111, ¶122). ¶182-192

213. By virtue of said Constructive Trust, Defendants have arranged to pay themselves by self-dealing, and Wendel has done so without the informed consent or oversight of their client in gross violation of their fiduciary duties and Bar Rules. In so doing, Defendants have engaged in mail fraud and bill padding to cause economic duress to Wendel's client, and have refused, and continue to refuse, to even disclose their complete billings to their client.

214. By virtue of the acts set forth in the re-alleged paragraphs herein, Defendants, and each of them, have been unjustly enriched.

215. By virtue of said Constructive Trust, Defendants have placed liens on properties owned, in part by Plaintiffs or trusts in secret from some of the owners including Plaintiffs, and have applied to themselves and to others money from at least some of the ownership entities and trusts without the oversight or informed consent of their client in gross violation of their fiduciary duties, and have refused, and continue to refuse, to even disclose the amount, location, and status of these funds, much less to make a complete accounting.

216. By virtue of said Constructive Trust, Defendants, and each of them, have become constructive trustees of these amounts for the benefit of, the estate of Johnson Clark, and Louise Clark, Diddo Clark, Ian Clark, Acacia Clark, Peter, the ATK Trusts, and others. As a proximate result of defendants fraudulent misrepresentations, violations of trust, and other wrongful conduct alleged herein, the trusts have lost income and Plaintiff Peter Clark has lost his income, his familial relationships, and management and development businesses have been destroyed, and Peter was forced into bankruptcy and the foreclosure of his home.

217. Defendants, and each of them and/or their agents are in possession and/or control of the books, records, and **financial** accounts of the various partnerships and other entities and trusts which are necessary for a determination of the full extent and amounts of such unjust enrichment, and therefore for the amounts of money held in constructive trust by defendants, and each of them. Unless defendants, and each of them, are made to state an accounting of such funds, Plaintiffs will be unable to determine the full extent of this unjust enrichment and of amounts being held in constructive trust by defendants for the benefit of Plaintiffs and trusts.

218. Plaintiffs demanded that the books of account and background invoices and leases be delivered to an independent certified public accountant for examination and preparation of a balance sheet and **financial** statement, but Defendants refuse to accede to Plaintiffs' request.

219. In order to conceal misappropriation of the funds of the entities, Defendants, and each of them, have failed and refused to comply, and have never brought the accounts together so that an accounting can be made in accordance with Generally Accepted Accounting Principles (GAAP), or disclosed the results of an audit by an independent public accountant or any other third party. However, it appears that the aforementioned Defendants have caused waste and/or understated income and overstated costs, all to deny funds to Peter and to others and to facilitate the withdrawal and use of the funds for Defendants' own personal purposes.

220. By reason of the fraudulent and otherwise wrongful manner in which the defendants, or any of them, obtained their alleged right, claim or interest in and to the property, defendants and, and each of them, have no legal or equitable right, claim or interest therein, but, instead, Defendants, and each of them are involuntary trustees holding said property and profits therefrom in constructive trust for Plaintiff Peter Clark, various trusts, and the estate of Johnson Clark, and Louise Clark, with the duty to convey the same to Peter Clark as executor forthwith.

#### **FOURTH CAUSE OF ACTION - DECLARATORY RELIEF Against All Defendants**

221. Plaintiffs re-allege paragraphs 1 through 220 hereinabove and all other paragraphs hereinafter as though fully set forth herein. (Plaintiffs in particular, reference this cause of action, directs the parties to re-alleged Paragraphs, *supra* ¶¶ 62-96.

222. Plaintiffs allege that after Peter Clark hired the law offices of Wendel, Rosen, Black, and Dean (Wendel) to prevent the fraud substantially similar to that complained about herein, Wendel instead utilized vigilante means supported by their own circularly reinforced opinions of counsel to seize control of entities and assets of which Peter Clark and/or Education Trusts are an owner in some capacity, and/or of which Peter Clark has acted as the Grantor and thus Settlor and/or the de jure highest authority in many other situations. Wendel alleges that they had acted in secret from their client to remove Peter, their client, from his positions of authority, however Wendel's allegations are unsupported by law, and appear to require massive violations of contract, law, fiduciary duty, the Rules of Professional Conduct of the California Bar, and public policy as delineated in the Points and Authorities which have already been filed with the arbitration. Defendants are operating these assets for self-gain contrary to their fiduciary duties as if there had been a judicial determination of the merits of their claims to authority, but in the absence of said determination, and while making preferential distributions to themselves and to their alleged co-conspirators while diverting payments to Peter Clark and to others as part of a campaign of economic duress.

223. An actual controversy has arisen and continues between Peter and Defendants over Wendel's claim that they represent entities of which Peter was the highest authority when Peter hired Wendel and the authority that Wendel alleges with their opinions of counsel contrary to the interests of their contractual and de jure client on behalf of those from whom Peter sought protection in hiring Wendel, on the one hand; and Wendel's contract and duty of loyalty to Peter, and Peter's position and authority as General Partner, and in other positions of actual authority on the other.

224. This controversy is centered upon the following:

b. Does Wendel have the authority and/or legal right to act in secret from Peter Clark, their contractual and de jure client related to the estates of Johnson and Louise Clark or Peter Clark?

c. Does Wendel have the right to fabricate legal action against Peter Clark using funds from entities of which Peter Clark was unquestionably one of the highest authorities if not the highest authority at the time that Peter Clark hired Wendel?

d. Can Wendel do so in secret from Peter Clark, their contractual client, regarding assets that Peter Clark had hired Wendel to protect from fraud substantially similar to what Wendel is facilitating?

e. Does Wendel have the right to arrange payments for themselves regarding their representation related to the referenced estates without the oversight of Peter Clark, their contractual client for "Estate Planning Matters" and regarding Peter's business and personal affairs?

f. Does Wendel have the right to terminate their relationship with Peter without taking the steps required by the Rules of Professional Conduct of the California Bar?

g. Does Wendel have the right to switch sides and to represent Peter's adversaries against Peter and to sue Peter for the stated goal of "bankrupting Peter" so they can take (Peter's assets and businesses) "for next to nothing?"

h. Does Wendel have the right and/or standing or authority to allege that they had removed Peter Clark from his various positions of authority in secret from Peter Clark and to represent entities of which Peter was the highest authority at the time that Peter hired Wendel?

i. Does Peter have the right to continue to act as the sole General Partner of La Playa Apartments after the resignation of the other General Partner, Charles, in 1990, or do defendants have the right to seize control of that asset by a means not supported by the Corporations Code or the Partnership Agreement or allowed by the due process, a judicial determination of the merits that their claim that they had removed Peter as General Partner by secret acts over a period of months, and only informed Peter of their alleged acts by Wendel's filing of a lawsuit against Peter, their client?

j. Does Wendel have the right and authority to act in the name of La Posada (General) Partnership and the La Playa Limited partnership to place liens against these properties, to use the funds for their own benefit and to the detriment of some partners?

k. Does Peter have the right to hire new counsel for the various entities that Wendel claims to represent adverse to Peter, their contractual client, and to pay them from moneys that Wendel has collected for themselves?

l. Are all contracts and actions by Wendel taken in secret from Peter Clark, their contractual client, void or voidable by public policy?

m. Should all acts in the Bankruptcy and all actions by Wendel related to the estates of Peter Clark and the late Johnson Clark, and the late Louise H. Clark be reversed if not approved by Wendel's client, Peter Clark?

n. Should the Bankruptcy of Peter Clark be reversed and be expunged?

o. Does Peter Clark have the right to require Wendel to cease and desist from their acts contrary to the interests of Peter?

p. Are adverse representation agreements void or voidable?

q. Does Peter have the right to require Wendel to terminate their relationship with Peter's adversaries adverse to Peter, and to be restrained from further contact with Peter's adversaries and/or any new counsel that they may attain?

r. Does Peter have the right to require Wendel to deliver to Peter all client files related to Peter, Peter's assets and businesses related in any way to Clark Family Trust, commonly held assets within the Clark Family, "estate planning matters," or the estate of Johnson Clark?

s. Does Wendel have the obligation to take direction from Peter to mitigate the damages they have caused?

225. Peter desires a judicial determination and declaration of Peter's and the defendants' respective rights and duties under all of the agreements between the parties regarding properties and entities associated with the estate of Johnson Clark, including La Playa Apartments, L.P.

226. Peter is informed and believes that since commencement of the partnerships and other entities, Wendel and Peter's Adversaries designated in the re-alleged paragraphs to this cause of action, from time to time, have caused waste and otherwise deprived Peter and others of their equitable distributions from the receipts of the various businesses, and have instead applied to themselves large sums of money to Defendants' own use without authorization from their client and/or regarding billings that are in contention.

227. The declaration is necessary and appropriate at this time, so that Peter can determine his rights, obligations and duties under said agreements. Without such declaration Peter will face the burden of loss of use of property and attendant benefits caused by the unsettled state of affairs resulting from different interpretations of the Partnership Agreements, Engagement Contract, and other agreements, and other remedies are and would be inadequate. These circumstances include the loss of Peter's management and development income, over a million dollars in costs incurred, and the loss of Peter's career, home, and way of life.

WHEREFORE, Plaintiff prays for relief according to proof as set forth hereinafter and for judgment against Defendants and each of them, as follows:

A. For a declaration that Peter Clark is the proper highest authority of La Playa Apartments, LP; the Johnson and Louise H. 20 Clark Limited Partnership; Clark Family Trust; Clark Children Trust, Johnson Clark Associates, Incorporated; Intelligent Investments; and Family Tree Foundation, and other entities that have been funded, in whole or in part, by funds derived or commingled from assets owned by Peter Clark, Clark Family Trust, or otherwise from the estate of the late Johnson Clark or Louise Clark.

B. For an order of status quo ante bellum and injunctive relief as may be required to provide such protection that might be appropriate to prevent further damages or disclosure of attorney-client or other privileged information and other damages prior to the full adjudication between Wendel and Plaintiff in the Binding Arbitration, and appointment of independent counsel to protect the interests of Louise Clark and the estate of Johnson Clark as authorized by [Welfare and Institutions Code section 15600\(j\)](#).

C. For an order that the acts of Wendel that have not been accomplished with the informed consent of Peter, their contractual and de jure client, are void or voidable in accordance with public policy.

D. For an order for an accounting to determine the accounts of Peter and his siblings, and contributions of principals pursuant to at least the *Uniform Partnership Act of 1914* (as enacted and in effect in California at all material times), the Corporations Code, the Welfare and Institutions Code, and the Statute of Frauds, to determine the assets and liabilities of various defendants; to declare the identity and interests, rights and obligations of each equitable owner, to resolve all competing claims;

E. For damages, costs of suits, and defense of suits incurred; and

F. For such other and further relief as the court may deem proper.

**FIFTH CAUSE OF ACTION- BREACH OF CONTRACT-  
SPECIFIC PERFORMANCE-(Against all Wendel Attorneys)**

228. Plaintiffs re-allege paragraphs 1 through 227 hereinabove and all other paragraphs hereinafter as though fully set forth herein. (Plaintiffs in particular, reference this cause of action, directs the parties to re-alleged Paragraphs, *supra* ¶¶ 105-132.

229. On or about June 18, 1998 in the City of Oakland, County of Alameda, State of California, Defendant then Wendel attorney William "Horwich" met with Plaintiff and entered into an oral contract on behalf of the Wendel law offices which was reduced to writing through a series of documents, including as shown by EXHIBITS 2-Ai TO 2-Av, dated July 9, 1998, August 12th, 1998, from Wendel, with a clarification letter from Plaintiff dated August 15th, 2008. Horwich then caused two documents to be

sent to Plaintiff dated August 31, One of said documents was an explanatory memo (EXHIBIT 2-Ai) and an Engagement Letter, drafted by William Horwich, signed by Peter Clark and Wendel, and dated August 31, 1998. A true copy of said Engagement Contract was filed with the American Arbitration Association in 1998, and filed herewith as EXHIBIT 2-Aii.

230. Since Peter hired the law offices of Wendel, Rosen, Black and Dean, LLP, by oral agreement in or about June, 1998, followed by a written "Engagement Contract" in August, 1998, Peter hired William Horwich ("Horwich") Steven McKae, Jeanine DeBacker, Greg Brandt, Walter Turner, Deanna Lyons, Gillian Ross, Thiele Dunaway, Leonard Marquez, Timothy Williams, Robin Dunbar, Elizabeth Berke-Dryfuss and (together, "Wendel").

231. The oral contract between Peter and Wendel related to numerous aspects of "*estate planning matters*" and Peter's personal management and development businesses. The written contract was not as complete, and was in some ways ambiguous, however, and did not list many of the tasks that Peter had already directed Wendel to accomplish related to "*estate planning matters*" and Peter's management and development businesses.

232. However then Wendel attorney Horwich also enclosed the "Horwich Engagement Memo" in the same mailing, in which Horwich explains that Horwich would take direction from Peter regarding "*estate planning matters*" and would be paid from Clark Family Trust. A true copy of said Horwich Engagement Memo is filed herewith marked 2-Ai. With this Horwich Engagement Memo and the Engagement Contract signed by Peter and Horwich dated August 31, 1998, Horwich stated that he, and thus Wendel, became "your attorney" (final sentence of Horwich Engagement Memo dated 8/31/98), with all of the responsibilities that this entails to Peter as an individual and in his various capacities as delineated by the Rules of Professional Conduct of the California Bar, American legal tradition, and public practice as supported by the considerable case law that has already been presented to the Binding Arbitration that Wendel at first agreed to in 2008 in a teleconference.

233. A true copy of said Engagement Letter is attached hereto as Exhibit "2-Aii" and made a part hereof. By the terms of said written agreements, Wendel was to help facilitate Plaintiff's projects, **financing**, cash flow, and, and re-investments, thus assisting Peter Clark in multiplying the wealth of the Clark Family while arranging for the fair and equitable distribution of half of the combined estate of Johnson Clark before his death, while acting as a watchdog over Peter's adversaries to prevent raids on the equity and harm to the assets and projects.

234.  The consideration set forth in the agreement was the fair and reasonable.

235.  Plaintiff has performed all conditions, covenants, and promises required by him on his part to be performed in accordance with the terms and conditions of the contract.

236.  Defendants have failed and refused, and continue to fail and refuse, to perform the conditions of the contract on their part. Instead of helping facilitate Plaintiff's projects, **financing**, cash flow, and re-investments, Wendel caused said cash flow that was to go to Plaintiff, to substantially flow to themselves instead. Instead of assisting Peter Clark in multiplying the wealth of the Johnson Clark Family while arranging for the fair and equitable distribution of half of the combined estate of Johnson Clark before his death, Wendel diminished the wealth of the Johnson Clark Family and insured that distributions were unfair and inequitable, as part of a campaign of economic duress against their client for self gain. And instead of acting as a watchdog over Peter's adversaries to prevent raids on the equity and harm to the assets and projects prevent raids, Wendel has joined with those adversaries, to gut the equity, switching allegiances for the corrupt motive of self gain.

237.  Plaintiff has no adequate legal remedy because Wendel has destroyed the business advantage enjoyed by Plaintiff, together with his credit, his resources, family political connections, and the business advantage and business network that Plaintiff enjoyed as a result of the good will and momentum that Plaintiff had carefully nurtured over the previous decade. As a result, Plaintiff lost what should rightfully have been the most productive decade of his life for developing sustainable infrastructure years ahead of the global recognition of the problems of global warming, etc., which has come over that period.



238. Because of the multiple RICO counts, the damages as provided by law are so high that it is unlikely that Plaintiff will see more than a small percentage of what is appropriate unless Wendel is ordered to mitigate the damages by undoing what the harm, to the extent possible, and removing the obstacles that they have created for their client, including by replacing those resources that have been lost to Plaintiff quickly, allowing Plaintiff to reenter the development world early in the new economic cycle.

239.  By the terms of said written agreement, the Plaintiff is entitled to recover reasonable attorney fees incurred in the enforcement of the provisions of the agreement. By reason of the aforementioned breach of the defendant, the Plaintiff requires the use of the client trust fund that Wendel must now create for all fees and costs that they engendered without approval from Plaintiff, their client. This will allow Plaintiff to hire an attorney who will actually act in his client's best interests, and to kick-start Plaintiff's businesses at a time when cash is king

240. Wendel Defendants have failed to follow the directives of their client; have engaged in bill padding and/or falsification of at least one billing, and thus also mail fraud in sending said bill, and allegedly numerous others, through the US mail. Wendel attorneys have then acted in secret from their client while concealing their activities, and billings, from oversight by their client, and in this and other ways, have misappropriated funds; have engaged in character assassination of their client as part of their campaign of alienation of affection and business and familial relations in the Clark Family; and violated their fiduciary duties and duty of loyalty in innumerable ways such as by switching sides and causing **abuse** of process against their client for the stated goal of bankrupting Peter so the can buy back his assets "for next to nothing," and causing other conflicts of interest and other violations of the Rules of Professional Conduct of the California Bar and/or the Business and Professional Code and in breach of contract in acts they have engaged in related to Peter Clark and/or related to the estate of Johnson Clark and Louise Clark without the informed consent of their client, Peter Clark.

241. Defendant's breaches of their agreement began from the very beginning of their engagement by Wendel failing to communicate with their client regarding important aspects of the work Defendant contracted to perform by the oral agreement that is partially verified by the Horwich Engagement Memo.

242. Plaintiff has been damaged as a result, in an amount to be determined after the accounting that is now required.

243. Plaintiff has fulfilled his obligations and complied with any and all conditions and agreements of the contract that he is required to perform, and Defendant has not.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

For an order voiding any adverse representation agreement, and for Defendants to return to Petitioner in an orderly manner all copies of all files, documents, and funds which defendants have arranged to pay to themselves or others, together with all all databases related to the estate of Johnson Clark, Louise Clark, or Peter Clark or funds commingled thereto since July 1, 1998, together with all billings and an index of the documents provided.

For an order by the arbitration voiding all acts by Wendel not approved by Peter Clark, Defendant's client

For an order permanently enjoining Defendants from any further involvement regarding Peter Clark and/or the estate of the late Johnson Clark or Louise Clark without the express, written permission of Peter Clark.

For payment of the following:

1. Reinstatement of all losses of management and development income; and
2. Reimbursement for loss of business opportunity.

3. For general property damages according to proof
4. For general personal injury damages according to proof
5. For paid and suffering that has resulted
6. For Defendants to mitigate by reversing and expunging all disparaging references or judgments that may have resulted in any court, including the Bankruptcy Court
7. For costs incurred herein, which should be calculated as being equal to the total costs caused by Wendel as a result of Wendel's acts and omissions, including an award of reasonable attorneys' fees on all sides of all actions involving Clark family assets.
8. For such other and further relief as the court shall deem just and proper
9. For damages for the above mentioned losses, to the extent that they can be ascertained.
10. For punitive damages; and
11. For an order requiring defendant to make an interim deposit into a client trust account of thirty million dollars against the amount that Wendel has raided.
12. For Defendants to cooperate in the mitigation of the damages that they have caused.
13. For such other and further relief as the court may deem proper.

**SIXTH CAUSE OF ACTION VIOLATIONS OF BUSINESS AND  
PROFESSIONS CODE Section 17200) (Against All Defendants)**

244. Plaintiffs re-allege paragraphs 1 through 243 hereinabove and all other paragraphs hereinafter as though fully set forth herein. 13 (Plaintiffs in particular, reference this cause of action, directs the parties to re-alleged Paragraphs, *supra* ¶¶ 105-132

245. Peter hired Defendant Law Offices of Wendel, Rosen, Black and Dean for assistance, and thus Defendants Steven McKae, Jeanine DeBacker, Gregory Brandt, Walter Turner, Deanna Lyons, Gillian Ross, Thiele Dunaway, Leonard Marquez, Timothy Williams, Elizabeth Berke-Dreyfus, Robin Dunbar, William Horwich. However Defendants have instead engaged in misrepresentation, concealment, violations of Bar Rules and law, to “roll up Clark Family Enterprises into a single limited liability company” that they controlled for their own self-enrichment and other unfair competition with Peter with the stated intent of “*bankrupting Peter so we can take (his assets) for next to nothing.*”

246. Defendants, and each of them, have engaged in concealment and other deceptive practices and then used litigation against their client as a key element of their damaging acts as described herein, which continues after the bankruptcy. This constitutes unfair, unlawful, and fraudulent business practices in violation of [California Business and Professions Code Section 17200 et seq.](#)

247. As a proximate result of these actions by Defendants, and each of them, and Peter's reliance thereon, Peter has been damaged as more fully described above in an amount to be ascertained at trial.

248. Peter is entitled to restitution of all gains, benefits, fees and monies obtained by Defendants and their erstwhile clients from the wrongful conduct alleged above in an amount according to proof.

249. In doing the actions herein alleged Wendel attorneys and former Wendel attorneys, and each of them, acted with oppression, fraud, malice, reckless disregard of Peter's rights and the consequences that they might suffer, and with the intent to injure Peter in his **financial** and personal interests and the interests of intended beneficiaries, who are therefore entitled to recover punitive damages from these defendants, and each of them, for the commission by each of them of this tort.

250. As a further proximate result of the activities set forth herein related to Berkley and JBMI's unlawful activities in violation of Business and Profession Code' 17200, Peter has incurred and continues to incur substantial attorneys' fees.

Wherefore, Peter prays for, costs of suits and defense of suits incurred by all sides;

For damages for loss of income and business advantage that could reasonably be imputed

For double damages, and other relief according to proof as set forth hereinafter; and

For such other and further relief as the court may deem proper.

**RICO CLAIMS SEVENTH CAUSE OF ACTION RACKETEER  
INFLUENCED & CORRUPT ORGANIZATIONS ACT 18 U.S.C. § 1962(c)**

251. Plaintiffs re-allege paragraphs 1 through 2150 hereinabove and all other paragraphs hereinafter as though fully set forth herein. (Plaintiffs in particular, reference this cause of action, directs the parties to re-alleged Paragraphs, *supra* ¶¶ 83-136. At all relevant times, “Clark Enterprises” and its various associated business shells businesses constituted an “enterprise,” within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c).

(a) [Text redacted in copy.] Wend el Rosen Black and Dean, LLP, and attorneys associated therewith (“Wendel”) : William Horwich; Steve McKae; Gregory Brandt; Walter Turner; Jeanine DeBaker; Deanna Lyons; Elizabeth Burke Dryfus; Thiele Robin Dunaway; Timothy Williams; Gillian Ross, Leonard Marquez, Kevin R. Brodehl; Charles A. Hansen; Howard Lind; Daniel Rapaport: law office of Wendel Rosen Black and Dean, LLP (Wendel); and agents Doesl-50, Candice Clark Wozniak, Steve Clark, Jack Clark aka Johnson Clark Jr., Charles Clark, Jeff Spiegel, Schoenholtz and Spiegel, Jon Berkley Management Inc., Norman Jon Berkley, and Josh Berkley “Berkley”) are individual “persons,” within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c), who associated with and/or participated in the conduct of said enterprise's affairs.

(b) [Text redacted in copy.] *Betwe en October, 1998 and February 10, 2010*, Defendants conducted, participated in, engaged in, conspired to engage in, or aided and abetted through an agency relationship, the conduct of the affairs of “Clark Enterprises” through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5) and 1962(c) (herein also “Pre-Petition Racketeering”), which defined the initial pattern complained about herein.

i. Defendnat's pattern of Pre-Petition Racketeering activity consisted in part of: Economic Duress/Extortion; Mail Fraud (*see supra* ¶ 14, ¶120, ¶183); re: fraudulent billings and fraudulent misrepresentation of Wendel's services (*see supra* ¶ 14, ¶120, ¶183); that were initially designed as a retaliatory and preemptive action to punish Peter for questioning Horwich's tax planning, and to prevent Peter from continuing his oversight over Wendel's activities or otherwise questioning Wendel attorney Horwich's direct or indirect personal rewards from Peter Clark, Clark Family Trust, and/or Peter's various enterprises, or the damages that Wendel was accomplishing along the way; and/or Bank Fraud: **Financial Elder Abuse**; and further extortion via economic duress and under the color of law provided by their **abuse** of process. Said acts of extortion were in violation of 18 U.S.C. § 1951;

(ii) Pleadings filed with the Superior Court with allegations that they knew to be false and/or which are unsupported by law as a key element of economic duress, as memorialized by the proof-of-service as a key element of their fraud. a falsified alleged “resolution” of La Playa Apartments and/or other falsified documents as part of filings made with various courts as part of an avalanche of litigation for improper purposes.

(iii) Diversion of funds owed to Peter Clark and/or Trusts to themselves.

(iv) Falsification/Forging of documents and/or Peter Clark's signature and concealment

(c) *Between February 10, 2010 and the present*, Defendants continued their conduct, participation in, engagement in, conspiracy to engage in, or aiding and abetting, the conduct of the affairs of "Clark Enterprises" through a continuation of their pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5) and 1962(c) (herein also "Post-Petition Racketeering")

(i) Wendel's pattern of Post-Petition Racketeering activity consisted in part of: a continuation of economic duress/extortion; further Mail fraud by each mailing in the various court cases that they have filed against Peter Clark, their client, Wire Fraud in postings to the Bankruptcy Court; fraudulent misrepresentation of Wendel's contracts, representation, and services and false representations and filings before the Bankruptcy Court as a key element of Bankruptcy Fraud; Mail fraud re: use of attorney-client privileged information; fraudulent misrepresentation of Wendel's services; and/or the damages that Wendel was accomplishing along the way; and/or **Financial Elder Abuse**; and further extortion via economic duress under the color of law provided by their **abuse** of process;

(ii) [Text redacted in copy.] concealment and deception to corruptly persuade Peter Clark and/or Laura Crisp, or attempts to do so, or engage in misleading conduct toward Peter Clark, with intent to influence, delay, dissuade, or prevent Peter from protecting himself or the Education Trusts the other trustees to expand the trust estate prior to Johnson's death as Peter transferred the assets to the heirs of Johnson Clark, fairly and equitably, or to benefit the Education Trusts or himself therefrom. Wendel thus prevented Peter Clark from completing his appointed tasks or from benefiting from the business advantage and fees earned at professional rate from the cash flow and increase in equity from Peter Clark's completed, in process, or planned developments.

(iii) a scheme to defraud by economic duress facilitated by an avalanche of litigation in the name of entities of which Peter was, and alleges is, the highest authority that was knowingly and intentionally devised by Defendants to obtain Peter Clark's money or property by means of false or fraudulent pretenses, representations, or promises; and, for the purpose of executing such scheme, Defendants placed or foreseeably caused to be placed in a post office, or authorized depository for mail, matter that furthered the scheme to defraud, including but not limited to:

(a) Pleadings filed with the Bankruptcy Court with allegations that they knew to be false and/or which are unsupported by law as a key element of economic duress, as memorialized by the proof-of-service as a key element of their fraud. and/or other falsified documents as part of filings made with the Bankruptcy Court as part of an avalanche of litigation for improper purposes.

(b) Diversion of funds owed to Peter Clark and/or Trusts to themselves.

a. Pleadings filed with the Superior Court which they continued before the Bankruptcy Court after Feb with allegation that they knew to be false, as memorialized by the proof-of-service as a key element of their fraud. a falsified alleged "resolution" of La Playa Apartments and/or other falsified documents as part of filings made with various courts as part of an avalanche of litigation for improper purposes;

b. Falsified "LP2" filings with the Secretary of State, including one for Peter's Fine Arts Limited Partnership development company in which they or their agents falsified Peter's signature;

Each of the innumerable filings by Defendants with the Superior Court of California related to lawsuits that Wendel has prosecuted against Peter without actual authority for the stated goal of bankrupting Peter and for the larger alleged goal of

economic duress and **financial elder abuse** described throughout these pleadings. Defendants committed mail fraud, in violation of **18 U.S.C § 1341**, each time they used or foreseeably caused the mails to be used to distribute the above described materials. (iv) knowingly executing, or attempting to execute, a scheme or artifice to obtain money under the custody or control of a **financial** institution by means of false or fraudulent pretenses or representations (including but not limited to false claims of authority based upon falsified documents and false opinions of counsel.

(v) using the mail or any facility in interstate or foreign commerce with intent to distribute the proceeds of extortion or otherwise promote, manage, establish, or carry on a scheme to extort and thereafter performed or attempted to perform said acts, including in seizing assets without due process and filing and mailing an avalanche of litigation against Peter Clark for the purpose of causing economic duress in violation of **18 U.S.C. § 1952**.

(vi) [Text redacted in copy.] causing fraudulent tax returns to be filed in violation of the Revenue Code;

These acts all occurred after the effective date of RICO and more than two such acts occurred within ten years of one another.

(in alternative)

**EIGHTH CAUSE OF ACTION Racketeer Influenced And Corrupt Organizations Act 18 U.S.C. § 1962(d) (Conspiracy) Steven McKae, Jeanine DeBacker, Greg Brandt, Walter Turner, Deanna Lyons, William Horwich, and Law Offices of Wendel, Rosen, Black & Dean**

252. Plaintiffs re-allege paragraphs 1 through 251 hereinabove and all other paragraphs hereinafter as though fully set forth herein. (Plaintiffs in particular, reference this cause of action, directs the parties to re-alleged Paragraphs, *supra* ¶¶ 82-136 C.).

253. Plaintiffs re-allege and restate Paragraphs 1 through 219. (Plaintiff, in particular, RE: this cause of action, directs the parties to re-alleged Paragraphs *supra* ¶¶ 8-23 (Parties and Agency), *supra* ¶¶ 24-146 (Common Allegations), and more specifically *supra* ¶¶ 45-59, ¶¶ 67-76, ¶¶ 89-95, ¶¶ 111-112, ¶¶ 132-146, ¶¶ 151-161, and ¶¶ 201-222 (Legal Summary).

254. At all relevant times, “Clark Enterprises” and its management and development businesses constituted an “enterprise,” within the meaning of **18 U.S.C. §§ 1961(4) and 1962(c)**.

255. In the alternative to the Eighth Cause of Action, Wendel attorneys and their agents/alleged clients/alleged co-conspirators The Charles Parties (Charles Clark, Steve Clark, and Jack Clark) and Doe Defendants to be identified, conspired to conduct or participate, directly or indirectly, in the conduct of the affairs of the management enterprises through a pattern of racketeering activity (as described in Paragraphs ¶¶ 8-23 (Parties and Agency), *supra* ¶¶ 24-146 (Common Allegations), and more specifically *supra* ¶¶ 45-59, but also ¶¶ 67-76, (Wendel's Violations of Trusts), ¶¶ 89-95; ¶¶ 132-146 (Wendel's Violations of Other Entities) in violation of **18 U.S.C. § 1962(d)**. Wendel Parties intended to further an endeavor of Clark Enterprises which satisfies all of the elements of a substantive RICO criminal offense and adopted the goal of furthering or facilitating the criminal endeavor. In particular, prior to December 1999, Wendel and alleged co-conspirators were not acting within the scope of their employment when they falsified Peter's signature on an “LP-2” (Amendment to Limited Partnership) filing with the California Secretary of State; or when they or the Charles and Wendel Parties provided false and/or misleading information on loan applications (see *supra* ¶ 51, ¶ 111, ¶¶ 148-155); signed a secret EXHIBIT 5-A Adverse Representation Agreement with Charles (see *supra* ¶ 93) that evidences Wendel's secretive conspiracy with Charles which emboldened Charles' further secretive conspiracy regarding “the fate of Peter,” and self-dealing reported by Charles' Conspiracy e-mail to Diddo Clark dated February 27, 2002 (see *supra* ¶ 93) and elsewhere,

256. Charles tried to enroll Diddo in the conspiracy to defraud Peter, self-dealing, and ongoing **elder abuse**, and criminal scheme regarding “the fate of Peter.” In the alternative, Charles' e-mail to Diddo Clark dated February 27, 2002, relays Charles'

criminal scheme, facilitated by Wendel as part of Wendel's larger fraud, to cause torts and thus billing opportunities to Wendel for the litigation as they diverted money from Peter Clark to the Charles Parties, Wendel, and to Berkley, in which Wendel utilized their alleged agent, Spiegel. In said e-mail, Charles discusses paying themselves a "finder's fee" from funds that belong, in part, to Peter, all in secret from Peter, the de facto Executor of the Estate. By this act, the Wendel parties intended to inflame an angry reaction from Peter that they could use as "evidence" that Peter suffered from either schizophrenia or manic depression without any actual basis for the false allegation.

257. Peter Clark and others, including Peter's now adult children, Ian and Acacia, were injured by Defendants overt acts in furtherance of Charles' illegal scheme and said overt acts were acts of racketeering or otherwise unlawful under the RICO statute:

(a) a scheme to defraud (see *supra* ¶¶ 30-68) that was knowingly and intentionally devised by then Wendel attorney Horwich and the Charles and Berkley Parties (see *supra* ¶49 to defraud Peter Clark by means of false or fraudulent pretenses, representations, or promises; and, for the purpose of executing such scheme, Charles, Berkley, Wendel, and others have placed or foreseeably caused to be placed in a post office, or authorized depository for mail, matter that furthered the scheme to defraud (including but not limited to all pleadings in the Clark Family Cases; copies of documents in which they and /or their agents forged Peter's signature and caused it to be filed with the Secretary of State and then mailed back to then Wendel attorney Horwich, and other forged documents such as a pre-dated alleged "Resolution" of La Playa Apartments in secret from Peter Clark, the only person who is legally authorized to act in the name of La Playa Apartments, and which was further fraudulent in that the Charles and Wendel parties have characterized these documents, together with another document that they procured by duress and the promise of consideration that was withdrawn thereafter, as an alleged legally constituted vote of the partnership to remove the General Partner, and his cash flow, all in secret from the General Partner. (see *supra* ¶¶45-54, 89-94 ) These alleged "Resolution" documents and the other documents were, and are, falsified documents which the Wendel Parties have used as a rationalization but not justification for their seizure of the partnership properties, (see *supra* ¶¶33-68), ¶94).

Wendel's filings with the Bankruptcy Court became the primary vehicle for their fraud. Thus, all of the boasting to the court, done by electronic means, and all of the "service-by-mail" which are recorded by the numerous "proofs-of-service" that the Wendel Parties have caused to be filed with the Court Clerk constitute sworn statements of wire fraud, and mail fraud. in violation of [18 U.S.C § 1341](#)

(b) Wendel's filings also constitute extortion via economic duress, including under the color of law in that, after Wendel's extensive ex parte contact with Judge Flinn Wendel sought to obtain Peter's assets, with his consent, induced by wrongful use of actual or threatened fear of criminal prosecution, *supra* ¶63, (in violation of the Hobbs Act, [18 U.S.C. § 1951](#), and in violation of [18 U.S.C. § 894](#); and 6(c) causing fraudulent tax returns to be filed in violation of the Revenue Code; *supra* ¶12, ¶14, ¶51, ¶108, ¶124.

(d) knowingly executing, or attempting to execute, a scheme or artifice to obtain money under the custody or control of a **financial** institution by means of false or fraudulent pretenses or representations (including but not limited to the **financing** of Peter Allegre Apartment Community and the refinancing of the La Posada and La Playa Partnership property in secret from General Partners of both of these partnerships in violation of [18 U.S.C. § 1344](#).

258. As a direct and proximate result of, and by reason of, the activities of the Wendel Parties and its conduct in violation of [18 U.S.C. §§ 1962\(d\)](#), Peter Clark, Johnson Clark, Louise Clark, Ian Clark, Acacia Clark, Diddo Clark, and others ("Aggrieved Clarks"), have been injured in their businesses, persons, and/or property within the meaning of [18 U.S.C. § 1964\(c\)](#). Among other things, Aggrieved Parties have suffered damages to the extent Wendel extorted payments to themselves of funds that otherwise would have gone to Peter. Peter is, therefore, entitled to recover threefold the damages they have sustained together with the cost of the suit, including reasonable attorneys' and experts' fees and costs.

Respectfully submitted,

Dated: November 7, 2011

By: <<signature>>

Peter Clark

**Appendix not available.**

Footnotes

- 1 While the California Supreme Court upheld hundreds of years of legal tradition in recognizing Unjust Enrichment as a separate cause of action by their ruling in *Ghirardo v. Antonioli* 924 P.2d996 (Cal.1996), *there has been confusion in Federal Courts re: its use as a separate tort rather than as a means for restitution.* (See March 26, 2011 posting in “*Complex Business Litigation*” by Douglas L. Johnston and Neville L. Johnston). However Defendants' acts of alleged Bankruptcy Fraud and Identity Theft are criminal acts without an apparent civil remedy, and thus the use of Unjust Enrichment as a remedy dovetails nicely for restitution regardless of whether or not it constitutes a separate cause of action.
- 2 While Defendant's **Financial Elder abuse** is one of the easiest to prove, this involves airing the dirty laundry of the Clark Family. Plaintiff would prefer that such airing be done in the relatively private environment of the Binding Arbitration rather than in the public forum of the courts. Fortunately, such a position is backed by the Federal Arbitration Act, which requires such arbitration when it is part of the contract.
- 3 Reserved.
- 4 The limited reach of a bankruptcy court's subject matter jurisdiction has been recognized ever since Congress amended the Bankruptcy Code in response to the Supreme Court's decision in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), which found unconstitutional Congress' attempt to confer the full breadth of the district court's original and exclusive bankruptcy jurisdiction upon the bankruptcy courts.
- 5 Dennis Davis, Attorney for the Trustee, failed to defend the Trust Estate in the Binding Arbitration that Peter Clark originally filed for in 2007, and which Wendel has evaded ever since by various “lawyer Trick's as delineated more fully in Addendum II, filed herewith did so, which later involved violation of the Bankruptcy Act, in collusion if not conspiracy with Trustee Attorney Dennis Davis. Davis is alleged to have shirked his duties under [11 USC § 558](#), which requires that the Trustee use every defense available to defend the estate.
- 6 The Bankruptcy Court agreed that it lacked jurisdiction over the over-all issues before the Binding Arbitration by its rulings in January, 2011, however it missed the point of Plaintiff's Motion, which was to provide a “comfort order” to the Arbitration similar to that required by Bankruptcy Courts under U.S.C. §362 that it could proceed without fear of impinging on Federal authority. In this, Wendel and attorney Dennis Davis led the court astray by “smoke-and-mirrors,” as delineated in the footnote that follows (See Addendum II):  
However Davis' violations of trust continued beyond that: Davis opposed Peter Clark's motion for abandonment to the Bankruptcy Court, while concealing from the court the important fact that he had announced the abandonment to the arbitration. By his methods, Davis caused the Judge to violate the letter and intent of [11 U.S.C. §554](#) by making his ruling of lack of jurisdiction for the full issues of the arbitration without a hearing for the abandonment as required by statute, as is delineated more fully in Addendum II. Davis did so as an element of a larger fraud that damaged Peter Clark and creditor Alan Kilpatrick, and as such, Davis is alleged to have engaged in Bankruptcy Fraud:
- 7 Laura Crisp is the Trustee of three Education Trusts that Peter hired Wendel to create in 1998. It is believed that as a Trustee, Mrs. Crisp cannot be listed as a Plaintiff unless she is represented by counsel, however her presence is only required as a third party beneficiary of the arbitration, not of the order fro arbitration. However funds must be provided for her representation from the Wendel Client Trust Fund that Wendel is required to establish for the estimated 5 million in known fees and costs, plus 10% interest per annum for a decade that they are alleged to have raided from Clark Family Trust and other Trusts and entities (estimated direct losses of in excess of \$40 million, plus over \$160 million in loss of business opportunity). Diddo Clark is Peter Clark's sister, and Ian and Acacia Clark are Peter's Children.
- 8 Wendel caused all eight employees of Sierra Sunrise Retirement Center to be fired as their reward for exemplary work on behalf of the Clark family. Peter Clark had hired Wendel to transfer to ownership of said asset to the heirs of Johnson Clark, who consist primarily of his grandchildren, and thus not Charles Clark or Wendel, who have coveted the assets for themselves.

Peter Clark hired Wendel to create Education Trusts for these grandchildren , so that the ownership of the assets would be owned by ALL of the heirs of Johnson Clark *equally*, and which ownership would thus be primarily by the third Party beneficiaries of Education Trusts as Peter developed said asset to produce abundance similar to Peter Clark's 152 unit Allegre Apartments development in Davis, which Peter invested his life savings in, and then hired Wendel to protect his estate. Instead, Defendants arranged to sell Sierra Sunrise and, after laundering the money in various ways, to have paid themselves the proceeds without benefitting the trusts, are thus “presumed” to be violating the trusts, “and such presumption is a presumption affecting the burden of proof” as will be delineated.

- 9 Wendel alleges that they removed their client, Peter Clark as the Managing Trustee by Secret acts that are alleged to have been incompetent and VOID as violations of contract, and transparently self-serving as a key element of Wendel's **Financial Elder Abuse** and Bankruptcy Fraud which now must be adjudicated in Binding Arbitration.
- 10 Arbitration Act- TITLE 9 > CHAPTER 1 > § 4 § 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination *A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement.* Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.
- 11 The declaration of David Bryant, shown by EXHIBIT 3-I, shows that Defendants engaged in the complained of acts against their client by enacting an avalanche of litigation against their client for the purpose of “bankrupting Peter Clark so we can buy back his assets for next to nothing.”
- 12 Ex Parte Communications: In one situation when The Honorable Judge Flinn was provided with evidence implicating Wendel's erstwhile clients in thefts from the trusts that Peter Clark hired Wendel to create for the children of Plaintiff and Plaintiff's nieces and nephews, the children of Wendel's erstwhile client/agents, Judge Flinn commented “there is something rotten in (the State of) Denmark.” Wendel immediately attempted to disqualify the judge for prejudice. However Wendel then engaged Judge Flinn in extensive ex parte communications with Wendel, both in Chambers, and in via filings to the judge which were not made available to opposing counsel in the coordinated cases related to an action that Plaintiff filed with his children to attempt to find out what Wendel was doing with the 152 unit Allegre Apartment Community development that Plaintiff Peter Clark had designed and developed, investing his life savings in, and hired Wendel to protect from the very raids in which Wendel then engaged, allegedly for the corrupt motive of self interest.
- 13 In California, the fiduciary relationship has been extended to every possible case in which a fiduciary relation exists as a fact. Such relation need not be legal; it may be moral, domestic or merely personal (*Foster v. Keating* (1953) 120 CA2d 435). When such a special relationship can be shown, the law then imposes a presumption that the **elder** was subjected to undue influence. This acts to shift the burden to the defendant to prove that fraud did not occur. This presumption is implemented to further the public policy of securing an **elder's** property and money when they have been entrusted to others. [http:// Elder-Law-Advocate.com/](http://Elder-Law-Advocate.com/)
- 14 See Addendum # I. Clark Family Enterprises, for further information elated to the seizure of the assets of the Clark Family by Wendel and their agents and operation thereof in a pattern of criminal racketeering activity.
- 15 None of Defendants contributed anything to Peter's Allegre development, and thus have no right to the ownership that Wendel has provided to them by stealing from Peter over the past decade while concealing the evidence and preventing the Binding Arbitration from adjudicating the damages that have now increased by a factor of 15 or more.
- 16 **Financial Elder Abuse** of this additional sort is also alleged regarding Louise Clark that is potentially harder to prove because of Defendants undue influence and the nature of Louise's alleged loss of mental capacity, however the other **Financial Elder Abuse** is prima facie regarding both **elders**.



- 17 The second amendment of the Trust Agreement for Clark Family Trust provided insufficient documentation for Peter Clark to act fully as the Managing Trustee of Clark Family Trust in 2001, so Wendel attorney Horwich alleged to Peter Clark that he perfected Peter Clark's position as Managing Trustee with the fourth amendment, as well as the Powers of Attorney for Louise and Johnson Clark (provided by the documents in EXHIBIT 1 of Appendix IV). However Wendel alleges that by secret acts one year later they removed Peter Clark as a Trustee of Clark Family Trust by a further amendment to the Trust Agreement, however Wendel knows or should have known that such an amendment removing Peter Clark as a Trustee required Peter's signature, and would have required an action in the Probate Court, disclosing their hand to Peter Clark, Wendel's contractual client for "estate planning matters" and regarding Peter's business and personal affairs, and producing court oversight of their alleged **financial elder abuse**, things that Wendel is alleged to have wanted desperately to avoid. In addition, Wendel's conflicts of interest and violation of Bar Rules and the Probate Code in litigating related to a trust agreement that Wendel had drafted against their contractual client "for estate planning matters" was prima facie. Thus, Wendel did not utilize the method proscribed by the Probate Code for the removal of a Trustee that was available to Defendants at the time, but instead used vigilante means not supported by law. Wendel's vigilante acts are alleged to have been legally deficient to their demonstrated goal of causing the **Elder** Clarks to, effectively, sign over control of their entire estate (and that of Peter Clark's as well), to Wendel for administration without oversight of Wendel's contractual client, Peter Clark.
- 18 The Engagement Letter is shown by EXHIBIT 2-Aii of Appendix IV. Wendel is alleged to have acted in collusion if not conspiracy with attorney Dennis Davis in separating Peter Clark from his defenses by violations of [11 USC § 558](#) in failing to defend the Trust Estate in the Binding Arbitration that Peter Clark had paid \$11,200 to advance as previously stated, and by violations of [11 USC §554](#) in abandoning said arbitration without going through the procedures proscribed by the Bankruptcy Act, thus preventing Peter Clark from continuing with the PRE-petition arbitration, and requiring the District Court to make a comfort order to the Neutral so that said Neutral can proceed with the POST-Petition arbitration without fear of treading on federal jurisdiction.
- 19 While this action is brought under the federal Bankruptcy Fraud and Racketeer Influenced and Corrupt Organization ("RICO") statute, [18 U.S.C. § 1961 et seq.](#), past acts have included violations of the Welfare and Institutions Code (Well & Inst. C.), The **Elder Abuse** Act, [Probate Code §§16060, 16061, 16062, 17200, §21350](#), and other Sections of the Probate Code and Code of Civil Procedure (CCP), and violations of Trust by [§§16004 and 16400, Civil Code 1572](#); the [Business and Professions Code Section 17200](#)) and other provisions thereof; and various California statutes and common law doctrines. Even if this case related to pre-petition torts rather than post petition actions, the allegations under California law would so related to Plaintiff's federal claims about which the Federal Court and arbitration has original jurisdiction, they form part of the same case or controversy under Article III of the United States Constitution. Such pre-petition claims must be considered to show that the post bankruptcy claims are part of an ongoing pattern of artifice that is alleged to constitute racketeering in violation of the RICO Act.
- 20 See Appendix I - Bar Complaint, and Appendix IV, Background- filed and attacé herewith.
- 21 Case law suggests that Wendel was obligated to act at Peter's direction even if Peter did not have an engagement Contract: "The Trustee may be authorized to employ attorneys to assist in administration of trust affairs, in which event *an attorney-client relationship exists between the attorney and trustee*" (in the trustee's representative capacity). [See [Moeler v. Sup.Ct. \(Sanwa Bank\) \(1997\) 16 C4th 1124, 1130, 69 CR2d 317 320](#), [Lasky, Haas, Cohhler & Munter v.Sup. Ct \(Getty\) \(1985\) 172 CA3rd 264,285-286 218 CR 205, 218](#)]. The attorney for a decedent's estate represents the executor or administrator of the estate (*not the estate's beneficiaries or creditors*). [[Goldberg v. Frye \(1990\) 217 CA3d 1258, 1267, 266 CR 483, 488](#); see also [Borisoff v. Taylor & Faust \(2004\) 33 C4th 523, 530, 15 CR3d 735, 739](#)] [Mirabito v. Liccardo \(1992\) 4 Cal.App.4<sup>th</sup> 41](#) -( Rules of Professional Conduct as evidence or as statements of law.); *Client's absolute right to terminate representation-Fracasse v. Brent (1972) 6 Cal.3d 784* -see also [Chyten v. Lawrence & Howell Investments \(1993\) 23 Cal.App.4<sup>th</sup> 607](#), and [Joseph E. Di Loreto, Inc. v. O'Neill \(1991\) 1 Cal.App.4<sup>th</sup> 149](#). *Counsel cannot cure conflicts by severing previous relationship- Truck v. Fireman's Fund (6 Cal.App.4th at p. 1057.)*; *Attorneys may not switch sides; San Francisco v. COBRA SOLUTIONS (38 Cal. 4th 839 (2006) 135 P.3d 20, 43 Cal.Rptr. 3d 771) (4)* -*Lawyer must continue representation until written notice of termination; Cal Formal Opinions 1973-10, 1979-50, 1989-115, and 1996-146; ABA Model Rule 1.3, Comment;*