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9 **SUPERIOR COURT - STATE OF CALIFORNIA**

10 **COUNTY OF ORANGE**

Judge Nathan Scott

11 JAMES BRADY and TPC PACIFIC, INC.;

Case No.: 30-2020-01129585-CU-BT-CJC

12 Plaintiffs,

COMPLAINT FOR DAMAGES FOR:

13 vs.

- 1. **BREACH OF CONTRACT;**
- 2. **BREACH OF FIDUCIARY DUTY**
- 3. **FINANCIAL ELDER ABUSE**

14 JOSEPH GARGAN; THE PENSION
15 COMPANY, INC.; and DOES ONE through
16 TWENTY-FIVE, inclusive,

DEMAND FOR JURY TRIAL

17 Defendants.

[DAMAGES EXCEED \$25,000]

18 Plaintiffs JAMES BRADY and TPC PACIFIC, INC., complain of Defendants JOSEPH
19 GARGAN; THE PENSION COMPANY, INC.; and DOES ONE through TWENTY-FIVE,
20 inclusive, and each of them and allege as follows:

21 **GENERAL ALLEGATIONS**

22 1. Plaintiff JAMES BRADY is a competent adult.

23 2. At all times relevant to this matter, Plaintiff JAMES BRADY was an Arizona
24 resident engaged in rendering financial planning and investment services and selling financial
25 products, including settlement annuities.

26 3. At all times relevant to this matter, Plaintiff TPC PACIFIC, INC. was: (a) a
27 corporation doing business in the County of Orange, State of California, and duly organized and
28 existing under and by virtue of the laws of the County of Orange and the State of California; (b)
engaged in owning, operating, maintaining, managing and doing business in the State of

1 California; (c) engaged in rendering financial planning and investment services and selling
2 financial products, including settlement annuities.

3 4. At all times relevant to this matter, Defendant JOSEPH GARGAN was engaged in
4 rendering financial planning and investment services and selling financial products, including
5 settlement annuities in the State of California.

6 5. At all times relevant to this matter, Defendant THE PENSION COMPANY, INC.
7 was: (a) engaged in owning, operating, maintaining, managing and doing business in the State of
8 California; (b) engaged in rendering financial planning and investment services and selling
9 financial products, including settlement annuities, including in the state of California.

10 6. Since the true names and capacities, whether individual, corporate, associate, or
11 otherwise, of the Defendants designated and sued as DOES ONE through TWENTY-FIVE,
12 inclusive, are unknown to Plaintiffs, those Defendants are designated by their fictitious names.
13 Plaintiffs allege on information and belief that each of the Defendants designated and sued as a
14 DOE is legally responsible in some manner for the events and happenings referred to herein below,
15 and legally caused the injury and damages to Plaintiffs as herein alleged. Plaintiffs will ask leave
16 of this Court to amend this pleading to insert the true names and capacities of these Defendants
17 designed by their fictitious names when those facts become known to Plaintiffs.

18 7. Plaintiffs are informed and believe, and upon such information and belief allege,
19 that at the times and places mentioned herein Defendants were the agents, servants, and employees
20 of the remaining Defendants, and each of them, and each of them was at all times and places
21 mentioned herein acting within the purpose and scope of said agency, service and employment.
22 Plaintiffs further allege that Defendant JOSEPH GARGAN was the agent, servant or employee of
23 Defendant THE PENSION COMPANY, INC.

24 **GENERAL ALLEGATIONS OF THE CIRCUMSTANCES**

25 **SURROUNDING THE COMPLAINED-OF INJURIES**

26 8. Plaintiffs allege and incorporate herein by reference all of the allegations
27 contained in the prior paragraphs of this Complaint.

28 9. In or around September, 2015, Plaintiffs JAMES BRADY and TPC PACIFIC,

1 INC. (“Plaintiffs”) entered into a written Agreement for Services (“Agreement”) contract with
2 Defendants JOSEPH GARGAN and THE PENSION COMPANY, INC. (“Defendants”).

3 10. A true and correct copy of the Agreement that Plaintiffs entered with Defendants
4 is attached hereto as Exhibit 1.

5 11. The essential terms of the agreement are stated in Exhibit 1.

6 12. The Agreement was to be performed in California.

7 13. The Agreement became effective August 10, 2015 and automatically renewed for
8 successive one-year intervals unless terminated.

9 14. Per the Agreement and the arrangements and understandings between Plaintiffs
10 and Defendants, Plaintiffs and Defendants were in a fiduciary relationship whereby Defendants
11 owed Plaintiffs fiduciary duties.

12 15. Under the Agreement, Plaintiffs were to provide financial planning and
13 investment services and to sell financial planning products, including settlement annuities, for
14 Defendants. Defendants were to compensate Plaintiffs for their services based upon the
15 commissions and other income received by Defendants and arising from structured settlements
16 and related matters produced by Plaintiffs according to the commission rate structure.

17 16. Per their arrangement, Defendants knowingly worked for the benefit of Plaintiffs
18 by collecting commissions that came in based on cases Plaintiffs produced. This was necessary
19 for reasons that included, but were not limited to, that Defendants held the appointments with the
20 life insurance companies that were required for the exchange of these funds.

21 17. The commission rate structure was incorporated into the Agreement for Services
22 by being attached as Exhibit A to the agreement. It provided that Plaintiffs agreed to pay
23 Defendants ninety percent (90%) of net commission revenue generated by Plaintiffs and received
24 by Defendants within thirty (30) days of receipt, less any accumulated expenses incurred by
25 Defendants on behalf of Plaintiffs.

26 18. From the time Plaintiffs and Defendants entered the Agreement to approximately
27 early 2019, both parties complied with the terms of the agreement. Plaintiffs generated
28 commissions by selling annuities and, until early 2019, Defendants paid Plaintiffs the contracted

1 rate of 90% less expenses for those annuities.

2 19. In approximately March 2019, Plaintiffs stopped receiving payments for
3 commissions they had generated for Defendants. These commissions were owed based on work
4 that Plaintiffs had already completed for Defendants.

5 20. The total commissions owed is comprised of commissions that were earned at
6 various times during the course of approximately late 2015 through March 2019.

7 21. Ultimately, Defendants were not paying the commissions owed to Plaintiffs, so
8 Plaintiffs and Defendants decided that Plaintiffs would stop selling annuities for Defendants as
9 of July 1, 2019. This decision did not affect the commissions owed.

10 22. Defendants have failed to pay Plaintiffs the above-referenced owed commissions.

11 **FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT**

12 (By all Plaintiffs against all Defendants)

13 23. Plaintiffs allege and incorporate herein by reference all of the allegations contained
14 in the prior paragraphs of this Complaint.

15 24. Plaintiffs entered a contract whereby Plaintiffs were to provide financial planning
16 and investment services and to sell financial planning products, including settlement annuities, for
17 Defendants in exchange for Defendants compensating Plaintiffs for their services based upon the
18 commissions and other income received by Defendants and arising from structured settlements
19 and related matters produced by Plaintiffs according to an agreed-upon commission rate structure.

20 25. Plaintiffs did all, or substantially all, of the significant things that the contract
21 required them to do, thereby earning commissions that Defendants owed to Plaintiffs.

22 26. Defendants failed to do something the contract required them to do, namely pay
23 Plaintiffs any commissions owed. The commissions owed and unpaid total approximately
24 \$200,000.

25 27. Defendants have failed to pay any of the commissions owed set forth above, thereby
26 breaching their contracts and agreements with Plaintiffs.

27 28. As a result, Plaintiffs have been harmed.

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1 29. Defendants' breaches of these contracts and agreements were a substantial factor
2 in causing Plaintiffs' harm.

3 30. Defendants owe Plaintiffs interest based on their breaches of these contracts and
4 agreements.

5 **SECOND CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY**

6 (By all Plaintiffs against all Defendants)

7 31. Plaintiffs allege and incorporate herein by reference all of the allegations contained
8 in the prior paragraphs of this Complaint.

9 32. At all times material to this action, Defendants JOSEPH GARGAN; THE
10 PENSION COMPANY, INC.; and DOES ONE through TWENTY-FIVE, inclusive, knowingly
11 undertook to act on behalf and for the benefit of Plaintiffs.

12 33. Defendants, and each of them, had a duty to act with the utmost good faith in the
13 best interests of Plaintiffs and owed a fiduciary duty to Plaintiffs.

14 34. Defendants and each of them breached the aforesaid duty through the acts and
15 omissions described herein; by misleading Plaintiff and taking actions that were not in Plaintiffs'
16 best interests but in the best interests of Defendants, including actions for Defendants' financial
17 gain; by failing to pay Plaintiffs commissions and/or monies owed; and by not acting as a
18 reasonably careful person or entity in the same or similar capacity would have acted under the
19 same or similar circumstances.

20 35. As a direct result of Defendants' conduct, Plaintiffs have been harmed as described
21 herein.

22 36. Defendants' conduct as described herein was despicable and was committed
23 maliciously, fraudulently and/or oppressively with the wrongful intention of injuring Plaintiffs and
24 with a willful and conscious disregard of the rights of Plaintiffs. Defendants JOSEPH GARGAN
25 and THE PENSION COMPANY, INC. subjected Plaintiffs to cruel and unjust hardship, and via
26 intentional misrepresentation, deceit, or concealment of material facts, Defendants JOSEPH
27 GARGAN and THE PENSION COMPANY, INC. intended to deprive Plaintiffs of property or
28 legal rights all to the detriment of Plaintiffs and to the financial benefit of Defendants.

1 **THIRD CAUSE OF ACTION FOR ELDER ABUSE:**

- 2 1. For general damages in a just and reasonable amount in excess of the jurisdictional
3 minimum of this Court.
- 4 2. For special damages according to proof.
- 5 3. For punitive damages according to proof.
- 6 4. For attorney fees according to proof.
- 7 5. For costs of suit and interest as provided by law.
- 8 6. For such other relief as the Court deems just and proper.

9 DATED: January 30, 2020

DANIELS LAW

10 BY: 
11 _____

12 WILLIAM A. DANIELS, ESQ.
13 Attorneys for Plaintiffs JAMES BRADY
14 and TPC PACIFIC, INC.
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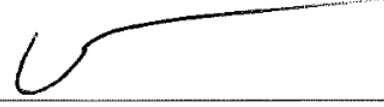
DEMAND FOR JURY TRIAL

Plaintiffs JAMES BRADY and TPC PACIFIC, INC. hereby demand trial of all causes by jury.

DATED: January 30, 2020

DANIELS LAW

BY: _____



WILLIAM DANIELS
Attorneys for Plaintiffs JAMES BRADY
and TPC PACIFIC, INC.

EXHIBIT “1”

THE PENSION COMPANY

AGREEMENT FOR SERVICES

1) PARTIES

- i) The Pension Company, Inc. ("Company") is a corporation organized under the laws of the State of Pennsylvania. TPC Pacific, LLC is a California Limited Liability Company (TCP), James J. Brady ("Brady") the sole Member of TCP and an individual residing in California and qualified and experienced in the area of financial planning, design and implementation of structured settlements using settlement annuities to meet those needs.

2) PURPOSE

- i) Company has engaged TCP/BRADY/Brady as an independent contractor to provide financial planning and investment services and to sell financial planning products including settlement annuities.
- ii) The parties desire to enter into this Agreement to provide a full statement of their respective responsibilities under the engagement. This Agreement shall supersede any and all prior agreements, oral or written, with respect to the subject matter of this Agreement. This Agreement may be amended only in writing signed by both parties.
- iii) TCP/BRADY may engage the services of brokers, agents, employees and others to help fulfill TCP/BRADY's obligations under this Agreement. In the event TCP/BRADY engages the services of any licensed broker or agents to provide services under this Agreement, such licensed brokers or agents may be required to enter into such agreements with Company.

3) SERVICES

- i) TCP/BRADY shall provide financial planning and investment services and will sell financial planning products, including settlement annuities, on behalf of Company. TCP/BRADY shall devote such time as is reasonably necessary for the satisfactory performance of TCP/BRADY's duties.
- ii) TCP/BRADY shall comply with the rules and regulations of Company as they pertain to producers and agents of Company as they may be promulgated from time to time by the Board of Directors and offices of Company.

4) STATUS OF PARTIES

- i) TPCP/BRADY is engaged as an independent contractor of Company. Company shall not have, nor exercise any control or direction over the manner or method by which TPCP/BRADY performs its services. The sole interest and responsibility of the Company is that the services shall be performed and rendered in a competent, efficient and satisfactory manner. TPCP/BRADY shall not be required to conform to any established work routine or work schedule, work any set number of hours, or comply with any other rule, regulation or policy of Company as pertains primarily to employees of Company. TPCP/BRADY shall not be required to accept any assignment offered by Company, nor to remain available for any such assignment.
- ii) Except as herein below provided, nothing in this Agreement shall restrict the right of TPCP/BRADY to engage in other businesses independently of this Agreement at any time. Notwithstanding the foregoing, during such periods of time TPCP/BRADY is performing services under this Agreement, TPCP/BRADY will not engage in any other activity which shall substantially interfere with such performance.
- iii) TPCP/BRADY shall file all tax returns and reports and pay all self-employment and similar taxes and payments (or reimburse Company as required by separate agreement) and all penalties and interests which may be incurred in connection therewith, properly reflecting TPCP/BRADY's independent status. TPCP/BRADY shall provide evidence of such filings and payments to Company within ten (10) business days of Company's request of such evidence. TPCP/BRADY's agreement to provide such evidence shall extend to requests made by Company to provide such evidence after the termination of this Agreement, provided that the evidence requested relates to a period during which this Agreement was in effect.

5) COMPENSATION

- i) Company shall compensate TPCP/BRADY for its services based upon the commissions and other income received by Company and arising from structured settlements and related matters produced by TPCP/BRADY according to the commission rate structure. A copy of the commission rate structure is attached as Exhibit "A" to this agreement and may be amended from time to time by the parties. TPCP/BRADY's production shall only mean commissions and other income actually received or receivable by Company or an affiliate, determined under accounting principles consistently applied by the independent accountants retained by Company. In addition, TPCP/BRADY will be allocated those percentages of the production of the agents and brokers under TPCP/BRADY's direct indirect sponsorship ("derivative income") shown on the attached commission rate structure schedule.
- ii) TPCP/BRADY acknowledges, understands and agrees that TPCP/BRADY's compensation under this Agreement shall be conditioned upon Company's right and ability to collect and

pay commissions attributable to services rendered by TPCP/BRADY and other agents and brokers of Company. **TPCP/BRADY hereby appoints The Pension Company as its attorney-in-fact with full power and authority to negotiate compromise litigate and** otherwise deal with any and all commission sharing agreements as well as agreements and arrangements which may result in the return or refund of commissions.

- iii) TPCP/BRADY acknowledges understands and agrees that the rules and regulations of Company pertaining to its broker and agents include provisions providing that TPCP/BRADY's share of commissions generated by TPCP/BRADY may be forfeited or deemed unearned in the event TPCP/BRADY breaches the rules and regulations of Company.

6) EXPENSES

- i) TPCP/BRADY shall pay all business expenses incurred in connection with the provision of services under this Agreement, unless otherwise agreed upon and reimburse Company for any expenses incurred by Company on TPCP/BRADY's behalf within thirty (30) days of notice.

7) INDEMNITY

- i) Company specifically and expressly agrees to indemnify, defend, and hold harmless TPCP/BRADY, his employees, agents, affiliates, (hereinafter collectively "Indemnitees") against and from any and all claims, demands, suits, losses, costs and damages of every kind and description, including attorneys' fees and/or litigation expenses, brought or made against or incurred by any of the Indemnitees resulting from or arising out of the acts, errors or omissions of Company, its employees, agents, representatives or Personnel of any tier, their employees, agents or representatives in the performance or nonperformance of Company's obligations under the Contract or in any way related to the Contract. The indemnity obligations under this Article shall include without limitation:
- a. Loss of or damage to any property of Company, TPCP/BRADY or any third party;
 - b. Bodily injury to, or death of any person(s), including without limitation employees of TPCP/BRADY, or its Personnel of any tier; and
- ii) If any claim, legal action or suit arising from the Services is instituted by any person or entity against an Indemnitee as a result of an action for which Company has agreed to indemnify TPCP/BRADY under this Article, then Company will assume the defense of that claim, legal action or suit, upon being notified to do so by TPCP/BRADY and will pay any judgment or settlement rendered in such action or suit.
- iii) TPCP/BRADY specifically and expressly agrees to indemnify, defend, and hold harmless Company, its employees, agents, affiliates, (hereinafter collectively "Indemnitees") against and from any and all claims, demands, suits, losses, costs and damages of every kind and description, including attorneys' fees and/or litigation expenses, brought or made against or incurred by any of the Indemnitees resulting from or arising out of the acts, errors or

omissions of TPCP/BRADY, its employees, agents, representatives or Personnel of any tier, their employees, agents or representatives in the performance or nonperformance of TPCP/BRADY's obligations under the Contract or in any way related to the Contract. The indemnity obligations under this Article shall include without limitation:

- a. Loss of or damage to any property of Company, TPCP/BRADY or any third party;
- b. Bodily injury to, or death of any person(s), including without limitation employees of TPCP/BRADY, or its Personnel of any tier; and
- c. Claims arising out of or related to workers' compensation, unemployment compensation, or similar such laws or obligations applicable to employees of TPCP/BRADY or its Personnel of any tier.

iv) If any claim, legal action or suit arising from the Services is instituted by any person or entity against an Indemnitee as a result of an action for which TPCP/BRADY has agreed to indemnify Company under this Article, then TPCP/BRADY will assume the defense of that claim, legal action or suit, upon being notified to do so by Company and will pay any judgment or settlement rendered in such action or suit.

8) INSURANCE

- i) Company shall obtain and maintain business and liability insurance coverage reasonably required by law and in the furtherance of TPCP/BRADY's business which shall name TPCP/BRADY as an additional insured, including but not limited to errors and omissions insurance, fidelity insurance, and worker's compensation insurance. Such insurances shall provide coverage in amounts deemed adequate by Company from time to time. Any such policy shall provide that it may not be canceled without ten (10) days' prior notice to TERMINATION. TPCP/BRADY will reimburse Company for its pro rata share of such expense within thirty (30) days of notification.

9) TERMINATION

- i) This Agreement shall terminate immediately upon any of the following events:
 1. The dissolution of Company.
 2. The death of BRADY, unless there is an agreed succession plan in place.
 3. The mutual agreement of company and TPCP/BRADY.
 4. Ninety (90) days' notice of termination given by TPCP/BRADY to Company, whether such termination is with or without cause. The foregoing notwithstanding, Company may elect, within ten (10) days of the receipt of TPCP/BRADY's ninety (90) day termination notice, to advance the effective date of the termination to as early as thirty (30) days from the date on which Company received TPCP/BRADY's termination notice. Company's election to advance the termination date shall be in writing and shall set forth the advanced termination date.
 5. Notice of termination given by TPCP/BRADY in accordance with Section 5(ii).

10) AMENDMENT

- i) No amendment or variation of the terms of this Agreement shall be valid unless made in

writing and signed by the duly authorized representative of Company and TPCP/BRADY.

11) CHOICE OF LAW

- i) This agreement is drawn to be effective in, and shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

12) CONSENT TO JURISDICTION

- i) Each party irrevocably (a) consents to the jurisdiction of the Courts of the Commonwealth of Pennsylvania and of the United States for any judicial district located in the Commonwealth of Pennsylvania invoked in any action or proceeding relating to this Agreement or the transactions contemplated hereby; (b) consents to the venue of such action (or any judicial district of a court of the United States as shall include the same); (c) agrees that service of legal process in any such action may be made by mailing or delivering a copy of such process to the party at the address in Section 18; and (d) if any reason be effected upon the party as provided above, consents to the service of legal process in any such action by mailing or delivering such process to the party's last known business address.

13) MEDIATION/ARBITRATION

- i) In the event a dispute arises between the parties concerning the interpretation or enforcement of this Agreement which results in legal proceedings of any nature, the parties shall avail themselves to Mediation before a mutually agreed upon Mediator. The parties must make a good faith effort to resolve the dispute and attend at least two mediation sessions, with each side to pay their own costs. If the parties are unable to agree at mediation they shall avail themselves to binding arbitration which each side bearing their own costs.

14) WAIVER

- i) A waiver of any of the terms and condition hereof shall not be construed as a general waiver by Company, and Company shall be free to reinstate such part of clause, with or without notice, to TPCP/BRADY.

15) SEVERABILITY

- i) If any term or provision of this Agreement is determined to be illegal, unenforceable or invalid in whole or in part for any reason, such illegal, unenforceable or invalid provision or part thereof shall be stricken from this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with provisions of this Section, then the stricken provision shall be replaced, to the extent possible, with a legal enforceable and valid provision which is as similar in tenor to the stricken provision as is legally possible.

16) ASSIGNMENT AND SUCCESSORS

- i) Company may assign or delegate all or any party of this Agreement to a successor company or any other affiliate or successor of Company. This Agreement may not be assigned or delegated by TPCP/BRADY without the written consent of Company. Except as expressly provided in this Agreement each and all of the covenants, terms, provisions, conditions and agreements contained herein shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto.

17) TERMS

- i) The term of this Agreement shall be from the Effective Date, August 10, 2015, subject, however, to prior termination as provided above, and unless terminated, this Agreement shall be automatically renewed for successive one (1) year intervals.

18) NOTICES

- i) Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either party by the other party to this Agreement shall be in writing and shall be deemed duly given when personally delivered to the party to whom they are directed, when delivered by same day or overnight courier, or when deposited in the United States mail, first class postage prepaid, addressed as follows, or such other address shall have previously designated by notice to the other party:

To: Joseph Gargan
The Pension Company
2200 Renaissance Boulevard
Suite 305
King of Prussia, PA 19406

To: James J. Brady
TPC Pacific, LLC *Inc.*
16520 Bake Parkway
Suite 240
Irvine, CA 92618

19) SIGNATURES

The Pension Company

By: _____
Joseph E. Gargan

TPC Pacific, LLC *Inc.*


James J. Brady 9-11-15

EXHIBIT A

Company agrees to pay to TPCP/BRADY Ninety Percent (90%) of Net Commission Revenue generated by TPCP/BRADY and received by Company within thirty (30) days of receipt, less any accumulated expenses incurred by Company on behalf of TPCP/BRADY. All expenses passed on by Company to TPCP/BRADY will be at cost unless agreed to in writing by Company and TPCP/BRADY.

A handwritten signature in black ink, appearing to be initials or a stylized name, located to the right of the main text block.