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DISTRICT OF HAWAII

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UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

SENIOR RESOURCES OF HAWAII, INC.
and MARK K. TERUYA,

Defendants.

CV 07-00467 HG LEK
Case No.

COMPLAINT FOR VIOLATIONS
OF THE FEDERAL SECURITIES
LAWS

Plaintiff Securities and Exchange Commission ("Commission") hereby
alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1), and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d)(1) & 77v(a); Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78(u)(d)(1), 78u(d)(3)(A), 78u(e) & 78aa; and Sections 209(d), 209(e)(1) and 214 of the

Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. §§ 80b-9(d), 80b-9(e)(1) and 80b-14. Defendants have directly or indirectly made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

2. Venue is proper in this district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and Section 214 of the Advisers Act, 15 U.S.C. § 80b-14, because defendant Senior Resources of Hawaii, Inc. (“Senior Resources”) is located in this district and defendant Mark K. Teruya (“Teruya”) (together with Senior Resources, “Defendants”) resides in this district and certain of the transactions, acts, practices, and courses of conduct constituting violations of the laws alleged in this Complaint occurred within this district.

SUMMARY OF ACTION

3. This action involves material misrepresentations and omissions made to senior citizens and retirees in Hawaii by Teruya, operating through Senior Resources. Since at least 2004, Defendants have lured Hawaii’s seniors and retirees to free monthly investment seminars at Honolulu hotels, providing free meals, and offering free follow-up, one-on-one consultations.

4. During these consultations, Defendants fraudulently induce seniors to sign forms that enable Defendants to liquidate the seniors’ current securities holdings. Defendants do so by making misrepresentations to clients about the purpose of the forms, the reasons the clients need to sign the forms, and how the Defendants will use the signed forms. As a result of Defendants’ false assurances in procuring the clients’ signatures, the seniors sign the forms without their knowledge or authorization that their securities will be liquidated by the Defendants, and without their knowledge of costs they will incur when Defendants

do so. In addition, Defendants induce the seniors to sign the forms without disclosing that they have a conflict of interest because Defendants stand to earn commissions, typically 12% to 14%, when they use the proceeds of the liquidated securities to purchase equity-indexed annuities (“EIAs”). Defendants also fraudulently induce seniors to sign application forms to establish new investment accounts for which Defendants stand to receive an advisory fee. Moreover, on at least one occasion, Defendants submitted to an EIA company a document that had never been signed by a client, but rather upon which the client’s signature had been copied and pasted from another document.

DEFENDANTS

5. Senior Resources of Hawaii, Inc. is a Hawaii corporation with its principal place of business in Honolulu, Hawaii.

6. Mark K. Teruya is a resident of Honolulu, Hawaii and the president of Senior Resources. Teruya has been licensed in Hawaii to sell life and health insurance since April 2000. In January 2005, Teruya became an investment adviser representative for USA Wealth Management, LLC (“USA Wealth”), an investment adviser based in Grand Rapids, Michigan and registered with the Commission. Teruya markets his services under the name Senior Resources. Starting in or after March 2006, Teruya also began to market his services through USA Wealth Resources, a trade name registered to Senior Resources.

DEFENDANTS’ TARGETED MARKETING TO SENIORS

7. Since January 2004, Defendants have offered through Senior Resources, and more recently, through the trade name USA Wealth Resources, free investment, tax and estate planning, or retirement financial planning seminars.

8. Defendants market these seminars and their services directly to retirees, typically senior citizens in their 60s, 70s, and 80s, by advertising directly in local newspapers, such as *The Honolulu Advertiser* and *Honolulu Star-Bulletin*,

MidWeek Magazine, publications specifically geared toward seniors over 50, such as the magazine *Generations Hawaii: The Good Life After 50*, and through direct mail.

9. The advertisements always feature eye-catching headlines, such as: “7 Seldom Heard, Significant Financial Opportunities [That] May Be Available to Many Retirees,” “10 Common Costly Financial Mistakes Hawaii Retirees May Make and Ways to Avoid Them,” “Financial Advisor Reveals Common Money Mistakes During Retirement,” or “What The Rich Do Differently.”

10. To learn about the strategies or how to avoid these financial mistakes described in the advertisements, Defendants require the seniors to attend one of Senior Resources’ free investment seminars, which are purportedly only open to those with at least \$300,000 in investment assets.

11. Teruya conducts the free seminars monthly at various Honolulu hotels, including the Hawaii Prince Hotel and the Ala Moana Hotel, and typically provides breakfast or a light meal. The format and content of each seminar, regardless of the title, is generally the same. Teruya is the lone or primary speaker and generally uses between 50 and 100 PowerPoint slides during a 60 to 90 minute seminar, a pace that makes it difficult for attendees to take notes or follow along. On average, about 75 seniors attend each seminar.

12. In these seminars and in marketing materials, Teruya makes a variety of claims designed to demonstrate his self-proclaimed financial expertise. He claims that he is a “Certified Retirement Financial Planner” and a “Financial Retirement Specialist.” Despite these claims, in 2004, Teruya was only licensed to sell life and health insurance – a fact he did not disclose to seminar attendees or in the advertisements for the seminars – and he focused solely on selling EIAs to retirees. An EIA is a contract issued by a life insurance company that generally provides for accumulation of the contract owner’s payments, followed by

payments of the accumulated value, which includes a return based on the changes in an equity index, to the contract owner in a lump sum or series of payments that begin on the contract's maturity date.

13. Teruya also claims that he has been working in the financial services industry and conducting seminars since 1992, although in fact he has not been continuously employed in the financial services industry over the past 15 years, and only began offering seminars in 2004.

14. Teruya devotes the bulk of the seminars to presenting purported strategies that he claims can save his clients thousands of dollars in taxes or similarly increase their investment returns. At the seminars, Teruya tells attendees that he can help them achieve better returns on their investments, or that his techniques achieve returns when other people were losing money.

15. Although attendees would not know it, besides adding a few personal anecdotes, Teruya simply reads a canned presentation drafted by and purchased from a marketing company that is affiliated with USA Wealth, the investment adviser for which Teruya is a representative.

THE DEFENDANTS LURE CLIENTS
TO ATTEND ONE-ON-ONE MEETINGS WITH TERUYA

16. At the end of each seminar, Teruya offers audience members a free follow up, one-on-one consultation to discuss the "financial opportunities" that may be available to them. He directs attendees to bring to the meetings all their financial records, including their most recent tax return, brokerage statements, life insurance and annuity policies, and IRA and other retirement account statements. Teruya promotes the one-on-one meetings as an opportunity to benefit from Teruya's purported expertise in developing individualized financial plans and strategies for them.

17. During the individual meeting, Teruya scrutinizes the client's entire investment portfolio. Teruya's approach includes undermining clients' confidence in their current financial advisers and the propriety of the advice they have been given, frequently criticizing the clients' existing investments or disparaging the amount of fees that the clients pay. Teruya represents to some clients that he charges lower commissions than their current investment adviser and that he would do a better job for less, monitoring the clients' investments on a daily basis.

18. If clients want to hear more about Teruya's tax and financial strategies, Teruya generally discusses how he can increase investment returns and reduce risk. When pressed for details about specific strategies, however, Teruya recycles what he said at the seminar, adding few if any details about his purported strategies or investment "formula." Nevertheless, Teruya frequently cautioned clients not to tell their current financial adviser that they were meeting with Teruya because he was purportedly fearful that the adviser would try to "steal" his program.

DEFENDANTS INDUCE CLIENTS TO SIGN BLANK FORMS

19. At the end of the one-on-one meeting, under the pretense of preparing an individualized financial plan or otherwise providing specific financial advice to the client, Teruya presents clients with a series of pre-printed, blank forms to sign.

20. Teruya hurries clients through the signature process, asking them to sign several documents one right after the other. He does not give them an opportunity to review or see the substance of the forms; he simply shows them the signature blocks and directs them where to sign or initial. These documents, unbeknownst to the signers, typically consist of an EIA application, related disclosure forms, new account applications, and transfer authorizations. Defendants later fill in the blanks on the signed forms, using the financial information Teruya instructs the clients to bring to the meetings. With these

fraudulently-obtained authorizations, Teruya liquidates the clients' existing securities holdings, purchases EIAs to replace the variable annuities, and opens new investment accounts for which Defendants receive an advisory fee. Teruya does not give the clients copies of documents they have signed before they leave his office.

DEFENDANTS' MISREPRESENTATIONS AND OMISSIONS

MADE TO CLIENTS

21. From 2004 through at least August 2007, in the one-on-one meetings with clients, the Defendants have deceived clients into signing the pre-printed, blank forms by making misrepresentations about the purpose of the forms, the reasons that they need clients to sign the blank forms, and the way in which the Defendants will use the signed forms. Defendants' specific misrepresentations vary slightly from client to client, as Defendants tailor their responses to the individual client's questions and concerns that arise during the meeting, including: (a) falsely assuring clients that they will not take any action without the clients' authorization; (b) falsely representing to clients that the forms merely authorize Teruya to obtain additional information to prepare a financial plan; and (c) falsely telling clients that signing the application does not obligate them to make an investment. Defendants also fail to disclose their conflict of interest created by the fact that Teruya is a licensed insurance agent who stands to gain substantial commissions from EIA sales to clients.

A. Defendants' False Assurances They Will Take No Action Without Authorization

22. As part of Defendants' fraudulent inducement to obtain client signatures on the blank forms, Defendants falsely assure clients that they will not take any action, either by selling the clients' existing securities or by opening new investment accounts without the clients' knowledge or authorization.

23. For example, on April 3 and April 28, 2006, a retired couple in their 60s and 70s and residing in Honolulu, met with Teruya for a one-on-one consultation.

24. During the second meeting, Teruya represented that he would put his recommendations in writing so the couple could review them before making any investment decision. Teruya assured the couple that he would take no action until the couple gave him their approval.

25. Teruya asked the couple to sign a series of pre-printed, blank forms that he said could be used in the future if the couple approved his financial plan. He promised to provide them with copies of any documents that the couple signed and to give the couple time to review them before he implemented any financial plan. Teruya never reviewed the documents with them or explained the documents to them.

26. As another example, on or about August 29, 2006, another couple, retirees in their late 70s and 80s and residing in Honolulu, met with Teruya for a one-on-one consultation.

27. During the meeting, Teruya assured the couple that he would not take any action concerning their investments until everyone had a chance to discuss his recommendations. Teruya also told them that he would inform the couple before making any decisions on their behalf.

28. When Defendants presented the couple with pre-printed, blank forms to sign, Defendants never explained the purpose of the documents or gave the couple an opportunity to read them. Defendants simply directed the couple where to sign or initial the documents.

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B. Defendants' False Claims That The Forms Are Necessary To Prepare A Financial Plan For Clients

29. As part of Defendants' fraudulent inducement to obtain client signatures on the blank forms, Defendants falsely represent that the forms merely authorize Teruya to obtain additional information about the client's investments so that Defendants can prepare a financial plan for them.

30. For example, on August 30, 2005, an 80-year old resident of Kaneohe met with Teruya for a one-on-one meeting after attending one of Senior Resources' seminars.

31. During that meeting, Teruya represented to the client that he would create a financial plan for him. Teruya falsely told the client that the forms merely authorized Defendants to obtain additional information about the client's investments and that this information was needed to prepare the financial plan.

32. Teruya then presented the client with a series of pre-printed, blank forms to sign, but did not give the client the opportunity to review or see the substance of the forms. Teruya directed the client to the signature blocks on the forms.

33. Unbeknownst to the client, the forms were, in fact, an application to purchase an EIA, two disclosure documents, and a transfer authorization.

C. Defendants' False Assurances That Clients Have No Obligations When Signing the Forms

34. As part of Defendants' fraudulent inducement to obtain client signatures on the blank forms, Defendants falsely tell clients that signing the application does not obligate them to make an investment.

35. For example, on March 3, 2005, a Honolulu couple attended a dinner presentation given by Teruya, and subsequently met with him for a one-on-one meeting.

36. During the meeting, Teruya presented the couple with a series of pre-printed, blank forms to sign. Teruya falsely represented that the forms did not obligate them to make an investment. Teruya falsely told the couple that by signing the forms now, the couple could save time later if they decided to make an investment.

37. Teruya further assured the couple that they would be allowed to review the forms before Defendants took any action. Teruya rushed the couple through the signature process and did not provide copies of the signed forms to them.

38. Moreover, Teruya asked the couple for a postdated check to cover the contemplated investment, falsely assuring them that he would hold it until the couple decided whether to invest. Based on Teruya's assurances, the couple gave Teruya a \$100,000 check, postdated to March 10, 2005, but contrary to Defendants' representations, Teruya submitted the check, on that date, to fund a new investment account.

39. Contrary to Defendants' various representations, each tailored to falsely assure clients during the one-on-one meetings that their signatures on the blank forms would be used in a manner consistent with the express desires of the particular client, Defendants use the signed forms to liquidate the clients' existing securities holdings without their knowledge or authorization. Defendants then use the proceeds of these unauthorized liquidations to purchase EIAs without the clients' authorization or knowledge. The unauthorized EIA purchases typically earn Teruya an undisclosed sales commission of 12% to 14%. Defendants also use the signed forms to open new investment accounts without the clients' knowledge or authorization and for which Defendants receive an advisory fee.

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D. Defendants' Fail To Disclose Their Conflict Of Interest

40. As to all of Defendants' clients, Defendants do not differentiate or clearly explain Teruya's role as an insurance agent who receives sales commissions versus his role as an investment adviser representative. Defendants also fail to disclose their conflict of interest created by the fact that Teruya is a licensed insurance agent who stands to, and in fact does, gain substantial commissions from sales of insurance products to clients.

41. Defendants have received at least \$2 million in commissions from the sales of EIAs, typically 12% to 14% per sale.

42. Additionally, as part of Defendants' fraudulent inducement to obtain client signatures on the blank forms, Defendants misrepresent if and how they get paid. Defendants fraudulently induce seniors to sign forms used to establish new investment accounts for which Defendants stand to receive an advisory fee.

43. For example, on or about July 18, 2007, another married couple, small business owners in their mid to late 50s and residing in Honolulu, met with Teruya for a free one-on-one consultation.

44. At the July 31 meeting, before having the couple sign the blank forms, Defendants falsely assured the couple that they would incur no costs whatsoever.

45. Contrary to Teruya's representations and acting without the couple's authorization, Defendants sold the couple's variable annuities, incurring over \$14,000 in surrender charges borne by the couple. Defendants also purchased new annuity policies for them, entitling Teruya to a commission.

E. Defendants' Other Fraudulent Conduct: Cutting and Pasting A Client's Signature on a Disclosure Document

46. On at least one occasion, Defendants submitted to an EIA company a disclosure document that had been purportedly signed by a client, but which the client had never signed. Rather, the signature on the document Defendants

submitted to the EIA company was copied and pasted from another document, and was not executed on the original document.

47. Specifically, when an 80-year-old client discovered that Defendants sold his existing variable annuity without his knowledge or authorization, resulting in an \$8,453 withdrawal fee, and further, that Defendants purchased an EIA for him, he demanded that the transactions be reversed and his funds restored.

48. The next day, Defendants sent a fax to the EIA company requesting that the EIA (which the client had never authorized in the first place) be changed to a “bonus” EIA. Defendants attached a new disclosure document, ostensibly signed by the client, making it appear as if he had requested the change.

49. The signature on the document Defendants submitted to the EIA company was copied and pasted from another document, and was not executed on the original document.

FIRST CLAIM FOR RELIEF

FRAUD IN THE OFFER OR SALE OF SECURITIES

Violations of Section 17(a) of the Securities Act

(Against All Defendants)

50. The Commission realleges and incorporates by reference paragraphs 1 through 49, above.

51. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails:

- a. with scienter, employed devices, schemes, or artifices to defraud;
- b. obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in

- order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

52. By engaging in the conduct described above, Defendants violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

SECOND CLAIM FOR RELIEF

FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder (Against All Defendants)

53. The Commission realleges and incorporates by reference paragraphs 1 through 49, above.

54. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter:

- a. employed devices, schemes, or artifices to defraud;
- b. made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

55. By engaging in the conduct described above, Defendants violated, and unless restrained and enjoined will continue to violate, Section 10(b) of Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

THIRD CLAIM FOR RELIEF

FRAUD BY AN INVESTMENT ADVISER

Violations of Sections 206(1) and 206(2) of the Advisers Act

(Against All Defendants)

56. The Commission realleges and incorporates by reference paragraphs 1 through 49, above.

57. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, by use of the mails or means or instrumentalities of interstate commerce:

- a. with scienter, employed devices, schemes, or artifices to defraud clients or clients;
- b. engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon clients or clients.

58. By engaging in the conduct described above, Defendants violated, and unless restrained and enjoined will continue to violate, Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) & 80b-6(2).

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

(a) Issue findings of fact and conclusions of law that Defendants committed the violations alleged and charged herein.

(b) Issue, in forms consistent with Fed. R. Civ. P. 65, orders temporarily restraining and preliminarily and permanently enjoining defendants Senior Resources and Teruya, and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, who

receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

(c) Issue, in forms consistent with Fed.R.Civ.P. 65, a temporary restraining order and preliminary injunction prohibiting Defendants from destroying documents.

(d) Order Defendants to disgorge all ill-gotten gains from their illegal conduct, together with prejudgment interest thereon.

(e) Order Defendants to pay civil penalties under Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e).

(f) Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

(g) Grant such other and further relief as this Court may determine to be just and necessary.

DATED: September 7, 2007



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