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File No. 52366

January 21, 2011

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**FROM:**

Yoli w/Attorney Albert Garcia

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Re: Cause No. D-1-GV-10-000454; State of Texas al v. Retirement Value, L.L.C,  
et al; In the 126<sup>th</sup> District Court, Travis County, Texas

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**MESSAGE:**

See the attached Original Plea in Intervention, which was electronically filed with  
the Court this morning.

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**TOTAL NUMBER OF PAGES INCLUDING THIS COVER SHEET: 9 .**

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pursuant to a docket control order entered by the Court.

## II.

### PARTIES

- 2.1. LaDell Harrison brings this case on behalf of Matthew C. Allen, Jr. and Teddie J. Allen as their agent by virtue of those Durable Power of Attorney authorizations executed on November 12, 2009. Matthew C. Allen, Jr. and Teddie J. Allen are individuals who resided in Memphis, Hall County, Texas at all relevant times.
- 2.2. LaDell Harrison also brings this case on behalf of the Matthew and Teddie Allen Charitable Remainder Annuity Trust (the "Allen CRAT") as the agent of the Trustees of the Allen CRAT, by virtue of the Agency Agreement executed on January 1, 2009.
- 2.3. Defendant Retirement Value, L.L.C. is a Texas limited liability company with its principal place of business in New Braunfels, Comal County, Texas. It may be served with process by serving its Court-appointed receiver, Mr. Eduardo Espinosa, P.O. Box 1431050, Dallas, Texas 75313.
- 2.4. Defendant Richard H. Gray is an individual residing in Comal County, Texas. He may be served with process at his residential address located 1945 Round Table, New Braunfels, Texas 78130, or his business address located at 707 N. Walnut, New Braunfels, Texas 78130.
- 2.5. Defendant Wendy Rogers is an individual residing in Comal County, Texas. She may be served with process at her residential address located at 1312 Havenwood Blvd., New Braunfels, Texas 78132.
- 2.6. Defendant Kiesling, Porter, Kiesling & Free, P.C. is a Texas professional corporation with its principal place of business in Comal County, Texas. It may be served with

process through its registered agent, Bob R. Kiesling, 348 E. San Antonio Street, New Braunfels, Texas 78130.

- 2.7 Defendant Brently "Brent" W. Free is an individual residing in Comal County, Texas. He may be served with process at his place of business located at 348 E. San Antonio Street, New Braunfels, Texas 78130.

### III.

#### VENUE AND JURISDICTION

- 3.1. Venue is proper in Travis County, Texas pursuant to Section 15.002 of the Texas Civil Practice & Remedies Code because it is the county where all or part of the events giving rise to Intervenors' causes of action occurred.
- 3.2. This Court has personal jurisdiction over the Defendants because they are residents of Texas, have their principal offices in Texas, purposefully engaged in continuous and systematic contacts with the State of Texas such that jurisdiction over the Defendants comports with traditional notions of fair play and substantial justice, and/or Intervenors' causes of action arise from Defendants' contacts with the State of Texas.
- 3.3. Pursuant to the this Court has exclusive jurisdiction over all claims and causes of action against Defendants arising from or related to the operation of Retirement Value, L.L.C. or their sale or offer to sell securities.

### IV.

#### FACTS

- 4.1. Matthew Allen and his wife Teddie Allen decided to invest their retirement savings in a manner that would provide them with a secure, steady stream of income for their

remaining years. In November 2009 the Allens were advised to invest \$1,100,000 in a scheme called the Re-Sale Life Insurance Policy Program. The Re-Sale Life Insurance Policy Program was created and marketed by Defendants.

- 4.2. Defendants represented to the Allens that they would receive a certain return on their investment, that the law firm of Kiesling, Porter, Kiesling & Free, P.C. would act as an escrow agent to safeguard and preserve the funds invested by the Allens, and that Defendants Retirement Value, L.L.C., Gray and Rogers would have no control over how such funds are used, and that another company, Midwest Medical Review, would provide reliable life expectancy estimates for the various insureds of the relevant policies. In reliance upon those representations, the Allen CRAT entered into a Policy Participation Agreement with Defendant Retirement Value, LLC whereby the Allen CART invested \$1.1 million towards the purchase of ten life insurance policies and in return the Allen CRAT was named as an irrevocable co-beneficiary in those ten insurance policies owned by Defendant Retirement Value, LLC.
- 4.3. Defendants did not disclose to the Allens that Defendant Dick Gray had previously and repeatedly engaged in illegal sales of securities through fraudulent investment schemes, the exorbitant fees and commissions that they were going to receive from the Allens' investment, that the owner of Defendant Midwest Medical Review, George Kindness, was a convicted felon, and that the Allens' investment in the Re-Sale Life Insurance Policy Program could constitute a "security" under Texas law and that Retirement Value, L.L.C. was not issuing the "security" in accordance with such statutes.

V.

CAUSES OF ACTION

A. NEGLIGENCE

- 5.1. Paragraphs 4.1 through 4.3 are incorporated herein.
- 5.2. Defendants owed a legal duty to Intervenors to act with reasonable care, skill, and diligence as an ordinarily prudent person or company would act under the same or similar circumstances. Defendants were also negligent in making the misrepresentations described above and in failing to disclose the matters described above. Defendants were also negligent in participating and aiding in the sale, marketing and administration of the Re-Sale Life Insurance Policy Program.

B. VIOLATION OF TEXAS SECURITIES ACT.

- 5.3. Paragraphs 4.1 through 4.3 are incorporated herein.
- 5.4. Intervenors assert that the investments in the Re-Sale Life Insurance Policy Program is a "security" within the meaning of the Texas Securities Act, Art. 581 et seq., Texas Revised Civil Statutes. Defendants are liable to Intervenors for violation of the Texas Securities Act because they (a) offered or sold investments in the Re-Sale Life Insurance Policy Program by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, (b) directly or indirectly control a seller or issuer of the Re-Sale Life Insurance Policy Program, and/or (c) directly or indirectly, with intent to deceive or defraud or with reckless disregard for the truth or the law, materially aided a seller or issuer of the investments in the Re-Sale Life Insurance Policy Program. As such, all of the Defendants are

jointly and severally liable for the damages suffered by Intervenors.

## VI.

### DAMAGES

- 6.1. The damages to Intervenors caused by all of the Defendants' actions are within the jurisdictional limits of this Court.
- 6.2. Defendants' acts, omissions, representations, misrepresentations, and failure to disclose were the proximate and/ or producing cause of Intervenors' damages and Intervenors seek all actual, compensatory, consequential and special damages as a result thereof. These damages include but are not limited to the loss of the monies they invested, the return on such investment that they were guaranteed, costs of court, and mental anguish damages.
- 6.3. Intervenors plead exemplary damages from Defendants because the negligence committed by Defendants constitutes gross negligence.

## VII.

### JURY DEMAND

Intervenors demand a jury trial and have tendered the appropriate fee.

### PRAYER

For these reasons, Intervenors ask that the Defendants be cited to appear and answer, and that Intervenors have judgment against the Defendants, jointly and severally, for:

- 7.1. Actual, special, compensatory, consequential and economic damages;
- 7.2. Mental anguish damages;
- 7.3. Exemplary and punitive damages;

- 7.4. Pre-judgment and post-judgment interest as allowed by law;
- 7.5. Costs of suit; and
- 7.6. All other relief, in law or equity, to which Intervenors may be entitled.

Respectfully submitted,

**GARCIA & MARTINEZ, L.L.P.**  
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**ATTORNEYS FOR INTERVENORS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was forwarded to the following counsel of record on this the 21<sup>st</sup> day of January, 2011.

**Via Fax 512-370-9903**

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RECEIVER**

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/s/ Albert Garcia  
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