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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CEMETERY AND FUNERAL BUREAU, DEPARTMENT OF CONSUMER AFFAIRS, Plaintiff, v. **CALIFORNIA MASTER TRUST, a trust; FUNERAL DIRECTORS SERVICE CORPORATION, a California corporation; THE CALIFORNIA FUNERAL DIRECTORS ASSOCIATION, a California corporation; COMERICA BANK, a national bank; MECHANICS BANK, a California corporation; ASSOCIATION RESOURCE CENTER, a California corporation; DAMORE, HAMRIC & SCHNEIDER, INC., CERTIFIED PUBLIC ACCOUNTANTS, a California corporation; BURNETT AND COMPANY, LLP, a California CPA partnership; JAMES E. DRAPER, individually and as a director of FDSC; MARK E. KUHN, individually and as an officer and director of FDSC; LESLIE D. PETERS, individually and as a director of FDSC; GEORGE F. PRATHER, individually**	Case No. **COMPLAINT FOR INJUNCTIVE RELIEF, RESTITUTION, AND OTHER EQUITABLE REMEDIES** **[Exempt from Filing Fees pursuant to Government Code Section 6103]** **DATE ACTION FILED:** **TRIAL DATE: None set** Date: Time: Dept: Judge: Trial Date: Action Filed:

and as a director of FDSC; WARREN BRUSIE, INC. D.B.A. BRUSIE FUNERAL HOME, a California corporation (Funeral Establishment License Number FD 371); FAIRHAVEN MEMORIAL PARK, INC. D.B.A. FAIRHAVEN MEMORIAL PARK & MORTUARY, a California corporation (Funeral Establishment License Number FD 1313); HAYWARD MORTUARY, INC., D.B.A. HOLY ANGELS FUNERAL & CREMATION CENTER, a California corporation (Funeral Establishment License Number FD 1456); MARK E. KUHN D.B.A. HILLVIEW FUNERAL CHAPELS, a sole proprietorship (Funeral Establishment License Number FD 527); WELCH-RYCE-HAIDER FUNERAL CHAPELS, a general partnership (Funeral Establishment License Number FD 303); and DOES 1 THROUGH 1000, inclusive,

Defendants.

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

TABLE OF AUTHORITIES

Page

CASES

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

OTHER AUTHORITIES

THE CEMETERY AND FUNERAL BUREAU, DEPARTMENT OF CONSUMER AFFAIRS, is informed and believes and thereupon alleges as follows:

AUTHORITY/PURPOSE

1. Plaintiff, the Cemetery and Funeral Bureau (Bureau), is a state agency of legislative origin, within the Department of Consumer Affairs, State of California, and under the supervision and control of the Director of Consumer Affairs (the Director). It is charged with administering and enforcing the laws and regulations relating to, inter alia, the funeral business as set forth in Chapter 12 of Division 3 of the Business and Professions Code, known and cited as the Funeral Directors and Embalmers Law, and in Division 12 of Title 16 of the California Code of Regulations.

2. The Bureau is expressly charged by the Legislature with regulating preneed funeral arrangements for consumer protection. Business and Professions Code Section 7735 *et seq.* govern "preneed funeral arrangements."[1] (These statutes will collectively be referred to in this Complaint as the Short Act.)[2] Business and Professions Code Section 7740 grants the Bureau the power to enforce preneed funeral arrangement laws and to adopt implementing rules and regulations. The Short Act's implementing regulations are set forth in California Code of Regulations, Title 16, Section 1261 *et seq*.

JURISDICTION AND VENUE

3. Business and Professions Code Section 125.5, subdivision (a), authorizes Plaintiff to petition with the approval of the Director, without the requirement of an undertaking,[3] for issuance of an injunction or other appropriate order restraining the conduct at issue against any

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[1] "'Preneed arrangement,' 'preneed agreement' or 'preneed' is written instruction regarding goods or services or both goods and services for final disposition of human remains when the goods or services are not provided until the time of death, and may be either unfunded or paid for in advance of need." (Cal. Code Regs., tit. 16, § 1277.)

[2] *See Mount Vernon Memorial Park v. Board of Funeral Directors and Embalmers* (1978) 79 Cal.App.3d 874, 879 ("In 1965, the Legislature enacted what is commonly termed the 'Short Act,' which added certain provisions to the Business and Professions Code and thereby placed restrictions upon preneed funeral contract.")

[3] Code Civ. Proc., § 995.220 (undertaking not required of public entity or officer).

person who has engaged in or who is about to engage in any act which constitutes a violation of the Funeral Directors and Embalmers Law.

4. Business and Professions Code Section 125.5, subdivision (b), authorizes Plaintiff to petition with the approval of the Director, for an order of restitution against any person who has engaged in any act which constitutes a violation of the Funeral Directors and Embalmers Law to persons injured as a result of such violation.

5. Business and Professions Code Section 125.5, subdivision (c), authorizes Plaintiff to petition for an order requiring persons subject to an injunction, restraining order, or restitution order to reimburse the Plaintiff for expenses incurred in its investigation relating to this petition.

6. Plaintiff has filed this Complaint with the approval of the Director.

7. Defendants at all times mentioned herein have transacted business within and throughout the State of California. The violations hereinafter described have been carried out in whole or in part within the State of California, including within Los Angeles County. The actions of defendants, individually, jointly and severally, as set out below, are in violation of the laws and public policy of the State of California.

8. Venue is appropriate in the Superior Court of California, County of Los Angeles under Code of Civil Procedure Section 395.5 because defendants Comerica Bank and Funeral Directors Service Corporation, which are corporations or associations, have made contracts in Los Angeles County, have contracts whose performance is due in Los Angeles County, have breached these contracts, and have violated obligations or liabilities that arose in Los Angeles County. Said defendants have contracts with multiple funeral establishments in Los Angeles County to hold millions of dollars in trust on behalf of consumers throughout the County. They have squandered a significant portion of these funds, or aided and abetted other defendants in doing so, violating their contractual obligations, the Short Act, and the Bureau's regulations.

DEFENDANTS

9. Defendant California Master Trust (TRUST) is, and at all times mentioned in this Complaint, was, a large commingled preneed funeral trust, which pools preneed funeral trusts of individual purchasers throughout California. The TRUST was created in or about 1985 by The

California Funeral Directors Association (CFDA). The TRUST is operated pursuant to a master trust agreement between defendant Funeral Directors Service Corporation, CFDA's wholly-owned subsidiary, and a trustee. The TRUST's current trustee is defendant Comerica Bank. The place of trust administration for the TRUST is in Santa Clara County, California.

10. Defendant The California Funeral Directors Association (CFDA), is, and at all times mentioned in this Complaint was, a non-profit mutual benefit corporation, incorporated under the laws of the State of California, with its principal place of business in Sacramento County, California. CFDA is an association of funeral directors and funeral establishments. CFDA is the sole shareholder of Funeral Directors Service Corporation (FDSC), a for-profit corporation. The funeral establishments that have enrolled in the TRUST program are or were members of CFDA (referred to herein as the enrolled funeral establishments).

11. Defendant Funeral Directors Service Corporation (FDSC), formerly known as California Funeral Funding, Inc., is, and at all times mentioned in this Complaint was, a for-profit corporation, incorporated under the laws of the State of California. FDSC's current principal place of business is in Beaverton, Oregon. FDSC is, and at all times mentioned in this Complaint was, engaged in the business of operating the TRUST on behalf of its non-profit corporate parent, CFDA. FDSC derives its income from the fees it withdraws from the TRUST. In its tax returns, FDSC refers to itself as Funeral Directors Service Corporation d.b.a. California Master Trust. FDSC is governed by its seven member board of directors. Its officers are directors. It does not have any staff. From in or about 1994 to in or about June 2003, Robert Pierce, now deceased, was the President of FDSC. From in or about July 2003 to the present, defendant Mark E. Kuhn has been the President of FDSC.

12. Defendant Comerica Bank (COMERICA BANK) is, and at all times mentioned in this Complaint was, a national banking association chartered or incorporated under the laws of the United States, engaged in doing business in the State of California. Plaintiff is informed and believes that Comerica Bank is a fictitious name and/or a subsidiary of Comerica Incorporated, a Delaware corporation. From February 15, 2002, to the present, COMERICA BANK has been the

duly appointed trustee of the TRUST. The principal place of administration of the TRUST is in Santa Clara County, California.

13. Defendant Mechanics Bank (MECHANICS BANK) is, and at all times mentioned in this Complaint was, a corporation, incorporated under the laws of the State of California, with its principal place of business in Contra Costa County, California. From on or about September 1, 1995, to February 15, 2002, MECHANICS BANK was the duly appointed trustee of the TRUST.

14. Defendant Association Resource Center (ARC), is, and at all times mentioned in this Complaint was, a corporation, incorporated under the laws of the State of California, with its principal place of business in Sacramento County, California. ARC provided administrative services for the TRUST from in or about 1985, to on or about January 31, 2007, pursuant to several Management Services Agreements it entered into with FDSC. ARC received substantial revenue as the TRUST's administrator.

15. Defendant Damore, Hamric & Schneider, Inc., Certified Public Accountants (DAMORE), is, and at all times mentioned in this Complaint was, a corporation, incorporated under the laws of the State of California, with its principal place of business in Sacramento County, California. DAMORE's shareholders are California licensed Certified Public Accountants. DAMORE provided accounting services to the TRUST and prepared the TRUST's annual audit reports for 1985 through 2000, which were submitted to the Bureau. From 2001 to 2007, DAMORE provided accounting services for the TRUST.

16. Defendant Burnett and Company, LLP (BURNETT), is a partnership of California licensed Certified Public Accountants, with its principal place of business in Sacramento County, California. BURNETT performed the TRUST's annual audit reports for 2001 through 2005, which were submitted to the Bureau.

17. Defendant James E. Draper (DRAPER) is an individual. DRAPER is named as a defendant in this Complaint as an individual and in his capacity as a director of FDSC. DRAPER has a delinquent California funeral director's license (Funeral Director License Number FDR 230), with an address of record with the Bureau in San Bernardino County. DRAPER has been a member of the FDSC Board of Directors from a date unknown to Plaintiff, but from no later than

1998 to the present. From in or about 1998 through June 2003, DRAPER was the Secretary of FDSC. From in or about July 2003 to the present, DRAPER has been the Recording Secretary of FDSC. DRAPER was the President of CFDA in 1993 and was a member of the CFDA Board of Directors.

18. Defendant Mark E. Kuhn (KUHN) is an individual. KUHN is named as a defendant in this Complaint as an individual and in his capacity as an officer and a director of FDSC. He is a California licensed funeral director and embalmer (Funeral Director license number FDR 980 and Embalmer License Number EMB 7084), with an address of record with the Bureau in Stanislaus County, California. KUHN has been the president of FDSC from 2003 to the present. He is also FDSC's current agent for service of process. KUHN has been a member of the FDSC Board of Directors from in or about July 2001 to the present. KUHN was a member of the FDSC Board in 1998, also. KUHN was the President of CFDA in 1998 and was a member of the CFDA Board of Directors. KUHN is the owner of three California licensed funeral establishments. One of these establishments, defendant Hillview Funeral Chapels (Funeral Establishment License Number FD 527), located in Stanislaus County, participated in the TRUST, as more fully described herein below. KUHN is the funeral director of Hillview Funeral Chapels.

19. Defendant Leslie D. Peters (PETERS) is an individual. PETERS is named as a defendant in this Complaint as an individual and in his capacity as a director of FDSC. PETERS is a California licensed funeral director and embalmer (Funeral Director License Number FDR 1132 and Embalmer License Number EMB 6894), with an address of record with the Bureau in Kern County, California. From in or about July 2000 through June 2002, PETERS was a member of the FDSC Board of Directors. PETERS was the President of CFDA in 2001 and was a member of the CFDA Board of Directors.

20. Defendant George F. Prather (PRATHER) is an individual. PRATHER is named as a defendant in this Complaint as an individual and in his capacity as a director of FDSC. PRATHER is a California licensed funeral director and embalmer (Funeral Director License Number FDR 42 and Embalmer License Number EMB 5681), with an address of record with the Bureau in Sacramento County, California. From in or about 1985 to 2003, PRATHER was a

member of the FDSC Board of Directors. In 2002, PRATHER was President of CFDA and was a member of the CFDA Board of Directors.

21. Defendant Warren Brusie, Inc. d.b.a. Brusie Funeral Home (BRUSIE FD 371), is, and at all times mentioned in this Complaint was, a corporation, incorporated under the laws of the State of California, and is a California licensed funeral establishment (Funeral Establishment License Number FD 371), in Butte County, California. BRUSIE FD 371 participated in the TRUST and received substantial "participation distributions" there from, as more fully described herein below.

22. Defendant Fairhaven Memorial Park, Inc. d.b.a. Fairhaven Memorial Park & Mortuary (FAIRHAVEN FD 1313), is, and at all times mentioned in this Complaint was, a corporation, incorporated under the laws of the State of California, and is a California licensed funeral establishment (Funeral Establishment License Number FD 1313), in Orange County, California. FAIRHAVEN FD 1313 participated in the TRUST and received substantial "participation distributions" there from, as more fully described herein below.

23. Defendant Hayward Mortuary, Inc., d.b.a. Holy Angels Funeral and Cremation Center and formerly known as Machado's Hillside Chapel (HAYWARD FD 1456), is, and at all times mentioned in this Complaint was, a corporation, incorporated under the laws of the State of California, and is a California licensed funeral establishment (Funeral Establishment License Number FD 1456), in Alameda County, California. John Machado is or was an owner of HAYWARD FD 1456. In or about July 2003 through June 2009, John Machado was a member of the FDSC Board of Directors. John Machado was the President of CFDA in 1996 and was a member of the CFDA Board of Directors. HAYWARD FD 1456 participated in the TRUST and received substantial "participation distributions" there from, as more fully described herein below.

24. Defendant Mark E. Kuhn d.b.a. Hillview Funeral Chapels (HILLVIEW FD 527), a sole proprietorship, is a California licensed funeral establishment (Funeral Establishment License Number FD 527), in Stanislaus County, California. Defendant KUHN is the owner and funeral director of HILLVIEW FD 527. HILLVIEW FD 527 participated in the TRUST and received significant "participation distributions" there from, as more fully described herein below.

25. Defendant Welch-Ryce-Haider Funeral Chapels (WELCH FD 303), a general partnership between John W. Alderson, J. Stephen Gibson, Roland R. Jurgens, James D. Nelson, and William L. Sweda, is a California licensed funeral establishment (Funeral Establishment License Number FD 303), in Santa Barbara County, California. WELCH FD 303 participated in the TRUST and received substantial "participation distributions" there from, as more fully described herein below.

26. The true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants named herein as DOES 1 through 1000, inclusive, are unknown to Plaintiff at this time, who therefore brings suit against said defendants by such fictitious names. Plaintiff will ask leave of this Court to amend this Complaint to reflect the true names and capacities of said defendants when they have been ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and that said defendants participated in and/or aided and abetted the other defendants in committing the statutory and regulatory violations herein alleged.

27. Plaintiff is informed and believes and thereon alleges that at all times mentioned in this Complaint, defendants, including the DOE defendants, acted as the agent or representative of each of the named defendants, in the course and scope of their employment, agency, or authority in doing the acts alleged herein and did so with the prior authority or subsequent ratification of their principals or managing agents. Petitioner alleges that the defendants, and each of them, knew of the acts of each other and accepted the benefits from the acts with knowledge of all material facts, and therefore ratified each of the acts of the other defendants, during each defendant’s involvement with the TRUST.

INTRODUCTION

28. In or about 1985, Defendant CFDA and its board members concocted a plan to pool the preneed funeral arrangement trust funds of tens of thousands of California consumers into one master trust. Rather than having individual funeral establishments entrust their customers’ trust funds to individual banks, CFDA planned to pool funds from hundreds of funeral establishments around the state and to take charge of the management of those funds.

29. In forming what would come to be called the California Master Trust (TRUST), CFDA had to overcome two legal obstacles: (1) as a non-profit organization, it could not substantially profit from the operation of the TRUST without facing tax consequences and jeopardizing its non-profit status; and (2) since it was run by funeral directors or owners or employees of funeral establishments, it could not serve as the primary trustee of consumers' preneed trust funds without violating the Short Act, as more fully described herein below.

30. To avoid tax problems, in or about 1985 CFDA incorporated defendant FDSC, a for-profit corporation, to manage the TRUST and to funnel funds from the TRUST to support CFDA's activities and agenda. FDSC is CFDA's alter ego: it is a wholly-owned subsidiary of CFDA; CFDA appoints its directors; and its directors and corporate officers are or were CFDA officers, directors, or both.

31. In or about 1985, the TRUST, under FDSC's management, began operations and started pooling funds from funeral establishments around the state.

32. From 1985 to the present, thousands of California consumers have entrusted funds with the TRUST for their own or their loved ones' funeral services.[4] These consumers collectively will be referred to as trustor-beneficiaries. The average age of trustor-beneficiaries is over sixty-five years old when they purchase their preneed funeral arrangements. As such, the majority of preneed funeral purchasers are among California's most vulnerable and trusting consumers. Preneed funeral contracts are usually paid in installments. On average, seven years lapse between consumers' purchase of their preneed contracts and the beneficiaries' death.

33. FDSC is the TRUST's de facto trustee. It refers to itself as the Funeral Directors Service Corporation d.b.a. California Master Trust or as the sponsor of the California Master Trust.

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[4] As of December 31, 2009, approximately 27,000 California consumers, the customers of more than 300 funeral establishments, had their money entrusted in the TRUST. The balance of the TRUST's corpus was reported to be approximately $63.5 million as of December 31, 2009. The TRUST's advertises that "[o]ver 100,000 people have pre-funded their funerals with the California Master Trust." "Plan Today . . . Ease Tomorrow" © 2004 The Funeral Directors Service Corporation

34. To conceal the scope of FDSC's control over the TRUST and to circumvent the Short Act, as more fully described herein below, FDSC hired so-called trustees, banks that would serve as the TRUST's duly appointed trustees to satisfy the Short Act's requirements. In practice, these banks delegated actual control of the TRUST and decision-making power over the TRUST to FDSC and its parent company, CFDA.

35. From approximately 2000 to the present, the defendants' collective acts or omissions have led to the violation of numerous provisions of the Short Act and its implementing regulations, including, but not limited to: enabling FDSC to impose improper control over the trustee of the TRUST, in violation of Business and Professions Code 7736; paying unauthorized fees to FDSC and making unauthorized withdrawals from the trust's corpus, in violation of Business and Professions Code Section 7735; failing to return the corpus to the funeral establishments or trustors as required by Business and Professions Code Section 7737; paying illegal kickbacks to enrolled funeral establishments in violation of Business and Professions Code Section 7735; retaining funds owed trustors after a funeral establishment became unable to perform contracted funeral services, in violation of California Code of Regulations, Title 16, Section 1274; failing to make refunds to trustors within 15 days of receipt of a written request for contract revocation, in violation of California Code of Regulations, Title 16, Section 1264; failing to maintain preneed trust records in California, in violation of California Code of Regulations, Title 16, Section 1267; and failing to make records available for inspection by the Bureau, in violation of California Code of Regulations, Title 16, Section 1267.

36. On or about November 9, 2007, the Bureau requested records from defendants FDSC and COMERICA BANK to perform an audit of the preneed funeral trust funds held in the TRUST. Despite this request and several subsequent requests, said defendants refused or failed to provide sufficient records for the Bureau to perform its audit.

37. In or about March 2009, a funeral industry whistleblower gave the Bureau certain TRUST records. These records included a partial copy of the Disparity Resolution Plan, a plan (discussed in the Second Cause of Action of this Complaint) by defendants to conceal imprudent investment losses and to conceal the other violations of law alleged herein.

38. On or about August 1, 2009, after realizing the Bureau had a partial copy of the Disparity Resolution Plan it had endeavored to conceal, FDSC turned over its own partial copy of the Plan to the Bureau and, for the first time, disclosed the Promissory Note discussed in the Second Cause of Action of this Complaint. Notably, the Bureau has never received a copy of Exhibit B of the Plan, which allegedly contains an explanation of the accounting practices to be used to account for gains and losses in the individual trustors' accounts

39. On or about March 22, 2010, the Bureau completed its initial audit of the TRUST records for the period of 2000 through 2009.[5] On or about June 2010, the Bureau issued a revised audit report. Because defendants FDSC and Comerica Bank still had not provided all the records necessary to completely perform the audit, some amounts in the audit had to be estimated.

40. On or about January 19, 2010, pursuant to its authority under Government Code Section 11180 *et seq*., the Department of Consumer Affairs and the California Department of Justice issued Joint Subpoenas to Answer Interrogatories and Produce Documents, which were served on the defendants and others. In or about October 2010, in response to the joint subpoena, FDSC finally produced approximately 61 boxes of TRUST documents that it had been storing in Oregon, as discussed in the Tenth Cause of Action of this Complaint.

41. As of the date of this filing, FDSC and COMERICA BANK have not provided all of the documents requested in Bureau's audit or in the joint subpoena.

42. The Bureau's June 2010 revised audit report and subsequent investigation revealed the multiple violations of the law described herein below committed by the defendants and each of them.

43. Defendants' collective actions and omissions as described in the various causes of action below have harmed California consumers (the trustor-beneficiaries), funeral establishments who have participated in the TRUST, and the Plaintiff.

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[5] The TRUST records provided to the Bureau covered periods from 2000 through 2008, May 2009, or throughout 2009.

REFERENCES

44. Whenever in this Complaint reference is made to any act of any corporate defendant or other business entity, such allegations shall be deemed to mean that defendant corporation or other business entity and its officers, directors, agents, employees, or representatives, did or authorized such acts while actively engaged in the management, direction, or control of the affairs of said defendant, and while acting within the course and scope of their duties.

45. Whenever in this Complaint reference is made to any acts of defendant FDSC, such allegations shall be deemed to mean the acts of both defendant CFDA and defendant FDSC, as defendant CFDA acts through defendant FDSC with regard to the TRUST.

46. Whenever in this Complaint reference is made to acts of the Funeral Establishment Defendants, such allegations shall be deemed to mean the acts of BRUSIE FD 371, FAIRHAVEN 1313, HAYWARD FD 1456, HILLVIEW FD 527, WELCH FD 303, and each of them, acting pursuant to and in furtherance of the conspiracy and alleged agreement herein below, during the period of each defendant's involvement with the TRUST.

47. Whenever in this Complaint reference is made to a trustor-beneficiary of a preneed funeral trust, the reference refers to the trustor, the consumer who paid for the preneed funeral arrangement for future funeral services, or to the beneficiary, the person for whom the funeral services are arranged, or both. Since most consumers of preneed funeral contracts purchase them for their own funeral services, they are both the trustors and beneficiaries of their respective individual preneed trust accounts within the TRUST.

48. Whenever in this Complaint reference is made to enrolled funeral establishments, the reference refers to funeral establishments in California who have placed their client's preneed funeral trust funds into the TRUST.

STATUTES GOVERNING PRENEED FUNERAL ARRANGEMENTS (SHORT ACT)

49. Business and Professions Code Section 7735 provides that funds for preneed funeral arrangements be placed and held in trust and provides rules for the payment of trust administrative fees:

> No funeral establishment licensed under the laws of the State of California, or the agents or employees of a funeral establishment, shall enter into or solicit any preneed arrangement, contract, or plan, hereinafter referred to as "contract," requiring the payment to the licensee of money or the delivery to the licensee of securities to pay for the final disposition of human remains or for funeral services or for the furnishing of personal property or funeral merchandise, wherein the use or delivery of those services, property or merchandise is not immediately required, unless the contract requires that all money paid directly or indirectly and all securities delivered under that agreement or under any agreement collateral thereto, shall be held in trust for the purpose for which it was paid or delivered until the contract is fulfilled according to its terms; provided, however, that any payment made or securities deposited pursuant to this article shall be released upon the death of the person for whose benefit the trust was established as provided in Section 7737. The income from the trust may be used to pay for a reasonable annual fee for administering the trust, including a trustee fee to be determined by the bureau, and to establish a reserve of not to exceed 10 percent of the corpus of the trust as a revocation fee in the event of cancellation on the part of the beneficiary. The annual fee for trust administration may be recovered by withdrawals from accumulated trust income, provided that total withdrawals for this purpose shall not exceed the amount determined by the bureau. In no case shall the total amount withdrawn in a year for trust administration exceed the total amount of posted trust income for the immediate 12 preceding months. In addition to annual fees and reserves authorized by this Section, a trustee may, at its election, pay taxes on the earnings on any trust pursuant to Section 17760.5 of the Revenue and Taxation Code. In no event, however, shall taxes paid on the earnings of any trust be considered part of the fees or reserves authorized by this Section. All remaining income shall be accumulated in trust.
>
> None of the corpus of the trust shall be used for payment of any commission nor shall any of the corpus of the trust be used for other expenses of trust administration, or for the payment of taxes on the earnings of the trust.

50. Business and Professions Code Section 7736 defines the terms trustee, trustor, beneficiary, and corpus of the trust:

> For the purposes of this article the term "trustee" shall mean any banking institution or trust company legally authorized and empowered by the State of California to act as trustee in the handling of trust funds or not less than three persons one of whom may be an employee of the funeral establishment; the word "trustor" shall mean any person who pays the money or deposits the securities used for those preneed arrangements; the term "beneficiary" shall be the person for whom the funeral services are arranged; the words "corpus of the trust" shall include all moneys paid and securities delivered by the trustor pursuant to the provisions of the article.

51. Business and Professions Code Section 7737 governs the placement, handling, and delivery of trust funds:

> All securities purchased by the trustor for deposit in trust and all money received from the trustor for deposit in trust shall be placed in trust with a trustee within 30 days of their receipt by the funeral establishment pursuant to a trust agreement executed by the funeral establishment, the trustor and trustee which shall provide that the trustee shall hold the money or securities in trust for the purposes for which deposited and that the trustee, upon the signature of a majority of such trustees, shall deliver the corpus of the trust to the funeral establishment upon the filing of a

> certified copy of the death certificate or other satisfactory evidence of the death of the beneficiary, together with satisfactory evidence that the funeral establishment has furnished the merchandise and services, provided, however, that (1) in the case of a trust agreement between any of the trustees set forth in Section 7736 and a recipient of public assistance, under the provisions of subdivision (a) of Section 11158 or paragraph (1) of subdivision (e) of Section 12152 of the Welfare and Institutions Code, and provided the value limitations of those Sections are not exceeded, such trust agreement may further provide that it is irrevocable, and (2) in all other cases such trust agreement shall further provide that at any time before the funeral establishment has furnished the merchandise and services provided for in the contract the trustor or the legally appointed representative may in writing demand and receive the return of the corpus of the trust, together with any income accrued in the trust, less the revocation fee provided for in Section 7735; provided, however, that if and when the trustor becomes otherwise eligible, or in order to become eligible, for public social services, as provided in Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, he or she may agree, at his or her option, that the trust shall be irrevocable in order to avail himself or herself of the provisions of Section 11158 or Section 12152 of the Welfare and Institutions Code. The delivery of the corpus of the trust and the accumulated income to the funeral establishment performing the services, trustor or beneficiary pursuant to the terms of this article and the trust agreement herein referred to, shall relieve the trustee of any further liabilities with regard to those funds or income there from.

52. Business and Professions Code Section 7737.3 provides audit rules for commingled trust funds:

> All commingled preneed trust funds held by a funeral establishment shall be subject to an annual, independent certified financial audit with a copy of the audit to be submitted to the bureau for review within 120 days of the close of the fund's fiscal year. Any findings of noncompliance with existing law regarding preneed trust funds shall be identified by the auditor in a separate report for review and action by the bureau. Audits and reports of noncompliance shall be filed simultaneously.

53. Business and Professions Code sections 7737.5 and 7737.7 provide that trust funds may be deposited in insured bank accounts: they provide, respectively, “[a] trustee may deposit the corpus of the trust in any financial institution insured by the Federal Deposit Insurance Corporation” or “in any credit union which is insured by the National Credit Union Share Insurance Fund.”

54. Business and Professions Code Section 7740 grants the Bureau authority to enforce the Short Act and to adopt necessary rules and regulations:

> The bureau is authorized to enforce of its own initiative the provisions of this article [Preneed Funeral Arrangements] and may adopt such rules and regulations as in its opinion may be necessary to perform such duties and to safeguard the trust funds subject to this chapter [Funeral Directors and Embalmers Law].

REGULATIONS GOVERNING PRENEED FUNERAL ARRANGEMENTS

55. California Code of Regulations, Title 16, Section 1263 provides additional investment rules for trust funds:

> (a) The trust funds shall be invested and reinvested, and kept invested in:
>
> (1) Bonds of or securities guaranteed by the United States or an Agency thereof or this State, or of any County, City, or City and County in this State.
>
> (2) Bonds which are legal investments for commercial banks in this State.
>
> (3) Certificates of deposit or other interest-bearing accounts in any bank in this State insured by the Federal Deposit Insurance Corporation.
>
> (4) Investment certificates or shares in any state or federally chartered savings institution insured by the Federal Savings and Loan Insurance Corporation.
>
> (5) Investments of the type and in the manner as provided in Section 15001 *et seq.* of the Probate Code.
>
> (b) No loan shall be made to any licensed funeral establishment; nor to any owner, director, officer, partner or stockholder of any licensed funeral establishment; or to trustees of the trust funds; or to partners, relatives, agents, or employees of any licensed funeral establishment or of such trustees.

56. California Code of Regulations, Title 16, Section 1265 provides limits on fees for trust administration:

> The annual fee for administering a trust, as provided in Business and Professions Code, Division 3, Chapter 12, Article 9, Section 7735, may be recovered by withdrawals from current trust income, but total withdrawals in any year shall not exceed four percent (4%) of the trust balance on December 31 of that year, or on the cancellation or maturity date during that year, of all payments deposited into trust, plus all prior years accumulated income. Any remaining current income shall be accumulated in trust.

57. California Code of Regulations, Title 16, Section 1267 provides, in part, rules for trust recordkeeping:

> Each funeral establishment charged with the reporting of preneed funds hereunder shall at all times maintain or cause the trustee of the preneed trust to maintain in California and available for inspection by the Board during reasonable working hours, complete financial records of all preneed contracts and arrangements, which records shall be established and maintained in accordance with generally accepted accounting principles. Such records shall include the following, provided, however, that records may otherwise be established and maintained in accordance with generally accepted accounting principles:
>
> . . .

(b) An individual trustor or beneficiary ledger account which shall set forth the amount of the contract, all payments received, all income prorated in accordance with the ratio which the trust corpus of the account bears to the entire corpus invested as set forth in Section 1265.

(c) A cash receipts journal which shall show each payment received and shall be totaled monthly.

(d) A cash disbursement journal which will show each withdrawal for an investment in compliance with 1263 and each disbursement to the funeral establishment for a serviced account or to the individual trustor on a canceled account, and all withdrawals for documented expenses.

. . .

(f) A general ledger which shall be posted monthly with respect to all accounts controlling the fiduciary relationship with the individual trusters. Such postings shall occur within 90 days after the close of each business month.

. . .

(h) Records for serviced accounts shall include but not be limited to:

> (1) A copy of the death certificate or other satisfactory evidence of the death; copies of all documents required as specified under Sections 7685 and 7685.2, Division 3, Chapter 12, Article 5.5 of the Business and Professions Code; a copy of the final arrangements (itemized); and a copy of the final statement to the family.
>
> (2) All monies received from the trust; all monies received from the family; and all monies received from the Veterans Administration or Social Security or any other source to be applied to the final bill.
>
> (3) A record showing credit for each of the above.

(i) Records for canceled accounts shall include but not be limited to:

> (1) A record of all income earned and documented expenses taken including a revocation fee as stated in Section 7735, Division 3, Chapter 12, Article 9, of the Business and Professions Code.
>
> (2) A copy of the final accounting to the family with the canceled check or withdrawal slip showing the amount refunded to the trustor.

(j) All of the foregoing records shall be retained for a period of one year after the account has been canceled or serviced and audited by the State Board and compliance with all recommendations made and audit exceptions resolved or 7 years from the date of service or cancellation, whichever comes first.

The required books and records for more than one licensed funeral establishment may be centrally maintained at a single location in California with notification to the Board or the main office as defined in Section 1204(c)(2), provided that a monthly summary of all financial transactions pertaining to each individual trust account for each licensed funeral establishment is available, at each such establishment during reasonable working hours, to the Board or its authorized representatives; and provides further that the monthly summary contains sufficient information from which the current balance of each individual trustor's account or each individual trustor's share of any commingled trust account may be identified.

58. California Code of Regulations, Title 16, Section 1269 requires, in part, disclosure to the Bureau of the details of preneed arrangements:

> (a) Each licensed funeral establishment and licensed funeral director who enters into any pre-need arrangements, contracts or plans described in and subject to the provisions of Article 9, Chapter 12, Division 3 of the Business and Professions Code shall file with the Board annually on or before May 1 of each year and upon transfer of license or cessation of business, a written, verified or audited report, on form 21 P-4A (1/94) prescribed and furnished by the Board, pertaining to funds received and held under such arrangements, contracts or plans. Firms utilizing a fiscal year accounting system may request permission, in writing to the Executive Officer, to file said report on a fiscal year basis and, if permission is granted, said report shall then be filed with the Board no later than 120 days from the date of the close of said fiscal year.
>
> . . .
>
> (d) In cases where trust funds have been commingled for purposes of investment, the Board may require, in addition to the written report required by subsection (a) of this Section, an independent audit report prepared and signed by a Certified Public Accountant or Public Accountant, currently licensed in the State of California, which certifies compliance with the provisions of Article 9, Chapter 12, Division 3 of the Business and Professions Code and the provisions of this Article.
>
> . . .
>
> (f) Two or more funeral establishments who utilize a common trust fund to hold and administer payments received under pre-need contracts may cause the trustee of that common trust fund to file one combined annual report regarding all such pre-need contracts, provided each funeral establishment's information is disclosed separately.

59. California Code of Regulations, Title 16, Section 1274 requires the repayment of trust funds and income when funeral providers are unable to perform:

> If, for any reason, a licensed funeral establishment or licensed funeral director is unable to perform the funeral services prior to or upon the death of the beneficiary of a preneed trust agreement, then the trustees shall pay all trust corpus and net income to the beneficiary, trustor or the legal representative of either the beneficiary or trustor without the imposition of any revocation charge.

60. California Code of Regulations, Title 16, Section 1275 provides, in part, detailed requirements for the contents of preneed trust contracts:

> A preneed trust contract within the meaning of Article 9, Chapter 12, Division 3, of the Business and Professions Code shall include but not be limited to the following information:
>
> . . .

(g) A statement that earned annual income is being credited to the account and that administrative expenses, if charged, are paid from income only.

(h) A statement, in clear nontechnical language, that the contract is either a guaranteed preneed contract or that it is a nonguaranteed preneed contract, and, if guaranteed only in part, the services or merchandise included in the guarantee shall be specified. This statement shall be printed in bold face type and shall be located on the first page of the contract.

> (1) If the contract is guaranteed, there shall be included in the contract a complete explanation of all the terms and conditions limiting the guarantee.
>
> (2) If the contract is not guaranteed, there shall be included in the contract a complete explanation of how the trust balance will be applied to pay for services and merchandise provided at the beneficiary's death and that there may be additional payments required or a refund due.

(i) A statement that the trustees of the trust will deliver the corpus of the trust and net income to the funeral establishment filing a certified copy of the Death Certificate and evidence that said funeral establishment has furnished the merchandise and services. (Corpus of the Trust means all monies paid and all securities delivered pursuant to this prearrangement contract.)

(j) A statement that the amount of revocation fee to be charged in the event of revocation, shall in no event exceed ten percent (10%) of the paid-in corpus and is chargeable against earned income only; and a statement that no revocation fee may be charged if the funeral establishment is unable to perform substantially according to the terms of the agreement.

(k) In immediate proximity to the space reserved for the purchaser's signature, in a size equal to at least ten point (10-point) bold type, the following statement: "All funds received will be deposited with the trustees within thirty (30) days and held in a trust which is fully refundable upon fifteen (15) days' written notice except when the beneficiary is the recipient of public assistance, as provided in the Welfare and Institutions Code and this trust agreement has been designated as being irrevocable thereunder.

FIRST CAUSE OF ACTION

(VIOLATION OF BUS. & PROF. CODE, § 7736)

(UNLAWFUL CONTROL OF PRENEED FUNERAL TRUST)

(AGAINST DEFENDANTS CFDA, FDSC, COMERICA BANK, MECHANICS BANK, TRUST, KUHN, AND DOES 1 THROUGH 1000)

61. Plaintiff realleges and incorporates by reference paragraphs 9 through 48, above, of the Complaint as though fully set forth herein.

62. Defendants CFDA, FDSC, COMERICA BANK, MECHANICS BANK, KUHN, and DOES 1 through 1000 have knowingly and willingly entered into a conspiracy, common

enterprise, or common course of conduct to enable defendant FDSC, an unauthorized entity, to operate a preneed funeral trust as the de facto trustee in violation of Business and Professions Code [6] Section 7736, and unless restrained and permanently enjoined from doing so by order of this Court, defendant FDSC will continue to operate a preneed funeral trust as the de facto trustee and defendants CFDA, COMERICA BANK, TRUST, KUHN, and DOES 1 through 1000 will continue to aid and abet FDSC in engaging in said practice, in violation of Section 7736, as follows:

63. The first overt act of this conspiracy was CFDA's incorporation of FDSC on May 13, 1985. In furtherance of the conspiracy, FDSC has controlled the TRUST as its de facto trustee, as described herein below.

64. Under Section 7736, trustee of a preneed funeral trust must be "any banking institution or trust company legally authorized and empowered by the State of California to act as trustee in the handling of trust funds or not less than three persons one of whom may be an employee of the funeral establishment." Since FDSC is not a banking institution or a trust company and its board at all times mentioned in this Complaint have had more than one representative of a funeral establishment, it cannot legally be a trustee of a preneed funeral trust.

65. To evade the restrictions of Section 7736, FDSC appointed as the trustee entities that satisfied the statutory requirements but which agreed to delegate actual control of the TRUST to FDSC. Specifically, on or about September 1, 1995, FDSC appointed MECHANICS BANK, a banking institution authorized to act as trustee of a preneed funeral trust, to be the trustee of the TRUST. Pursuant to the trust agreement, MECHANICS BANK accepted the appointment as the trustee of the TRUST and then delegated actual control of the TRUST to FDSC. In exchange, FDSC paid MECHANICS BANK an annual trustee fee and MECHANICS BANK was able to deposit the trust funds that were not otherwise invested in its bank. From in or about 1995 to February 15, 2002, MECHANICS BANK was the duly appointed trustee of the TRUST.

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[6] All subsequent statutory references are to the Business and Professions Code unless otherwise noted.

66. Likewise, on or about February 15, 2002, the effective date of MECHANICS BANK's resignation as trustee, FDSC appointed defendant COMERICA BANK, a banking institution authorized to act as trustee of a preneed funeral trust, as the trustee of the TRUST. Pursuant to the trust agreement, COMERICA BANK accepted the appointment as the trustee and then delegated actual control of the TRUST to FDSC. In exchange, FDSC has paid COMERICA BANK an annual trustee fee and COMERICA BANK has been able to deposit the TRUST's funds that were not otherwise invested in its bank. From February 15, 2002, to the present, COMERICA BANK has been the duly appointed trustee of the TRUST.

67. In the aforementioned agreements, MECHANICS BANK and COMERICA BANK, respectively, granted FDSC the sole power to remove the trustee, which gave FDSC ultimate control over the trustee.[7] FDSC was also given the power to determine how much to pay the trustee. In addition, MECHANICS BANK and COMERICA BANK, respectively, transferred critical trustee decision-making powers to FDSC, including the power to hire, fire and monitor all agents to the TRUST, including administrators, accountants, attorneys, auditors, investment advisors, and other consultants;[8] the power to determine the investment policy of the TRUST and when to hold or sell investments;[9] and the power to decide how the funds are received, invested, and dispersed.[10] In contrast, the trustee was allowed to hold trust funds, to disburse those funds pursuant to FDSC's directions, and to observe the performance of the investment advisors and report its observations to FDSC.

68. Furthermore, Section 7737 restricts who may be a party to a preneed funeral agreement to the funeral establishment, the trustor, and the trustee(s). The TRUST's preneed trust

[7] "The power to remove is the power to control." *Silver v. United States Postal Service* (9th Cir. 1991) 951 F.2d 1033, 1039.

[8] See Prob. Code, § 16247 (trustee's power to hire).

[9] See Prob. Code, §§ 16047 (trustee's duty to invest and manage trust assets as a prudent investor would, by considering the purposes, terms, other circumstances of the trust, and the law and to evaluate investments as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust), 16049 (trustee's duty to make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, other circumstances of the trust, and the governing laws).

[10] See Prob. Code, §§ 16220 (trustee's power to collect, hold, retain, and dispose of trust property), 16246 (power to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation).

agreements are between the funeral establishment, the trustor, the trustee, and FDSC. However, FDSC is not a permitted party to a preneed funeral trust agreement. FDSC with the assistance of said defendants and others have violated Section 7737 by making FDSC a party to the TRUST's preneed funeral agreements. By being a party to these trust agreements, FDSC has obtained an improper level of control of the TRUST.

69. Consequently, from a date unknown to Plaintiff but no later than 2000 and continuing to the present, FDSC has exercised control over almost all aspects of the operation of the TRUST. Trustee control over the TRUST has been almost nonexistent. Thus, with the passive approval of MECHANICS BANK and COMERICA BANK, CFDA via FDSC has operated the TRUST for the primary benefit of CFDA and not solely in the interest of the trustor-beneficiaries. In so doing, CFDA was able to advance the fundamental objective of the conspiracy, which was and is to use the assets of the TRUST to fund CFDA's activities and agenda. To achieve this objective, the defendants named in this Complaint and DOES 1 through 1000 and others have violated or aided and abetted others in violating the Short Act, its implementing regulations, and California's Trust Law,[11] as well as breached the TRUST's preneed funeral contracts, as described herein below.

70. MECHANICS BANK's and COMERICA BANK's imprudent and improper delegation of control of the TRUST to FDSC and FDSC's operating the TRUST as the de facto trustee with the assistance of the other said defendants violates Section 7736 and breaches their respective fiduciary duties toward the trustor-beneficiaries of the TRUST.[12] Importantly, MECHANICS BANK and COMERICA BANK are held to a higher standard of care as professional trustees.[13]

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[11] Prob. Code, § 15000, *et seq.*

[12] See Prob. Code, §§ 16002, subd. (a) (duty of loyalty; trustee's duty to administer the trust solely in the interest of the beneficiaries), 16012 (trustee's duty not to delegate), 16006 ("The trustee is under a duty to the beneficiary to take reasonable steps to take and keep control of the trust property.") See Restat. 2d. of Trusts, § 175 ("The duty of the trustee is not only to take and keep control, but to take and keep exclusive control.")

[13] *Moeller v. Superior Court* (1997) 16 Cal. 4th 1124, 1134.

71. Said defendants' violation of section 7736 caused damage to the California consumer who placed assets in the TRUST, in that FDSC, acting as the de facto trustee of the TRUST and with the assistance of the other said defendants, has misused, misspent, and mismanaged millions of dollars belonging to the TRUST and has fraudulently concealed said defendants' misconduct, as more fully described herein below. As a result of the foregoing, said defendants owe restitution to the trustor-beneficiaries, TRUST, and enrolled funeral establishments who have participated in the TRUST.[14]

72. Plaintiff is informed and believes and thereon alleges that this conspiracy, common enterprise, and common course of conduct continue to the present date.

73. Probate Code section 17200 provides for the modification by the Court of the terms of the TRUST in order to comply with applicable law. Modification of the TRUST's trust agreements by removing FDSC as a party and by eliminating terms that require or permit the TRUST to pay fees to FDSC or CFDA or any party related thereto is necessary in order to address the inordinate level of control that FDSC has over the acts of this preneed funeral trust and to comply with the Funeral Directors and Embalmers Law.

74. Unless restrained and permanently enjoined, defendants CFDA, FDSC, COMERICA BANK, TRUST, KUHN, and DOES 1 through 1000 will continue to engage in or will resume said aforementioned practices and acts in violation of the law, as hereinabove set forth.

75. Plaintiff, trustor-beneficiaries, and enrolled funeral establishments, will be irreparably injured in that said defendants will continue to engage in or will resume acts and practices in violation of law, as hereinabove set forth.

76. Plaintiff has no adequate remedy at law to prevent said defendants from engaging in the aforementioned alleged acts and practices.

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[14] The full amount of restitution that defendants owe the trustor-beneficiaries, TRUST, and/or the State (escheatment) will be determined by proof at trial.

SECOND CAUSE OF ACTION

(VIOLATION OF BUS. & PROF. CODE, § 7735 AND

CAL. CODE REGS., TIT. 16, § 1265)

(UNAUTHORIZED PAYMENTS OF ADMINISTRATIVE FEES)

(AGAINST CFDA, FDSC, MECHANICS BANK, COMERICA BANK, ARC, KUHN, HILLVIEW 527, DRAPER, PETERS, PRATHER, DAMORE, BURNETT, AND DOES 1 THROUGH 1000)

77. Plaintiff realleges and incorporates by reference paragraphs 9 through 48 and paragraphs 62 through 73, inclusive, of the Complaint as though fully set forth herein.

78. Defendants CFDA, FDSC, MECHANICS BANK, COMERICA BANK, ARC, KUHN, HILLVIEW 527, DRAPER, PETERS, PRATHER, DAMORE, BURNETT, and DOES 1 through 1000 have knowingly and willingly entered into a conspiracy, common enterprise, or common course of conduct to defraud the trustor-beneficiaries and the enrolled funeral establishments by causing the TRUST to make unauthorized payments of administrative fees of approximately $5 million dollars in 2001 and 2002 to pay themselves and others, in violation of Section 7735 and California Code of Regulations, Title 16, Section 1265, as follows:

79. Section 7735 permits income from a preneed funeral trust to be used to pay for a “reasonable annual fee for administering the trust.” However, under Section 7735, "[i]n no case shall the total amount withdrawn in a year for trust administration exceed the total amount of posted trust income for the immediate 12 preceding months." In other words, if a preneed funeral trust does not have any income for a given year, it may not pay administrative fees that year.

80. In 2001, the TRUST realized losses of $9,790,996.50 from high risk investments, as described in further detail in the Eighth Cause of Action of this Complaint, infra. Because of these losses, the TRUST did not earn any income in 2001. Since the TRUST had no income that year, Section 7735 barred it from paying administrative fees that year. Nevertheless, in 2001, FDSC, aided and abetted by the other said defendants, took approximately $2,330,807 from the TRUST assets to pay themselves and others administrative fees in violation of Section 7735.

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81. Pursuant to the TRUST's audit report for 2002, which was prepared by BURNETT and submitted to the Bureau, the TRUST suffered a net loss again the following year. Yet, in 2002, FDSC, aided and abetted by the other said defendants, took approximately $2,506,485 from the assets of the TRUST to pay themselves and others administrative fees in violation of Section 7735.

82. The funds that were illegally withdrawn from the TRUST as administrative fees were entrusted to MECHANICS BANK or COMERICA BANK by the trustor-beneficiaries.

83. Said defendants and each of them conspired to create, adopt, and/or implement a fraudulent scheme to conceal the $9.8 million dollar loss. The purpose of this scheme was to justify the continued withdrawal of administrative fees to pay themselves and others and to avoid disclosure of and potential liability for the loss. The scheme was called the "Disparity Resolution Plan," and it was memorialized as an agreement between FDSC and ARC. The Disparity Resolution Plan provided that FDSC would “purchase” the loss by executing a non-interest bearing Promissory Note in favor of the TRUST in the amount of $9,790,996.50, which was the amount of the loss as of June 30, 2001. The plan was to have the Promissory Note accounted for in such a way in the TRUST's annual audits that it would appear to offset the loss, even though said defendants knew or should have known that the Promissory Note was not enforceable and had dubious value. By offsetting the loss in this manner, the TRUST would appear to have earned sufficient income to pay administrative fees, when, in fact, it had not.

84. On or about October 16, 2001, the FDSC Board adopted the Disparity Resolution Plan. It was given an effective date of June 30, 2001. FDSC Board members KUHN, PETERS, DRAPER and PRATHER voted in favor of adopting the Disparity Resolution Plan, and Ronald Day, who had been on the Board Task Force's investigating solutions to the disparity, voted against approving the Plan and requested that the minutes so reflect.[15] Based on what the directors knew at that time or should have known by reasonable diligence, an ordinary prudent person would not have authorized the Plan.

[15] The other directors from that time, Robert Pierce and Barry Berlin, are now deceased.

85. Said defendants conspired to conceal and did conceal or aided and abetted others in concealing the terms of the Disparity Resolution Plan, a material transaction, from the trustor-beneficiaries, the enrolled funeral establishments, and the Bureau. The Plan itself provided that its terms were to be kept secret and not disclosed to anyone other than the co-conspirators, i.e., the trustee and participating attorneys, accountants, and auditors of the TRUST. Section I.9. of the Disparity Resolution Plan states: "FDSC and ARC agree that the following elements are incorporated into this Plan: a) FDSC and ARC agree not to seek a ruling on this Plan from the Department of Consumer Affairs."

86. In furtherance of said defendants' scheme to defraud, FDSC and COMERICA BANK chose not to provide a copy of the Disparity Resolution Plan to the trustor-beneficiaries, the enrolled funeral establishments, or the Bureau. As fiduciaries, FDSC and COMERICA BANK had a duty to disclose the Disparity Resolution Plan and the Promissory Note, which represented a material transaction of the TRUST, to the trustor-beneficiaries. In addition, a copy of the plan was not submitted to the Bureau with the TRUST's annual self-reporting audits and, despite the Bureau’s request for financial records from FDSC and COMERICA BANK during the Bureau's audit of the TRUST, FDSC and COMERICA BANK chose not to provide a copy of the Plan or even a partial copy of the Plan to the Bureau until August 2009, which was only after they learned that the Bureau had obtained a partial copy of the plan from another source. In August 2009, FDSC and COMERICA provided the Bureau with a partial copy of the Plan.

87. In furtherance of the conspiracy, said defendants and each of them deliberately designed or authorized others to design the TRUST’s audited financial statements for 2001 and 2002 to deceive the financial statement user.

88. To disguise the fact that the auditor(s) did not believe that the Disparity Resolution Plan's Promissory Note had any value, said defendants changed the TRUST's basis of accounting for its self-reporting audits. Said defendants changed the method of accounting from a generally accepted accounting principles (GAAP) basis to an alleged Federal income tax basis. However,

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the presentation of the audited financial statements for 2001 and 2002 was not based on GAAP or on an income tax basis. To further mislead the financial statement user, BURNETT deliberately failed to follow other generally accepted auditing standards in its 2001 audit report of the TRUST, such as explaining the material effect that the change in accounting method from prior audits had on the TRUST's financial statements.

89. The TRUST's 2001 audit report that was submitted to the Bureau was false and misleading, had material omissions, and was incomplete. To offset the $9.8 million dollar loss in the TRUST's 2001 audit, which was at $9.5 million dollars as of December 31, 2001, said defendants represented that the TRUST earned approximately $9.4 million of income, called "disparity resolution income." This representation was false. The TRUST had not earned any such income in 2001.

90. By claiming the fictitious income, said defendants avoided reporting a net loss for the year of approximately $7 million dollars and made the financial statements appear to have the required net income, which it did not have, to pay approximately $2.3 million dollars in administrative fees. The following chart sets forth said defendants' fraudulent representation of income in the Statement of Revenue and Expenses in the TRUST's 2001 audit report and also shows what should have been reported:

	As Reported By TRUST	Actual
REVENUE		
Interest	$886,064	$886,064
Dividends	$1,735,352	$1,735,352
Loss on sale of investments	($9,509,221)	($9,509,221)
Disparity resolution income	**$9,462,430**	-----
Total revenue	$2,574,625	($6,887,805)
EXPENSES		
Administrative fees	$2,330,807	Not permitted
Net revenue over expenses	$241,818	None

91. In addition, said defendants chose not to file a separate report of noncompliance with preneed funeral arrangement laws, as required by Section 7737.3. The TRUST was not in compliance based on the facts set forth above and because the TRUST's records had not been

maintained in accordance with generally accepted accounting principles as required by California Code of Regulations, Title 16, Section 1267. Said defendants also chose not to file a completed Preneed Funeral Trust Fund Report, form 21 P-4A, as required by California Code of Regulations, title 16, section 1269, which would have disclosed a summation of the corpus (accumulated and current amount received and paid) and income (accumulated and current income received and paid). The TRUST's audited financial statements do not provide the corpus balances or the accumulated income balance. As this information was never provided, the Bureau's ability to regulate the TRUST was hindered.

92. Similarly, the TRUST's 2002 audit report that was submitted to the Bureau was false and misleading, had material omissions, and was incomplete. Pursuant to the audited financial statements, which were prepared by BURNETT and submitted to the Bureau, the TRUST realized a loss of approximately $6.4 million dollars from the sale of investments. To offset the loss in the TRUST's 2002 audit report, said defendants represented that the TRUST earned approximately $6.8 million of income, referred to therein as "disparity resolution income." This representation was false. The TRUST had not earned any such income.

93. By claiming the fictitious income, said defendants avoided reporting a net loss for the year of approximately $3 million dollars and made the financial statements appear to have the required net income to pay approximately $2.5 million dollars in administrative fees. The following chart sets forth said defendants' fraudulent representation of income in the Statement of Revenue and Expenses in its 2002 audit report and shows what said defendants should have reported:

	As Reported by Defendants	Actual
REVENUE		
Interest	$2,296,033	$2,296,033
Dividends	$822,928	$822,928
Loss on sale of investments	($6,445,778)	($6,445,778)
Disparity resolution income	**$6,796,361**	-----
Total revenue	$3,469,544	($3,326,817)
EXPENSES		
Administrative fees	$2,506,485	Not permitted
Net revenue over expenses	$963,059	None

94. In addition, for year 2002, said defendants chose not to file a separate report of noncompliance with preneed funeral arrangement laws, as required by Section 7737.3. Said defendants also chose not to file a completed Preneed Funeral Trust Fund Report, form 21 P-4A, as required by California Code of Regulations, title 16, section 1269.

95. In sum, said defendants reported $16,258,791 of income in the TRUST's audit reports for 2001 and 2002 that did not exist. Based on this fictitious income, the TRUST wrongfully paid approximately $5 million of administrative fees to said defendants and others that they were not legally entitled to receive.

96. The TRUST's audit report for year 2001 was dated May 15, 2002, and submitted to the Bureau on June 17, 2002. The 2002 audit report was submitted to the Bureau on April 30, 2003. When the 2001 and 2002 fraudulent audit reports were submitted to the Bureau and disseminated to the enrolled funeral establishments, said defendant COMERICA BANK was the duly appointed trustee of the TRUST.

97. The audited financial statements for 2001 and 2002 were prepared and certified by BURNETT. BURNETT knowingly and willingly made material misrepresentations in these audited financial statements, and falsely certified that in its opinion, "the financial statements referred to [therein] . . . present fairly, in all material respects, the assets, liabilities and net assets of the California Master Trust as of December 31, 2001 [and as of December 31, 2002], and its revenue and expenses and changes in net assets for the year then ended, on the basis of accounting described [therein]."

98. DAMORE who had been the TRUST's auditor previously chose not to perform the TRUST's audit in 2001 and thereafter, but instead aided and abetted BURNETT in preparing the BURNETT's unqualified opinions and the TRUST's fraudulent audit reports.

99. Also, in accordance with the Disparity Resolution Plan, said defendants have "paid" the Note, in part, by applying the TRUST's capital gains to the balance of the Note, rather than allocating the gains to the individual trust accounts and reporting the gains as taxable income, and by making withdrawals from the TRUST to make payments on the Note and characterizing these payments as administrative fees, said defendants used trust funds to repay the TRUST.

100. Said defendants have proximately caused the resulting distortions in the TRUST's accounting that has been carried forward to the present.

101. As a result of the foregoing actions, said defendants wrongfully depleted the TRUST by approximately $5 million plus lost earnings for the funds expended on administrative fees in 2001 and 2002, in violation of Section 7735 and California Code of Regulations, Title 16, Section 1265.

102. As a result of the foregoing, said defendants owe restitution to the trustor-beneficiaries, TRUST, and enrolled funeral establishments who have participated in the TRUST.

THIRD CAUSE OF ACTION

(VIOLATION OF BUS. & PROF. CODE, § 7735 AND CAL. CODE REGS., TIT. 16, § 1265)

(ILLEGAL KICKBACKS)

(AGAINST DEFENDANTS CFDA, FDSC, COMERICA BANK, MECHANICS BANK, TRUST, KUHN, HILLVIEW FD 527, BRUSIE FD 371, FAIRHAVEN FD 1313, HAYWARD FD 1456, AND WELCH FD 303, AND DOES 1 THROUGH 1000)

103. Plaintiff realleges and incorporates by reference paragraphs 9 through 48, 62 through 73, and 78 through 101, inclusive, of the Complaint as though fully set forth herein.

104. Defendants CFDA, FDSC, COMERICA BANK, MECHANICS BANK, KUHN, HILLVIEW FD 527, BRUSIE FD 371, FAIRHAVEN FD 1313, HAYWARD FD 1456, and WELCH FD 303, and DOES 1 through 1000 have knowingly and willingly entered into a conspiracy, common enterprise, or common course of conduct to cause the TRUST to pay kickbacks, have caused the TRUST to pay kickbacks, and unless restrained and permanently enjoined from doing so by order of this Court, defendants CFDA, FDSC, COMERICA BANK, TRUST, KUHN, HILLVIEW FD 527, BRUSIE FD 371, FAIRHAVEN FD 1313, HAYWARD FD 1456, and WELCH FD 303 and DOES 1 through 1000 will continue to cause the TRUST to

pay kickbacks[16] from the TRUST's assets to enrolled funeral establishments, in violation of Section 7735 and California Code of Regulations, Title 16, Section 1265, as follows:

105. Section 7735 prohibits funeral establishments from receiving any income from preneed funeral trusts before the contracted services are rendered. Section 7735 states that "all money paid" under a preneed funeral agreement "shall be held in trust for the purpose for which it was paid or delivered until the contract is fulfilled according to its terms" and "any payment made … [for a preneed funeral arrangement] shall be released [to the funeral establishment] upon the death of the person for whose benefit the trust was established as provided in Section 7737." [Emphasis added.] Section 7735 prohibits funeral establishments from receiving trust income for uses other than funeral services, barring them from receiving payments for funeral establishment expenses such as commissions to sales personnel, operating costs, or a return on investment.[17]

106. Section 7737 provides that a funeral establishment may be paid the trust funds after it has provided the trustee with a certified death certificate of the beneficiary and satisfactory evidence that the funeral establishment provided the goods and services as stated in the contract.

107. As an inducement to refer their customers to the TRUST, said defendants have caused the TRUST to make payments (kickbacks)[18] to Funeral Establishment Defendants and other enrolled funeral establishments of 1% to 1.5%[19] of the annual balances of the firms' individual trust accounts in the TRUST. These payments have been made on a quarterly basis. These funeral establishments are given an annual option to receive these payments. If the election is not made,

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[16] "A kickback includes a payment in consideration of the referral of a client . . . or customer." Int.Rev. Code, § 162(c)(2).

[17] See *American Funeral Concepts v. Bd. of Funeral Directors and Embalmers* (1982) 136 Cal.App.3d 303, 313 ("[t]he Short Act sets out an elaborate plan for the control of funds accruing under preneed funeral contracts. Its obvious purpose is to recognize the utility of a preneed funeral arrangement and at the same time assure its performance by requiring that all consideration paid pursuant thereto be held in trust until the need materializes … This purpose is unattainable if cosmetic manipulation of the form of the transaction allows the funeral director to tap its proceeds to pay expenses such as commissions to sales personnel, operating costs, and a return on investment.")[Internal citations and quotations omitted, emphasis in original.]

[18] The defendants call these payments or kickbacks "participation distributions."

[19] Prior to 2001, the Trust paid the funeral establishments 1.5% of the trust balances. With the adoption of the Disparity Resolution Plan, the kickback amount was reduced to 1% of the trust balances.

the money remains in the individual trust accounts and earns income. The majority of enrolled funeral establishments have elected to receive these payments.

108. These payments violate Section 7735 and California Code of Regulations, Title 16, Section 1265, as said defendants have caused the TRUST to pay and Funeral Establishment Defendants have collected and kept for themselves a portion of their own clients' trust funds each year, despite the fact that the preneed funeral contracts have not been fulfilled according to their terms. In other words, these payments are made at a time when the beneficiary has not died and the funeral establishment has not provided the funeral services and merchandise pursuant to the agreement.

109. In addition, CFDA, FDSC, MECHANICS BANK, COMERICA BANK, KUHN, and DOES 1 through 1000 have made or have authorized others to make explicit and implicit misrepresentations to consumers in the TRUST's individual trust agreements and the TRUST's advertisements, which state that the trustor's funds will be held in trust until the funeral establishment provides the agreed upon goods and services.

110. Section 8 (Delivery of Funds) of the TRUST's standard consumer preneed contract states that, "[t]he Trustee shall hold the funds transferred to it for the purpose for which they are deposited until this Agreement is fulfilled according to its terms. The Funeral Establishment shall file with FDSC a certified copy of the Beneficiary's death certificate and evidence that the Funeral Establishment has furnished the merchandise and services as provided in this Agreement and shall forward such documents to Trustee. Trustee will then direct disbursement of the funds in the Trustor's account, less any fees provided for herein [administrative fees], to the Funeral Establishment." The agreement does not authorize nor contemplate kickbacks, rebates, participation distributions, dividends, or any other payments to the contracting funeral establishment until services are rendered.

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111. Likewise, defendants CFDA, FDSC, MECHANICS BANK, COMERICA BANK, KUHN, and DOES 1 through 1000 have prepared or authorized the misrepresentations set forth in the TRUST's brochures, which have been given to enrolled funeral establishments to sell preneed trusts to prospective consumers and mailed to prospective consumers upon request, and posted on the TRUST's website. These advertisements indicate that the funeral establishments will not be paid from the consumers' funds before the agreed upon services are rendered.

112. These advertisements also misrepresent to consumers that the TRUST "is in full compliance with California State Law," when, in fact, it is not.

113. Moreover, in the TRUST's financial reports and the four annual preneed trust audit reports filed with the Bureau,[20] said defendants misrepresented the 1% payments to funeral establishments (referred to as "participation distributions" by the defendants) as administrative expenses of the TRUST. However, the enrolled funeral establishments do not provide any administrative services to the TRUST. Therefore, the participation distributions to the funeral establishments are not trust administration costs and violate Section 7735 and California Code of Regulations, Title 16, Section 1265.

114. By and through their conspiracy, said defendants violated Section 7735 and California Code of Regulations, Title 16, Section 1265, which has caused harm to California consumers. The amounts paid in kickbacks and lost income from failure to invest the funds are not refunded to the trustor-beneficiary in the event that a trust is revoked, canceled, the contracting funeral establishment goes out of business, or the trustor-beneficiary entered into a non-guaranteed preneed agreement. Approximately twenty percent of the TRUST's contracts written are non-guaranteed. The trustors are charged at today's costs when the trustor is serviced. The funeral establishment will apply only the account balance against their billing. The

[20] Prior to 2007, defendants filed with the Bureau only audited financial statements of the TRUST, but failed to file a Preneed Funeral Trust Fund Report. In or about April 2007, defendants FDSC and COMERICA BANK filed the TRUST's first Preneed Funeral Trust Fund Report for year ending December 31, 2006. Subsequently, defendants filed Preneed Funeral Trust Fund Report with the TRUST's audited financial statements for 2007, 2008, and 2009. The TRUST's four Preneed Funeral Trust Fund Reports were verified by Defendant KUHN and Robert Gajewski, Senior Vice President, of Defendant COMERICA BANK.

“kickback” amount is never considered in the calculation. Depending upon the trust account balance and amount being billed, the trustor or estate will be over charged or receive less than the full refund to which they would have been entitled. For example:

	Example A	Example B
Amount Paid by consumer to TRUST, plus income	$1,000	$1,000
Kickback	(100)	(100)
Trust Account Balance	900	900
Actual Cost of funeral goods and services	(850)	(950)
Refund or (Added Charge)	50	(50)
What should be the Refund	$150	$50

115. From 2000 through 2009, said defendants caused the TRUST to pay enrolled funeral establishments an approximate total of $4,621,376 in illegal kickbacks from their own clients' trust funds. From January 1, 2000, through June 30, 2009, defendants BRUSIE FD 371, FAIRHAVEN FD 1313, HAYWARD FD 1456, and WELCH FD 303 each collected more than $100,000 in illegal kickbacks. Specifically, defendant BRUSIE FD 371 collected approximately $115,831; defendant FAIRHAVEN FD 1313 collected approximately $188,467; defendant HAYWARD FD 1456 collected approximately $106,197; and defendant WELCH FD 303 collected approximately $112,763.

116. The members of the FDSC and/or CFDA Board of Directors are owners, officers, and/or funeral directors of enrolled funeral establishments that have elected to collect the kickbacks, and as such, have received a financial benefit by authorizing the kickbacks. From January 1, 2000 through June 30, 2009, defendant HILLVIEW FD 527 collected approximately $31,911.95. During this time, KUHN, its owner, was a member of the CFDA Board and/or the FDSC Board. John Machado, an owner of defendant HAYWARD FD 1456, was a member of FDSC's and CFDA's Board of Directors and has authorized these kickbacks.

117. As a result of the foregoing, said defendants owe restitution to the trustor-beneficiaries and the TRUST.

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118. Unless restrained and permanently enjoined, said defendants will continue to engage in or will resume said aforementioned practices and acts in violation of the law as hereinabove set forth.

119. Plaintiff and trustor-beneficiaries will be irreparably injured in that said defendants will continue to engage in or will resume acts and practices in violation of law, as hereinabove set forth.

120. Plaintiff has no adequate remedy at law to prevent said defendants from engaging in the aforementioned alleged acts and practices.

FOURTH CAUSE OF ACTION

(VIOLATION OF BUS. & PROF. CODE, § 7735)

(IMPROPER PAYMENTS FOR NON-TRUST RELATED EXPENSES)

(AGAINST DEFENDANTS CFDA, FDSC, COMERICA BANK, MECHANICS BANK, TRUST, KUHN, AND DOES 1 THROUGH 1000)

121. Plaintiff realleges and incorporates by reference paragraphs 9 through 48, 62 through 73, 78 through 101, and 104 through 116, inclusive, of the Complaint as though fully set forth herein.

122. Defendants CFDA, FDSC, COMERICA BANK, MECHANICS BANK, KUHN, and DOES 1 through 1000 have knowingly and willingly entered into a conspiracy, common enterprise, or common course of conduct to cause the TRUST to pay, have caused the TRUST to pay, and unless restrained and permanently enjoined from doing so by order of this Court, defendants CFDA, FDSC, COMERICA BANK, TRUST, KUHN, and DOES 1 through 1000 will continue to cause the TRUST to pay for expenses that are not ordinary and necessary expenses to administer a preneed funeral trust, in violation of Section 7735, as follows:

123. Section 7735 states, "[t]he income from the trust may be used to pay for a reasonable annual fee for administering the trust, including a trustee fee to be determined by the bureau." California Code of Regulations, title 16, Section 1265 restricts the recovery of administrative fees to a ceiling of 4% of the trust balance.

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124. For the period of January 1, 2000, through December 31, 2008, said defendants allowed or helped FDSC take approximately $22,290,614 from the TRUST in purported trust administration fees. FDSC then doled out payments to itself and others. Some of these payments were to service providers for purportedly providing actual trust administration services. Other payments were to FDSC or its board members for travel costs and board meetings. And approximately $14,313,455[21] was diverted to expenses clearly unrelated to administering the TRUST, including lobbying fees, dividends to CFDA, sponsorship of CFDA conventions, settlement costs in litigation that did not benefit the TRUST, kickbacks to enrolled funeral establishments (who are CFDA members), unidentified and undocumented attorneys' fees and marketing expenses, and the continued repayment of investment losses under the Disparity Resolution Plan discussed in the Second Cause of Action, supra. In addition, as part of the Disparity Resolution Plan, FDSC and ARC agreed to refund a portion of their fees. These payments are refunds that reduce the amount of fees paid for administrative services and are not expenses. Said defendants have violated Section 7735 and California Code of Regulations, Title 16, Section 1265, by causing the TRUST to pay these non-trust administration expenses.

125. Moreover, said defendants have made or authorized others to make explicit and implicit misrepresentations to consumers with regard to the payment of administrative fees. Section 9 of the California Master Trust Agreement between FDSC and MECHANICS BANK, which is incorporated into the TRUST's Preneed Trust Agreements with the individual trustors, defines fees as the trustee fee and fees to be paid to FDSC and its agents for "administrative services rendered to the Trust and Trustee and all costs related-thereto," and states further that, "[a]ll remaining net income per annum shall be credited to the individual accounts of depositors in proportion to the amounts of their respective corpus. None of the Trust corpus or any remaining net income earned on the corpus shall be used for payment of any sales commission, rent or salary."

[21] This amount includes the $4,837,292 paid for administrative fees in 2001 and 2002.

126. Similarly, the Master Trust Agreement of the TRUST between FDSC and COMERICA BANK, effective as of February 15, 2002, which is incorporated into the Preneed Trust Agreements with the individual trustors, defines "Administrative Fees" to collectively mean "the FDSC Fee, the Trustee Fee, and the Investment Advisor Fee." The "FDSC fee" is described as the fee paid to FDSC for the administrative services rendered to the TRUST by FDSC and FDSC's Trust Accounts Administrator, Consultants, Accountant, Legal Counsel, and Auditor and all other costs related thereto."

127. Thus, the preneed trust agreements between the TRUST and consumers do not permit trustor-beneficiaries' money to be used for the aforementioned extraordinary expenditures for the benefit of CFDA and FDSC.

128. Furthermore, by committing violations of Section 7735 and California Code of Regulations, Title 16, Section 1265, as set forth hereinabove, MECHANICS BANK, COMERICA, and FDSC, as fiduciaries of the TRUST,[22] violated numerous provisions of the Trust Law, including, but not limited to, the fiduciary's duty to administer the trust solely in the interest of the beneficiaries[23]; its duty not to use trust property for the trustee's own profit or for any other purpose unconnected with the trust[24]; and its duty to take reasonable steps to preserve the trust property[25].

129. These violations of law have harmed the trustor-beneficiaries in the approximate amount of $14,313,455 plus lost income. As a result, said defendants owe restitution to the trustor-beneficiaries, TRUST, and enrolled funeral establishments who have participated in the TRUST.

130. By and through their conspiracy said defendants have conspired to continue these improper payments, which dissipate trust assets and thus harm the consumers.

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[22] Since Defendant FDSC has powers of direction with regard to the TRUST, it assumes and owes fiduciary duties toward the TRUST and the trustor-beneficiaries. See *Crocker-Citizens Nat'l Bank v. Younger* (1971) 4 Cal. 3d 202, 211.

[23] Prob. Code §16002, subd. (a).

[24] Prob. Code, 16004, subd. (a).

[25] Prob. Code, § 16006.

131. Unless restrained and permanently enjoined, defendants CFDA, FDSC, COMERICA BANK, TRUST, KUHN, and DOES 1 through 1000 will continue to engage in or will resume said aforementioned practices and acts in violation of the law as hereinabove set forth.

132. Plaintiff, trustor-beneficiaries, and enrolled funeral establishments, will be irreparably injured in that said defendants will continue to engage in or will resume acts and practices in violation of law, as hereinabove set forth.

133. Plaintiff has no adequate remedy at law to prevent said defendants from engaging in the aforementioned alleged acts and practices.

FIFTH CAUSE OF ACTION

(VIOLATION OF BUS. & PROF. CODE, § 7737)

(FAILURE TO DELIVER TRUST CORPUS AND ACCUMULATED INCOME)

(AGAINST DEFENDANTS CFDA, FDSC, COMERICA BANK, MECHANICS BANK, TRUST, KUHN, AND DOES 1 THROUGH 1000)

134. Plaintiff realleges and incorporates by reference paragraphs 9 through 48, 62 through 73, 78 through 101, 104 through 116, and 122 through 130, inclusive, of the Complaint as though fully set forth herein.

135. Defendants CFDA, FDSC, COMERICA BANK, MECHANICS BANK, KUHN, and DOES 1 through 1000 have knowingly and willingly entered into a conspiracy, common enterprise, or common course of conduct to cause and have caused the TRUST to systematically underpay certain trust beneficiaries and funeral establishments to whom repayments were due.

136. When beneficiaries die, Section 7737 requires trustees to repay the trust corpus plus accumulated income to the funeral establishments performing the beneficiaries' funeral services: "the trustee … shall deliver the corpus of the trust to the funeral establishment upon the filing of a certified copy of the death certificate or other satisfactory evidence of the death of the beneficiary . . . together with any income accrued in the trust."

137. But by and through said defendants' collective actions, beginning in or about 2007 and continuing to the present, when certain beneficiaries have died, the TRUST has failed to deliver the full amount of those beneficiaries' trust corpus and income accrued.

138. Said defendants instituted this policy of systematic underpayments because they had depleted the TRUST through investment losses, inappropriate diversions of trust funds, excessive administrative fees, and inappropriate expenditures. In effect, they made unwitting trustor-beneficiaries or the funeral establishments providing services to these individuals bear the losses from their misconduct.

139. Unless restrained and permanently enjoined from doing so by order of this Court, defendants CFDA, FDSC, COMERICA BANK, TRUST, KUHN, and DOES 1 through 1000 will continue to unlawfully withhold the entire corpus and accumulated income from funeral establishments providing services to beneficiaries or from trustors in violation of Section 7737.

140. Trustor-beneficiaries and enrolled funeral establishments have been harmed as a result of these violations and are owed restitution.

141. Plaintiff, trustor-beneficiaries, and enrolled funeral establishments, will be irreparably injured in that said defendants will continue to engage in or will resume acts and practices in violation of law, as hereinabove set forth.

142. Plaintiff has no adequate remedy at law to prevent said defendants from engaging in the aforementioned alleged acts and practices.

SIXTH CAUSE OF ACTION

(VIOLATION OF CAL. CODE REGS., TIT. 16, § 1274)

(UNLAWFULLY RETAINING FUNDS OWED TO TRUSTOR AFTER FUNERAL ESTABLISHMENT NOT ABLE TO PERFORM CONTRACTED FUNERAL SERVICES)

(AGAINST DEFENDANTS CFDA, FDSC, TRUST, COMERICA BANK, MECHANICS BANK, KUHN, AND DOES 1 THROUGH 1000)

143. Plaintiff realleges and incorporates by reference paragraphs 9 through 48, 62 through 73, 78 through 101, 104 through 116, 122 through 130, and 135 through 138, inclusive, of the Complaint as though fully set forth herein.

144. Defendants CFDA, FDSC, COMERICA BANK, MECHANICS BANK, KUHN, and DOES 1 through 1000 have knowingly and willingly entered into a conspiracy, common

enterprise, or common course of conduct to cause and have caused the TRUST to unlawfully retain funds that are owed to beneficiaries when licensed funeral establishments or licensed funeral directors are unable to perform contracted funeral services, in violation of California Code of Regulations, Title 16, Section 1274, as follows.

145. Beginning at dates unknown to the Plaintiff, but no later than in or about 2000, and continuing to the present, said defendants either willfully or negligently retained the trust funds of customers of funeral establishments or funeral directors who had become unable to perform funeral services.

146. California Code of Regulations, Title 16, Section 1274 requires trustees to return trust funds and net income to beneficiaries or trustors when funeral establishments or funeral directors cannot perform preneed funeral service contracts: "[i]f, for any reason, a licensed funeral establishment or licensed funeral director is unable to perform the funeral services prior to or upon the death of the beneficiary of a preneed trust agreement, then the trustees shall pay all trust corpus and net income to the beneficiary, trustor or the legal representative of either the beneficiary or trustor without the imposition of any revocation charge."

147. From 2000 to the present, certain funeral establishments and funeral directors participating in the TRUST have become unable to perform trust beneficiaries' funeral services for a variety of reasons: their businesses may have closed, they may have moved, they may have retired, or they may have had their licenses revoked or suspended.

148. The TRUST and said defendants have failed to develop a system for effectively identifying and repaying customers who can no longer have their funeral services performed by the establishment or director with whom they contracted. They have not regularly monitored enrolled funeral establishments to verify whether enrolled establishments or funeral directors are still in business. Nor have they regularly checked the Bureau's web site to verify whether enrolled funeral establishments or directors still have active licenses.

149. Even for certain establishments that said defendants knew or should have known went out of business, they have failed to notify and repay trustors or beneficiaries as required by law.

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150. Instead of repaying all trustors or beneficiaries as required by law, in some cases said defendants have assigned or sold the assignment of performance of preneed contracts to other enrolled funeral establishments, without the trustors' knowledge or consent. As a result, trustors who purchased a contract for funeral services at establishments they selected may find their contract assigned or sold to another funeral establishment that they did not choose to be in business with for reasons of convenience, familiarity, price, reputation, or location.

151. There is no provision in California Code of Regulations, Title 16, Section 1274 or other laws or regulations permitting the assignment, sale, or purchase of existing preneed funeral contracts without the customer's consent.

152. The assignment, sale or purchase of existing preneed funeral contracts without the customer's consent also violates the provisions of the TRUST's standard consumer contracts, which provide in section 10 (entitled "Inability of the Funeral Establishment to Perform"): "[i]f for any reason the Funeral Establishment becomes unable to substantially perform this Agreement prior to or upon the death of the Beneficiary, the trustee shall return to the funeral establishment for delivery to the trustor or beneficiary, as applicable, or to the trustor's or beneficiary's representative … all funds in the trustor's account, less any fees."

153. In some instances, instead of refunding the monies to the trustor or beneficiary, or their estates, or their heirs, or to the state if these funds go unclaimed, said defendants have conspired, engaged in a common scheme, or a common purpose to keep the trust funds from clients of defunct funeral establishments in the TRUST.

154. Unless restrained and permanently enjoined, defendants CFDA, FDSC, COMERICA BANK, TRUST, KUHN, and DOES 1 through 1000, and each of them, will continue to engage in or will resume said aforementioned practices and acts in violation of the law as hereinabove set forth.

155. Trustor-beneficiaries have been harmed as a result of the aforementioned violations and are owed restitution.

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156. Plaintiff, trustor-beneficiaries, and enrolled funeral establishments, will be irreparably injured in that said defendants will continue to engage in or will resume acts and practices in violation of law, as hereinabove set forth.

157. Plaintiff has no adequate remedy at law to prevent said defendants from engaging in the aforementioned alleged acts and practices.

SEVENTH CAUSE OF ACTION

(CAL. CODE REGS., TIT. 16, § 1264)

(FAILURE TO TIMELY RETURN FUNDS OWED TO TRUSTORS UPON TRUST REVOCATION)

(AGAINST DEFENDANTS CFDA, FDSC, TRUST, COMERICA BANK, MECHANICS BANK, KUHN, AND DOES 1 THROUGH 1000)

158. Plaintiff realleges and incorporates by reference paragraphs 9 through 48, 62 through 73, 78 through 101, 104 through 116, 122 through 130, 135 through 138, and 144 through 153, inclusive, of the Complaint as though fully set forth herein.

159. Defendants CFDA, FDSC, COMERICA BANK, MECHANICS BANK, KUHN, and DOES 1 through 1000 have knowingly and willingly entered into a conspiracy, common enterprise, or common course of conduct to unlawfully retain funds, have unlawfully retained funds, and/or unless restrained and permanently enjoined from doing so by order of this Court, defendants CFDA, FDSC, TRUST, COMERICA BANK, KUHN, and DOES 1 through 1000 will continue to unlawfully retain funds owed to trustors beyond the payment deadline, in violation of California Code of Regulations, Title 16, Section 1264, as follows:

160. Beginning at dates unknown to the Plaintiff, yet no later than in or about 2000, said defendants caused the TRUST to unlawfully retain trustors’ corpus and accumulated earnings for more than fifteen days after cancellation or revocation of a contract.

161. Said defendants have established a practice of causing the TRUST to issue refunds to trustors upon trust revocation over 30 days late, despite the requirements of California Code of Regulations, Title 16, Section 1275 and the TRUST's own contract language, which require that the trust funds be returned within 15 days.

162. Unless restrained and permanently enjoined, said defendants and each of them will continue to engage in or will resume said aforementioned practices and acts in violation of the law as hereinabove set forth.

163. Trustor-beneficiaries and enrolled funeral establishments have been harmed as a result of the aforementioned violations and are owed restitution.

164. Plaintiff, trustor-beneficiaries, and enrolled funeral establishments, will be irreparably injured in that said defendants will continue to engage in or will resume acts and practices in violation of law, as hereinabove set forth.

165. Plaintiff has no adequate remedy at law to prevent defendants from engaging in the aforementioned alleged acts and practices.

EIGHTH CAUSE OF ACTION

(CAL. CODE REGS., TIT. 16, § 1263)

(FAILURE TO PROPERLY INVEST TRUST FUNDS)

(AGAINST DEFENDANTS FDSC, CFDA, TRUST, COMERICA BANK, MECHANICS BANK, KUHN, AND DOES 1 THROUGH 1000)

166. Plaintiff realleges and incorporates by reference paragraphs 9 through 48, 62 through 73, 78 through 101, 104 through 116, 122 through 130, 135 through 138, 144 through 153, and 159 through 161, inclusive, of the Complaint as though fully set forth herein.

167. Defendants FDSC, CFDA, COMERICA BANK, MECHANICS BANK, KUHN, and DOES 1 through 1000, have knowingly and willingly entered into a conspiracy, common enterprise, or common course of conduct to improperly invest preneed funeral trust funds, have improperly invested preneed funeral trust funds, and unless restrained and permanently enjoined from doing so by order of this Court, Defendants FDSC, CFDA, TRUST, COMERICA BANK, KUHN, and DOES 1 through 1000, will continue to improperly invest preneed funeral trust funds in violation of California Code of Regulations, title 16, section 1263, as follows:

168. On or about October 1997, FDSC, CFDA, with MECHANICS BANK's passive approval, adopted and implemented an investment policy of accepting increased risk to

potentially increase earnings and invested some or all of the TRUST corpus in risky mutual fund investments.

169. The TRUST's investment manager during the period 1998 to 2001 was Philip Pauze, a mutual fund manager with connections to the funeral home industry, including creating and managing a mutual fund called the Pauze Tombstone Fund, which invested only in companies associated with the funeral industry, and which collapsed after losing much of its value in only a few years.

170. From approximately 1994 to 2003, Robert Pierce was FDSC's President. From 1996 to 2001, Mr. Pierce also served as a trustee for Mr. Pauze's bond funds. Mr. Pierce was paid $12,500 a year for being a trustee for the Pauze Funds, at the same time he was approving TRUST investments in these funds and approving compensation of more than $200,000 a year from the TRUST to Mr. Pauze's company.

171. With the consent of FDSC, CFDA, KUHN, and MECHANICS BANK, from 1998 to 2001 Mr. Pauze invested a significant portion of the TRUST's investment portfolio in zero coupon government bonds, an investment that did not pay yearly coupons or dividends and which was highly-sensitive to changes in interest rate fluctuations. He also invested the TRUST's portfolio in the Pauze Total Return Fund, a bond fund that also held significant investments in zero coupon government bonds. During this time, the Pauze Total Return Fund -- whose assets were almost entirely comprised of the TRUST's investments -- dramatically underperformed long-term and short-term U.S. Treasury Bonds and as similar bond funds while incurring far greater risk and charging higher fees than these comparable investments.

172. From 1998 to 2001, the TRUST experienced substantial investment losses as a result of Mr. Pauze's imprudent investments.

173. On or about June 30, 2001, the TRUST sold all of its investments in Pauze bond funds and in zero coupon bonds and fired Mr. Pauze as its investment manager.

174. In 2001, said defendants changed the TRUST's investment policy. Their goal was to increase the rate of return of the TRUST's investments (thereby accepting more risk) in order to offset investment losses.

175. Sometime in 2001 and continuing to the present, the Trust has been invested in corporate asset-backed securities. Based on financial disclosure reports filed by FDSC, these securities appear to be bundles of securities based largely on consumer credit card debt and auto loans.

176. Sometime in 2006, two years before the housing market collapsed, and continuing to the present, the TRUST has been invested in privately-issued mortgage backed securities and collateralized mortgages.

177. Sometime in 2006 and continuing to the present, the TRUST has been invested in foreign bonds and notes.

178. Sometime in 2007 and continuing to the present, the TRUST has been invested in foreign stocks and stocks of foreign companies listed on domestic stock exchanges.

179. The TRUST's investments in corporate asset-backed securities, in privately-issued mortgage backed securities, in privately-issued collateralized mortgages, in foreign bonds and notes, and in foreign stock, do not comply with Business and Professions Code sections 7737.5 or 7737.7, which allow for the investment of the trust corpus in insured bank or credit union accounts, and do not comply with California Code of Regulations, title 16, section 1263 subdivision (a), which, in part, requires preneed funeral arrangement trust funds to invest, reinvest, and keep trust assets invested in (1) federal, state or local bonds or securities; (2) bonds which are legal investments for commercial banks; (3) FDIC insured CDs or interest bearing accounts; (4) investment certificates or shares in state or federally chartered savings institution insured by the Federal Savings and Loan Insurance Corporation, or, in the alternative, (5) in investments that comply with the Section 15001 *et seq*. (Division 9) of the Probate Code, which includes the Uniform Prudent Investor Act. These types of investments are not insured bank accounts, are not bonds that are legal investments for commercial banks (sections 1001 *et seq*. of the Financial Code lists certain legal investments for commercial banks), are not government bonds, and do not comply with the Uniform Prudent Investor Act (as discussed below).

180. The TRUST's investments in corporate asset-backed securities, in privately-issued mortgage backed securities, in privately-issued collateralized mortgages, in foreign bonds and

notes, and in foreign stock, fail to comply with the Uniform Prudent Investor Act, Probate Code section 16045 *et seq*., also known as the prudent investor rule, and therefore do not comply with regulation 1263 subdivision (a)(5). Section 16047 of the Probate Code requires trustees to "invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust" and to have an "overall investment strategy having risk and return objectives reasonably suited to the trust." FDSC's investments of funeral service trust funds in assets that could result – and in some cases, have resulted – in the substantial loss of trust principal are ill-suited to the purpose, terms, distribution requirements and risk and return objectives of beneficiaries of preneed funeral trust arrangements.

181. Funds for preneed funeral arrangements are put into trust so beneficiaries can have the funeral services they have contracted for when their time comes. The investments listed in Business and Professions Code sections 7737.5 and 7737.7 and California Code of Regulations, title 16, section 1263 reflect this conservative purpose: they include insured accounts protected from principal loss and government bonds with little likelihood of default. These types of conservative investments generally minimize risk and principal loss, have low administrative costs, and allow for some appreciation of the principal in order to protect these investments from inflation. This is appropriate for trust beneficiaries who need to have their trust funds invested safely for the term between their purchase of a preneed funeral arrangement and their death.

182. In contrast, the TRUST's investments in corporate asset-backed securities, in privately-issued mortgage backed securities, in privately-issued collateralized mortgages, in foreign bonds and notes, and in foreign stock, were and are unsuited to the needs of preneed trust purchasers: they have high levels of risk, jeopardizing the principal of trust beneficiaries. They can lose, and, in some cases, have lost, their value.

183. Said defendants determined the risk and return objective of the TRUST's investments based on their own needs -- including their needs to recoup and to hide past investment losses, to take excessive administrative fees, and to fund inappropriate expenditures -- or based on the needs of participating funeral establishments, not the needs of the trust beneficiaries.

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184. Unless restrained and permanently enjoined, defendants CFDA, FDSC, COMERICA BANK, TRUST, KUHN, and DOES 1 through 1000 will continue to engage in or will resume said aforementioned practices and acts in violation of the law as hereinabove set forth.

185. Plaintiff, trustor-beneficiaries, and enrolled funeral establishments, will be irreparably injured in that said defendants will continue to engage in or will resume acts and practices in violation of law, as hereinabove set forth.

186. Plaintiff has no adequate remedy at law to prevent said defendants from engaging in the aforementioned alleged acts and practices.

NINTH CAUSE OF ACTION

(VIOLATION OF CAL. CODE REGS., TIT. 16, § 1267)

(UNLAWFULLY MAINTAINED FINANCIAL RECORDS OUT-OF-STATE)

(AGAINST DEFENDANTS CFDA, FDSC, TRUST, COMERICA BANK, KUHN, AND DOES 1 THROUGH 1000)

187. Plaintiff realleges and incorporates by reference paragraphs 9 through 48, 62 through 73, 78 through 101, 104 through 116, 122 through 130, 135 through 138, 144 through 153, 159 through 161, and 167 through 183, inclusive, of the Complaint as though fully set forth herein.

188. Defendants CFDA, FDSC, COMERICA BANK, KUHN, and DOES 1 through 1000 have knowingly and willingly entered into a conspiracy, common enterprise, or common course of conduct to conceal and have concealed evidence of their unlawful conduct and will continue to conceal evidence of their unlawful conduct by keeping the TRUST’s financial records out of state, and unless restrained and permanently enjoined from doing so by order of this Court, defendants CFDA, FDSC, TRUST, COMERICA BANK, KUHN, and DOES 1 through 1000 will continue to keep the TRUST's records out of state and out of reach of the Bureau, in violation of California Code of Regulations, Title 16, Section 1267, as follows:

189. In or about 2006, FDSC hired Charter Management Associates, which later changed its name to Essential Planning Group (EPG), as the TRUST's administrator, replacing the TRUST's prior administrator, Association Resource Center (ARC). EPG's offices are located in

Beaverton, Oregon. From in or about 2006 to the present, the TRUST's records have been kept by EPG in Oregon.

190. Unless restrained and permanently enjoined, said defendants and each of them will continue to engage in or will resume said aforementioned practices and acts in violation of the law as hereinabove set forth.

191. Plaintiff, trustor-beneficiaries, and enrolled funeral establishments, will be irreparably injured in that said defendants will continue to engage in or will resume acts and practices in violation of law, as hereinabove set forth.

192. Plaintiff has no adequate remedy at law to prevent said defendants from engaging in the aforementioned alleged acts and practices.

TENTH CAUSE OF ACTION

(VIOLATION OF CAL. CODE REGS., TIT. 16, § 1267)

(UNLAWFULLY WITHHELD TRUST RECORDS FROM THE BUREAU)

(AGAINST DEFENDANTS CFDA, FDSC, COMERICA BANK, MECHANICS BANK, TRUST, KUHN, AND DOES 1 THROUGH 1000)

193. Plaintiff realleges and incorporates by reference paragraphs 9 through 48, 62 through 73, 78 through 101, 104 through 116, 122 through 130, 135 through 138, 144 through 153, 159 through 161, 167 through 183, and 188 through 189, inclusive, of the Complaint as though fully set forth herein.

194. Defendants CFDA, FDSC, COMERICA BANK, MECHANICS BANK, KUHN, and DOES 1 through 1000 have knowingly and willingly entered into a conspiracy, common enterprise, or common course of conduct to conceal and have concealed evidence of their unlawful conduct by unlawfully withholding trust records from the Bureau, and unless restrained and permanently enjoined from doing so by order of this court, defendants CFDA, FDSC, COMERICA BANK, TRUST, KUHN, and DOES 1 through 1000 will continue such practices, in violation of California Code of Regulations, title 16, Section 1267, as follows:

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195. Said defendants have engaged in a pattern of concealing material information and documentation regarding the TRUST by keeping the TRUST's records out of state since 2007,[26] failing to file a Preneed Funeral Trust Fund Report, as required by California Code of Regulations, title 16, section 1269, until 2007 , failing to provide a full copy of the Disparity Resolution Plan to the Bureau, and failing to fully cooperate with the Bureau during its audit of the TRUST, necessitating the issuance of administrative subpoenas to obtain many documents requested in the audit. Furthermore, said defendants continue to withhold material records of the TRUST from the Bureau, including but not limited to, the TRUST's general ledger, the ledgers of the individual trust accounts, the original FDSC Board of Directors minute book, and Exhibit B to the Disparity Resolution Plan.

196. By and through their conspiracy to hide the financial mismanagement of the TRUST, defendants CFDA, FDSC, COMERICA BANK, KUHN, and DOES 1 through 1000 failed to make certain records available to the Bureau for review until in or about September 2010, despite the fact that the records have been requested since 2007. As of the date of this filing, said defendants have not provided certain records that were requested for the audit in 2007, such as the TRUST's cash disbursement journals regarding all withdrawals for documented expenses and its general ledger, as required pursuant to California Code of Regulations, Title 16, Section 1267, subdivisions (d) and (f). Plaintiff is informed and believes that FDSC's administrator, EPG/CMA, maintains the TRUST's general ledger on QuickBooks data files.

197. Unless restrained and permanently enjoined, said defendants and each of them will continue to engage in or will resume said aforementioned practices and acts in violation of the law as hereinabove set forth.

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[26] *See* footnote 20, *supra*.

198. Plaintiff, trustor-beneficiaries, and enrolled funeral establishments, will be irreparably injured in that said defendants will continue to engage in or will resume acts and practices in violation of law, as hereinabove set forth.

199. Plaintiff has no adequate remedy at law to prevent said defendants from engaging in the aforementioned alleged acts and practices.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. That defendants, and each of them, their officers, directors, employees, agents, representatives, successors, and assigns, and all other persons, corporations, or other entities acting under, through, or on behalf of defendants, be permanently restrained and enjoined from engaging in or performing, directly or indirectly, any and all of the following acts or aiding or abetting others to:

A. Allow a trustee other than a banking institution or a trust company legally authorized by the State of California to act as trustee as defined in Section 7736.

B. Violate Business and Professions Code Section 7737 by allowing FDSC or any other entity other than the trustor, trustee, and funeral establishment to be a party to a preneed funeral agreement.

C. Violate Business and Professions Code Section 7735 by allowing income from the trust to be used for payment of anything other than a reasonable annual fee for services rendered in administering the trust, using any funds other than income directly earned on the trust during that year, or by expending administrative fees in an amount in excess of four (4%) percent of the trust balance on December 31 of any given year. A reasonable annual fee for administering the trust shall include the following expenses if such expenses are directly related to the administration of the trust: bookkeeping, accounting fees, office expenses, trustee fees, and investment management fees. A reasonable annual fee for administering the trust shall not, under any circumstances, be interpreted to include any of the following expenses: lobbying fees, payment of any expense in connection with any convention, payment to any third party organizations, other than those providing services directly related to the administration of the trust as defined above, funeral establishments commissions or fees, or payments of any legal settlements or arbitration expenses.

D. Violate Section 7737 by failing to deliver the corpus and accumulated income, less the revocation fee, to the trustors, beneficiaries, or their legal representatives upon revocation.

E. Violate California Code of Regulations, Title 16, Section 1274 by failing to return to the trustors, beneficiaries, or their legal representatives, without imposition of a revocation fee the funds paid to the funeral establishment and any interest earned on their trust corpus when an enrolled funeral establishment is not able to perform the trust contract or to provide the contracted services and merchandise. Such funds shall be returned within ninety days of the date that defendants have been notified or have become aware that:

(i) the funeral establishment can no longer perform services; or

(ii) the funeral establishment no longer has a valid license.

Defendants shall be required to use due diligence to ensure that they are apprised of such circumstances at the earliest possible juncture.

F. Solicit the transfer of preneed contracts from trustors, beneficiaries, or legal representatives of a beneficiary or trustor when a participating funeral establishment has become unable to perform the contract or to provide the contracted services or merchandise.

G. Transfer any preneed contract to another funeral establishment unless the trustor, beneficiary, or legal representative of a beneficiary or trustor has specifically requested that transfer and authorized it in a signed writing submitted at the time of the request.

H. Violate California Code of Regulations, Title 16, Section 1264 by failing to return to the trustor within 15 days after cancellation or revocation of a contract the corpus and accumulated earnings. This provision shall not prevent defendants from deducting a revocation fee from the distribution.

I. Violate California Code of Regulations, Title 16, Section 1267 by failing to maintain or cause the trustee of the preneed trust to maintain, complete financial records in

California at all times or by failing to make the trust records available for inspection in California by the Bureau during reasonable working hours.

J. Violate Probate Code Section 16002, by failing to operate the trust for the sole benefit of the beneficiary.

K. Hold the California Master Trust out to the public as a Bureau approved trust or as a trust that is compliant with the laws and regulations of the state.

L. Destroy any evidence in any form, including, but not limited to, evidence in written, electronic and recorded formats.

M. Dissipate any assets received by and through their business affiliation with the California Master Trust.

2. That this Court, during the pendency of this action, issue a preliminary injunction against defendants, including the corporations, partnerships, and individuals, and each of them, from engaging in any action that violates the preneed funeral trust laws within the Funeral Directors and Embalmers Law as codified at Section 7600 *et seq*. and Division 12 of Title 16 of the California Code of Regulations pursuant to Section 125.5, as described in paragraph 1, above, in this Prayer.

3. That this Court issue a preliminary and permanent injunction enjoining defendants, their employees, agents, servants, representatives, successors, and assigns, any and all persons acting in concert or participation with them, and all other persons, corporations, or other entities acting under, by, through, or on their behalf, from doing any of the following:

A. Expending, disbursing, transferring, encumbering, withdrawing or otherwise exercising control over any funds received by or on behalf of the TRUST or rightfully due the TRUST except as authorized by the Court; and

B. Conducting business of any kind on behalf of, or relating to the TRUST other than as necessary to assist a Receiver, successor trustee, or administrator, or to comply with discovery requests and orders, or as permitted by the Court.

4. That this Court, as authorized by Section 125.5, order defendants, and each of them, to pay investigation expenses to Plaintiff Cemetery and Funeral Bureau for violating the Funeral

Directors and Embalmers Law as set forth in as Section 7600 *et seq*. and Division 12 of Title 16 of the California Code of Regulations, all in the amount according to proof at trial.

5. That this Court order defendants, and each of them, to render to the Court and to the Plaintiff a full and complete accounting of the financial activities and condition of the TRUST and their dealings with the TRUST from 2000 to the present, to include the expenditure and disposition of all revenues and assets received by or on behalf of the TRUST.

6. That this Court order defendants, and each of them, be surcharged and held liable for restitution for any and all such assets for which they fail to properly account, together with interest thereon at the legal rate from the date of liability thereon.

7. That this Court order that any and all expenses and fees incurred by defendants in this action be borne by the individual defendants and each of them and not by TRUST or any of its trustors or beneficiaries.

8. That this Court, as authorized by Section 125.5, order defendants, and each of them, to pay restitution to each of its victims for monies owed to them, by and through defendants' operation of the TRUST in violation of the Funeral Directors and Embalmers Law as codified at Section 7600 *et seq*. and Division 12 of Title 16 of the California Code of Regulations, together with interest thereon at the legal rate from the date of liability thereon, all in the amount according to proof at trial, including the following:

A. That this Court order defendants, and each of them, to identify all deceased beneficiaries on the TRUST's active list whose funeral services have not been provided pursuant to the preneed funeral contract, to account for the monies or other assets owed to these beneficiaries, and to pay restitution together with interest thereon at the legal rate from the date of liability hereon to those deceased beneficiaries' heirs or legal representatives or to escheat those funds to the state pursuant to the Unclaimed Property Law, set forth in Code of Civil Procedure Section 1500 *et seq*.

B. That this Court order defendants, and each of them, to identify all funeral establishments who are enrolled or have previously been enrolled in the TRUST from 2000 to the present who are or were unable to perform the contracted funeral services and pay restitution to the trustors or beneficiaries (or their heirs or legal representatives) who have contracted with these homes, or to escheat those funds to the state pursuant to the Unclaimed Property Law.

C. That this Court order defendants, and each of them, to identify and pay restitution together with interest thereon at the legal rate from the date of liability to all beneficiaries, trustors (or their heirs or legal representatives), or enrolled funeral establishments that have been underpaid from 2000 to the present.

9. That this Court appoint a receiver, trustee, or administrator to exercise control over all TRUST assets and any funds received by or on behalf of the TRUST, to administer the restitution ordered, to implement all orders of this Court, and/or to oversee the dissolution of the TRUST and return of its assets to participating funeral establishments or the trustors as required.

10. That this Court order defendants, and each of them, to pay the fees and costs of and assist and cooperate with the appointed receiver, trustee, or administrator who shall administer the TRUST and oversee the restitution ordered.

11. That this Court modify the terms of the TRUST in order that the TRUST complies with the Funeral Directors and Embalmers Law, which shall involve, inter alia, the removal of FDSC as a party and the elimination of any term that requires or permits the TRUST to pay fees to FDSC or CFDA or any party related thereto.

12. That costs of suit herein incurred be awarded to Plaintiff.

13. That the reasonable expenses incurred by the Plaintiff, the Cemetery and Funeral Bureau, be awarded to Plaintiff.

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14. That such other and further relief be ordered as this Court may deem necessary to protect the public health, safety, and welfare.

Dated: April 18, 2011

Respectfully Submitted,

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