

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

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

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

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

11 **EIGHTH CAUSE OF ACTION**

12 **(CAL. CODE REGS., TIT. 16, § 1263)**

13 **(FAILURE TO PROPERLY INVEST TRUST FUNDS)**

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

16 166. Plaintiff realleges and incorporates by reference paragraphs 9 through 48, 62 through
17 73, 78 through 101, 104 through 116, 122 through 130, 135 through 138, 144 through 153, and
18 159 through 161, inclusive, of the Complaint as though fully set forth herein.

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

26 168. On or about October 1997, FDSC, CFDA, with MECHANICS BANK's passive
27 approval, adopted and implemented an investment policy of accepting increased risk to
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1 potentially increase earnings and invested some or all of the TRUST corpus in risky mutual fund
2 investments.

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

8 170. From approximately 1994 to 2003, Robert Pierce was FDSC's President. From 1996
9 to 2001, Mr. Pierce also served as a trustee for Mr. Pauze's bond funds. Mr. Pierce was paid
10 \$12,500 a year for being a trustee for the Pauze Funds, at the same time he was approving
11 TRUST investments in these funds and approving compensation of more than \$200,000 a year
12 from the TRUST to Mr. Pauze's company.

13 171. With the consent of FDSC, CFDA, KUHN, and MECHANICS BANK, from 1998 to
14 2001 Mr. Pauze invested a significant portion of the TRUST's investment portfolio in zero
15 coupon government bonds, an investment that did not pay yearly coupons or dividends and which
16 was highly-sensitive to changes in interest rate fluctuations. He also invested the TRUST's
17 portfolio in the Pauze Total Return Fund, a bond fund that also held significant investments in
18 zero coupon government bonds. During this time, the Pauze Total Return Fund -- whose assets
19 were almost entirely comprised of the TRUST's investments -- dramatically underperformed
20 long-term and short-term U.S. Treasury Bonds and as similar bond funds while incurring far
21 greater risk and charging higher fees than these comparable investments.

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

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

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

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

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

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

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

12 179. The TRUST's investments in corporate asset-backed securities, in privately-issued
13 mortgage backed securities, in privately-issued collateralized mortgages, in foreign bonds and
14 notes, and in foreign stock, do not comply with Business and Professions Code sections 7737.5 or
15 7737.7, which allow for the investment of the trust corpus in insured bank or credit union
16 accounts, and do not comply with California Code of Regulations, title 16, section 1263
17 subdivision (a), which, in part, requires preneed funeral arrangement trust funds to invest,
18 reinvest, and keep trust assets invested in (1) federal, state or local bonds or securities; (2) bonds
19 which are legal investments for commercial banks; (3) FDIC insured CDs or interest bearing
20 accounts; (4) investment certificates or shares in state or federally chartered savings institution
21 insured by the Federal Savings and Loan Insurance Corporation, or, in the alternative, (5) in
22 investments that comply with the Section 15001 *et seq.* (Division 9) of the Probate Code, which
23 includes the Uniform Prudent Investor Act. These types of investments are not insured bank
24 accounts, are not bonds that are legal investments for commercial banks (sections 1001 *et seq.* of
25 the Financial Code lists certain legal investments for commercial banks), are not government
26 bonds, and do not comply with the Uniform Prudent Investor Act (as discussed below).

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

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

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

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

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

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

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

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

9 **NINTH CAUSE OF ACTION**

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

11 **(UNLAWFULLY MAINTAINED FINANCIAL RECORDS OUT-OF-STATE)**

12 **(AGAINST DEFENDANTS CFDA, FDSC, TRUST, COMERICA BANK,**

13 **KUHN, AND DOES 1 THROUGH 1000)**

14 187. Plaintiff realleges and incorporates by reference paragraphs 9 through 48, 62 through
15 73, 78 through 101, 104 through 116, 122 through 130, 135 through 138, 144 through 153, 159
16 through 161, and 167 through 183, inclusive, of the Complaint as though fully set forth herein.

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

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