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
28	
	45
	COMPLAINT FOR INJUNCTIVE RELIEF, RESTITUTION, AND OTHER EQUITABLE REMEDIES

1	Beaverton, Oregon. From in or about 2006 to the present, the TRUST's records have been kept by
2	EPG in Oregon.
3	190. Unless restrained and permanently enjoined, said defendants and each of them will
4	continue to engage in or will resume said aforementioned practices and acts in violation of the
5	law as hereinabove set forth.
6	191. 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	192. Plaintiff has no adequate remedy at law to prevent said defendants from engaging in
10	the aforementioned alleged acts and practices.
11	TENTH CAUSE OF ACTION
12	(VIOLATION OF CAL. CODE REGS., TIT. 16, § 1267)
13	(UNLAWFULLY WITHHELD TRUST RECORDS FROM THE BUREAU)
14	(AGAINST DEFENDANTS CFDA, FDSC, COMERICA BANK,
15	MECHANICS BANK, TRUST, KUHN, AND DOES 1 THROUGH 1000)
16	193. 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, 159
18	through 161, 167 through 183, and 188 through 189, inclusive, of the Complaint as though fully
19	set forth herein.
20	194. Defendants CFDA, FDSC, COMERICA BANK, MECHANICS BANK, KUHN, and
21	DOES 1 through 1000 have knowingly and willingly entered into a conspiracy, common
22	enterprise, or common course of conduct to conceal and have concealed evidence of their
23	unlawful conduct by unlawfully withholding trust records from the Bureau, and unless restrained
24	and permanently enjoined from doing so by order of this court, defendants CFDA, FDSC,
25	COMERICA BANK, TRUST, KUHN, and DOES 1 through 1000 will continue such practices, in
26	violation of California Code of Regulations, title 16, Section 1267, as follows:
27	///
28	///
	46
	COMPLAINT FOR INJUNCTIVE RELIEF, RESTITUTION, AND OTHER EQUITABLE REMEDIES

1 195. 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 2 3 failing to file a Preneed Funeral Trust Fund Report, as required by California Code of 4 Regulations, title 16, section 1269, until 2007, failing to provide a full copy of the Disparity 5 Resolution Plan to the Bureau, and failing to fully cooperate with the Bureau during its audit of 6 the TRUST, necessitating the issuance of administrative subpoenas to obtain many documents 7 requested in the audit. Furthermore, said defendants continue to withhold material records of the 8 TRUST from the Bureau, including but not limited to, the TRUST's general ledger, the ledgers of 9 the individual trust accounts, the original FDSC Board of Directors minute book, and Exhibit B to 10 the Disparity Resolution Plan. 11 196. By and through their conspiracy to hide the financial mismanagement of the TRUST, 12 defendants CFDA, FDSC, COMERICA BANK, KUHN, and DOES 1 through 1000 failed to 13 make certain records available to the Bureau for review until in or about September 2010, despite

14 the fact that the records have been requested since 2007. As of the date of this filing, said

15 defendants have not provided certain records that were requested for the audit in 2007, such as the

16 TRUST's cash disbursement journals regarding all withdrawals for documented expenses and its

17 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.

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

23 ///
 24 ///
 25 ///
 26 ///
 27 _______
 28 _______
 26 See footnote 20, supra.
 47 _______
 47 _______
 COMPLAINT FOR INJUNCTIVE RELIEF, RESTITUTION, AND OTHER EQUITABLE REMEDIES

1	198. Plaintiff, trustor-beneficiaries, and enrolled funeral establishments, will be irreparably
2	injured in that said defendants will continue to engage in or will resume acts and practices in
3	violation of law, as hereinabove set forth.
4	199. Plaintiff has no adequate remedy at law to prevent said defendants from engaging in
5	the aforementioned alleged acts and practices.
6	PRAYER FOR RELIEF
7	WHEREFORE, Plaintiff prays for relief as follows:
8	1. That defendants, and each of them, their officers, directors, employees, agents,
9	representatives, successors, and assigns, and all other persons, corporations, or other entities
10	acting under, through, or on behalf of defendants, be permanently restrained and enjoined from
11	engaging in or performing, directly or indirectly, any and all of the following acts or aiding or
12	abetting others to:
13	A. Allow a trustee other than a banking institution or a trust company legally
14	authorized by the State of California to act as trustee as defined in Section 7736.
15	B. Violate Business and Professions Code Section 7737 by allowing FDSC or any
16	other entity other than the trustor, trustee, and funeral establishment to be a party to a preneed
17	funeral agreement.
18	C. Violate Business and Professions Code Section 7735 by allowing income from
19	the trust to be used for payment of anything other than a reasonable annual fee for services
20	rendered in administering the trust, using any funds other than income directly earned on the trust
21	during that year, or by expending administrative fees in an amount in excess of four (4%) percent
22	of the trust balance on December 31 of any given year. A reasonable annual fee for administering
23	the trust shall include the following expenses if such expenses are directly related to the
24	administration of the trust: bookkeeping, accounting fees, office expenses, trustee fees, and
25	investment management fees. A reasonable annual fee for administering the trust shall not, under
26	any circumstances, be interpreted to include any of the following expenses: lobbying fees,
27	payment of any expense in connection with any convention, payment to any third party
28	organizations, other than those providing services directly related to the administration of the trust 48
	COMPLAINT FOR INJUNCTIVE RELIEF, RESTITUTION, AND OTHER EQUITABLE REMEDIES