

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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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:

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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