

## **QUESTIONS AND ANSWERS REGARDING CLASS ACTION LAWSUIT AGAINST FIRST TRUST CORPORATION**

A class action lawsuit was filed in federal court on April 27, 2005. The lawsuit is against First Trust Corporation ("First Trust"), as well as a number of so-called "Doe" defendants who can be replaced with actual defendants at a later date. The lawsuit was filed on behalf of a "class" of plaintiffs consisting of all Heath victims, as well as a "sub-class" consisting of Heath victims who held their investments at First Trust.

The complaint can be viewed at the end of this Q and A list.

A number of questions have been posed to the Receiver regarding the class action. The Receiver is not an attorney and is not actively involved in the class action. However, we have prepared a list of questions and answers concerning the class action for the convenience of Heath victims.

### **Q: Why isn't the Receiver involved in the class action?**

A: The Receiver does not believe it is appropriate to expend monies that would otherwise go directly to Heath victims in order to pursue expensive and complex litigation without a guarantee of success. However, the Receiver supports any proper action that has the potential for increasing the recovery for victims without risking money already recovered. The class action appears to meet that test.

### **Q: Who are the class action lawyers?**

A: The Century City law firm Glancy, Binkow & Goldberg filed the class action. The lead lawyer, Kevin Ruf, can be reached at (310) 201-9166.

### **Q: How can I get more information about the class action?**

A: A website has been setup at <http://heathclassaction.blogspot.com>.

### **Q: What must I do to participate in the class action?**

A: At this time, we are informed that a Heath victim need take no action. However, we understand that the class action lawyers have requested information (or at least contact) from all Heath victims as they prepare their case.

### **Q: What will happen to the money recovered -- if any -- in the class action?**

A: The Receiver has entered into an informal agreement with the class action attorneys whereby the monies recovered would be turned over to the Receiver and distributed by the Receiver according to whatever plan of distribution is approved by the Receivership Court. The Receiver believes this will save costs and assure accuracy and fairness to the victims.

**Q: How can I receive updates regarding the class action?**

A: The website at <http://heathclassaction.blogspot.com> was designed for this purpose. Also, you may contact Kevin Ruf if you have a question not answered on the website.

**Q: How long will it be until there is a significant development in the class action?**

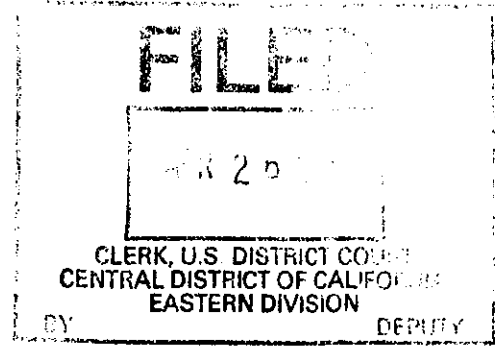
A: While anything is, of course, possible, the Receiver is told that class counsel do not expect any major developments for several months, until mid-summer at the earliest.

**Q: If I have specific evidence or concerns regarding the class action, what should I do?**

A: Contact Kevin Ruf at Glancy, Binkow & Goldberg.

BY FAX

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7 UNITED STATES DISTRICT COURT  
 8 CENTRAL DISTRICT OF CALIFORNIA  
 9 EASTERN DIVISION

10 JEROME JENSON, EILEEN  
 11 HORTON and JOSEPH RISSE,  
 Individually and On Behalf of All  
 Others Similarly Situated,

Plaintiffs,

v.

13 FIRST TRUST COMPANY, and  
 14 DOES 1-10~~X~~, inclusive,  
 Defendants.

Case No. CV05-3124 ABC *CTx*

CLASS ACTION COMPLAINT  
 FOR:

1. AIDING AND ABETTING BREACH OF FIDUCIARY DUTY;
2. AIDING AND ABETTING FRAUD;
3. VIOLATIONS OF CALIFORNIA CORPORATIONS CODE;
4. NEGLIGENT MISREPRESENTATION;
5. NEGLIGENCE;
6. BREACH OF FIDUCIARY DUTY AND CONSTRUCTIVE FRAUD;
7. FRAUD AND DECEIT BY ACTIVE CONCEALMENT
8. FRAUD AND DECEIT BASED UPON OMISSIONS AND MISREPRESENTATIONS OF MATERIAL FACTS
9. VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTIONS 17200 ET SEQ.

DEMAND FOR JURY TRIAL

FILE

1 **INTRODUCTION**

2 1. Daniel Heath, with the help of his minions John Heath, Denis O'Brien,  
3 and Larre Schlarman, appears to be the mastermind of one of the largest Ponzi  
4 schemes in California history, which bilked almost 1,700 people – most of them  
5 elderly and vulnerable – out of approximately \$120,000,000 (the “Heath Fraud”).  
6 He could not have executed his fraudulent scheme, however, without the help of Mr.  
7 Heath’s “chosen” custodial trust company, defendant FIRST TRUST COMPANY  
8 (“First Trust”) as well as other defendants. First Trust in particular operated with the  
9 cynical confidence that it, as a custodial trust company, could turn a blind eye to  
10 clear signs of the Heath Fraud and utterly disregard its duties to its customers without  
11 liability. The cynical arrogance of First Trust allowed Dan Heath and his criminal  
12 minions to use First Trust as an essential element of their fraud to the extreme  
13 detriment of First Trust’s customers. By this lawsuit, plaintiffs hope to give First  
14 Trust and other similar defendants a wake up call.

15 2. Dan Heath and several of his minions are in jail. The paltry assets that  
16 remain of the Heath Fraud are in the hands of a receiver. Plaintiffs bring this class  
17 action to hold First Trust and other defendants accountable for the devastating harm  
18 they helped cause. That harm exceeds \$120,000,000.

19 **JURISDICTION AND VENUE**

20 **Subject Matter Jurisdiction**

21 3. Jurisdiction is proper under 28 U.S.C. section 1332 (d). The matter in  
22 controversy exceeds \$5,000,000 and at least one member of the class of plaintiffs is  
23 a citizen of a State different from that of a defendant.

24 4. In addition, this proceeding is related to at least one other case currently  
25 pending in the Eastern Division of the Central District of California : Securities and  
26 Exchange Commission v. D.W. Heath & Associates, Inc. et al. Case No. CV-04-  
27

1 02949. Both cases bring claims arising from the Heath Fraud.

2 **Venue**

3 5. Pursuant to 28 U.S.C. section 1391 (b), venue in this Court is  
4 appropriate. All defendants are subject to personal jurisdiction in the Central District  
5 of California, and substantially all of the acts underlying the claims contained in this  
6 Complaint occurred in this District.

7 **PARTIES**

8 **Lead Plaintiffs**

9 6. Plaintiff JEROME JENSON is an individual who resides in Cerritos,  
10 California. He invested Individual Retirement Account (IRA) monies in the Heath  
11 Fraud through First Trust in early 2001 and has lost approximately \$500,000 as a  
12 result of defendants' conduct.

13 7. Plaintiff EILEEN HORTON is an individual who resides in Fullerton,  
14 California. She invested IRA monies in the Heath Fraud through Trust Company of  
15 America in 2003; she also invested non-IRA monies directly. Ms. Horton has lost  
16 approximately \$100,000 as a result of defendants' conduct.

17 8. Plaintiff JOSEPH RISSE is an individual who resides in Whittier,  
18 California. He invested monies directly in the Heath Fraud and has lost  
19 approximately \$250,000 as a result of defendants' conduct.

20 **Defendants**

21 9. Defendant FIRST TRUST COMPANY ("First Trust") is a trust company  
22 with its principal place of business in Denver, Colorado. First Trust is a wholly  
23 owned subsidiary of Fiserv, Inc., an \$8 billion financial services conglomerate.

24 10. DOE DEFENDANTS 1 - 25 are individuals or corporations who  
25 engaged in the wrongful conduct herein and/or aided and abetted and assisted in the  
26 Heath Fraud.  
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1 11. DOE DEFENDANTS 26 - 50, the TRUST COMPANY DEFENDANTS,  
2 are banks, trust companies, and financial institutions, not necessarily trust companies,  
3 who breached their customer agreements, fell beneath the standard of care, or  
4 otherwise participated in and aided and abetted the Heath Fraud.

5 12. DOE DEFENDANTS 51 - 75, the ATTORNEY DEFENDANTS, are  
6 attorneys and law firms who fell beneath the standard of care, or otherwise  
7 participated in and aided and abetted the Heath Fraud.

8 13. DOE DEFENDANTS 76 - 100, the ACCOUNTANT DEFENDANTS,  
9 are accountants and accountancy firms who fell beneath the standard of care, or  
10 otherwise participated in and aided and abetted the Heath Fraud.

#### 11 Non-Defendant Heath Criminals

12 14. Certain individuals who were central to the Heath Fraud are not named  
13 in this complaint. As described above, they are Daniel Heath, John Heath, Denis  
14 O'Brien, and Larre Schlarman (the "Heath Criminals"). The Heath Criminals are  
15 not sued because they are in jail and their assets are being pursued by the capable  
16 receiver, Robb Evans.

#### 17 CLASS ACTION ALLEGATIONS

18 15. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure  
19 23 on behalf of themselves and as representatives of all others who are similarly  
20 situated and who fall within the following Class definition: All individuals or entities  
21 who invested in the Heath Fraud and who received in return less money than they  
22 invested.

23 16. The Class Representatives are Ms. Horton and Mr. Risse, both of whom  
24 fall within the definition above.

25 17. This action also includes the following Subclass: All individuals or  
26 entities who invested in the Heath Fraud through First Trust and who received (or  
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1 whose accounts received) in return less money than was invested.

2 18. The Subclass Representative is Mr. Jenson, who falls within the  
3 definition above.

4 19. The Class and Subclass are so numerous that joinder of all members is  
5 impracticable. There are approximately 1,700 Class Members and 800 Subclass  
6 members spread around the United States.

7 20. There are questions of law and fact which are common to the Class and  
8 which predominate over questions affecting any individual Class member. The  
9 common Class questions include, inter alia, the following:

- 10 a.) Whether defendants participated directly in the Heath Fraud;  
11 b.) Whether defendants aided and abetted the Heath Fraud;  
12 c.) Whether defendants aided and abetted the breaches of fiduciary duty of  
13 the Heath Criminals; and  
14 d.) Whether defendants engaged in Unfair Business Practices.

15 21. In addition to the questions of law and fact which predominate for the  
16 Class, those which predominate for the Subclass include whether First Trust violated  
17 various customer agreements by failing to conduct an administrative review of the  
18 private placement memorandums for the Heath Fraud investments and whether First  
19 Trust otherwise violated the standard of care in its handling of its customer accounts.  
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21 22. The claims of the lead plaintiffs are typical of the claims of the other  
22 members of the Class and Subclass in that all members of the Class and Subclass  
23 have been damaged in a similar manner by defendants' actions.

24 23. Plaintiffs are committed to prosecuting this action and have retained  
25 competent counsel experienced in litigation of this nature. Plaintiffs are adequate  
26 representatives of the Class and Subclass.

27 24. A class action is superior to any other method available for the fair and  
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1 efficient adjudication of this controversy because it would be impractical and  
2 undesirable for each of the individual members of the Class and Subclass who has  
3 suffered damages to bring separate actions. Moreover, defendants have acted and  
4 will continue to act on grounds generally applicable to the Class and Subclass,  
5 thereby making appropriate final injunctive or corresponding declaratory relief with  
6 respect to the Class and Subclass as a whole.

### 7 GENERAL ALLEGATIONS

8 25. Since at least 1995 to April 2004, the Heath Criminals offered and sold  
9 various fraudulent notes and securities to at least 1,700 investors throughout the  
10 nation, including Plaintiffs, collecting over \$178 million in investment funds. The  
11 Heath Criminals were not registered with the Securities and Exchange Commission,  
12 as they were required to be. In march 1998, the California Department of  
13 Corporations issued Desist & Refrain ("D&R") Orders against Daniel Heath,  
14 Schlarman and certain related entities, ordering them to stop engaging in the  
15 unregistered offering and sales of securities and acting as broker-dealers.

16 26. Despite the D & R Orders, the Heath Criminals continued their ongoing,  
17 fraudulent financial scheme with a specific target: vulnerable senior citizens. The  
18 Heath Fraud persisted until April 28, 2004, when the Securities & Exchange  
19 commission filed an action in this Court which shut the operation down.

20 27. As is now abundantly clear, the simple scheme of the Heath Fraud, like  
21 most Ponzi schemes, was to take investor's money, steal it or otherwise squander it,  
22 and use new investor's money to make principal and interest payments to the existing  
23 investors lucky enough to redeem their investments to take dividends in cash.

24 28. During most of the duration of the Heath Fraud, at least from 1995 until  
25 spring 2003, First Trust was the custodial trustee of "choice" for Daniel Heath, and  
26 the other Heath Criminals, and the overwhelming majority of victims who used IRA  
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1 money to invest in the Heath Fraud used First Trust as their custodial trustee.

2 29. First Trust was aware of this virtually exclusive relationship, and First  
3 Trust employees, including Jim Terry, maintained close relations with Dan Heath and  
4 some of the other Heath Criminals in order to maintain that relationship.

5 30. Because of the crude nature of the Heath Fraud, there were abundant  
6 signs of the fraud to anyone sophisticated in the nature of financial investments, such  
7 as First Trust. First Trust was in a particularly strong position to disclose the fraud,  
8 since First Trust acted as a clearing house for thousands of Heath investments which  
9 totaled in excess of \$60,000,000. Yet, First Trust, despite its awareness of the fraud,  
10 did not disclose its awareness until the spring of 2003 when it became clear that third  
11 parties would not allow First Trust to feign ignorance any longer.

12 31. During the time that First Trust acted as the virtually exclusive custodial  
13 trustee for Heath investments, there were abundant signs that First Trust was aware  
14 of the Heath Fraud, and First Trust was, in fact, aware that there were fraudulent  
15 aspects of the Heath Fraud investments from the beginning of its relationship with  
16 Daniel Heath and the other Heath Criminals. These signs included that: the account  
17 information provided by the Heath Criminals to First Trust regarding the status of the  
18 investments in First Trust customer accounts was consistently incorrect (showing  
19 incorrect numbers of shares, failing to post investments etc.) and these errors were  
20 consistently brought to the attention of First Trust by its customers to the point where  
21 the sheer record keeping incompetence of the Heath Fraud sponsors made the  
22 investments not "administratively feasible" under Internal Revenue Code section  
23 4975 and First Trust, thus, violated that requirement; First Trust was aware that the  
24 authorized Financial Representative (often Daniel Heath or O'Brien) were one-in-the-  
25 same with the investment sponsor in further violation of IRC section 4975 regarding  
26 prohibited transactions through related parties; the investments in the Heath Fraud  
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1 were held by approximately 700 First Trust customers, most of whom had  
2 investments in a Heath Fraud vehicle called "PCM Fixed Income Fund I." a number  
3 of investors absurdly in excess of the 35 investor maximum for an exempt security  
4 which the PCM Fixed Income Fund I purported to be; numerous First Trust customers  
5 contacted First Trust regarding difficulties with the Heath Fraud beyond mere record-  
6 keeping, including the refusal of the Heath Criminals to provide account documents  
7 and, of course, the refusal of the Heath Criminals to allow the redemption of  
8 investments for cash; First Trust also violated many of its purported internal  
9 safeguards and procedures in order to accommodate the Heath Fraud, including  
10 allowing investments to be purchased without signed Investment Authorizations,  
11 sending payments to the Heath Criminals for investments in one investment vehicle,  
12 but making payment to a different investment vehicle (First Trust turned a blind eye  
13 to the commingling implications of this activity as well, indeed it actively participated  
14 in the commingling), and, as discussed in more detail below, First Trust failed to have  
15 on file – or to ever review as it promised – a prospectus for most, if not all, of the  
16 Heath Investments despite the fact that its own Investment Authorization Forms  
17 required the prospectus or offering memorandum to be on file and to be reviewed as  
18 a pre-condition to the allowance of any investment in the types of investments which  
19 the Heath Fraud investment vehicles purported to be.  
20

21 **First Trust Fails to Conduct Feasibility Reviews of Offering Materials**

22 32. First Trust required its customers (or their Financial Representative) to  
23 sign a number of documents which set forth First Trust's policy that it will review  
24 offering materials for unregistered or private investments such as those offered by the  
25 Heath Criminals. While there were slight variations in the language from document  
26 to document and over the years, during the period of 1995 (and perhaps earlier) until  
27 approximately 2002, First Trust maintained a policy to have the offering  
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1 memorandum or prospectus for each investment on file and to review this  
2 documentation to determine its "administrative feasibility." A \$250 charge was  
3 assessed by First Trust in order to compensate it for performing this review. For  
4 example, Investment Authorization Forms during the pre-1995 to approximately 2002  
5 period stated "before purchasing one of these offerings [of the type which the Heath  
6 Fraud investment purported to be], a prospectus must be on file with First Trust's  
7 Compliance Department." The Investment Authorization Forms also stated "[U]nless  
8 the offering has been registered with the SEC or similar state agency, the investment  
9 is subject to a review fee. When reviewing an offer for administrative feasibility,  
10 First Trust does not recommend, comment or pass on the investment merits, risk,  
11 suitability or management of the offering." Similar language is contained in IRA  
12 applications during this period. They include language stating that: "Private offerings  
13 are limited to those that have been determined to be Administratively Feasible  
14 Investments by First Trusts Investment Administration Analysts. A \$250 fee is  
15 assessed for the determination process."

16  
17 33. Despite these promises to perform an administrative review of the  
18 offering materials and to keep them on file, First Trust did neither. Of particular  
19 importance to this case, First Trust did not perform an administrative review of the  
20 PCM Fixed Income Fund I investment held by approximately 700 First Trust  
21 customers in the ultimate amount of over \$60,000,000. Nor did First Trust maintain  
22 on file the offering documentation for that investment because First Trust never had  
23 this information in the first place. Plaintiffs believe that, had First Trust required  
24 these documents, the Heath Criminals could not have perpetrated their scam.

25 **First Trust Can't Reasonably Fake Ignorance Any Longer, But Still Does**

26 34. When, in 2001, First Trust became aware this massive failing had been  
27 detected by a customer, First Trust took steps to cover-up its failings and to attempt  
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1 to avoid liability. Among the steps taken by First Trust to cover-up its problem were  
2 the institution of a "new" policy whereby it would no longer review offering  
3 documents, but instead rely upon the investment sponsor to sign a declaration  
4 concerning the investment characteristics which the administrative review had  
5 previously been designed to assure. First Trust also instituted a "new" policy to  
6 destroy documents and to the extent that First Trust followed this policy with regard  
7 to any documentation related to the Heath Fraud, such destruction was done with  
8 knowledge that a customer was pursuing a claim related to the Heath Fraud, and was  
9 done with knowledge of the Heath Fraud, or aspects of it, and was clearly a tortious  
10 act. First Trust, aware of the Heath Fraud, also decided to send its Valuation Policy  
11 to its customers to reinforce its attempt to shield itself from liability related to Heath  
12 Fraud valuation issues.

13           35. Having pretended to be ignorant of the Heath Fraud, and having taken  
14 steps to hide its culpability and shield itself from liability, First Trust, as in the sadly  
15 appropriate Casablanca quotation, purported in the Spring of 2003 to be "shocked,  
16 shocked" that there might be improprieties concerning the Heath Fraud investments.  
17 At that time, First Trust determined to decline further investments in Heath Fraud  
18 investments. First Trust has admitted that it knew at that time – and this complaint  
19 alleges it knew much earlier – numerous aspects of the Heath Fraud and, of great  
20 importance to this case, characterized those faults as being deficiencies of  
21 "administrative feasibility."  
22

### 23           **The Stunningly Misleading Letter of March 2003**

24           36. Despite the fact that it was aware when it announced its "no new  
25 investments in the Heath Fraud" policy to its customers that Daniel Heath had  
26 admitted that of the \$60,000,000 invested by First Trust customers in PCM Fixed  
27 Income Fund I, only "roughly \$15 - \$20 million" was left, First Trust merely  
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1 informed its customers in its letter of March 28, 2003 that it had become aware of the  
2 D&R Order (and a related Stipulated Settlement) and that "First Trust could not  
3 verify for its own purposes that [Heath entities and persons] have complied with the  
4 Orders and the Stipulated Settlement." (Emphasis added.) The letter is striking in  
5 many ways, and is an excellent litmus of First Trust's misleading conduct in this  
6 entire affair.

7 37. First, consistent with its attempts since 2001 to create new rules and  
8 postures to protect if from liability as the expense of its customers, First Trust  
9 intentionally misrepresents the significance of the problems, presenting it as a mere  
10 technicality relevant only for "its own purposes." First Trust does not inform its  
11 customers that it has learned that only \$15 - \$20 million out of over \$60 million  
12 invested in PCM Fixed Income Fund I remain. It does not tell them that First Trust  
13 did not have in its possession the offering memorandum (as required) for that huge  
14 investment until just weeks before the decision to curtail new Heath Fraud  
15 investments, and more importantly failed to disclose that the Heath Criminals had  
16 resisted giving the offering memorandum to First Trust. It did not tell its customers  
17 that its review - conducted at last - of the documentation demonstrated facially that  
18 the investment is bogus, such as the fact that the documentation purports to apply to  
19 "California residents only" while First Trust customers invested in PCM Fixed  
20 Income Fund I are located in 16 states in addition to California.

22 38. Nor does First Trust bother to inform its customers that the purported  
23 precipitating event which led First Trust to acknowledge the problems - and again,  
24 plaintiffs allege that First Trust was aware of problems with the Heath Fraud  
25 investments from virtually the first time its customers made investments in them -  
26 was a First Trust customer who since 2001 had loudly attempted to recover assets  
27 from the Heath Criminals without success and since 2001 had sought First Trust's  
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1 help in recovering those assets or at least learning what documentation existed  
2 concerning same – including, of course, the offering memoranda – and had been  
3 ignored by First Trust.

4 39. Nor does the letter even take a position concerning whether Heath  
5 Criminals are appropriate financial representatives of its customers; instead, with  
6 knowledge that the Heath Criminals were in violation of D&R orders and  
7 stipulations, and that those same Heath Criminals had squandered \$40 million of its  
8 customers' nest eggs, and with knowledge that Daniel Heath had flatly lied regarding  
9 the nature of the PCM Fixed Income Fund I investment, First Trust appallingly tells  
10 these primarily elderly investors: "Please understand that, by this letter, First Trust  
11 does not intend to make any statement about the quality of the assets in which you  
12 have invested, their current value, or the advice you have received from your financial  
13 representative." Still loyal to Daniel Heath and the other Heath Criminals, even now  
14 that the scheme is clearly unraveling, First Trust has the audacity to even inform these  
15 customers that First Trust is "not...recommending that you [name a new financial  
16 representative]." (Emphasis added.)  
17

18 40. In short, First Trust has no problem taking orders from so-called  
19 fiduciaries who: are in clear violation D&R orders and stipulations; who have  
20 squandered \$40 million dollars (at least); who refuse to allow their customers to  
21 redeem shares; and refuse to provide customers with offering documentation,  
22 presumably because that documentation, on its face, demonstrates that the  
23 investments are bogus and constitute unregistered securities. The list could go on and  
24 on as described above.

25 41. Because First Trust's March 28, 2003 letter misled its customers as to  
26 the real problems, and the extent of First Trust's awareness of same – it would not be  
27 inaccurate to call that letter a flat-out lie – First Trust customers and others who heard  
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1 about the letter continued to make investments in the Heath Fraud. Moreover, First  
2 Trust was aware that Daniel Heath rebutted even the weak assertions of the First  
3 Trust letter in his own letter, and First Trust took no steps to clarify the record. In  
4 short, First Trust continued to aid and abet the Heath Fraud even after it could no  
5 longer benefit from it, presumably in an effort to put as much distance between First  
6 Trust and the Heath Fraud before the inevitable collapse of the house of cards.

7 42. As set forth above, the grossly misleading nature of the First Trust letter  
8 of March 28, 2003 is a reflection of the First Trust policies and attitudes toward its  
9 customers who invested in the Heath Fraud from the beginning.

10 43. Even Heath Fraud investors who never invested through First Trust were  
11 encouraged to make direct investments because of the involvement of First Trust and  
12 First Trust was aware of this fact. First Trust was aware, for example, that the Heath  
13 Criminals actually used the First Trust administrative review of offering documents  
14 as a sales point even though First Trust never performed such reviews at all, a  
15 particularly egregious fault regarding the PCM Fixed Income Fund I which  
16 investment was widely owned both within First Trust and by outside investors as  
17 well.  
18

#### 19 Other Participants in The Heath Fraud

20 44. Plaintiffs believe that individual and corporate defendants, sued as Does,  
21 participated in the Heath Fraud both directly and as aiders and abettors by helping  
22 manage the Heath Fraud offices, infrastructure and investments. These defendants  
23 helped secret monies, made kick-backs to the Heath Criminals, helped sell the bogus  
24 Heath Fraud investments, and otherwise took actions that helped perpetuate the Heath  
25 Fraud.

26 45. Plaintiffs believe other TRUST COMPANY DEFENDANTS, sued as  
27 Does, have acted in a manner similar to First Trust and are similarly liable. They  
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1 have failed to review offering materials, despite contractual obligations to do so; they  
2 have turned a blind eye to abundant evidence of the Heath Fraud, were aware of the  
3 Heath Fraud, and have affirmatively chosen to participate in the Heath Fraud through  
4 acceptance of investments in the Heath Fraud and acting as a conduit for the fraud  
5 and for the purchase of illegal securities from individuals ineligible to sell securities.  
6 Plaintiffs believe at least one TRUST COMPANY DEFENDANT, in addition to  
7 defendant First Trust, failed to perform contractually required reviews of offering  
8 documentation and was aware of aspects of the Heath Fraud at the time it agreed to  
9 take investments in same. Various causes of action, as described below, apply to this  
10 conduct.

11           46. Plaintiffs believe ATTORNEY DEFENDANTS, sued as Does, have  
12 directly participated in the Heath Fraud by helping formulate legalistic strategies to  
13 accomplish the fraud, by preparing legal documents in furtherance of the fraud, and  
14 by helping the Heath Criminals to cover-up their illegal actions in order to induce  
15 innocent investors to make investments in the Heath Fraud.

16           47. Plaintiffs believe ACCOUNTANT DEFENDANTS, sued as Does, have  
17 directly participated in the Heath Fraud by helping formulate accounting strategies  
18 to accomplish the fraud, by preparing accounting documents in furtherance of the  
19 fraud, and by helping the Heath Criminals to cover-up their illegal actions in order  
20 to induce innocent investors to make investments in the Heath Fraud.  
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3 **CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**

5 **Aiding and Abetting Breach of Fiduciary Duty**  
6 **(Brought by the Class Against ALL DEFENDANTS)**

7 48. Plaintiffs incorporate by reference all prior paragraphs of this Complaint  
8 as though fully set forth herein.

9 49. ALL DEFENDANTS, and each of them, had knowledge of the fiduciary  
10 duties that each the Heath Criminals owed to the Plaintiffs. ALL DEFENDANTS, and  
11 each of them, had knowledge of the facts which constituted breaches of fiduciary  
12 duties by the Heath Criminals.

13 50. ALL DEFENDANTS, and each of them, substantially assisted the Heath  
14 Criminals' breaches of fiduciary duties against the Plaintiffs as described above.

15 51. As a direct and proximate result of ALL DEFENDANTS' aiding and  
16 abetting breaches of fiduciary duties, the Heath Fraud was allowed to flourish, and  
17 all Plaintiffs suffered damages, with interest thereon, in an amount to be determined  
18 at trial.

19 52. Plaintiffs have suffered substantial financial injury as a direct,  
20 foreseeable and proximate result of ALL DEFENDANTS' intentional and/or reckless  
21 wrongful conduct, as alleged herein. As a proximate result of such financial injury,  
22 Plaintiffs have experienced, and continue to experience, severe emotional distress in  
23 the form of depression, fear, anxiety, worry, grief, loss of sleep, and strokes,  
24 according to proof at trial. Plaintiffs' emotional distress has caused and is continuing  
25 to cause them to suffer additional financial losses as well, according to proof at trial.  
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1 THIRD CAUSE OF ACTION

2 **Violations of the California Corporations Code**  
3 ***Persons Jointly and Severally Liable with the Violator: Aiding and Abetting***  
4 **(Brought by the Class Against ALL DEFENDANTS)**

5 58. Plaintiffs incorporate by reference all prior paragraphs of this Complaint  
6 as though fully set forth herein.

7 59. The Heath Criminals violated §25110, §25401, §25402 and §25403 of  
8 the Corporations Code as described above. ALL DEFENDANTS, and each of them,  
9 had knowledge of the violations of the Corporations Code §25110, §25401, §25402  
10 and §25403 due to the role ALL DEFENDANTS, and each of them, played in the  
11 scheme to defraud.

12 60. Each of the HEATH DEFENDANTS materially assisted each other in  
13 violating Corporations Code §25110, §25401, §25402 and §25403. ALL  
14 DEFENDANTS acted with the intent to deceive or defraud Plaintiffs when they  
15 materially assisted in the primary violations of Corporations Code §25110, §25401,  
16 §25402 and §25403.

17 61. The acts complained of herein occurred within four years from the filing  
18 of the original Complaint and within one year of the discovery of these facts.

19 62. As a direct and proximate result of ALL DEFENDANTS wrongful  
20 conduct, Plaintiffs were damaged in an amount to be determined according to proof  
21 at trial, with interest thereon.

1 **FOURTH CAUSE OF ACTION**

2 **Negligent Misrepresentation**  
3 **(Brought by the Subclass Against ALL DEFENDANTS)**

4 63. Plaintiffs incorporate by reference all prior paragraphs of this Complaint  
5 as though fully set forth herein.

6 64. ALL DEFENDANTS, and each of them, made misrepresentations of  
7 facts through oral and written communications to Plaintiffs.

8 65. ALL DEFENDANTS made these misrepresentations of facts to the  
9 Plaintiffs without any reasonable grounds for believing the representations to be true  
10 when made. The Plaintiffs justifiably relied on ALL DEFENDANTS'  
11 misrepresentations of facts. ALL DEFENDANTS' misrepresentations of facts were  
12 the immediate cause of the Plaintiffs' injuries. Had ALL DEFENDANTS'  
13 misrepresentations of facts not been made to the Plaintiffs, the Plaintiffs would not  
14 have invested money in the Heath Fraud.

15 66. Plaintiffs did not and could not have, in the exercise of reasonable  
16 diligence, discovered the facts constituting this cause of action until after April 28,  
17 2004, at the earliest, when the public information first became available about the  
18 ongoing Heath Fraud.

19 67. As a direct and proximate result of ALL DEFENDANTS negligent  
20 misrepresentations of facts, Plaintiffs suffered damages in an amount to be  
21 determined according to proof at trial.

22 68. Plaintiffs have suffered substantial financial injury as a direct,  
23 foreseeable and proximate result of ALL DEFENDANTS' intentional and/or reckless  
24 wrongful conduct, as alleged herein. As a proximate result of such financial injury,  
25 Plaintiffs have experienced, and continue to experience, severe emotional distress in  
26 the form of depression, fear, anxiety, worry, grief, loss of sleep, and strokes,  
27 according to proof at trial. Plaintiffs' emotional distress has caused and is continuing  
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1 to cause them to suffer additional financial losses as well, according to proof at trial.

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3 **FIFTH CAUSE OF ACTION**

4 **Negligence**  
5 **(by the Subclass Against All Defendants)**

6 69. Plaintiffs incorporate by reference the preceding paragraphs, as if fully  
7 set forth herein.

8 70. Each defendant named in this claim had during the relevant period a duty  
9 to use due care and protect plaintiffs from injury, which included, among other things,  
10 a duty to verify, ensure, and adequately investigate the truthfulness and accuracy of  
11 the statements they made, as well as to refrain from disseminating false and  
12 misleading statements.

13 71. The defendants named in this claim breached the duty they owed to  
14 plaintiffs as described above.

15 72. The breach by the defendants named in this claim was the actual cause  
16 plaintiffs' injury, in that each defendants' breach was a substantial factor in bringing  
17 about plaintiffs' injury.

18 73. The breach by the defendants named in this claim was the legal cause of  
19 plaintiffs injury.

20 74. As a result of the negligent conduct by the defendants named in this  
21 claim, plaintiffs were injured. Plaintiffs reasonably and foreseeably relied on what  
22 turned out to be false information concerning the investments they made in the Heath  
23 Fraud and the Heath Criminals and have been damaged as a result, and are entitled  
24 to recover all actionable damages (including general, consequential, incidental and  
25 special damages, lost profits, lost opportunities and other damages).  
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1 81. First Trust actively concealed material facts with the intent to defraud  
2 or the intent to induce reliance thereon by Plaintiffs. First Trust induced indirect  
3 reliance thereon by Plaintiffs. Had the material facts that First Trust actively  
4 concealed been known, Plaintiffs would not have invested in the HEATH FRAUD.

5 82. The Plaintiffs did not and could not have, in the exercise of reasonable  
6 diligence, discovered the fraudulent acts constituting this cause of action until after  
7 in or around April 28, 2004, at the earliest, when the true information became  
8 available publicly, and still do not know all the facts concerning the First Trust's  
9 participation.

10 83. As a direct and proximate result of First Trust's active concealment of  
11 material facts, Plaintiffs were damaged in an amount to be determined according to  
12 proof at trial, together with interest.

13 84. Plaintiffs have suffered substantial financial injury as a direct,  
14 foreseeable and proximate result of First Trust's intentional and/or reckless wrongful  
15 conduct, as alleged herein. As a proximate result of such financial injury, Plaintiffs  
16 have experienced, and continue to experience, severe emotional distress in the form  
17 of depression, fear, anxiety, worry, grief, loss of sleep, and strokes, according to proof  
18 at trial. Plaintiffs' emotional distress has caused and continues to cause them to suffer  
19 additional financial losses as well, according to proof at trial.

20 85. First Trust, and each of them, acted intentionally and/or with a reckless  
21 disregard for the truth in a manner that was grossly negligent in engaging in the acts  
22 complained of herein. Plaintiffs therefore seek exemplary, punitive and financial  
23 distress damages in amount to be determined according to proof at trial.  
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1 **EIGHTH CAUSE OF ACTION**

2 **Fraud and Deceit Based Upon Omissions and**  
3 **Misrepresentations of Material Facts**  
4 **(Against ALL DEFENDANTS)**

5 86. Plaintiffs incorporate by reference all prior paragraphs of this Complaint  
6 as though fully set forth herein.

7 87. At all relevant times First Trust had a duty to disclose all material facts  
8 to the Plaintiffs.

9 88. First Trust made misrepresentations of fact, omitted facts and/or  
10 suppressed facts from the Plaintiffs, despite the duty to disclose.

11 89. First Trust knew the representations, omissions, and misleading  
12 statements they made to the Plaintiffs were false, or did not believe them to be true,  
13 or did not reasonably believe them to be true when made.

14 90. First Trust made these representations, omissions and suppressions of  
15 facts with the intent to defraud or with intent to induce reliance by the Plaintiffs. Had  
16 First Trust not made such misrepresentations, omissions, or suppressions of facts, the  
17 Plaintiffs would not have invested in the Heath Fraud. Plaintiffs justifiably relied on  
18 the misrepresentations, omissions and suppressions of material facts were the  
19 immediate cause of the Plaintiffs' damages.

20 91. In the exercise of reasonable diligence, Plaintiffs did not and could not  
21 have discovered the wrongful acts constituting this cause of action until after April  
22 28, 2004, at the earliest.

23 92. As a direct and proximate result of First Trust's intentional  
24 misrepresentations, omissions and misleading statements, Plaintiffs were damaged  
25 in an amount to be determined according to proof at trial, together with interest  
26 thereon as provided by law.

27 93. Plaintiffs have suffered substantial financial injury as a direct,  
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1 foreseeable and proximate result First Trust's intentional and/or reckless wrongful  
2 conduct, as alleged herein. As a proximate result of such financial injury, Plaintiffs  
3 have experienced, and continue to experience, severe emotional distress in the form  
4 of depression, fear, anxiety, worry, grief, loss of sleep, and strokes, according to proof  
5 at trial. Plaintiffs' emotional distress has caused and is continuing to cause them to  
6 suffer additional financial losses as well, according to proof at trial.

7 94. First Trust maliciously and with an evil mind committed the wrongful  
8 acts which constitute this cause of action such that it warrants the imposition of  
9 punitive, financial distress and exemplary damages to Plaintiffs.

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11 **NINTH CAUSE OF ACTION**

12 **Violation of California Business and Professions Code Sections 17200 et seq.**  
13 **(By the Class against All Defendants)**

14 95. Plaintiffs incorporate by reference all prior paragraphs of this Complaint  
15 as though fully set forth herein.

16 96. Defendants' actions constitute unfair, illegal and fraudulent business  
17 practices within the meaning of Cal. Bus. & Prof. Code Sections 17200 et seq.  
18 Accordingly, plaintiffs may obtain all remedies and penalties authorized by statute,  
19 including without limitation, restitution and attorneys fees.  
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**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs request judgment against ALL DEFENDANTS, and each of them, as follows:

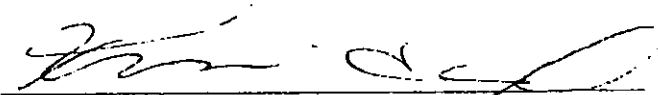
1. Compensatory and general damages according to proof;
2. Special damages according to proof;
3. For financial stress damages, according to proof at trial;
4. Prejudgment interest at maximum rate;
5. Punitive and exemplary damages according to proof;
6. For extraordinary equitable or injunctive relief, restitution, and disgorgement of profits;
7. Costs of proceedings herein;
8. Reasonable attorneys fee;
9. All such other and further relief as the Court deems proper.

**JURY DEMAND**

Plaintiffs hereby demand a trial by Jury.

Dated: April 27, 2005

GLANCY BINKOW & GOLDBERG LLP

  
\_\_\_\_\_  
Kevin F. Ruf

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