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.

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CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

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

Plaintiffs,

v.

FIRST TRUST COMPANY, and DOES 1-10~~0~~, 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

INTRODUCTION

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

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

JURISDICTION AND VENUE

Subject Matter Jurisdiction

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

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

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

Venue

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

PARTIES

Lead Plaintiffs

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

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

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

Defendants

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

10. DOE DEFENDANTS 1 - 25 are individuals or corporations who engaged in the wrongful conduct herein and/or aided and abetted and assisted in the Heath Fraud.

11. DOE DEFENDANTS 26 - 50, the TRUST COMPANY DEFENDANTS, are banks, trust companies, and financial institutions, not necessarily trust companies, who breached their customer agreements, fell beneath the standard of care, or otherwise participated in and aided and abetted the Heath Fraud.

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

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

Non-Defendant Heath Criminals

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

CLASS ACTION ALLEGATIONS

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

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

17. This action also includes the following Subclass: All individuals or entities who invested in the Heath Fraud through First Trust and who received (or

whose accounts received) in return less money than was invested.

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

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

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

a.) Whether defendants participated directly in the Heath Fraud;

b.) Whether defendants aided and abetted the Heath Fraud;

c.) Whether defendants aided and abetted the breaches of fiduciary duty of the Heath Criminals; and

d.) Whether defendants engaged in Unfair Business Practices.

21. In addition to the questions or law and fact which predominate for the Class, those which predominate for the Subclass include whether First Trust violated various customer agreements by failing to conduct an administrative review of the private placement memorandums for the Heath Fraud investments and whether First Trust otherwise violated the standard of care in its handling of its customer accounts.

22. The claims of the lead plaintiffs are typical of the claims of the other members of the Class and Subclass in that all members of the Class and Subclass have been damaged in a similar manner by defendants' actions.

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

24. A class action is superior to any other method available for the fair and

efficient adjudication of this controversy because it would be impractical and undesirable for each of the individual members of the Class and Subclass who has suffered damages to bring separate actions. Moreover, defendants have acted and will continue to act on grounds generally applicable to the Class and Subclass, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the Class and Subclass as a whole.

GENERAL ALLEGATIONS

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

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

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

28. During most of the duration of the Heath Fraud, at least from 1995 until spring 2003, First Trust was the custodial trustee of "choice" for Daniel Heath, and the other Heath Criminals, and the overwhelming majority of victims who used IRA

money to invest in the Heath Fraud used First Trust as their custodial trustee.

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

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

31. During the time that First Trust acted as the virtually exclusive custodial trustee for Heath investments, there were abundant signs that First Trust was aware of the Heath Fraud, and First Trust was, in fact, aware that there were fraudulent aspects of the Heath Fraud investments from the beginning of its relationship with Daniel Heath and the other Heath Criminals. These signs included that: the account information provided by the Heath Criminals to First Trust regarding the status of the investments in First Trust customer accounts was consistently incorrect (showing incorrect numbers of shares, failing to post investments etc.) and these errors were consistently brought to the attention of First Trust by its customers to the point where the sheer record keeping incompetence of the Heath Fraud sponsors made the investments not "administratively feasible" under Internal Revenue Code section 4975 and First Trust, thus, violated that requirement; First Trust was aware that the authorized Financial Representative (often Daniel Heath or O'Brien) were one-in-the-same with the investment sponsor in further violation of IRC section 4975 regarding prohibited transactions through related parties; the investments in the Heath Fraud

were held by approximately 700 First Trust customers, most of whom had investments in a Heath Fraud vehicle called "PCM Fixed Income Fund I." a number of investors absurdly in excess of the 35 investor maximum for an exempt security which the PCM Fixed Income Fund I purported to be; numerous First Trust customers contacted First Trust regarding difficulties with the Heath Fraud beyond mere record-keeping, including the refusal of the Heath Criminals to provide account documents and, of course, the refusal of the Heath Criminals to allow the redemption of investments for cash; First Trust also violated many of its purported internal safeguards and procedures in order to accommodate the Heath Fraud, including allowing investments to be purchased without signed Investment Authorizations, sending payments to the Heath Criminals for investments in one investment vehicle, but making payment to a different investment vehicle (First Trust turned a blind eye to the commingling implications of this activity as well, indeed it actively participated in the commingling), and, as discussed in more detail below, First Trust failed to have on file – or to ever review as it promised – a prospectus for most, if not all, of the Heath Investments despite the fact that its own Investment Authorization Forms required the prospectus or offering memorandum to be on file and to be reviewed as a pre-condition to the allowance of any investment in the types of investments which the Heath Fraud investment vehicles purported to be.

<u>First Trust Fails to Conduct Feasibility Reviews of Offering Materials</u>

32. First Trust required its customers (or their Financial Representative) to sign a number of documents which set forth First Trust's policy that it will review offering materials for unregistered or private investments such as those offered by the Heath Criminals. While there were slight variations in the language from document to document and over the years, during the period of 1995 (and perhaps earlier) until approximately 2002, First Trust maintained a policy to have the offering

memorandum or prospectus for each investment on file and to review this documentation to determine its "administrative feasibility." A $250 charge was assessed by First Trust in order to compensate it for performing this review. For example, Investment Authorization Forms during the pre-1995 to approximately 2002 period stated "before purchasing one of these offerings [of the type which the Heath Fraud investment purported to be], a prospectus must be on file with First Trust's Compliance Department." The Investment Authorization Forms also stated "[U]nless the offering has been registered with the SEC or similar state agency, the investment is subject to a review fee. When reviewing an offer for administrative feasibility, First Trust does not recommend, comment or pass on the investment merits, risk, suitability or management of the offering." Similar language is contained in IRA applications during this period. They include language stating that: "Private offerings are limited to those that have been determined to be Administratively Feasible Investments by First Trusts Investment Administration Analysts. A $250 fee is assessed for the determination process."

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

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

34. When, in 2001, First Trust became aware this massive failing had been detected by a customer, First Trust took steps to cover-up its failings and to attempt

to avoid liability. Among the steps taken by First Trust to cover-up its problem were the institution of a "new" policy whereby it would no longer review offering documents, but instead rely upon the investment sponsor to sign a declaration concerning the investment characteristics which the administrative review had previously been designed to assure. First Trust also instituted a "new" policy to destroy documents and to the extent that First Trust followed this policy with regard to any documentation related to the Heath Fraud, such destruction was done with knowledge that a customer was pursuing a claim related to the Heath Fraud, and was done with knowledge of the Heath Fraud, or aspects of it, and was clearly a tortious act. First Trust, aware of the Heath Fraud, also decided to sent its Valuation Policy to its customers to reinforce its attempt to shield itself from liability related to Heath Fraud valuation issues.

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

<u>The Stunningly Misleading Letter of March 2003</u>

36. Despite the fact that it was aware when it announced its "no new investments in the Heath Fraud" policy to its customers that Daniel Heath had admitted that of the $60,000,000 invested by First Trust customers in PCM Fixed Income Fund I, only "roughly $15 - $20 million" was left. First Trust merely

informed its customers in its letter of March 28, 2003 that it had become aware of the D&R Order (and a related Stipulated Settlement) and that "First Trust could not verify <u>for its own purposes</u> that [Heath entities and persons] have complied with the Orders and the Stipulated Settlement." (Emphasis added.) The letter is striking in many ways, and is an excellent litmus of First Trust's misleading conduct in this entire affair.

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

38. Nor does First Trust bother to inform its customers that the purported precipitating event which led First Trust to acknowledge the problems – and again, plaintiffs allege that First Trust was aware of problems with the Heath Fraud investments from virtually the first time its customers made investments in them – was a First Trust customer who since 2001 had loudly attempted to recover assets from the Heath Criminals without success and since 2001 had sought First Trust's

help in recovering those assets or at least learning what documentation existed concerning same – including, of course, the offering memoranda – and had been ignored by First Trust.

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

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

41. Because First Trust's March 28, 2003 letter misled its customers as to the real problems, and the extent of First Trust's awareness of same – it would not be inaccurate to call that letter a flat-out lie – First Trust customers and others who heard

about the letter continued to make investments in the Heath Fraud. Moreover, First Trust was aware that Daniel Heath rebutted even the weak assertions of the First Trust letter in his own letter, and First Trust took no steps to clarify the record. In short, First Trust continued to aid and abet the Heath Fraud even after it could no longer benefit from it, presumably in an effort to put as much distance between First Trust and the Heath Fraud before the inevitable collapse of the house of cards.

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

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

Other Participants in The Heath Fraud

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

45. Plaintiffs believe other TRUST COMPANY DEFENDANTS, sued as Does, have acted in a manner similar to First Trust and are similarly liable. They

have failed to review offering materials, despite contractual obligations to do so; they have turned a blind eye to abundant evidence of the Heath Fraud, were aware of the Heath Fraud, and have affirmatively chosen to participate in the Heath Fraud through acceptance of investments in the Heath Fraud and acting as a conduit for the fraud and for the purchase of illegal securities from individuals ineligible to sell securities. Plaintiffs believe at least one TRUST COMPANY DEFENDANT, in addition to defendant First Trust, failed to perform contractually required reviews of offering documentation and was aware of aspects of the Heath Fraud at the time it agreed to take investments in same. Various causes of action, as described below, apply to this conduct.

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

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

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Aiding and Abetting Beach of Fiduciary Duty
(Brought by the Class Against ALL DEFENDANTS)

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

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

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

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

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

SECOND CAUSE OF ACTION

Aiding and Abetting Fraud
(Brought by the Class Against ALL DEFENDANTS)

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

54. ALL DEFENDANTS, and each of them, had knowledge of the fraud, or at least some of the many frauds, committed by the Heath Criminals in connection with the investments they sold.

55. ALL DEFENDANTS, and each of them, substantially assisted the Heath Criminals in their fraudulent conduct as described above.

56. As a direct and proximate result of ALL DEFENDANTS' aiding and abetting the Heath Criminals, the Heath Fraud was allowed to flourish, and all Plaintiffs suffered damages, with interest thereon, in an amount to be determined at trial.

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

THIRD CAUSE OF ACTION

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

Negligent Misrepresentation
(Brought by the Subclass Against ALL DEFENDANTS)

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

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

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

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

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

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

to cause them to suffer additional financial losses as well, according to proof at trial.

FIFTH CAUSE OF ACTION

Negligence
(by the Subclass Against All Defendants)

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

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

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

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

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

74. As a result of the negligent conduct by the defendants named in this claim, plaintiffs were injured. Plaintiffs reasonably and foreseeably relied on what turned out to be false information concerning the investments they made in the Heath Fraud and the Heath Criminals and have been damaged as a result, and are entitled to recover all actionable damages (including general, consequential, incidental and special damages, lost profits, lost opportunities and other damages).

SIXTH CAUSE OF ACTION

Breach of Fiduciary Duty and Constructive Fraud (by Subclass against First Trust and by the Class against Trust Company Defendants)

75. Plaintiffs incorporate by reference the preceding paragraphs, as if fully set forth herein.

76. First Trust engaged in the above-described acts while in a fiduciary relationship with all of the Subclass members. As a custodian and/or trustee of Subclass members' accounts, First Trust's conduct constitutes a breach of their fiduciary duties and of their duties of reasonable care. The result of these breaches was to convince the members of the Subclass that their money was safe, that the periodic statements of value issued by First Trust accurately reflected the values of their accountants and the Heath Criminals were legitimate investment advisors. Such reliance was reasonable and resulted in massive damage to the Subclass.

77. First Trust's action were malicious, fraudulent, oppressive, and intended to injure the Subclass. Consequently, the Subclass is entitled to punitive damages.

SEVENTH CAUSE OF ACTION

Fraud and Deceit by Active Concealment By Sub-Class Against First Trust (Against ALL DEFENDANTS)

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

79. First Trust, and each of them, actively concealed material facts affecting the value and condition of Plaintiffs' investment in the HEATH FRAUD as well as concealing material facts concerning the Heath Criminals.

80. First Trust knew the material facts affecting Plaintiffs', which they actively concealed, were beyond the reach of Plaintiffs.

81. First Trust actively concealed material facts with the intent to defraud or the intent to induce reliance thereon by Plaintiffs. First Trust induced indirect reliance thereon by Plaintiffs. Had the material facts that First Trust actively concealed been known, Plaintiffs would not have invested in the HEATH FRAUD.

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

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

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

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

EIGHTH CAUSE OF ACTION

Fraud and Deceit Based Upon Omissions and Misrepresentations of Material Facts (Against ALL DEFENDANTS)

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

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

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

89. First Trust knew the representations, omissions, and misleading statements they made to the Plaintiffs were false, or did not believe them to be true, or did no reasonably believe them to be true when made.

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

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

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

93. Plaintiffs have suffered substantial financial injury as a direct,

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

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

NINTH CAUSE OF ACTION

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

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

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

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

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