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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

Coordination Proceeding Special Title (Rule 1550(b)) FIRST PENSION CASES I _____ __	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 3131 Orange County Superior Court Case No. 740706
KARMELE MURRAY; JOSEPH T. MURRAY; LINDA COLLINS; MIKE KRASOWSKI; GERALDINE KRASOWSKI; RONALD WONG; RUTH WONG; BETTY BOLGER; CLAUDETTE FOSDICK; THOMAS KAISER; JEAN KAISER; CANDY RENDALL; WILLIAM RENDALL; MARGARET SHELEY; JOHN SHELEY; SANDRA VAN LOBEN SELS; and ELLEN WISE, individually, and on behalf of all others similarly situated, Plaintiffs, vs. GLEN BELKA, an individual, LATHAM & WATKINS, a professional corporation, GARY MENDOZA, an individual, JOHN R. STAHR,	**FOURTH AMENDED CLASS ACTION COMPLAINT FOR:** 1. Active Concealment 2. Fraud and Deceit 3. Negligent Misrepresentations 4. Attorney Malpractice 5. Breach of Fiduciary Duty 6. Negligence 7. State Securities Violations 8. Aiding and Abetting **JURY TRIAL DEMANDED**

an individual, C. CHRISTOPHER COX, an individual, WILLIAM E. COOPER, an individual, ROBERT E. LINDLEY, an individual, VALERIE JENSEN, an individual, SMITH & HILBIG, a professional corporation, MILAN SMITH, an individual, COOPERS & LYBRAND, a professional corporation, HAL HURWITZ, and individual, and DOES 1 through 100, inclusive,

Defendants.

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Plaintiffs, on their own behalf, and on behalf of the Accountholder Class and the BMF 100 Class (defined in the Class Action section of this operative complaint), allege, upon personal knowledge as to themselves and their own acts, and as to all other matters, upon information and belief, based upon, *inter alia*, the investigations made by their attorneys and certain findings made by the Securities and Exchange Commission ("SEC") and the United States Attorney's Office and first made public on or about May 13, 1994, as follows:

I.

STATEMENT OF THE CASE

I. On 8 November 1984 Defendant Glen Belka ("Belka"), a principal of investment manager VestCorp of California ("VestCorp") was in a panic. As a former IRS Pension/Trusts Tax Law Specialist, Defendant Belka knew the dire things that would happen to him if VestCorp's 2,000 accountholders discovered he and his co-defendants were either violating their fiduciary duties to accountholders, buying over-priced trust deeds with accountholder funds from one of the defendants own companies, selling unregistered and fraudulent securities to accountholders, covering up prior violations, failing to disclose material information, failing to disclose, obstructing,or misleading on-going government investigations into the wrongdoing, and providing accounting and legal services that fell below required professional standards.

1. Defendant Belka and his co-defendants Cooper, Valerie Jensen (Jensen)

and Robert Lindley's (Lindley) concerns that their scheme would be uncovered had begun in March 1983 when the California Department of Real Estate (DRE) had begun an investigation into defendant Cooper's misappropriation of trust deed fund payments, held in trust by the company (L.B. Mortgage Servicing Co) servicing the trust deeds sold to VestCorp's accountholders. Those concerns became more acute when in July 1983 the Securities & Exchange Commission (SEC) showed up at the VestCorp offices and began a field investigation into VestCorp's possible violations of the Investment Advisors Act. In March 1984 SEC attorneys asked defendant Jensen to submit to a deposition. It was at this point in March that VestCorp's principals, defendants Cooper, Lindley, Belka and Jensen retained defendant Latham & Watkins (Latham) to provide legal advice and services to defendants and the accountholders.

2. From March 1984 until 8 November 1984 defendant Latham and specifically its attorneys, defendants John Stahr (Stahr), C. Christopher Cox (Cox) and Gary Mendoza (Mendoza) undertook and did represent the defendants and their accountholders, even after learning of the underlying wrongdoing described above. Defendants Latham, Stahr, Cox and Mendoza joined with the intentional deceit of defendants Cooper, Lindley, Jensen and Belka and thereby thrusted themselves into a primary and nefarious role in the transactions described herein. Having first manufactured a falsehood, defendants were forced to invent more to maintain it. Defendants Cox, Stahr and Mendoza conceived and with defendants Cooper, Lindley, Jensen and Belka implemented a seven part strategy that would buy the wrongdoing defendants more time, head off an accountholder run on the VestCorp system, and

expand the wrongdoers ability to bring more money into the scheme. The seven-part strategy consisted of the following: (1)on paper transforming the relationship between the accountholders and VestCorp from investment manager-accountholder to a discount broker dealer-customer; (2) on-paper giving accountholders the choice of converting their single trust deed investments into an interest in a pool of trust deeds; (3) Without advising accountholders to seek independent counsel, having Latham perform legal services for them which included sending them a series of misleading and materially false writings which provided legal advice and other representations that fell below professional standards; (4) Reorganizing on paper the ownership of the affiliated parties to conceal the fact that they were under defendant Cooper's control; (5) Keeping government regulators misinformed by writings and sending them a series of misleading and false communications aimed at obstructing their investigation; (6) Expanding the ability of defendants Cooper, Lindley, Jensen and Belka to sell a broader range of fraudulent securities to accountholders by reorganizing the investment system in violation of fiduciary duties; and (7) Expanding the ability to continue the scheme by moving defendants Cooper, Lindley, Belka and Jensen's business operations further into the financial services industry with the purchase of a bank and the organization of a massive holding company. These combined actions directed and lead by defendant Latham and its attorneys made it possible for a fraud that should and would have been discovered by 1985 to continue on for another 9 years.

3. By 8 November 1984, at least 7 months after Latham became involved in

the scheme, matters were coming to a head for defendants Belka, Cooper, Cox, Jensen, Mendoza and Lindley. SEC filings drafted by defendants Cox and Mendoza were scheduled to be filed in December. From March to November 1984 defendants Cox and Mendoza conceived and implemented a plan to reorganize on paper the VestCorp to accountholder relationship so that VestCorp was no longer acting as the accountholders investment manager. In filings with the SEC, written by defendants Cox and Mendoza, it was represented that the accountholders were the former clients of VestCorp. Defendant Belka also testified before the SEC in early 1985 that VestCorp was no longer the investment manger for the accountholders because VestCorp had gotten out of the investment management business and accountholders were on their own. VestCorp's "resignation" allowed defendants to argue to the SEC that any SEC violation by VestCorp has ceased, as it was no longer the investment manager to the Accountholder Class. However, unknown to the SEC, Defendants Cooper, Belka, Lindley and Jensen would still provide investment management and advice to accountholders, continue to control the Accountholder Class' funds, continue to sell fraudulent and unlawful securities to the Accountholder Class, and would continue to control the overall operation of the scheme. Thus, what defendant Belka, Cox, Jensen, Mendoza, Lindley and Cooper really changed was how the operation looked on paper.

4. The problem Belka raised with defendants Mendoza and Cox on 8 November 1984 was how to tell investors VestCorp was no longer going to be their investment manager. Defendants Belka, Cox and Mendoza knew accountholders had

been persuaded to open accounts with VestCorp based on VestCorp acting as the accountholders investment manager. If VestCorp was truly resigning, defendants Belka, Cox and Mendoza knew there was a high risk accountholders would close their accounts in droves causing a "run on the system."

5. The solution hatched by defendants Belka, Cox and Mendoza was to misrepresent the facts to accountholders in a series of writings. Accountholders were told in these writings that they would be receiving more investment management and investment advice, not less, by a newly reorganized investment system which would provide the plaintiffs a "financial supermarket."

6. The strategies, changes and writings sent to accountholders were advised, structured, and implemented by defendants Latham and its attorneys Stahr, Cox, Mendoza, and Defendants Smith & Hilbig and Milan Smith (hereinafter collectively referred to as the "S&H Defendants"). Defendants Latham, Cox, Mendoza and the S& H Defendants were the lawyers Defendant Belka and his co-horts, Defendants Cooper, Lindley, and Jensen had retained to represent the Accountholder Class and the companies servicing the Accountholder Class investments and accounts. The lawyers, as detailed in this operative complaint, breached legal duties owed to the Accountholder Class in carrying out the scheme.

7. Contemporaneous with Defendant Belka's operation of VestCorp and First Pension, Defendant Belka had been implicated in another massive criminal pension and investment fraud case. Defendant Belka and Defendant Jensen both had been principals in John Rinaldo's ("Rinaldo") illegal pension and investment business,

American Home Mortgage and Western States Pension. Both of these companies served as a model for Defendants Cooper, Belka, Lindley and Jensen in creating First Pension and VestCorp. Consequently, Defendant Belka was right to worry that his involvement in a second pension and investment fraud might land him in jail. Specifically, in February 1984, Rinaldo's accountholders had named Defendants Belka and Jensen in a multi-million dollar civil fraud and racketeering complaint arising out of their involvement in Rinaldo's unlawful pension and investment business. Defendant Belka testified before the federal grand jury in Los Angeles that indicted Rinaldo. Defendant Jensen was questioned by the U.S. Postal Inspectors in connection with the Rinaldo case. As a result of American Home Mortgage's fraud scheme, Rinaldo was headed to federal prison for performing many of the same types of transactions with pension and investor funds that Defendants Belka, Cooper, Lindley, Jensen were doing at First Pension and VestCorp.

8. Another worry of defendant Belka was over whether the Accountholder Class would find out that VestCorp was a shill used by Defendant Belka's partner, Defendant Cooper, to gain control of millions of dollars for Defendant Cooper's financially ailing trust deed sales company, Continental. Beginning in 1976, Continental, under Defendant Cooper, was operating as a trust deed loan brokering and sales company. To get investors to invest in trust deed loans brokered or sold by Continental, Defendant Cooper directly or through Continental Commercial Finance Corporation ("Continental Finance"), issued repayment guarantees to investors who invested in said trust deeds. Continental sold, and Defendant Cooper guaranteed

repayment, of trust deed loans to investors at prices materially above the real property's underlying equity values. However, eventually, Defendant Cooper had to make good on repayment guarantees, to which he could not. Defendant Cooper was eventually sued by scores of his trust deed loan buyers on these repayment guarantees.

9. To meet his repayment obligations, and to keep Continental afloat, Defendant Cooper needed a major infusion of cash. With Defendants Belka and Jensen's help, Defendant Cooper organized VestCorp and First Pension to front as an independent pension and investment management business for small pension plans and individual retirement accounts ("IRA's"). Through this guise, and an aggressive radio advertising program, Defendant Cooper was able to amass over $13 million in pension accounts at First Pension and VestCorp by 1984. From 1981 to 1984, Defendant Cooper, with the aid of Defendants Belka and Jensen, transferred funds amassed from approximately 2000 accountholders to Continental in exchange for approximately 450 materially overpriced trust deeds. These sales of trust deeds, however, were not made in arms length transactions, as Defendant Cooper controlled both the buyer and seller.

10. In September 1983, to avoid discovery of the trust deed loan losses, and to reduce the administrative burden of running the scheme, Defendants Cooper, Lindley, Belka and Jensen, working with the S&H Defendants, merged the approximately 450 trust deed loans into a single pool of trust deeds, named Bank Mortgage Fund No. 1 ("BMF 1"). The Accountholder Class was issued interests in BMF 1 in exchange for their interests in individual trust deeds. Federal and State Securities

laws required a review by the SEC and approval by the California Department of Corporations ("DOC") for such a merger. Defendants did not submit BMF 1 to either the DOC nor the SEC for such a review and thereby violated federal and state securities laws. Despite violating Federal and State Securities Laws in creating BMF 1, Defendants Cooper, Lindley, Belka, and Jensen continued to sell interests in BMF 1. These sales, which continued until 1988, were not approved by the SEC or the DOC, and thus, constituted on-going federal and state securities laws violations.

11. Borrower payments on the Accountholder Class' trust deed loans were serviced by Defendant Cooper through L.B. Mortgage Servicing. Important facts were kept from the Accountholder Class regarding the servicing of these trust deed loans. On 16 August 1983, the California Department of Real Estate ("DRE") accused Defendant Cooper of misappropriating funds entrusted to him at L.B. Mortgage Servicing. In June 1984, the DRE revoked Defendant Cooper's real estate license based on its accusation. The revocation of Defendant Cooper's license was concealed from the Accountholder Class.

12. The Rinaldo problem, the Accountholder Class' pension account short fall, the unlawful BMF 1 merger, the misappropriation of the Accountholder Class' funds, the SEC investigation, and the revocation of Defendant Cooper's real estate license, and the other material information above-described would not be disclosed in the two letters Defendants Belka, Cox and Mendoza were writing. Instead, Defendants Belka, Cox and Mendoza suggested to the Accountholder Class that First Pension and its affiliated companies were opening a "financial supermarket" for the Accountholder

Class. Defendant Belka was following the advice of the attorney defendants he and his fellow defendants had retained to deal with the mounting legal problems. Defendants Latham, Stahr, Cox and Mendoza, along with the S&H Defendants, were retained by VestCorp to represent the Accountholder Class. VestCorp was the Accountholder Class' agent and investment manager.

13. Defendants Latham, Stahr, Cox and Mendoza and the S&H Defendants curried favor with Defendant Cooper by providing the advice and help needed to cover-up the wrongdoing and retain control over the Accountholder Class' funds, while expanding sales of fraudulent and unlawful securities. According to the plan, Defendants Latham, Stahr, Cox and Mendoza and the S&H Defendants would hide the trust deed loan losses and the illegal BMF 1 pool in a new multi-million dollar trust deed loan public offering. Ingenuously, Defendant Cooper proposed giving the trust deed loans full value by using the prices originally charged the Accountholder Class as fair market values.

14. On 8 November 1984, Defendant Belka admitted to Defendants Latham, Stahr, Cox and Mendoza that disclosure of the pertinent facts should be limited so as to not cause a "run on the system." Defendant Belka was concerned about violations and penalties if the letters fell into the hands of the authorities. Thus, Defendant Belka asked Defendant Latham for a "written opinion and written suggested language changes" to his draft copies of the proposed communications to the Accountholder Class and stressed the point that "as this project for us is **most urgent**, I would appreciate your immediate response." [emphasis added] Specifically, Defendant

Belka's "most urgent" letter asked Defendant Latham to consider the letters to the Accountholder Class "from the following point of view":

> (1) should these communications (as is) **fall into the hands of the following regulating agencies**, i.e., the Department of Labor, the SEC, the IRS, the Department of Corporations, the Department of Real Estate and the State Banking Department; **what violations do we commit** (if any) and **what are the penalties** (if any). (emphasis added)
>
> Our objective is to inform our clients of the **changes that have occurred in the system** that meet the proper fiduciary disclosure requirements **without causing a run on the system**." (emphasis added) ("Most Urgent Letter")

15. Defendant Latham, through its attorneys, Defendants Cox and Mendoza, spent several hours drafting and conferring with Defendant Belka about the content of the two proposed letters to the Accountholder Class. The product of their collaboration was a 28 November 1984 letter on VestCorp stationery addressed to "Dear Accountholder" ("28 November 1984 Accountholder Reorganization Letter"). The other writing was a winter 1985 First Pension Newsletter letter ("First Pension Reorganization Newsletter"). The letters were written and sent by Defendants Belka, Latham, Stahr, Cox and Mendoza and the S&H Defendants to persuade the Accountholder Class to refrain from closing their accounts, to go along with the switch-over from the VestCorp investment system to the VestCorp Securities investment system, and to purchase more fraudulent and unlawful securities issued and sold by Defendants Cooper, Belka, Lindley and Jensen's companies. When Defendants Latham, Stahr, Cox and Mendoza participated in the drafting of these two letters, they had been retained as counsel for the Accountholder Class by their investment manager, VestCorp, as well as being retained as counsel for Defendants Cooper, Lindley, Belka, and Jensen.

16. The 28 November 1984 Accountholder Reorganization Letter and the First Pension Reorganization Newsletter, which Defendants Latham, Cox and Mendoza took a material hand in advising and drafting, were sent to the Accountholder Class and those letters were relied upon by the Accountholder Class to their detriment. Specifically, the letters caused the Accountholder Class to refrain from closing their accounts, to go along with the switch-over from the VestCorp investment system to the VestCorp Securities investment system, and to buy additional fraudulent and unlawful securities issued and sold by Defendants Cooper, Belka, Lindley and Jensen's companies.

17. The 28 November 1984 Accountholder Reorganization Letter and the First Pension Reorganization Letter contained a number of misrepresentations, misleading statements and omitted material facts needed to make those statements made not misleading. The Accountholder Class was not told the switch in investment systems could not be imposed upon them without their informed consent. By these letters and the related actions of Defendants Cooper, Belka, Lindley, Jensen, Latham, Stahr, Cox, Mendoza, and the S&H Defendants undue influence was used to get the Accountholder Class to refrain from closing their accounts and to go along with the switch from the VestCorp investment system to the VestCorp Securities investment system.

18. A run on the system, a closing down of the system, a change in the system to an honest one with past losses recompensed was what was called for under the circumstances. Failing the honest approach, Defendant Cooper, with the active

assistance of Defendants Belka, Lindley and Jensen, paid Defendants Latham, Stahr, Cox and Mendoza, the S&H Defendants, and the C&L Defendants from the Accountholder Class funds unlawfully raised continued to pour into Defendant Cooper because of these defendants' unlawful activities to cover-up the fraud. Once engaged in the concealment of the fraud, all the defendants got caught in a vicious circle of telling falsehoods to cover-up prior falsehoods.

19. Driven by greed, the desire for more business, desire for powerful political connections, personal interests to avoid liabilities for past misconduct and disdain for government regulation and regulators, these defendants violated their duties to the Accountholder Class and expanded the scheme so that when it finally collapsed there was over $100 million in losses and several thousand victims. Had the defendants met their legal duties, the scheme would have stopped when there were only 2000 victims who had lost only six to seven million dollars.

20. Defendants' objective in carrying out the wrongdoing and the related cover-up was to avoid a "run on the system," by the Accountholder Class to expand the products sold to the Accountholder Class and to increase the number of accountholders. The defendants were successful. The on-going wrongdoing continued to generate hundreds of thousands of dollars from new pension accounts, additional contributions by existing pension accounts, and through sales of securities to non-pension accountholders. For example, the Accountholder Class increased their investments by investing in twenty-three limited partnerships sponsored by Defendants Cooper, Lindley, Jensen and/or Belka, with all twenty-three limited partnerships filing

notices of exemption from the registration requirements with the DOC on or about August 12, 1987. The fraud continued until it was uncovered by Colorado authorities in April 1994. The Accountholder Class learned of the facts of the fraud as detailed in the Statute of Limitations section below.

21. The losses suffered by the Accountholder Class from those investments were foreseeable to Defendants Latham, Stahr, Cox, Mendoza, C&L, and Smith & Hilbig, during the time defendants were continuing to involve themselves in the fraud and up through and including the present. Defendant Latham was actively involved in the fraud from 1984 to 1988. The C&L Defendants were involved in the fraud from 1982 to 1993. The S&H Defendants were involved in the fraud from 1983 to 1994. Because of their involvement in the fraud, the Accountholder Class and the BMF 100 Class suffered millions of dollars in damages in addition to those suffered from their BMF 1 trust deed investments for which the Accountholder Class and the BMF 100 Class seek recovery in an amount according to proof at trial from these defendants during the time of their active involvement in the fraud.

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22. Amongst the professionals hired by the defendants were the accountant defendants, the C&L Defendants. Defendant Lindley had been an accountant at Coopers & Lybrand and had remained active in the Coopers & Lybrand alumnae. Defendant Lindley was able to compromise the independence and professionalism of the C&L Defendants in connection with extensive accounting services provided by the C&L Defendants in furtherance of the fraud and other wrongdoing alleged in this operational complaint.

23. Another professional hired by the defendants to further the fraud and on-going unlawful conduct was the law firm of Smith & Hilbig and its main partner Defendant Milan Smith. The S&H Defendants joined in a scheme to prepare a false registration statement and qualification application in connection with BMF Mortgage Income Fund, among other activities.

24. The Accountholder Class and the BMF 100 Class seek to hold those who were instrumental in the fraud and were able to hide their complicity accountable in this operative complaint.

II.

IDENTIFICATION OF PARTIES

A. THE REPRESENTATIVE PLAINTIFFS

25. Named Plaintiffs Karmele Murray; Joseph T. Murray; Linda Collins; Mark Krasowski; Ronald T. Wong; Ruth Wong; Candy Rendall; and Sandra Van Loben Sels (hereinafter the Accountholder Class Representatives) each had an IRA, KEOGH or CORPORATE Account wherein First Pension was the Plan Administrator and VestCorp

of California was the Investment Manager on November 28, 1984. The residence of each of the Accountholder Class Representatives and the amount of funds lost by each of these named plaintiffs is as follows:

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Plaintiff	Account Losses	Residence
Karmele & John Murray	$70,954.04	Orange County, CA
Betty Bolger	$22,900.00	San Diego, CA
Linda Collins	$7,633.49	Placentia, CA
Mike & Geraldine Krasowski	$62,315.76	Laguna Niguel, CA
Thomas & Jean Kaiser	$20,084.00	Seal Beach, CA
Ronald & Ruth Wong	$237,642.46	Westminster, CA
Candy & William Rendall	$24,685.66	Chino Hills, CA
Sandra Van Loben Sels	$40,816.08	Fallbrook, CA

26. Named Plaintiffs Karmele Murray; Joseph T. Murray; Linda Collins; Mike Krasowski; Geraldine Krasowski; Ronald Wong; Ruth Wong; Betty Bolger; Claudette Fosdick; Candy Rendall; William Rendall; Margaret Sheley; John Sheley; Sandra Van Loben Sels; and Ellen Wise (hereinafter BMF 100 Class Representatives) each purchased or acquired Participation Interests in BMF 100 between 30 April 1987 and April 30, 1994. The BMF 100 Class Representatives resided and acquired their BMF 100 interests as follows:

Plaintiff	Purchase Date	BMF 100 Losses	Residence
Karmele & Joseph Murray	9/11/87	$2,000.00	Orange County, CA
Karmele & Joseph Murray	9/14/87	$11,573.00	Orange County, CA
Linda Collins	9/22/87	$1,780.00	Placentia, CA
Linda Collins	11/10/87	$225.00	Placentia, CA
Linda Collins	2/8/88	$100.00	Placentia, CA
Linda Collins	9/12/89	$200.00	Placentia, CA
Geraldine Krasowski	10/91	$3,500.00	Laguna Niguel, CA
Mike Krasowski	10/91	$2,000.00	Laguna Niguel, CA
Ronald & Ruth Wong	5/26/88	$9,650.00	Westminster, CA
Ronald & Ruth Wong	5/26/88	$1,100.00	Westminster, CA
Ronald & Ruth Wong	10/01/90	$11,597.32	Westminster, CA
Ronald & Ruth Wong	2/01/91	$328.50	Westminster, CA
Ronald & Ruth Wong	9/10/92	$356.46	Westminster, CA
Ronald & Ruth Wong	10/20/92	$385.60	Westminster, CA

Ronald & Ruth Wong	11/05/92	$374.26	Westminster, CA
Betty Bolger	9/17/87	$7,000.00	San Diego, CA
Betty Bolger	2/27/91	$268.30	San Diego, CA
Claudette Fosdick	11/87	$6,959.00	Yucaipa, CA
Candy & William Rendall	9/17/87	$8,600.00	Chino Hills, CA
Candy Rendall	9/17/87	$1,165.00	Chino Hills, CA
William Rendall	2/28/94	$1,200.00	Chino Hills, CA
Margaret & John Sheley	1987	$2,295.00	Southgate, CA
John Sheley	1987	$2,295.00	Southgate, CA
Sandra Van Loben Sels	7/8/88	$2,228.00	Fallbrook, CA
Sandra Van Loben Sels	3/20/90	$1,945.00	Fallbrook, CA
Ellen Wise	7/23/87	$2,700.00	Santa Monica, CA

B. THE MEMBERS OF THE CLASS

27. Plaintiffs bring this class action for themselves and on behalf of the following two classes of investors. The first Class consists of:

> All persons, entities, trusts, corporations, partnerships and associations which, on November 28, 1984, had an IRA, KEOGH or CORPORATE Account wherein First Pension was the Plan Administrator and VestCorp

> of California was the Investment Manager; except that any defendant, the Receivership Entities; and the families, co-conspirators, legal representatives, agents, officers, directors, employees, heirs, successors and assigns of any defendant and/or the Receivership Entities is excluded. (Hereinafter referred to as the "Accountholder Class")

Plaintiffs Karmele Murray; Joseph T. Murray; Linda Collins; Mark Krasowski; Ronald T. Wong; Ruth Wong; Candy Rendall; and Sandra Van Loben Sels are proceeding, individually, and as representatives of the Accountholder Class. Members of the Accountholder Class seek recovery of all funds and the value of all assets held in their Accounts as of November 28, 1984, as well as all additional funds deposited into their Accounts up through April 22, 1994 which have not been returned to them. The members of the Accountholder Class also seek equitable relief, pre-judgment interest, exemplary and consequential damages.

28. The second class consists of:

> All persons, entities, trusts, corporations, partnerships and associations who purchased or acquired Participation Interests in BMF Mortgage Income Fund (hereinafter BMF 100) between 30 April 1987 and April 22, 1994, except that any defendant, the Receivership Entities; and the families, co-conspirators, legal representatives, agents, officers, directors, employees, heirs, successors and assigns of any defendant and/or the Receivership Entities is excluded. (Hereinafter referred to as the "BMF 100 Class")

Plaintiffs Karmele Murray; Joseph T. Murray; Linda Collins; Mike Krasowski; Geraldine Krasowski; Ronald Wong; Ruth Wong; Betty Bolger; Claudette Fosdick; Candy Rendall; William Rendall; Margaret Sheley; John Sheley; Sandra Van Loben Sels; and Ellen Wise are proceeding individually and as representatives of the BMF 100 Class. Members of the BMF 100 Class seek recovery of all funds paid to acquire their interests

in BMF 100, less any returns on their investment. The members of the BMF 100 Class also seek equitable relief, pre-judgment interest, exemplary and consequential damages

C. RECEIVERSHIP ENTITIES

29. First Pension Corporation ("FPC"), a California corporation formed in 1980 and located in Irvine, California, was a pension administrator. FPC had approximately 8,000 clients and $350 million in client assets under its control. It was 100% owned by First Diversified Financial Services ("FDFS"), which, in turn, was owned by Defendants Cooper, Lindley and Jensen and acted as the holding company for all their related entities.

30. VestCorp of California was incorporated in the State of California on or before November 28, 1984, and was registered under the Investment Advisor's Act of 1940. VestCorp served as an investment fiduciary and investment manager for the Accountholder Class at all times prior to November 30, 1984 and at certain times thereafter. On or about January 1, 1985, VestCorp became Pension Asset Management.

31. Continental Home Loan Inc was incorporated in the State of California in and around 1976 by Defendant Cooper as a trust deed loan brokerage and sales business. Defendant Cooper operated Continental unlawfully as he sold over-priced trust deeds to its customers without disclosing material facts that impaired their value.

32. L.B. Mortgage Servicing, Inc. (L.B. Mortgage Servicing) was incorporated in the State of California in and around 1976 by Defendant Cooper as a trust deed loan

servicing company.

33. Continental Commercial Finance Corporation ("Continental Commercial") was incorporated in the State of California in part to guarantee repayment of funds to those who purchased trust deed loans from Continental.

34. Diversified Financial Services, Ltd. was a limited partnership which was controlled by Defendant Cooper and which held interests in various companies such as Continental, L.B. Mortgage Servicing, Continental Commercial Finance Corporation.

35. On April 22, 1994, FPC filed a Chapter 7 bankruptcy petition in the U.S. District Court, Central District of California, Santa Ana, Case No. SA94-14145 JB. In May 1994, the Securities & Exchange Commission filed an action against FDFS and its principals, and in July 1994, the Court appointed a Receiver to manage, operate and liquidate FDFS and its related corporate entities, partnerships and associations, (herein referred to as Receivership Entities). The bankruptcy and the receivership have been merged and an order was entered staying all litigation against any Receivership Entities. Thus, plaintiffs are not at this time proceeding against any of the Receivership Entities in this litigation.

D. DEFENDANTS

36. **Defendant Glen Belka**, was the founder of FPC and VestCorp of California and was a general partner of BMF 100 as detailed in the first prospectus. Additionally, Defendant Belka was President and Chief Executive Officer of VestCorp of California, a registered investment adviser that served as the Investment Manager and

Investment Fiduciary for the Accountholder Class. When VestCorp of California became Pension Asset Management, Inc., Belka was its sole director and shareholder. At all relevant times, Defendant Belka was a resident of Redlands, California.

37. Defendant William E. Cooper , during all relevant times, was a general partner of most of the limited partnerships offered through VestCorp Securities, a broker-dealer, and was partial owner of FDFS, which he co-owned with Lindley and Jensen. Defendant Cooper, during all relevant times, was president of Diversified Financial Services ("DFS"), Equity Realty Advisors, Inc. and United Securities Equities, each of which acted as a general partner for some of the limited partnerships. On April 5, 1994, Cooper became First Pension's president, replacing Defendant Jensen. During all relevant times, Defendant Cooper was also a shareholder of Summit Trust Services, Inc. ("Summit"), FPC's last custodian, and was president of Ernest-Edwards & Associates, Inc. ("Ernest-Edwards"), a purported broker-dealer which dealt with FPC. From 1984 through April 1994 Cooper resided in Villa Park, California. Defendant Cooper pled guilty to two counts of mail fraud in connection with his operation of the entities discussed in this paragraph and is presently serving a 10 year prison sentence.

38. **Defendant Valerie Jensen**, during all relevant times, was a partial owner of FDFS and VestCorp. Defendant Jensen served as: VestCorp's Chief Executive Officer from approximately 1986 through July 1992; vice-president of FPC from approximately 1980 to 1982, and president of FPC from 1982 through April 1994. Defendant Jensen also served as secretary of Summit and as a member of its Board of Directors along with Judith Hanson, Defendant Lindley and Kenneth Lyon, president of

Summit. From 1984 until April 1994, Defendant Jensen resided in San Juan Capistrano, California. Defendant Jensen pled guilty to two counts of mail fraud in connection with her operation of the entities discussed in this paragraph and is presently serving a 54 month prison sentence.

39. **Defendant Robert E. Lindley**, during all relevant times was the president of BMF Management, Inc., and a general partner of some of the limited partnerships offered through VestCorp Securities. Defendant Lindley was a partial owner of FDFS with Defendants Cooper and Jensen, the treasurer and secretary of VestCorp Securities, Chief Financial Officer and treasurer of DFS, a director of Summit, the treasurer of Ernest-Edwards and the chairman of the board of NPB Loan Service, the company that serviced certain BMF 100 trust deed loans for a monthly fee. From 1984 through April of 1994, Defendant Lindley resided in Laguna Niguel, California. Defendant Lindley pled guilty to two counts of mail fraud in connection with his operation of the entities discussed in this paragraph and is presently serving a 9 year prison sentence.

40. **Defendant Latham & Watkins**, is a professional corporation, and at all times relevant, was a law firm which served as the attorneys for the Accountholder Class and the BMF 100 Class. At all times relevant herein, Latham maintained offices in Orange County, California and the activities complained of herein principally arise out of the conduct of the attorneys with their principal place of business being the Orange County Offices of Latham.

41. **Defendant Gary Mendoza**, was an attorney at Latham's Orange County

Office from on or before November 1, 1984 through and including May 1988. At all times relevant herein, Defendant Mendoza was a resident of Los Angeles County, California. Mendoza is currently the Commissioner of the California Department of Corporations.

42. **Defendant John R. Stahr**, was an attorney at Latham's Orange County Office from on or before November 1, 1984 through and including May 1988. At all times relevant herein, Defendant Stahr was a resident of Orange County, California.

43. **Defendant C. Christopher Cox**, was an attorney at Latham's Orange County Office from on or before November 1, 1984 through approximately March 14, 1986. Cox was a resident of Orange County, California while an attorney at Latham's Orange County Office and has maintained a residence in Orange County, California since November 1988.

44. **Defendant Smith & Hilbig**, a professional corporation, is, and at all times relevant was, a law firm doing business in the County of Los Angeles. Defendant Smith & Hilbig, at all times relevant, served as corporate counsel for Defendants Cooper, Belka, Lindley and Jensen and their related entities.

45. **Defendant Milan Smith**, an individual, at all relevant times was a partner of Defendant Smith & Hilbig. Defendant Smith served as corporate counsel for Defendants Cooper, Belka, Lindley and Jensen and their related entities. At all relevant times herein, Smith was a resident of Los Angeles County.

46. **Defendant Coopers & Lybrand** ("C&L"), a professional corporation, is, and at all times relevant was, a certified public accounting firm doing business in the

State of California, with offices located in Orange County, and elsewhere.

47. **Defendant Hal Hurwitz**, was a Certified Public Accountant employed by Defendant Coopers & Lybrand and was the engagement partner for the accounting services rendered to Defendants Cooper, Belka, Lindley and Jensen and their related entities during all relevant times and thus had direct supervisory responsibility for all accounting and financial services provided by Defendant Coopers & Lybrand. Defendant Hurwitz was a resident of Orange County during all relevant times.

48. **DOE DEFENDANTS** 1 through 100 are persons, entities, associations, partnerships and corporations about which Plaintiffs and the Class are ignorant of the true names and capacities and therefore sue those defendants by such fictitious names. DOES 4 through 10, inclusive are attorney defendants.[1] DOES 13 through 20, inclusive are accountant defendants.[2] The Accountholder Class and the BMF 100 Class sue DOES 21 through 30, inclusive, as bank defendants. The Accountholder Class and the BMF 100 Class sue DOES 31 through 50, inclusive, as broker/dealer defendants. The Accountholder Class and the BMF 100 Class are informed and believe and thereon allege that each of the fictitiously named defendants herein are in some manner liable and responsible to the Accountholder Class and the BMF 100 Class for the damages suffered by the Accountholder Class and the BMF 100 Class as

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[1] Defendant C. Christopher Cox has previously been named as Doe Defendant 1, Defendant Smith & Hilbig has previously been named as Doe Defendant 2, and Defendant Milan Smith previously has been named as Doe Defendant 3.

[2] Defendant Coopers & Lybrand has previously been named as Doe Defendant 11. Defendant Hal Hurwitz has previously been named as Doe Defendant 12.

alleged herein. The Accountholder Class and the BMF 100 Class will file appropriate amendments to this Complaint to allege the true names and capacities of the DOE DEFENDANTS not yet identified, when such information becomes available.

49. The Accountholder Class and the BMF 100 Class are informed and believe and thereon allege that at all times herein mentioned, defendants, and each of them, including all Doe Defendants, alternatively were and are agents, employees, partners, joint venturers, co-conspirators and/or aiders and abettors of each other and were acting within the course and scope of the agency, employment, partnership, joint venture, conspiracy or assistance with the consent and permission, express and implied, and ratification of each other's conduct.

III.

CLASS ALLEGATIONS

50. The Accountholder Class and the BMF 100 Class can be identified and located based upon records of the Receiver and business records maintained by the Receivership Entities. Thus, the Classes are ascertainable.

51. The Classes consist of a well defined community of interest in that: common questions of law and fact predominate; the claims of representative plaintiffs are typical of the claims of the Classes; and the class representatives can and will adequately represent the interests of the Classes.

52. Questions of law and fact common to the Class predominate over many questions which may affect individual members, and a Class action is superior to other available methods for a fair and efficient adjudication of this controversy. The Class is

united by a common interest in seeking damages and equitable relief from defendants for the common course of conduct described herein.

53. Common questions of law and fact among the members of the class, include, but are not limited to, the following:

- Whether Defendants Latham, Stahr, Cox and Mendoza were retained to provide legal services on behalf of the Accountholder Class and/or the BMF 100 Class;
- Whether the C&L Defendants were retained to provide accounting services on behalf of the Accountholder Class and/or the BMF 100 Class;
- Whether any or all of the defendants owed a duty to the Accountholder Class or the BMF 100 Class;
- Whether any or all of the defendants owed a fiduciary duty to the Accountholder class and/or the BMF 100 Class;
- Whether any or all of the defendants breached a duty to the Accountholder Class and/or the BMF 100 Class;
- Whether any or all of the defendants breached fiduciary duties to the Accountholder Class and/or the BMF 100 Class;
- Whether Defendants Latham, Stahr, Cox and Mendoza fell below the standard of care in performing legal services on behalf of the Accountholder Class and/or the BMF 100 Class;
- Whether the C&L Defendants fell below the standard of care in performing accounting services on behalf of the Accountholder Class and/or the BMF

100 Class;

- Whether Defendants Latham, Stahr, Cox and Mendoza and the C&L Defendants were aware of the fraudulent conduct of Cooper, Lindley, Jensen, Belka and/or the Receivership Entities at the time they provided professional services on behalf of the Accountholder Class or the BMF 100 Class;
- Whether Defendants Latham, Stahr, Cox and Mendoza or the C&L Defendants owed a duty to the Accountholder Class and/or the BMF 100 Class to disclose the fraudulent conduct of Cooper, Lindley, Jensen, Belka and/or the Receivership Entities;
- Whether the Accountholder Class would have established, maintained or continued to deposit funds into their Accounts wherein First Pension was the Plan Administrator and VestCorp of California was the Investment Manager if they were aware of the fraudulent conduct of Cooper, Lindley, Jensen, Belka and/or the Receivership Entities;
- Whether the BMF 100 Class would have purchased, maintained or made additional capital contributions in BMF 100 had they been aware of the fraudulent conduct of Cooper, Lindley, Jensen, Belka and/or the Receivership Entities;
- Whether any of the defendants acted maliciously and with an evil mind sufficient to warrant the imposition of exemplary damages in an amount sufficient to alter such conduct in the future; and

! Whether the members of the Accountholder Class or members of the BMF 100 Class have suffered damages as a result of the actions of any defendant named herein, and, if so, the amount of such damages.

54. The Plaintiffs' claims are typical of the Class they seek to represent. Specifically, the Plaintiffs' claims are typical of the class they seek to represent because they: (a) arise out of the same events or course of conduct that gives rise to the claims of other investors; and (b) depend upon a showing of the same acts and omissions of defendants upon which liability is based.

55. Throughout the Class Period, Defendants Cooper, Belka, Lindley and Jensen consistently and routinely employed the uniform or "canned" sales pitch to sell BMF 100 limited partnership units (Participation Interests) to Plaintiffs and the BMF 100 Class Members and to offer account services to members of the Accountholder Class. Plaintiffs thus hold claims typical of all other Class members which they seek to represent. Each Class is united by the common interest in seeking redress for defendants' wrongs. Plaintiffs and the members of the Classes are also sometimes referred to as the "Investors."

56. Plaintiffs will prosecute this action vigorously for themselves and for the Class they seek to represent. Plaintiffs do not have interests that are antagonistic to those of other Class members and will fairly and adequately protect the interest of the Class. Plaintiffs have retained counsel competent and experienced in class actions and complex securities litigation.

57. Plaintiffs are informed and believe that the Accountholder Class consists

of over 2000 members and the BMF 100 Class consists of over 500 members. Thus the size of each Class is so numerous that joinder is impracticable. In addition, (1) the putative members of each Class reside in various localities and are not familiar with each other; (2) the action is a complex fraud case that does not lend itself to individual actions; and (3) the size of the individual claims as compared with the costs of proceeding with this case, is nominal.

58. A class action is superior to other available methods for a fair and efficient adjudication of this controversy. Moreover, class proceedings will permit Plaintiffs to proceed against defendants in an economical manner, and to prevent the massive duplication of discovery and other similar proceedings which would occur if there were a multiplicity of actions.

59. Because damages suffered by many individual Class members are relatively small, the expense and burden of individual litigation makes it impractical for members of each Class to individually seek redress for the defendants' wrongful conduct.

IV.

DUTIES DEFENDANTS OWED TO THE FIRST PENSION/VESTCORP ACCOUNTHOLDER CLASS AND THE BMF 100 CLASS AND BREACHES THEREOF

A. DUTIES DEFENDANTS COOPER, LINDLEY AND JENSEN OWED TO THE ACCOUNTHOLDER CLASS AND THE BMF 100 CLASS AND THE BREACH THEREOF

1. Duties

60. Defendants Cooper, Lindley and Jensen owed the Accountholder Class

an investment manager duty, a broker-dealer duty, a pension administrator duty, a fiduciary duty, common law duties to refrain from knowing or reckless misrepresentations, duties of full disclosure, and other statutory and common law duties.

/ / /

2. Breaches of Duties

61. Defendants Cooper, Lindley, and Jensen were convicted of two counts of mail fraud in the United States District Court for the Central District of California. How Defendants Cooper, Lindley and Jensen breached their duties to the Accountholder Class and the BMF 100 Class is set forth in the criminal information to which these defendants entered guilty pleas. The criminal information is attached hereto as Exhibit 1 and is incorporated herein by reference as though fully set forth herein.

62. By engaging in the wrongful and unlawful conduct alleged herein, Defendants Cooper, Jensen and Lindley breached the duties they owed to the Accountholder Class and the BMF 100 Class, including their investment adviser duty, broker dealer duty, pension administrator duty, fiduciary duty, common law duties to refrain from knowing or reckless misrepresentations, duties of full disclosure, and other statutory and common law duties.

B. DUTIES DEFENDANT BELKA OWED TO THE ACCOUNTHOLDER CLASS AND THE BMF 100 CLASS AND HIS BREACHES THEREOF

63. In 1980, Defendant Glen L. Belka ("Belka") formed First Pension and VestCorp of California, a registered investment advisor that acted as a trustee of the pension funds Plaintiffs and the Class invested in through First Pension. Defendant Belka was President and Chief Executive Officer of VestCorp of California and First Pension. Through his positions, Defendant Belka was responsible for selecting investments for the Accountholder Class members.

64. Defendants Belka and Cooper created the First Pension and VestCorp of

California investment system to expand Defendant Cooper's mortgage brokerage and trust deed operations by using pension funds. Through First Pension and VestCorp of California, Belka used funds deposited by the members of the Accountholder Class to purchase trust deeds from entities run by Cooper, including Continental Home Loan. The Accountholder Class members then obtained a fractionalized interest in a specific trust deed. Of the 360 trust deeds purchased by the Accountholder Class members, while Belka operated and controlled VestCorp of California and First Pension, only 50 were from entities other than Continental Home Loan. Belka never disclosed to the Accountholder Class members that they were investing in loans issued by entities operated and controlled by Defendant Cooper, who was also the President of Diversified Financial Services, the holding company of both VestCorp of California and First Pension.

65. First Pension would solicit pension funds from individuals and companies (e.g. IRA, Keogh, and money purchase profit sharing plans) and function as the recordkeeper and the administrator. The recordkeeping function was to track the dollars into the plan, and track how income was distributed. The administrator function was to make money purchase and profit sharing calculations and advise clients on the actions necessary to comply with IRS and ERISA regulations. First Pension issued quarterly activity statements to its clients that detailed all activity that occurred in their accounts and a listing and value of their investments.

66. First Pension was purportedly advised in connection with these trust deed investments by VestCorp of California. From 29 September 1980 through 31

December 1984, VestCorp of California was an Investment Advisor, registered pursuant to Section 203 of the Investment Advisers Act of 1940, and, in that capacity, First Pension clients, including members of the Accountholder Class, were investment advisory clients of VestCorp of California.

67. First Pension Clients were asked to select the type of investment they wanted their pension funds invested in from different categories of investments. Once they had selected the type of investment they preferred, Defendant Belka, through VestCorp of California, would invest their money in an investment of his choice which fell into the selected category. Defendant Belka used his authority as Plaintiffs' investment advisor to funnel the First Pension clients' funds into investments controlled by the First Pension Defendants which were primarily trust deed loan pools.

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68. From inception, numerous of the trust deeds purchased by the Accountholder Class members, which originated with Continental Home Loan, went into default or foreclosure. These trust deeds had little or no equity and the borrowers defaulted on their interest payments causing cash shortfalls. Ten to eleven percent of the trust deeds were lost through senior lien foreclosures. Between 1981 and 1983, the shortfalls on these loans continued so that by mid-1983, the value of the trust deed assets was 50% less than the amount Accountholder Class members had invested.

69. In September 1983, in order to conceal these losses, Belka decided to roll all the Accountholder Class' trust deeds into a pool called Bank Mortgage Fund No. 1 ("BMF1"). In notifying the Accountholder Class members of this roll-up, Belka wrote in a letter sent to and received by all the Accountholder Class members and the First Pension/VestCorp Newsletter for September 1983 that "[e]ffective 9/16/83, all mortgage and trust deed investments in pension plans will be merged into the Bank Mortgage Fund ("Fund")." Belka represented to the Accountholder Class in the September 1983 newsletter that the change was for the benefit of the Accountholder Class members and never disclosed the shortfalls that already existed with regard to the trust deeds rolled into BMF1. In fact, quite to the contrary, Belka represented that BMF1 had 10% reserves and the roll-up would protect investors from potential losses on a single trust deed.

70. Commencing in or about 1983, and continuing through 1988, Belka along with Cooper, diverted money out of the BMF1 pool of funds to pay Continental Home Loan's overhead without providing collateral into the BMF1 fund. At some point, in an

attempt to try and maintain an air of legitimacy, Continental Home Loan furnished bogus trust deeds for the money it was diverting. This practice continued until 1986, when Continental stopped furnishing fraudulent trust deeds or for that matter any document evidencing the withdrawal of funds misappropriated from BMF1. As neither VestCorp of California, nor First Pension, ever raised sufficient income to cover overhead or make a profit, Continental Home Loan used the diverted BMF1 money to make loans to First Pension to cover its overhead and First Pension in turn made payments to Vestcorp of California and other related entities. Over $9 million was diverted from BMF1 to Continental Home Loan and related entities between 1983-1988.

71. By March 1984, Defendants Cooper, Lindley, Belka, and Jensen faced the prospect of enforcement actions by the U.S. Securities & Exchange Commission, U.S. Department of Labor, the California Department of Real Estate, the National Association of Securities Dealers, as well as, criminal prosecution by the U.S. Department of Justice, and hundreds of civil lawsuits from defrauded investors. It was in this context that Defendants Belka, Cooper, Lindley and Jensen retained the Latham & Watkins Defendants to help devise a strategy to avoid their liabilities, create a new investment vehicle to raise additional funds without the disclosure of material facts and based upon false material facts, and to change and expand their corporate structure in furtherance of the First Pension Defendants' unlawful objectives.

72. In or about July 1984, in the face of impending financial doom, Belka with the guidance and assistance of the Latham & Watkins Defendants decided to "roll-up"

the BMF1 offering into a new public offering. The original intention of this offering precluded cash investments and limited the investments to the deposit of trust deeds by the members of the Accountholder Class and left open the possibility of other First Pension investors rolling up their investments into this public offering, originally named the Providence Trust Deed Fund.

73. In connection with this public offering, at the behest of the Latham & Watkins Defendants, Belka effectuated a restructure in the ownership of VestCorp of California, First Pension, and Providence Securities. The intention of this ownership restructuring was to make it appear to the SEC that the Providence Trust Deed Fund was not engaging in prohibited transactions. Immediately before the restructure, the ownership of these related companies was as follows:

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VestCorp		Providence	First Pension
Belka		Walsh	Jensen Lazar
Jensen Lazar		Jensen Lazar	Belka
Diversified		Lindley	Diversified
Cooper Trust	Belka		Cooper Trust

74. In order to obfuscate the SEC investigation, and in preparation of the public offering rolling up BMF1, in or about August 1984, Belka effectuated a change in the ownership structure of these inter-related companies in order to give the appearance that the Providence Trust Deed Fund was not engaging in prohibited transactions as follows:

VestCorp	Providence	First Pension
Belka	Walsh	Jensen Lazar
	Lindley	
	Diversified	
	Cooper Trust	

75. At no time did Belka disclose that these changes were merely form over substance, and in fact, Belka and Cooper remained as one of the principal operators of all three entities, VestCorp of California, Providence Securities and First Pension.

76. Pursuant to this restructure, in 1984, Defendant Belka gave up his interest in First Pension for complete ownership of VestCorp of California in an attempt to avoid the First Pension Defendants' ongoing business transactions from being classified as prohibited transactions under applicable provisions of ERISA.

77. Accordingly, in December 1984, VestCorp of California changed its name to Pension Asset Management, and, in form, altered its function from being a trustee who made the investments on a client's behalf to advertising acceptable investments to

First Pension clients, thus, supposedly terminating its role as a registered investment advisor. When VestCorp of California became Pension Asset Management, Inc. ("PAM"), Belka was its sole director and shareholder. Through PAM, Belka continued to offer investments to members of the Accountholder Class and was responsible for reviewing and evaluating real estate investments and bringing together syndicates to invest in such properties. Additionally in 1984, Providence Securities changed its name to VestCorp Securities in an attempt to retain the name recognition of "VestCorp."

78. In reality, these changes in ownership and corporate roles had little practical effect, as the First Pension Defendants, through both VestCorp Securities and Pension Asset Management, continued to control and direct the Accountholder Class members investments to First Pension related investments.

79. In August 1984, Belka changed the name of the proposed public fund from Providence Securities Trust Deed Fund to VestCorp Trust Deed Fund, possibly to reflect Providence Securities' name change to VestCorp Securities. In or before December 1984, the name of the proposed public offering fund was changed to BMF Mortgage Income Fund ("BMF 100"). Due to regulatory concerns about the BMF 100 offering, the registration did not become effective for over three years. During those three years, 1984-1987, Belka, continued to advise the Accountholder Class members about their investment while at the same time diverted additional contributions made by these class members for overhead of related corporate affiliates and personal expenditures. During those years, Belka's advice to Accountholder Class members, which was relied upon by them, caused these individuals to invest in smaller limited

partnership mortgage loan pools sponsored by Defendants Cooper, Lindley, Jensen and/or Belka known as "mini-funds."

80. In October of 1984, Defendant Belka signed the application to the DOC for an open offering qualification for participation in BMF 100. Defendant Belka signed the application as President of Pension Asset Management, Inc. and as General Partner of VestCorp Trust Deed Fund. Pension Asset Management was the manager of the VestCorp Trust Deed Fund.

81. The application to the DOC stated that investors would be able to purchase Participation Interests in the fund for cash or obtain them in exchange for trust deed loans valued at the principal amount due under each Trust Deed Loan. Defendant Belka knew that the trust deed loans referred to in the application filed with the DOC were existing interests in BMF 1. Defendant Belka further knew that the BMF 1 was a pool of trust deeds in which each investor had an interest in the pool, and therefore, there were no individual trust deed loans to exchange for Participation Interests in BMF 100. Defendant Belka was also aware that many of the trust deeds held by BMF 1 could not be valued at the principal amount due under the trust deed loan because the borrowers had defaulted on the loan payments which resulted in a foreclosure on the trust deed or the trust deeds themselves did not exist.

82. In 1987, PAM's function was taken over by First Diversified Financial Services and the other First Pension Defendants. However, Defendant Belka continued to operate real estate limited partnerships in which First Pension clients had invested until at least 1992.

1. Duty To Not Negligently or Intentionally Misrepresent or Fail to Disclose Material Facts and Fiduciary Duty as to the Accountholder Class and the BMF 100 Class

83. Defendant Belka was a general partner of BMF 100, and thus, owed a fiduciary duty to the BMF 100 investors.

84. As an officer and director of PAM, the fund manager for BMF 100, Belka owed a fiduciary duty to the BMF 100 Class.

85. Members of the BMF 100 Class reposed trust and confidence in Belka based on his various roles with First Pension, PAM, and his represented experience in managing investment funds.

86. As an officer and principal shareholder of VestCorp of California and then PAM, the investment advisor for the members of the Accountholder Class, Belka owed a fiduciary duty and a duty of disclosure to the Accountholder Class members. The Accountholder Class reposed trust and confidence in Belka that he would invest their retirement savings in prudent, risk-adverse investments.

87. Moreover, Belka, prior to 1984, was the in-house legal advisor for First Pension, and, in that role learned of and participated in the wrongdoing alleged herein. Indeed, Belka testified that Defendant Latham & Watkins had taken over some of the legal services he had previously provided to First Pension.

88. Consequently, Belka, as a general partner of BMF 100, the founder of VestCorp of California, and the sole director and sole shareholder PAM, had the power to direct the actions of and exercised the power to cause the controlled persons to engage in the unlawful acts and conduct complained of herein. Belka exercised

control over the general operations of the controlled persons and possessed the power to control specific activities which comprise the primary violations about which the members of the classes complain.

2. Breach of Duty to Not Negligently or Intentionally Misrepresent or Fail to Disclose Material Facts and Breach of Fiduciary Duty as to the Accountholder Class and The BMF 100 Class

89. In his various roles, Belka wrote and participated with the other defendants named herein, in drafting many documents intended to be sent, and in fact were sent to, and relied upon by, the members of the classes proceeding herein. In drafting these documents, Belka made affirmative misrepresentations and omissions of material facts to Plaintiffs and the Classes through communications, including, but not limited to, the BMF 100 prospectus, correspondence, brochures, account statements and newsletters. Belka made these misrepresentations and omissions knowing them to be false, or knowing they omitted material facts, and intending to defraud Plaintiffs and the Classes. Plaintiffs and the Classes justifiably relied on the misrepresentations and omissions of material facts made to them by Belka through the offering materials and other communications detailed herein. Had Plaintiffs and the Classes known of the truth behind these misrepresentations and omissions they would not have made their investment decision.

90. In the First Pension/VestCorp Newsletter for the first quarter of 1983, which was sent to, reviewed and relied upon by the Accountholder Class Members, Belka made the following misrepresentations knowing they were false and without any reasonable basis for believing them to be true:

FUND REGISTRATION - over a year ago, we designed a quasi-mortgage pool that helped us diversify our overall portfolio and served to provide you with an alternative method of investing in mortgages. The Bank Mortgage Fund has been incredibly successful over this time period. Because of the compounding effect and the on-going reinvestment capability that it provides, it is clear that the fund will soon be our most consistent income producing investment category.

Therefore, we have employed the law firms of Lazof and Swanson in Santa Ana, Smith and Hilbig in Torrance, and Wellman and Cane in Newport Beach, to represent VestCorp, First Pension, and our participating banks and brokers in submitting the Bank Mortgage Fund for a public offering qualification.

Presently, VestCorp has been limited as to the types of product that can be incorporated into the fund. In an effort to broaden the fund's earning power, and to allow us to merge all of our trust deed investments both pension and private into this vehicle, a public offering registration is required. We feel that an overall merger into this category puts your account in a much stronger position over the long term. In addition, the administrative work load connected with the trust deeds will be tremendously reduced.

91. In the First Pension/VestCorp Newsletter for the second quarter of 1983, which was sent to, reviewed and relied upon by the Accountholder Class members, Belka misrepresented the following material facts knowing they were false and without any reasonable basis for believing them to be true:

FUND QUALIFICATION STATUS - Corporate National Bank attorneys have approved the draft for sponsorship of the new Bank Mortgage Fund. Valencia Bank is currently reviewing the documents as trustee. We anticipate that very few changes will be made by either bank and that qualification submittal to the Department of Corporations should be forthcoming in the next couple of weeks. The Bank Mortgage Fund has been redesigned to parallel the one already in existence between Bank of America and Crocker Bank. Therefore, we have every reason to believe that the Department of Corporations will approve our submission. We will keep you informed as to the qualification process.

TRUST DEED SHIFT - As I have mentioned in several past newsletters, we are in the process of preparing all of our trust deeds to be eventually shifted into the Bank Mortgage Fund. This will allow us to continue to invest in trust deeds albeit in a different format. The new structure will reduce our internal workload by more than half. In addition, we feel that the overall protection of your funds will be increased in the light of our brokers' decisions to no longer guarantee

advances on any default. Again, any default that the Fund would experience will be covered by an operating reserve that has been designed into that investment.

92. In the First Pension/VestCorp Newsletter for the second quarter of 1983, Belka and the other First Pension Defendants also misrepresented to the First Pension clients that any default in the trust deeds held by BMF1 would be covered by an operating reserve that was designed into the fund, when in fact the fund operated at a shortfall from the beginning.

93. In the First Pension/VestCorp Newsletter for the third quarter 1983, which was sent to, reviewed and relied upon by the Accountholder Class members, Belka misrepresented that "[e]ffective 9/16/83, all mortgage and trust deed investments in pension plans will be merged into the Bank Mortgage Fund ("Fund"). Private funds in these categories are already in separate funds and will also be merged at a later date." In the newsletter, Belka further made misrepresentations knowing they were false and without any reasonable basis for believing them to be true:

> Both the Bank and First Pension will continue to maintain records for your account as beneficial owner, as has been done in the past.
>
> VestCorp is the manager of the Fund. First Pension Corporation will continue to administer the daily operations.
>
> GENERALLY - the Fund consists of over 450 Mortgages and trust deeds that fall into one of the three following categories: (1) 30 year fully amortized first; (2) 3-7 year, partially amortized second or third; (3) 1-5 year, interest only second, third and under rare circumstances fourth.
>
> The Fund consists mostly of mortgages in category (3) above, but over the past year VestCorp has been progressively balancing the portfolio with categories (1) and (2).
>
> Much like the individual trust deed format, where your account holds an undivided interest in a particular trust deed, your account will now hold a pro-

rata share of the Fund evidenced by a Certificate of Ownership. The original Certificates are held in trust at Valencia Bank. First Pension will continue to maintain a duplicate set of records and Certificates in your file at our offices. A copy of the original Certificates will be provided to you with your spring quarter (March '84) statement. In the interim, your quarterly statements represent ownership for your records.

QUESTIONS/ANSWERS - the following are answers to questions that we feel that you might have regarding the Fund and your account.

* * *

Safety is the fundamental objective of this Fund. All mortgages and trust deeds (loans) are reviewed and qualified by VestCorp. It has established a conservative criteria with which all products, brokers and bankers must comply. All mortgages and trust deeds are originated by FDIC member banks, FSLIC member savings and loans and/or pre-approved qualified brokers. [emphasis added]

The fund provides safety through diversification. In effect, the Fund format spreads the investment risk of approximately $13.6 million over some 450 mortgages having an estimated market value of approximately $18.5 million.

In addition, the Fund has an operating reserve of 5-10% of the value of the Fund, which is held in an FDIC insured Money Market Account, to be used if necessary for any defaults, foreclosures and management for properties should they become our responsibility in foreclosure proceedings.

NOTE: in four years of operation, we have had only one (1) instance where we have had to step in and deal with a real estate owned (REO) property. In that case, we created a rare fourth trust deed to bring the property current, then sold the property at a profit for our accounts thirty days later.

As you know, all investments contain some degree of risk. The Fund format is designed to protect your account principal and also provide a sound investment with a high yield cash return.

* * *

11. <u>Can I remain invested in the mortgages and/or trust deeds that are currently in my account</u> ?

No. One of the main purposes of the conversion is to move the portfolio into a safer form of investment in light of our brokers' notifying us that they are unable

to guarantee advance payments in the event of default. Generally, the Fund provides greater safety because of the operating reserve.

94. In the First Pension/VestCorp Newsletter for the third quarter of 1983, Belka and the other First Pension Defendants also made several other misrepresentations of material facts to the First Pension clients. Specifically, Belka and the other First Pension Defendants misrepresented that all mortgages and trust deed/loans were reviewed and qualified by VestCorp of California which had established a conservative investment strategy, when in fact, VestCorp of California invested First Pension Clients' funds in "hard money loans" brokered by an affiliated company, Continental Home Loan. In the same newsletter, Belka and the other First Pension Defendants also misrepresented to the First Pension clients that BMF1 provided safety through diversification when in fact BMF1 was formed to hide losses suffered by individual trust deeds. Belka and the other First Pension Defendants also misrepresented to the First Pension clients that BMF1 had an operating reserve of 5-10% of the value of the fund which was held in an FDIC insured Money Market Account to be used if necessary for any defaults, foreclosures and management for properties should they become the responsibility of the fund through foreclosure. In fact, BMF1 operated under a shortfall from the very beginning and had no money in reserve for these stated purposes.

95. Belka made misrepresentations and omissions of material facts to the Accountholder Class members concerning the BMF1 investment through the November 28, 1984 letter sent to and received by all Accountholder Class members. The November 28, 1984 letter was dated approximately six days before the BMF 100

S-11 was filed with the DOC and the SEC by coordination on December 4, 1984. The letter was sent in order to allow Defendants to file the S-11 with the DOC and the SEC. Specifically, the November 28 letter allowed Defendants to file the S-11 because Defendants were then able to show that VestCorp of California, the investment advisor of the BMF1 was no longer the investment advisor as of the date the S-11 was filed. The letter also falsely indicated that its purpose was for the benefit of the Accountholder Class members, but, was actually to allow the First Pension Defendants to file the S-11 which would permit raising additional capital to perpetrate the ongoing fraud scheme through BMF 100. The November 28, 1984 letter also omitted the looming SEC investigation into First Pension and VestCorp of California. Indeed, Belka and the Latham & Watkins Defendants worked hand in hand to draft the November 28, 1984 letter.

96. Belka owed the Accountholder Class members a duty to disclose all material facts concerning their BMF1 investment in this November 28, 1984 letter. Notwithstanding such duty owed to the Accountholder Class, Belka made the following misrepresentations which he knew to be untrue and had no reasonable basis for believing to be true with the intent to defraud the BMF1 investors in the November 28, 1984 letter which was sent to, read and relied upon by members of the Accountholder Class:

- "In order that we at Vest-Corp of California might also provide to you and our other accountholders the benefits of a "financial supermarket" format, we too have made and are in the process of making a number of organizational changes in our system which we believe will be of ever increasing benefit to you as an accountholder."

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- "The purpose of this letter is to explain briefly the efforts we have made and will be making in the near future to improve our services to you."

- "Also under our new system, you will have the opportunity to direct Vest-Corp Securities, Inc., as your account broker, to make specific investments of your choice."

- "Using this format, you will be able to select from a far greater variety of investments than was previously possible."

97. In the February 8, 1985 letter which was sent to, read, and relied upon by the members of the Accountholder Class, Belka misrepresented the following material facts which he knew were untrue or had no reasonable basis for believing to be true:

- "Prior to January 1, 1985 VestCorp of California automatically invested your funds for you on behalf of your account."

- "Under the new self-directed system, your IRA/KEOGH contributions will be invested only in accordance with your specific instruction."

- "As you know, VestCorp of California changed its name to Pension Asset Management, Inc. PAM will continue to select product and advise various funds and limited partnerships."

- "In addition our real estate categories have been expanded to include various registered funds. . . ."

98. In the April 1985 First Pension Newsletter, which was sent to, read, and relied upon by the members of the Accountholder Class, Belka misrepresented the following material facts which he knew were untrue or had no reasonable basis for believing to be true:

- "Most of you are no doubt aware that the mortgage fund is pending registration as a public offering."

- "Until such time as the registration is complete, VestCorp Securities cannot accept investments into that product [BMF 1]."

- "PAM informs us that they have been working with several law firms in qualifying their products with federal and state agencies."

- "Must (sic) of the legal issues were approved last year (1984) and all indications were that PAM would have its three major funds ready in January 1985."

- "They indicate to us that they hope to work out the remaining issues within the next few months."

- "The Bank Mortgage Fund [Accountholder investments] on the other hand has maintained a consistent 14 - 14.5% rate of return for several years."

- "However, because of the decline in rates at which trust deeds can be written, the mortgage fund will ultimately be affected to a slight degree."

- "It is anticipated that the fund may fluctuate during the remainder of 1985 between 13.5-14%."

99. In the July 1985 First Pension Newsletter which was sent to, read, and relied upon by the members of the Accountholder Class, Belka misrepresented the following material facts which he knew were untrue or had no reasonable basis for believing to be true:

- BANK MORTGAGE FUND - As was expected, the Bank Mortgage Fund has experienced a slight reduction in the rate of return. Many variables come into play when calculating the rate of return, but the primary reason for the decline is due to a steady lowering of interest rates within the industry as a whole. However, the fund should still maintain an average annual yield of between 13.0% and 13.5%. Still very competitive with other income producing investments in the marketplace.

- "You will be pleased to know (we know we are) that Pension Asset Management has informed us that their attorneys, who are working on the qualification of the fund, have indicated that the registration process should be completed within 6 weeks."

- "At VestCorp Securities, you are able to control and direct your money to where it will work most effectively toward your retirement."

- "Your VestCorp Securities representative reviews your s was expected, the Bank Mortgage Fund has experienced a slight reduction in the rate of return. Many variables come into play when calculating the rate of return, but the primary reason for the decline is due to a steady lowering of interest rates within the industry as a whole. However, the fund should still maintain an average annual yield of between 13.0% and 13.5%. Still very competitive with other income producing investments in the marketplace.

- "Your VestCorp Securities representative reviews your investments at least quarterly to compare its performance with alternative investments."

- "To summarize, as a client of VestCorp Securities you enjoy
  (1) investment flexibility,
  (2) self direction,
  (3) counsel to help you make informed investment choices,
  (4) quarterly review of your portfolio performance,
  (5) discount brokerage commissions."

100. In the November 1985 First Pension Newsletter which was sent to, read, and relied upon by the members of the Accountholder Class, Belka misrepresented the following material facts which he knew were untrue or had no reasonable basis for believing to be true:

- **BANK MORTGAGE FUND** - BMF - Pension Assets Management's attorneys are putting the final touches to the prospectus and have indicated the that the offering should be available around mid to late November. We will keep you informed of its progress.

101. In the all communications with the members of the Accountholder Class, including those referenced above, Belka suppressed the following material facts while he was under a duty to the members of the Accountholder Class to disclose those facts and/or while providing other facts which made the letter misleading:

- The desire of the First Pension Defendants to avoid a run on the system;

- The reason for the creation of VestCorp Securities;

- The reason for the change of name from VestCorp of California to Pension Asset Management;

- The reason that VestCorp of California was resigning as the Investment Advisor for the Accountholders;

- The desire of the First Pension Defendants to avoid making the appropriate fiduciary disclosures;

- The intent to withhold information from the Accountholders concerning past and present breaches of fiduciary duties;

- The Accountholders right to rescind their investment contract with the First Pension Defendants in light of the unilateral restructuring of the investments and fiduciary responsibilities;

- The similarities in the operations of Merrill Lynch and Sears as compared with the First Pension Defendants;

- The benefits that the restructuring would provide to the Accountholders;

- The prohibited transactions engaged in by the First Pension Entities and the First Pension Defendants;

- The regulatory action taken by the California Department of Real Estate ("DRE") with regards to William E. Cooper's real estate broker's license.

- The fact that the BMF1 trust deeds had been pooled, and as a result of the pooling, BMF1 was in violation of the qualification provisions of the California securities laws;

- The true financial condition of BMF1, which in fact, had a material shortfall of funds;

- Ms. Lucille Reynold's letter and claim regarding her request for a liquidation distribution of her investment in BMF1;

- The fact that various BMF1 trust deeds reviewed by defendant Latham and Watkins were in fact non-performing trust deeds;

- The financial conditions of the First Pension Entities;

- That the First Pension Defendants were conducting an on-going fraud on

the Accountholder Class Members and were diverting and commingling funds;

- That the pooling of the individual trust deeds into BMF1 was unlawful as the interests sold in BMF1 had neither been qualified or registered with any regulatory agency;

- That there was a substantial shortfall in the assets of BMF1;

- That the First Pension Defendants pooled the individual trust deeds into BMF1 to hide the mounting losses resulting from non-performing trust deeds sold to Accountholder Class Members;

- That the First Pension Defendants owned and operated a series of inter-related companies which they used to divert money from the Accountholder Class members investments;

- That the First Pension Defendants' companies selling the trust deeds to the Accountholder Class Members had a bad track record;

- That the trust deeds purchased by the Accountholder class members had a negative financial performance;

- That, in light of its financial condition, it was likely that First Pension would be required to file bankruptcy within the life of the funds;

- That the First Pension Defendants created fraudulent trust deeds and included them in the portfolio of the First Pension Defendants' securities in which Accountholder Class Members were invested;

- That the First Pension Defendants diverted investor funds to make political contributions to individuals whom they perceived could exert influence over government regulators; and

- That the First Pension Defendants and their affiliated companies were being investigated by the DOC, the SEC, the DRE, the DOL and the NASD.

102. The Accountholder Class members justifiably relied on the misrepresentations and omissions of material facts in these documents which were directed by Belka, and others, to their direction. Had the true and accurate facts been

disclosed to the Accountholder Class members, they would have taken steps to minimize their losses. As a proximate result of these misrepresentations and omissions of material facts by Belka, the Accountholder Class members have been damaged.

103. In drafting the BMF 100 prospectus, along with the Latham & Watkins Defendants, Belka made the following misrepresentations of material facts:

- "Substantially all of the principal payments received by the Fund on Trust Deed Loans, including prepayments and the proceeds from the sale of loans, net of Fund expenses, will be reinvested in additional Trust Deed Loans or, at the election of a Participant, passed through quarterly. Prior to such reinvestment or distribution, principal payments received by the Fund, net of Fund expenses, will be invested in short-term interest-bearing investments." (page 2)

- "It is anticipated that former investment advisory clients of PAM will exchange up to approximately $2,164,000 of Trust Deed Loans presently owned by them for Participation Interests." (page 3)

- "Up to $2,164,000 of the Trust Deed Loans comprising the Fund may be contributed by PAM's former investment advisory clients in exchange for Participation interests. ... While the Fund Manager believes the valuation to be applied to Existing Trust Deed Loans that may be exchanged for Participation interests are theoretically sound and justified...." (page 4)

- "As of March 31, 1987, a substantial portion of the Existing Trust Deed Loans have exchange values greater than their respective principal balances. ... Given the interest rates payable on such Existing Trust Deed Loans, the Fund Manager believes that prepayment of a substantial portion of these loans may occur." (page 5)

- "At March 31, 1985, 1986 and 1987, approximately 17.2%, 6.5% and 0%, respectively, of the outstanding principal balances of Trust Deed Loans owned by former investment clients of PAM were delinquent for more than 45 days. It has been PAM's experience that less than 6% of such loans do not have the delinquency cured and are actually foreclosed upon. ... The delinquency rate could be considered an indication of the possible future incidence of foreclosures and possible losses on Trust Deed Loans." (page 9)

- "The Existing Trust Deed Loans, currently held by former investment

advisory clients of PAM, that may be exchanged for Participation Interests offered by this Prospectus, will be valued in accordance with valuation criteria developed with reference to current market conditions and in light of the collective experience of the Fund Manager's executive officer and directors and PAM in evaluating Trust Deed Loans. ... Under this analysis, payments to be received pursuant to each Existing Trust Deed Loan, including periodic interest and principal payments, together with the principal balance due upon maturity of the respective Existing Trust Deed Loan, will be discounted to its present value applying the interest rate, or discount factor, calculated as described herein below." (page 17-18)

- "Because the Fund Manager cannot predict which Existing Trust Deed Loans will be prepaid or when such prepayment will occur, it has not made an adjustment to the discount factor which would take into account the possibility of prepayment in the calculation of exchange value. Therefore it is possible that investors who paid cash for their Participation Interests or who exchanged Existing Trust Deed Loans which are not prepaid by their borrowers may be somewhat disadvantaged compared to those investors who exchanged Existing Trust Deed Loans which are later prepaid." (page 19)

- "The Fund Manager believes that, assuming a substantial number of the Existing Trust Deed Loans are exchanged for Participation Interests, the Fund should provide a diversified portfolio of Trust Deed Loans with varying interest rates, maturity dates, amortization schedules and locations within the State of California." (page 20)

- "In connection with each Existing Trust Deed Loan to be exchanged for Participation Interests and each additional Trust Deed Loan to be acquired by the Fund, the Fund Manager will obtain prior to acceptance by or acquisition by the Fund, a preliminary title report to verify the status of the borrower's title and to determine what liens exist against the property." (page 28)

104. The above statements were material misrepresentations in the BMF 100 prospectus for the following reasons, respectively:

- Payments received by the Fund were used for other purposes undisclosed to investors, such as to pay the operating expenses of the related entities.

- The former investment advisory clients at the time of this offering did not own an individual interest in a trust deed, but rather had a pro rata interest

in a pool of trust deeds. Thus, the valuation criteria could not have been theoretically sound and justified as applied to the existing trust deed loans as these loans were already non-performing.

- The exchange values of the existing trust deed could not be greater than their respective principal balances as these trust deeds were already in default. As many of the existing trust deeds were in default, it is not a fair representation that it could be anticipated that many of them would be prepaid, especially since these loans were "hard money loans."

- As most, if not all trust deeds were non-performing, the delinquent figures in the prospectus are misrepresentations. Moreover, the disclosed delinquency rate is not a fair indicator of future delinquencies as the disclosed rate is incorrect.

- The valuation criteria is misleading as the criteria incorporates payments to be received pursuant to each existing trust deed loan as these loans were already non-performing, thus no future payments could be expected.

- Investors were materially misled to believe that some of the existing trust deed loans would be prepaid when in fact it was very unlikely at best that a prepayment would occur, as most, if not all of the trust deed loans were non-performing.

- As most, if not all trust deeds were non-performing, the contribution of that trust deed, if it was possible, would dilute the value of BMF MIF as that existing trust deed was most likely non-performing.

- If a preliminary title report had been obtained with regard to the existing trust deed loans, it would have been discovered that these loans were either non-performing or already in default.

105. Additionally, Belka failed to disclose to the BMF 100 class members the following material facts:

- The desire of the First Pension Defendants to avoid a run on the system;

- The reason for the creation of VestCorp Securities;

- The reason for the change of name from VestCorp of California to Pension Asset Management;

- The reason that VestCorp of California resigned as the Investment Advisor for the Accountholders;

- The desire of the First Pension Defendants to avoid making the appropriate fiduciary disclosures;

- The intent to withhold information concerning past and present breaches of fiduciary duties;

- The prohibited transactions engaged in by the First Pension Entities and the First Pension Defendants;

- The regulatory action taken by the California Department of Real Estate ("DRE") with regards to William E. Cooper's real estate broker's license;

- The fact that the BMF1 trust deeds had been pooled, and as a result of the pooling, BMF1 was in violation of the qualification provisions of the California securities laws;

- The true financial condition of BMF1, which in fact, had a material shortfall of funds but was going to be traded into BMF 100;

- Ms. Lucille Reynold's letter and claim regarding her request for a liquidation distribution of her investment in BMF1 and her inability to liquidate her funds for over 18 months;

- The fact that various BMF1 trust deeds reviewed by defendant Latham and Watkins were in fact non-performing trust deeds but BMF 1 investors would still be permitted to roll their investment up into BMF 100;

- The financial conditions of the First Pension Entities;

- That the First Pension Defendants were conducting an on-going fraud on the members of both classes and were diverting and commingling funds;

- That the pooling of the individual trust deeds into BMF1 was unlawful as the interests sold in BMF1 had neither been qualified or registered with any regulatory agency and thus the roll-over into BMF 100 should not have been permitted;

- That the First Pension Defendants pooled the individual trust deeds into BMF1 to hide the mounting losses resulting from non-performing trust deeds sold to Accountholder Class Members;

- That the First Pension Defendants owned and operated a series of inter-related companies which they used to divert money from the members of both classes;

- That the First Pension Defendants' companies selling the investments to members of both classes had a bad track record;
- That the trust deeds owned by the Accountholder class members which could be rolled up into BMF 100 had a negative financial performance;

- That, in light of its financial condition, it was likely that First Pension would be required to file bankruptcy within the life of BMF 100;

- That the First Pension Defendants created fraudulent trust deeds and included them in the portfolio of BMF1 which could be converted into BMF 100 interests;

- That the valuation techniques employed in issuing certificates to participants in the fund based on roll-overs from BMF1 were not fair, reasonable and adequate under the circumstances;

- That the BMF 100 offering had changed its stated purposes and objectives numerous times in its creation;

- That Belka, Cooper, Lindley & Jensen's purpose in creating BMF 100 was to attempt to conceal an ongoing fraud that had been operating for years and to divert funds to pay off prior investors;

- That Belka, Cooper, Lindley & Jensen needed to create BMF 100 in order to raise additional capital to cover their own overhead;

- That Belka, Cooper, Lindley & Jensen created BMF 100 as a technique to divert the SEC investigation;

- That the First Pension Defendants diverted investor funds to make political contributions to individuals whom they perceived could exert influence over government regulators; and

- That the First Pension Defendants and their affiliated companies were

  being investigated by the DOC, the SEC, the DRE, the DOL and the

  NASD.

3. Duty Not to Engage in Fraud By Active Concealment

106. In his various roles and as the responding party to various inquiries from regulators and attorneys for the Accountholder and BMF 100 Class members, Belka had a duty to cooperate with governmental regulators and with agents of the investors who were seeking to uncover the true facts about the location and condition of investor funds. This duty arose both from his various roles with VestCorp of California, Pension Asset Management and the other First Pension entities, as described above, but also from duties and obligations which all residents have to cooperate with government investigations. Additionally, whereas in response to these inquiries Belka chose to respond, rather than stay silent, he had an obligation and duty to speak the whole truth and not to make false or misleading statements.

4. Belka Breached His Duty Not to Engage In Fraud By Active Concealment

107. Belka engaged in active concealment in the manner by which he misled and misrepresented material facts to the DOC. On 13 January 1983, DOC attorney George Crawford wrote Belka indicating that members of the DOC staff had heard radio advertisements for VestCorp of California on KNX radio which raised concerns about whether VestCorp of California was acting as more than a mere investment advisor. Mr. Crawford's letter to Belka specifically pointed out the need to comply with California Corporations Code provisions relating to investment advisors and qualifications of securities. The DOC followed up its 13 January 1983 letter with subpoenas duces tecum directed to VestCorp of California and First Pension. (DOC Enforcement Letter

No. 1). These subpoenas called for production by First Pension and VestCorp of California of twenty-six categories of documents. On 23 April 1983, in connection with the DOC investigation, DOC attorney Crawford again directed subpoenas duces tecum to VestCorp of California and First Pension calling for the production of again, twenty-six categories of documents. The DOC subpoenas called for the production of VestCorp of California and First Pension's general journals, general ledgers, cash receipts journal, cash disbursements journal, bank statements, cancelled checks, deposit slips, check books, check vouchers, advertisements, brochures and mailers, names, addresses, and telephone numbers of clients and investors, contracts and agreements with investors and clients, all contracts between VestCorp and First Pension, all contracts between First Pension or VestCorp of California and Continental Home Loan, audited and unaudited financial statements for VestCorp of California and First Pension, offering circulars for VestCorp of California and First Pension, and related documents. The documents sought by the DOC subpoenas would have revealed the existence of the First Pension Defendants' ongoing unlawful conduct.

108. Consequently, Belka and the First Pension Defendants and their counsel, Defendant Smith, devised a plan to keep the subject documents from being produced by the First Pension Defendants to the DOC. Instead of producing the subject documents at the offices of the DOC, Defendant Smith persuaded the DOC to send an examiner to the offices of First Pension. The documents showing the trust deed losses, violations of fiduciary duty, and creation of the unlawful trust deed pool, BMF1, were concealed from the DOC examiner and DOC attorney George Crawford.

109. Another aspect of the DOC investigation occurred on 2 July 1984 in connection with Belka's involvement in an offering of securities for Health Mountain Snack Foods-Turkey Jerky. The DOC initiated this investigation when they came into possession of a flyer that appeared to constitute an unlawful offering of securities and identified Belka as its sponsor. In this offering, Belka solicited investments without qualifying the offering with any regulatory agency. Belka submitted a declaration under oath to the DOC that he was inexperienced in the securities laws at the time he offered this security and that he had a good faith belief that he was not operating in contravention of any laws. However, during this time period, Belka was acting as a registered investment advisor.

110. Belka also engaged in active concealment during the SEC investigation. In July 1983, the SEC commenced an investigation into First Pension and VestCorp of California for possible untrue statements of material facts and omissions of material facts in Belka's application and other reports filed with the SEC pursuant to Section 203 and 204 of the Investment Advisers Act of 1940 ("SEC Investigation"). The SEC investigation began when SEC Compliance Examiner, Lois M. Guerrero, conducted a review of VestCorp of California's documents at 1045 Katella Avenue, Suite 320, Orange, California, the offices of First Pension and VestCorp of California. The SEC Compliance Examiner was unable to complete her investigation from the review of documents at the offices of VestCorp of California and First Pension as she was unable to secure some of the necessary documents.

111. Of primary concern to the SEC was the issue of whether or not the

Accountholder Class members were receiving proper disclosure from VestCorp of California as required under the Investment Advisers Act of 1940. On 27 September 1983 Belka assured the SEC Compliance Examiner that each existing VestCorp client would receive, within a few days, a written disclosure by way of a VestCorp of California Form ADV filed by VestCorp of California with the SEC under the Investment Advisers Act of 1940. Such disclosure to VestCorp clients should have been made previously and without SEC intervention.

112. Furthermore, as with the DOC, Belka actively concealed the fraudulent scheme, the DRE accusation which determined that Defendant Cooper had misappropriated $577,858 trust fund assets in connection with L.B. Mortgage Service, and the relationship between Continental Home Loan, First Pension and VestCorp of California from the SEC.

113. In furtherance of actively concealing material facts relating to the ongoing fraud scheme, ten days after the issuance of the SEC order directing a private investigation of First Pension and VestCorp of California, by letter dated 17 August 1984 addressed to Belka, Defendant Cox laid out the plan for removing the appearance of a conflict of interest amongst the investment adviser, the pension administrator and the broker dealer who was selling product to the First Pension clients. The result was the ownership reorganization of the First Pension related entities discussed above. Ironically, these were the same entities the SEC was currently investigating.

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114. Defendant Cox's letter became the subject of an agreement between the First Pension Defendants. Beyond the agreed upon restructuring as detailed above, the letter also discusses other ownership configurations. It concludes with the following statement, "[r]egardless of which ownership rearrangements are made, it will be desirable to avoid delivery of promissory notes or other evidences of interest in the respective entities as consideration for the transfer of interests therein."

115. On 28 November 1984, Belka, with the aid and preparation of the Latham & Watkins Defendants, wrote a letter to the VestCorp of California clients and explained a number of organizational changes that were being made among the First Pension related entities. The letter was received by all clients of VestCorp of California. The letter was part of the active concealment engaged in by Belka and others to preclude the members of the Accountholder Class and ultimately the BMF 100 Class, as well as the regulators and attorneys working on their behalf, from discovering the fraud. This letter is materially misleading. Specifically, the letter fails to disclose the past breaches of fiduciary duties of the First Pension Defendants. Additionally, undisclosed were the motives behind the reorganization which were to hide the cross-ownership and common control and give a false facade of independence between First Pension, VestCorp Securities, VestCorp of California and PAM in light of the SEC and DOL investigations which were focusing on the inter-relationship of these and other First Pension Defendant entities. Consequently, the purpose of the letter was to induce the existing clients of VestCorp of California to maintain their investments with the First Pension Defendant entities through the use of material misrepresentations and

omissions, as the First Pension Defendants, even though they had to make the changes in light of the regulatory investigations and could not afford to liquidate any client holdings, were experiencing a significant shortfall of client funds due to their ongoing fraud scheme.

116. As the SEC investigation expanded, Belka continued to misrepresent facts to the SEC to hide the First Pension fraud scheme from them and to allow the scheme to continue. In March of 1985, Belka stated, under oath, that First Pension bought, on behalf of First Pension clients, only 60% of its trust deed investments from its affiliate, Continental Home Loan, when in fact that percentage was between 80% to 90%. During his testimony under oath taken by the SEC, Belka also misrepresented facts and made misleading statements about the ongoing scheme in which he was involved. These misrepresentations, along with others, were designed to and had the effect of actively concealing the First Pension fraud from the authorities, and, ultimately the First Pension clients.

117. Belka further engaged in active concealment through his handling of a Department of Labor inquiry. On 26 April 1985 DOL investigator Dave Jacobs-Robinson wrote Belka and indicated that the DOL investigation had reached its initial conclusions regarding the activities of First Pension. The DOL determined that VestCorp of California acted as a fiduciary for its clients in the plans pursuant to a written agreement. The DOL also asserted that certain payments to VestCorp of California appeared to violate ERISA sections 406(a)(1)(D) and 406(b)(1), which state, in applicable part:

406(a)(1) A Fiduciary ... shall not cause the Plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect ---

(D) ... use by or for the benefit of, a party in interest, of any assets of the plan ... (Note that ERISA section 3(14)(A) defines fiduciaries as parties in interest). 406 (b) A fiduciary with respect to a plan shall not--(1) deal with the assets of the plan in his own interest.

* * *

9. A review of VC investment in trust deeds showed payment to FP by mortgage brokers of fees based on a percentage of the investment. It is our experience that "finder's fees" would normally go to the lender. Although we are told that the fees in this instance are compensation for seminars and for record-keeping services, we find no evidence to suggest that amounts received by FP (including nearly $700,000 from Continental Home Loan alone, according to William E. Cooper) are commensurate with the value of services provided. Accordingly, we conclude that, since VC exercises fiduciary control over plan assets invested in these trust deeds, the payment of fees to FP based upon VC's investment presents potential ERISA section 406(a)(1)(D) and 406(b)(1) violations.

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> In addition, the receipt of a commission by Continental Home Loan for trust deeds involving ERISA plan monies is a potential violation of 406(b)(1) in view of Mr. Cooper's simultaneous ownership interests in VestCorp and Continental Home Loan. Mr. Cooper is a party in interest to the various VC client plans due to ERISA section 3(14)(H).

118. Despite the DOL findings, Belka and the other First Pension Defendants did not disclose the impropriety of the payments between VestCorp and First Pension to the First Pension clients. Nor, did Belka and the other First Pension Defendants refund the excessive funds paid by Continental Home Loan. Rather, Belka and the other First Pension Defendants maintained the practice of paying "finders fees" to Continental Home Loan, as such was a conduit for diverting Plaintiff and the Classes' funds.

119. Belka also actively concealed facts from attorneys for the investors. On 17 February 1987 two months before the new public fund, BMF 100 was given its sales permit from the California Department of Corporations, attorney Thomas M. Gieser wrote Defendant Mendoza on behalf of his client, Lucille Reynolds, and described in detail the existence of the unlawful pool, Bank Mortgage Fund No. 1. In confirming his conversation with Mr. Belka, Attorney Gieser wrote:

> Specifically, when my client and I met with Mr. Belka on September 16, 1986, he advised us that the total amount of investor funds in the **Bank Mortgage Funds No. 1** was in the approximate amount of Ten Million Dollars ($10,000,000.00), and that Mrs. Reynolds= investment balance of approximately Two Hundred Forty Thousand Dollars ($240,000.00) amounted to approximately 2.4 percent of said total funds invested. During that meeting, Mr. Belka provided me with your name, and suggested that I discuss with you the status of the qualification of the **Bank Mortgage Fund**. [emphasis added]
>
> * * *
>
> According to the representations of Glen Belka, my client was led to believe that

> these funds were at the very least extremely closely related, if not identical. As a matter of fact, my client has been advised by Mr. Belka, as well as other representatives of First Pension, for the last several months, that as soon as the BMF Mortgage Income Fund went public, she would be able to receive the balance of her investment in the **Bank Mortgage Fund No. 1**, in the approximate amount of Two Hundred Thousand Dollars ($200,000.00). [emphasis added]

120. By engaging in these discussions without full disclosure of the true facts and circumstances concerning the security of Ms. Reynolds funds, Belka was actively concealing material facts.

121. Pension Asset Management's duties were assumed in 1987 by First Diversified Financial Services, Inc. and Defendants Cooper, Lindley and Jensen. Belka continued to be a part of the First Pension fraud scheme by hiding the truth of the First Pension investments from First Pension Clients and government authorities. By not disclosing the First Pension fraud, Belka continued to participate in and benefit from the fraud. Moreover, even after his departure from First Pension and its related entities, Belka went on to form many other real estate limited partnerships in which many First Pension Clients invested. The First Pension Clients would not have invested in these limited partnerships in which he was a general partner had they known the truth about the First Pension fraud.

5. Duty to Not Aid and Abet Breaches of Fiduciary Duty as to Accountholder Class

122. In addition to his own fiduciary obligations to the class, Belka was aware that the other First Pension Defendants and the First Pension related entities also owed fiduciary duties to Plaintiffs and members of both the classes based upon their respective roles in the various First Pension entities and further based upon the fact

that Plaintiffs and members of the Classes reposed trust and confidence in the other First Pension Defendants and the First Pension related entities. Belka's knowledge of the fiduciary duties owed by the other First Pension Defendants and the First Pension related entities came from his overall understanding of the workings of the pension investment structure in which the members of both classes were induced to invest as well as the fact that he holds a law degree. Based on this knowledge, Belka had a duty not to provide substantial assistance to the other First Pension Defendants' and the First Pension related entities breaches of fiduciary duties.

6. Breach of Duty to Not Aid and Abet Breaches of Fiduciary Duty owed to the Accountholder Class and the BMF 100 Class

123. Belka provided substantial assistance to Defendants Cooper, Lindley and Jensen's and the First Pension related entities' breaches of fiduciary duties as follows:

- By concealing the ongoing fraud through false testimony before the SEC as alleged above;
- By drafting offering documents, account statements, and letters directed to members of both classes which failed to disclose material facts and which misrepresented material facts as alleged above;
- By orchestrating the reorganization of ownership in the First Pension related entities to give the appearance of independence, yet at the same time continuing to operate in the same manner as prior to the ownership reorganization;
- By orchestrating the restructure of the corporate entities to give the appearance that plaintiffs and members of the class were receiving independent advice concerning the appropriate investments;
- By misrepresenting facts to Ms. Lucille Reynolds and her counsel and other investors concerning the security of the funds invested in BMF1 and BMF 100;

- By misrepresenting to investors the purposes behind the restructuring and reorganization of the First Pension Entities;

- By participating in and authorizing the wrongful diversion of funds from BMF1 and BMF 100 to pay for the overhead and personal expenses of the other First Pension Defendants and the First Pension Entities, as well as other entities under the control and supervision of Defendant Cooper;

- By creating BMF 100 as an effort to divert the SEC investigation and conceal the substantial shortfalls in BMF1;

- By creating BMF1 as an attempt to conceal the substantial shortfalls of the original trust deed investments owned by members of the Accountholder Class;

- By creating VestCorp of California and First Pension as a way of financing Cooper's failing company Continental Home Loans;

- By using Accountholder Class Member Funds to purchase defaulting and worthless loans from Cooper controlled entities such as Continental Home Loans;

- By diverting money out of the BMF1 pool of funds to pay Continental Home Loan's overhead without providing collateral into the BMF1 fund;

- By continuing to promote investments in BMF1 and BMF100 and related First Pension Investments to members of both classes even though he knew the money invested would be used for illegitimate purposes;

- In providing day to day management, structure and organization to the First Pension Entities and the operation of the fraud which induced the members of both classes to invest;

- By creating a structure which was motivated by a desire of the First Pension Defendants to avoid a run on the system, rather than provide financial services to Plaintiffs and members of the classes;

- By concealing the reasons for the creation of VestCorp Securities and the change of name from VestCorp of California to Pension Asset Management;

- By concealing the reason that VestCorp of California resigned as the Investment Advisor for the Accountholders;

- By withholding information concerning past and present breaches of fiduciary duties;

- By participating in, approving and allowing prohibited transactions by the First Pension Entities and the other First Pension Defendants;

- By concealing the regulatory action taken by the California Department of Real Estate ("DRE") with regards to William E. Cooper's real estate broker's license;

- By concealing that the BMF1 trust deeds had been pooled, and as a result of the pooling, BMF1 was in violation of the qualification provisions of the California securities laws and thus the Accountholder Class Members had a right of rescission;

- By concealing non-performing trust deeds in BMF 1 that would still be permitted to roll their investment up into BMF 100;

- By falsifying financial statements concerning the financial conditions of the First Pension Entities and the First Pension Defendants;

- By authorizing, approving and allowing the diversion and commingling of Accountholder and Class Member funds;

- By concealing and attempting to mislead Accountholders and BMF 100 Class members about the interrelatedness of companies used to divert money from the members of both classes;

- By concealing the bad track record of the First Pension Defendants' and the First Pension Entities;

- By holding himself out to the Accountholder and BMF 100 Class members, as well as the public, as a reputable business person with whom investor funds would be safe;

- By approving, allowing and authorizing bogus and fraudulent trust deeds in the portfolio of BMF1 and BMF 100;

- By employing fraudulent valuation techniques in issuing certificates to participants in the BMF 100 fund based on roll-overs from BMF1; and

- By diverting and obfuscating regulatory investigations by the DOC, the

SEC, the DRE, the DOL and the NASD that would have uncovered the fraud.

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7. Duty to Not Aid & Abet Fraud as to the Accountholder Class and the BMF 100 Class

124. Having knowledge of the ongoing fraud being perpetrated upon the Accountholder and BMF 100 Class members, Belka had a duty not to aid and abet co-defendants in the perpetration of the fraud scheme. Belka had knowledge of the fraud scheme through his overall roll in the First Pension related entities, as alleged herein, as well as from his legal and business background.

8. Breach of Duty to Not Aid & Abet Fraud as to the Accountholder Class and the BMF 100 Class

125. Defendant Belka substantially assisted in the overall fraud in the same manner he substantially assisted in aiding and abetting the breaches of fiduciary duties as set forth above. In addition, Belka aided and abetted the fraud by his participation with the Latham & Watkins Defendants and the First Pension Defendants making misrepresentations and omissions of material facts to the DOC about the trust deeds which were to be exchanged for Participation Interests in BMF 100. Belka knew that the Latham & Watkins Defendants were making these false and misleading statements in that he was aware of and received copies of Defendant Latham & Watkins communications to the DOC but did nothing to correct these misrepresentations. The misrepresentations included, but were not limited to:

- That none of the trust deeds to be exchanged had a delinquent payment history;
- That the expense of appraising the trust deeds would result in a substantial and unnecessary dilution of the investors' interests; and

- That BMF 100 fund was being formed to permit holders of small trust deeds to exchange the deeds for interests in the fund in order to diversify their risk and to enhance the liquidity of their investment.

126. Belka also substantially assisted in the fraud by his participation with Defendant Smith in obfuscating regulatory investigations into the First Pension related entities and First Pension Defendants. While the Latham & Watkins and First Pension Defendants were developing the valuation criteria, Defendant Belka was preparing for and attending his deposition taken by the SEC. Defendant Belka's deposition was taken by the SEC on 31 July 1985. Defendant Smith represented Defendant Belka during his deposition. During such deposition, Defendant Belka misrepresented material facts. The misrepresentations, were part of a design to, and in fact did conceal the First Pension fraud from the SEC and other regulatory agencies.

C. DUTIES THE C&L DEFENDANTS OWED TO THE ACCOUNTHOLDER CLASS AND THE BMF 100 CLASS AND THE BREACHES THEREOF

1. Duty to Not Actively Conceal Material Facts as to the Accountholder Class and the BMF 100 Class

127. THE COURT HAD DISMISSED THIS CAUSE OF ACTION WITHOUT LEAVE TO AMEND PURSUANT TO DEFENDANT COOPER=S & LYBRAND=S DEMURRER AND THIS CAUSE OF ACTION IS NOT REASSERTED IN THIS OPERATIVE COMPLAINT. PLAINTIFFS INCLUDE THE ALLEGATIONS OF THE CONCEALMENT CAUSE OF ACTION FOR TWO LIMITED PURPOSES: (1) TO PRESERVE PLAINTIFFS APPELLATE RIGHTS REGARDING THE DISMISSAL OF THIS CAUSE OF ACTION; (2) TO INCORPORATE BY REFERENCE THE ALLEGATIONS INTO THE STATUTE OF LIMITATIONS ALLEGATIONS SET FORTH IN

THIS OPERATIVE COMPLAINT.

128. The C&L Defendants had a duty to the Accountholder Class to not actively conceal material facts from the accountholder class. The C&L Defendants prepared writings in which they had a duty to not actively conceal material facts. These documents included:

- Report on Review of Trust Fund Financial Statements for the Six Months Ended June 30, 1982, and any other year so issued;
- Report of Independent Accountant Trust Account Inspection Rule 260.105.30 Real Estate Loans: Multi-Lender Transactions;
- VestCorp of California Annual Report 1983, and any other year so issued;
- Form S-11 Registration Statement for Vestcorp Trust Deed Fund, filed with the SEC on December 4, 1984, and, filed with the DOC on the same day pursuant to an application for coordination;
- Pre-Effective Amendment No. 1 to the Form S-11 Registration Statement for Vestcorp Trust Deed Fund, filed with the SEC and DOC on September 29, 1986;
- Pre-Effective Amendment No. 2 to the Form S-11 Registration Statement for Vestcorp Trust Deed Fund, filed with the SEC and DOC on February 12, 1987;
- Pre-Effective Amendment No. 3 to the Form S-11 Registration Statement for Vestcorp Trust Deed Fund, filed with the SEC and DOC on April 7, 1987; and

- Post-Effective Amendment No. 1 to the Form S-11 Registration Statement for Vestcorp Trust Deed Fund, filed with the SEC and DOC on April 20, 1987.

(Hereinafter referred to as the "C&L Accountholder Concealment Writings")

129. The C&L Defendants owed the Accountholder Class a duty to not knowingly or recklessly engage in activities which concealed material facts from the Accountholder Class. The services the C&L Defendants performed in which they were not to actively conceal material facts from the Accountholder Class were the following:

- Reviewing financial statements in accordance with standards established by the American Institute of Certified Public Accountants;
- Examining financial statements in accordance with standards established by the American Institute of Certified Public Accountants;
- Reviewing accounts in accordance with standards established by the American Institute of Certified Public Accountants;
- Auditing financial statements in accordance with generally accepted auditing standards;
- Drafting opinion letters regarding the findings of their reviews and examinations; and
- Providing accounting services.

(Hereinafter referred to as the "C&L Accountholder Concealment Services")

130. The C&L Defendants had a duty to the BMF 100 Class to not actively conceal material facts from the BMF 100 Class. The duty extended to the following

writings prepared by the C&L Defendants:

- The prospectus for BMF Mortgage Income Fund, dated April 30, 1987; and
- The BMF Mortgage Income Fund, Inc. annual 10K reports, from 1987, through and including, 1993.

(Hereinafter referred to as the "C&L BMF 100 Concealment Writings")

131. The C&L Defendants had a duty to not engage in activity to actively conceal material facts from the BMF 100 Class. That duty extended to the following activities by the C&L Defendants:

- Examining balance sheets in accordance with standards established by the American Institute of Certified Public Accountants;
- Examining balance sheets in accordance with generally accepted auditing standards;
- Auditing financial statements in accordance with generally accepted auditing standards; and
- Drafting opinion letters regarding the findings of their review and examinations.

(Hereinafter referred to as the "C&L BMF 100 Concealment Services")

2. Breach of Duty to Not Actively Conceal Material Facts as to the Accountholder Class and the BMF 100 Class

132. As set forth above, Defendant Cooper controlled both the trust deed loan seller Continental and the agent investment manager of the trust deed loan buyers

VestCorp. Defendant Cooper manipulated his joint control to transfer approximately 450 materially over-priced trust deed loans in exchange for over $13 million from the Accountholder Class' accounts. These "sales" were not made under market conditions because they were not arms length, the prices were not negotiated between an arms-length buyer and seller, but were, in fact, set up to unjustly and fraudulently to enrich the seller, Defendant Cooper.

133. Due to the fact that the trust deed loans sold by Continental to the Accountholder Class were to be serviced by Continental's affiliate, L.B. Mortgage Servicing Co., Continental was required to comply with California Code of Regulation ' 260.105.30. Specifically, Continental, as the person negotiating and arranging the transaction, was required to be a real estate broker licensed by the California Real Estate Commissioner. Second, Continental was required to file a detailed notice form with the DOC disclosing any interest of the broker in any of the transactions. Third, Continental's trust deed loans sold to the Accountholder Class could not exceed 80% of the current fair market value of the property. Continental and L.B. Mortgage Servicing's books and records were required to be maintained in a manner which readily identified such transactions and related receipt and disbursement of funds.

134. Moreover, pursuant to ' 260.105.30, an independent accountant was required to inspect a randomly selected representative sample of at least 5% of the sales made and 2% of the payments processed under the exemption. In connection with the accountant's examination, the accountant was to identify any advances made by the broker or servicing agent or to otherwise show that such disbursements were not

the a disbursement of trust funds. Additionally, the accountant was to forward to the Commission of Corporations the accountant's report together with a certification that the inspection was made in accordance with the provisions of ' 260.105.30.

135. Defendant Cooper retained the C&L Defendants to prepare the accountant's inspections and reports required by ' 260.105.30. The C&L Defendants knew that the purpose of their inspections and subsequent reports was to ensure for the benefit of the investors the integrity of funds maintained for the purpose of buying trust deed loans sold by Continental which were purportedly exempt from qualification under DOC requirements. The C&L Defendants knowingly or recklessly failed to properly inspect or ignored adverse material facts which showed Defendant Cooper, Continental, and L.B. Mortgage Servicing Co. were not in compliance with ' 260.105.30.

136. Specifically, the C&L Defendants did not inspect or ignored and did not report that L.B. Mortgage Servicing and Continental's books and records were not maintained in a manner which readily identified transactions under ' 260.105.30 and the receipt and disbursement of funds in connection with such transactions. The C&L Defendants inspection did not identify or ignored the fact that the sources of advances were trust funds contributed by investors. By failing to identify or ignoring such adverse material facts, the C&L Defendants issued "clean" letters of opinion and reports to the DOC which concealed the on-going fraud which made it possible for Defendants Cooper, Lindley, Belka, and Jensen to continue to defraud investors.

137. By knowingly or recklessly issuing false and misleading reports to the

DOC under ' 260.105.30, the C&L Defendants thrusted themselves into a primary and nefarious role in the fraudulent transactions alleged in this operative complaint. The reports concealed Defendant Cooper's diversion of trust funds to pay advances and his selling of trust deeds in transactions in which Defendant Cooper, Continental or an affiliate had an undisclosed interest. Moreover, these facts were beyond the reach of the BMF 100 Class members. These false and misleading reports to the DOC made it possible for Defendants Cooper, Lindley, Belka, and Jensen to continue to perpetrate their fraud.

138. In addition to the reports prepared in connection with DOC requirements, the C&L Defendants prepared reports in connection with DRE requirements for Continental and L.B. Mortgage Servicing Co. The C&L Defendants prepared such reports pursuant to California Business & Professions Code ' 10232.2 and DRE Regulation ' 2846.5(a) from at least 1982 to 1987.

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139. Pursuant to said sections, the C&L Defendants review and subsequent reports were to include details regarding: (1) receipt and disposition of all funds of others to be applied to the making of loans and the purchasing of promissory notes; (2) the receipt and disposition of all funds of others in connection with the servicing by the broker of the accounts of owners of promissory notes; (3) a statement as of the end of the fiscal year which shall include an itemized trust fund accounting of the broker and confirmation that the trust funds are on deposit in an account or accounts maintained by a broker in a financial institution. However, the C&L Defendants issued such reports without disclosing related party transactions involving VestCorp accountholders and Defendant Cooper, the misapplication of the Accountholder Class' funds by Defendant Cooper through L.B. Mortgage Servicing, and the diversions of the Accountholder Class' funds by Defendant Cooper to make up for prior misappropriation of trust funds.

140. The C&L Defendants conducted such reviews and reports of Continental and L.B. Mortgage Servicing under the threat that the DRE may conduct their own examination. Specifically, on September 30, 1982, the DRE wrote Defendant Cooper and stated, "[i]f we do not receive your immediate compliance with Code Sections 10232.2(a) and 10232.2(c), procedures will be instituted for us to begin examination of your trust account and preparation of your Annual Report of Business Activity."

141. Under such a back drop, the C&L Defendants issued their "Report on Review of Trust Fund Financial Statements" for Continental and L.B. Mortgage Servicing Co. pursuant to Code Sections 10232.2(a) and 10232.2(c) on October 15, 1982, just 15 days after the threat of a DRE conducted examination. The C&L

Defendants concealed in this report, conducted in accordance with generally accepted accounting principles, and the other reports they issued between 1982 to 1987, that they were unaware of any material modifications that should have been made to the statement of trust fund balances, related disbursements and changes in trust fund balances of Continental or L.B. Mortgage Servicing. These reports also falsely reported that the C&L Defendants review included procedures which considered Continental's and L.B. Mortgage Servicing's trust accounts to be in compliance with DRE regulation 2846.5(a).

142. In associating itself with these financial reports, the C&L Defendants failed to maintain in matters relating to the assignment, an independence in mental attitude. The C&L Defendants were compromised in two ways. First, the C&L Defendants had a prior existing relationship with Defendant Lindley, the chief financial officer of Continental, L.B. Mortgage Servicing, First Pension, VestCorp, and VestCorp Securities. This relationship interfered with the independence of the C&L Defendants, as the C&L Defendants did not want to embarrass a former colleague. The C&L Defendants independence were also compromised by the fact that they had involved themselves in the fraud early on, and thus, it was in the C&L Defendants personal financial well being to keep the Accountholder Class ignorant of the true facts so as to avoid their own personal liability.

143. While the C&L Defendants were issuing their false reports, the DRE discovered in March 1983 that Defendant Cooper had misappropriated $577,000 of trust funds entrusted to him at L.B. Mortgage Servicing. The DRE brought an

accusation against Defendant Cooper seeking the revocation of his license. Defendant Cooper attempted to convince the DRE that the misappropriation was a technical mistake and enlisted the C&L Defendants in the effort to conceal the misappropriations.

a) Ten days after the DRE filed its amended accusation against Defendant Cooper seeking the revocation of his real estate license for misapplication of funds entrusted to him at L.B. Mortgage Servicing, the C&L Defendants associated themselves with Continental and L.B. Mortgage Servicing by reviewing the statement of trust fund balances for the year ended June 1983 and issued an opinion letter. The report issued on August 26, 1983, provided that:

> Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with generally accepted accounting principles.
>
> Our review also included procedures which considered the Company's compliance with certain Regulations of the Real Estate Commissioner of the State of California, as enumerated in section 2846.5(a) of such Regulations. Based on our review, we are not aware of any material instances of noncompliance with such Regulations.

144. Following the DRE's accusation, Defendant Cooper's real estate license was revoked. However, Defendant Cooper received a restricted license as he was able to convince the DRE that his "out of trust" problem was solved. The C&L Defendants were a critical part of perpetrating this deception on the DRE and the Accountholder Class. The order regarding revocation of Defendant Cooper's real estate license provided expressly that any restricted license issued to Defendant Cooper had to based upon reports by an independent accountant to be filed periodically with the DRE. Those reports, which were subsequently prepared by the

C&L Defendants were false and misleading. These reports played a critical part in keeping the fraud operational. Had the C&L Defendants met their duties and issued accurate reports or had otherwise not associated themselves with the reports, plaintiffs would not have suffered additional damages. From this involvement, the C&L Defendants had a keen understanding of the unlawful scheme Defendant Cooper, Lindley, Belka, and Jensen were engaged in.

145. The C&L Defendants' unlawful actions spilled over from the sales and service side provided by Continental and L.B. Mortgage Servicing to the investment management side. While the C&L Defendants were issuing false financial reports for Continental and L.B. Mortgage Servicing, they were also issuing a false audit for VestCorp, the Accountholder Class' investment manager. The C&L Defendants knowingly or recklessly issued the false VestCorp financial report, and thereby, thrusted itself into a primary and nefarious role in the transactions by joining in Defendant Cooper, Lindley, Belka, and Jensen's intentional deceit of the Accountholder Class. The C&L Defendants made the false statements in its audit of VestCorp recklessly to the Accountholder Class who it intended to or had reason to expect would open or refrain from closing an account with VestCorp. The false statements in the financial report were made with the intent to defraud plaintiffs who the C&L Defendants intended to or reasonably should have foreseen would rely upon these misrepresentation and misleading statements.

146. The facts needed to make those statements made not misleading in the C&L Defendants' financial report for VestCorp were as follows: (1) The DRE was

seeking to revoke Defendant Cooper's real estate for misapplication of trust funds entrusted to L.B. Mortgage Servicing; (2) Defendant Cooper had misused funds entrusted to him at L.B. Mortgage Servicing at least involving $577,000; (3) VestCorp and Continental had engaged in a series of related party non-arms length transactions involving the sale of trust deed loans to plaintiffs accounts at VestCorp; (4) the need for additional audit work to determine if the sales of trust deed loans from Continental to the Accountholder Class was at market value; (5) the poor financial condition of VestCorp and the fact that it could not exist as a going concern but for the advances by Defendant Cooper; (6) the need to audit advances by Defendant Cooper to VestCorp to determine if there source was trust funds from plaintiffs; (7) the financial condition of the BMF 1 trust deed portfolio; (8) the C&L Defendants' lack of independence and conflicting other audit and reviewing undertakings on behalf of Defendant Cooper and his affiliated companies; and (9) the other facts set forth in greater detail in this operative complaint known to the C&L Defendants.

147. The C&L Defendants knew the true nature of the facts as the C&L Defendants relationship with Defendant Cooper, Lindley, Jensen and Belka was continuous and dated as far back as 1981. Moreover, the C&L Defendants were engaged to provide accounting services for several of the First Pension related entities and through such engagements learned of materially adverse facts. Amongst the facts learned by the C&L Defendants were the following facts which were integral to understanding the existence and extent of the fraud being perpetrated by defendants on plaintiffs: (1) Defendant Cooper was misapplying trust funds in connection his

mortgage servicing business; (2) Defendant Cooper had financed the organization and operation of VestCorp and First Pension; (3) while under Defendant Cooper's control VestCorp was buying trust deeds on behalf of its accountholders from Continental in a series of affiliated party transactions; (4) Defendant Cooper, Belka, Jensen and Lindley had transformed VestCorp into VestCorp Securities and had changed the services provided to plaintiffs from investment manager to broker-dealer; (5) Defendant Cooper, Belka, Jensen and Lindley were changing ownership of the operational companies VestCorp, VestCorp Securities, First Pension amongst themselves; (6) that the Accountholder Class' trust deed loans had been merged into BMF 1; (7) that BMF Mortgage Income Fund was being organized to allow Accountholder Class trust deed loans to be merged into a publicly registered and qualified fund; and (8) that Defendant Cooper had misappropriated funds entrusted to L.B. Mortgage Servicing while that company was servicing trust deeds on behalf of the Accountholder Class. With this information and a detailed understanding of Defendant Cooper's business activities, the C&L Defendants knew or were reckless in not knowing of the underlying fraud. Despite having such knowledge the C&L Defendants continued to perform accounting services detailed herein which was essential to the on-going fraud.

148. Moreover, the Accountholder and BMF 100 Classes were told on several occasions that the Defendant Coopers & Lybrand was providing accounting services to the First Pension Defendants' entities responsible for the fraud perpetrated on them. This information was conveyed to the Accountholder and BMF 100 Classes or government officials with the intent of inducing the belief in the Accountholder and BMF

100 Classes that the C&L Defendants were confirming the financial performance of the First Pension Defendants' companies. For example, the sales brochure that was used to sell its services to the Accountholder and BMF 100 Classes specifically listed Defendant Coopers & Lybrand as a reference. In addition, when investors asked for company financial statements, the Defendants Cooper, Belka, Lindley and Jensen used the C&L Defendants auditor role to provide comfort to them. Moreover, the First Pension/VestCorp newsletter made specific reference to the C&L Defendants being VestCorp's auditor:

> STATEMENT OF CONDITION - although Vest-Corp is privately owned and not subject to a public shareholders report, we have had many requests for some sort of company financial statement. As a Registered Investment Advisor, Vest-Corp is required to provide certified financial statements to the Securities and Exchange Commission (SEC) and the California Department of Corporations on an annual basis. Our auditor for this purpose is Coopers & Lybrand.

149. On February 5, 1985, Defendant Smith told SEC investigators during Defendant Jensen's deposition taken by the SEC:

> MR. SMITH: One thing that might be of some help to you, in order to -- basically this, the early stages of these obviously are for you to find whether these people are a bunch of crooks, okay? Everybody knows that and once you find that out, it changes the complexion. **Coopers & Lybrand has recently completed an audit and it is, you know, it's an unqualified audit. I believe that perhaps if we were to furnish you a copy of that, that might help alleviate some of your concerns**. [emphasis added]
>
> MR. DION: That would be helpful if you could give us a copy. Was that audit of First Pension alone or was it a Diversified or other entities or --
>
> MR. SMITH: Do you remember that? Do you know?
>
> THE WITNESS: Well I know Vest Corp. of California, they audit--they did a complete audit of them.

150. The C&L Defendants were an important factor in Defendant Cooper's

effort to reinstate his revoked real estate license. Defendant Cooper wrote the DRE on November 3, 1986, and in support of his effort to reinstate his revoked real estate license stated:

> Number two, I have maintained a very strict supervision of my trust accounts and as I stated previously my trust accounts have remained in trust which is verified by my quarterly reports and **Coopers & Lybrand's annual audits**. I think these two issues in themselves would be sufficient reason to remove the restriction from my brokers license. The restriction was agreed to based upon an allegation by the Department of Real Estate about an "out of trust" problem which I have corrected prior to the Department of Real Estate audit. [emphasis added]

3. Breach of Duty to Not Engage in Fraud by Active Concealment as to the BMF 100 Class

151. The C&L Defendants also acted as the auditors of BMF Management Inc., the general partner of BMF 100, in connection with the public offering of BMF 100. The C&L Defendants actively concealed material facts that they knew were beyond the reach of the BMF 100 Class members. Such active concealment by the C&L Defendants took place in the C&L BMF 100 Active Concealment Writings and in the services performed by the C&L Defendants as detailed in the C&L BMF 100 Active Concealment Services.

152. The C&L Defendants actively concealed material facts from the BMF 100 Class members, not only in the BMF 100 prospectus, but also in annual reports and 10-K filings with the SEC from 1988 to 1993. The C&L Defendants actively concealed the related party transactions in the BMF 100 prospectus regarding the related party transactions between BMF Management, Inc. and its related entities. Additionally, the C&L Defendants actively concealed the fact that the borrower payoffs in BMF 100 were

not returned to plaintiffs or otherwise properly reinvested. Indeed, as of March 1994, the assets in BMF 100 consisted of only two performing loans, two loans who's trustor's had filed for bankruptcy protection and four loans in foreclosure. This disastrous financial picture emerged under the C&L Defendants' noses, however, like the rest of the fraud, and the C&L Defendants responded by issuing "clean" financial reports.

153. The C&L Defendants knowledge or recklessness can be inferred by their systematic violations of accountant rules and standards of professional conduct. In performing the accounting services and in preparing the financial reviews and opinion letters, the C&L Defendants failed to follow at least the following accounting or auditing standards: American Institute of Certified Public Accountants ("AICPA") General Standards No. 3, Field Work Standards Nos. 1, 2 and 3; Standard of Reporting Nos. 1, 3 and 4; Generally Accepted Accounting Principles ("GAAP") Statement No. 4; AU Section 230 (due care in the performance of audit work); AU Section 311 ("Planning and Supervision"); AU Section 326 (obtaining sufficient evidential matter); AU Section 334 ("Related Parties"); AU Section 340 [pre-1989] or 341 [1989 and thereafter] (evaluation of an entity when its existence as a going concern comes into question); AU 431 (adequacy of disclosure in financial statements); AU Section 550 (where reports are included in other documents); AU Section 551 ("Reporting on Information Accompanying the Basic Financial Statements in Auditor Submitted Documents"); AU 711 (inclusion of opinions in securities filings); Statement of Financial Accounting Concepts No.1 (objectives of financial reporting by business enterprises); and Statement of Financial Accounting Concepts No. 2 (qualitative characteristics of

accounting information).

154. Other violations by the C&L Defendants of applicable accounting or auditing standards included: (1) the principle that a conservative approach, providing early recognition of unfavorable events and minimizing the amount of net assets and income reported as appropriate (see Statement No. 4, " 28, 35 and 171); (2) the principle that the economic substance of transactions rather than formal considerations should be emphasized (see, Statement No. 4, " 25, 35 and 127); (3) the principle that the financial information presented should be complete (see Statement No. 4, " 23 and 106); (4) the principle that no significant uncertainties can exist if revenue is to be recognized (see Statement No. 4, ' 150); (5) the principle that there be fair presentation (see Statement No. 4, " 109, 138 and 189); and (6) the principle that the financial statements and reports contain all material information (see Statement No. 4, " 25 and 128).

155. Additionally, the C&L Defendants violated AU Section 311 ("Planning and Supervision") in that, in planning the examination, the auditors should have considered, among other things, matters relating to the entity's business and conditions that may require extension or modification of audit tests such as the existence of related party transactions. The auditor must obtain a knowledge of matters that relate to the nature of the entity's business, its organization, and its operating characteristics. Such matters include, for example the type of business, types of products and services, capital structure, and related parties.

156. The C&L Defendants knew of the existence of significant related party

transactions amongst Continental, VestCorp, VestCorp Securities, and Defendants Cooper, Lindley, Jensen and Belka and their affiliated companies. Pursuant to AU Section 334, the C&L Defendants were required to become aware of the possibility that the related parties transactions were motivated solely, or in large measure, by a lack of sufficient working capital. The C&L Defendants were required to obtain sufficient competent evidential matter to understand the relationship of the parties and, for related party transactions, the effects of the transaction on the financial statements. The C&L Defendants either did not perform the above and violated the applicable standards, or did perform them, and thus were fully aware and had actual knowledge of the "ponzi" scheme and other improper activities. In either case, the C&L Defendants violated generally accepted auditing standards and issued false and misleading auditor opinion letters.

157. The C&L Defendants also provided accounting services in connection with Defendants Cooper, Lindley, Jensen and Belka's unsuccessful effort to create a bank holding company and acquire a bank, Citizens National Bank. The C&L Defendants learned from this experience that there had been a substantial deterioration of Defendant Cooper's companies which was so serious as to cripple the bank takeover.

158. The C&L Defendants financial reports were also critical to keep operative the securities sales scheme, unlawfully operated to sell millions of dollars of worthless or below value securities. VestCorp Securities, the broker dealer arm of Defendants Cooper, Belka, Lindley and Jensen, which had to file financial reports with the SEC.

These financial reports included a report from the C&L Defendants. These reports included a report on Examination of the Financial Statements and Supplemental Schedules For the Period From Inception, October 25, 1985; a report of Independent Certified Public Accountants Supplemental Report On Internal Control VestCorp Securities; a report of Independent Certified Public Accountants On SIPC Schedule of Assessment And Payments For the Period December 26, 1984 through June 30, 1985; and VestCorp Securities examination and reports on VestCorp Securities from 1983 to 1986.

4. Duty to Not Intentionally Misrepresent Material Facts as to the Accountholder Class

159. The C&L Defendants had a duty to the Accountholder Class to not prepare writings which contained knowing or reckless misrepresentations of material facts or misleading statements. The C&L Defendants prepared a key financial report which misrepresented material facts to the Accountholder Class, the VestCorp of California Annual Report 1983.

160. The C&L Defendants had a duty to the BMF 100 Class to not prepare writings which contained knowing and/or reckless misrepresentations of material facts or misleading statements. The C&L Defendants prepared documents which misrepresented material facts to the BMF 100 Class, including:

- The prospectus for BMF Mortgage Income Fund, dated April 30, 1987; and
- The BMF Mortgage Income Fund, Inc. annual 10K reports, from 1987, through and including, 1993.

(hereinafter referred to as the "C&L BMF 100 Misrepresentation Writings"):

5. Breach of Duty to Not Intentionally Misrepresent Material Facts as to the Accountholder Class and the BMF 100 Class

161. The C&L Defendants thrusted itself into a primary and nefarious role in the transactions aimed at getting plaintiffs to refrain from closing their accounts, and go along with the switch-over from the VestCorp/First Pension investment system to the VestCorp Securities investment system which thereby induced plaintiffs to purchase more fraudulent and unlawful securities issued by Defendants Cooper, Lindley, Jensen and Belka.

162. The C&L Defendants joined in the intentional breaches of Defendants Cooper, Lindley, Jensen and Belka and breached their own duty owed to the Accountholder Class by issuing a "clean" audit report in connection with VestCorp of California's annual report for 1983. In said report, Defendants Cooper, Lindley, Jensen and Belka represented to the Accountholder Class that VestCorp of California was generating a profit and had not engaged in related-party transactions, other than those with Enterprise Agency, Diversified Financial Services and Continental Home Loan for management and advertising services. Such representations were misleading in that VestCorp of California had engaged in numerous other related-party transactions to which VestCorp of California was monetarily indebted. Consequently, VestCorp of California had massive amounts of liabilities from these related-party transactions which were misrepresented to the Accountholder Class.

163. Despite the false facts regarding the financial position of VestCorp of California made to the Accountholder Class by Defendants Cooper, Lindley, Jensen

and Belka, the C&L Defendants issued a "clean" audit report of VestCorp of California's financial condition on September 7, 1983. In so doing, the C&L Defendants knowingly or recklessly made material misrepresentations of facts regarding VestCorp's financial condition. This report was issued to and relied upon by the Accountholder Class which induced them to maintain and increase their accounts to their detriment. Interestingly, the C&L Defendants issued such an audit opinion nine days prior to Defendants Cooper, Lindley, Jensen and Belka's pooling of the trust deeds into BMF 1 for the ostensible purpose of salvaging the failing trust deed investments and to avoid notifying the Accountholder Class of their losses. By issuing such a false audit opinion, the C&L Defendants intentionally misrepresented material facts and made misleading statements to the Accountholder Class.

164. The C&L Defendants had actual knowledge of the false or baseless character of its opinions or statements, or alternatively, the C&L Defendants had no belief in the truth of its opinions or statements and made them recklessly without knowing whether they were true or false. Moreover, the C&L Defendants failed to make statements of facts and opinions needed to make those it did make not misleading. The C&L Defendants made such statements to the Accountholder Class who it intended to or had reason to expect would act or refrain from acting in reliance upon the misrepresentation and misleading statements.

165. Additionally, the C&L Defendants gave accounting advice to Defendants Cooper, Lindley, Jensen, Belka and their related entities which was misleading and/or contained misrepresentations intending for Defendants Cooper, Lindley, Jensen, Belka

and their related entities to repeat in form or substance the misrepresentations or misleading statements to the Accountholder Class.

166. The C&L Defendants intentionally made misrepresentations of material facts and misleading statements to the BMF 100 Class, and thus, breached their duty to the BMF 100 Class. Such intentional misrepresentations of material fact and misleading statements were made by the C&L Defendants in the BMF 100 prospectus and the BMF 100 annual reports.

167. The C&L Defendants intentionally made materially misleading statements in the BMF 100 prospectus when the C&L Defendants stated that BMF Management, Inc. intended to contract with affiliated companies. Such statements were materially misleading as BMF Management, Inc. had already entered into numerous related party transactions which caused them to incur a great amount of unpaid liabilities which was not disclosed to the BMF 100 Class which was necessary to make the statements made by the C&L Defendants not materially misleading.

168. From 1987, through and including 1993, Defendants Cooper, Lindley, Jensen and Belka issued annual 10K reports to the BMF 100 Class members. In each of these annual reports, Defendants Cooper, Lindley, Jensen and Belka, through balance sheets, statements of income, statements of partners' capital, and statements of cash flows, intentionally misrepresented that BMF 100 was operating successfully and was generating a substantial profit to the BMF 100 Class members. These facts were in fact false as trust deeds purchased by BMF 100 were experiencing losses and monies were being diverted by Defendants Cooper, Lindley, Jensen and Belka for

other than legitimate partnership purposes, and thus, were in fact causing a loss to the BMF 100 Class members' investments in BMF 100. Despite the falsity of Defendants Cooper, Lindley, Jensen and Belka's intentional misrepresentations regarding the performance of BMF 100, the C&L Defendants audited such financial statements and issued opinion letters in each of the annual 10K reports which materially misrepresented the financial condition of BMF 100 and made misleading statements regarding BMF 100's financial condition. The BMF 100 Class read and relied on such audits and opinion letters in deciding to maintain and increase their investments in BMF 100 to their detriment.

169. The C&L Defendants had actual knowledge of the false or baseless character of its opinions or statements, or alternatively, the C&L Defendants had no belief in the truth of its opinions or statements and made them recklessly without knowing whether they were true or false. Moreover, the C&L Defendants failed to make statements of facts and opinions needed to make those it did make not misleading. The C&L Defendants made such statements to the BMF 100 Class who it intended to or had reason to expect would act or refrain from acting in reliance upon the misrepresentation and misleading statements.

170. Additionally, the C&L Defendants gave accounting advice regarding BMF 100 which was misleading and/or contained misrepresentations to Defendants Cooper, Lindley, Jensen, Belka and their related entities intending Defendants Cooper, Lindley, Jensen, Belka and their related entities to repeat in form or substance the misrepresentations or misleading statements to the BMF 100 Class.

6. Duty to Not Make Negligent Misrepresentations as to the Accountholder Class and the BMF 100 Class

171. The C&L Defendants intended to induce the Accountholder Class to act in reliance upon the 1983 VestCorp Annual Report to refrain from closing their First Pension/VestCorp account and to continue to buy fraudulent and unlawful securities issued by Defendants Cooper, Lindley, Jensen and Belka. The C&L Defendants intended to induce the Accountholder Class to act in reliance on the 1983 VestCorp annual report in refraining from closing their First Pension/VestCorp account and in continuing to buy fraudulent and unlawful securities issued by Defendants Cooper, Lindley, Jensen and Belka. The C&L Defendants knew with substantial certainty that the Accountholder Class would rely on the representations in the 1983 VestCorp annual report in the course of deciding whether to close their First Pension/VestCorp account and in deciding whether to continue to buy fraudulent and unlawful securities issued by Defendants Cooper, Lindley, Jensen and Belka.

172. The C&L Defendants intended to induce the BMF 100 Class to act in reliance upon the C&L BMF 100 Misrepresentation Writings to invest and increase their investments in BMF 100. The C&L Defendants intended to induce the BMF 100 Class to act in reliance on the BMF Management financial reports in purchasing their interests in BMF 100. The C&L Defendants knew with substantial certainty that the BMF 100 Class would rely on the representations in the C&L BMF 100 Misrepresentation Writings in the course of deciding whether to invest and increase their investments in BMF 100.

173. Upon these premises the C&L Defendants owed the Accountholder and BMF 100 Classes a duty to make representations in the VestCorp annual report and the C&L BMF 100 Misrepresentation Writings with due care, respectively.

7. Breach of Duty to Not Make Negligent Misrepresentations as to the Accountholder Class and the BMF 100 Class

174. The Accountholder Class members hereby incorporate by reference all the preceding paragraphs as if fully alleged herein. The C&L Defendants owed the Accountholder Class members a duty to not negligently misrepresent material facts in the C&L Accountholder Misrepresentation Writings. Consequently, as an alternative theory, the C&L Defendants breached the duty owed to the Accountholder Class when they negligently misrepresented the facts as alleged above in the C&L Accountholder Misrepresentation Writings.

175. The C&L Defendants made such representations with the intent to induce Plaintiffs and members of the Accountholder Class to act in reliance upon such representations in order to maintain their accounts with VestCorp of California. The Accountholder Class received and expressly relied on the reports created by the C&L Defendants. The Accountholder Class relied on the misrepresentations of the C&L Defendants to their detriment when they maintained and increased their accounts with VestCorp of California and suffered damages complained of as alleged in this operative complaint.

176. The BMF 100 Class hereby incorporates by reference all the preceding paragraphs as if fully alleged herein. The C&L Defendants owed the BMF 100 Class a

duty to not negligently misrepresent material facts in the C&L BMF 100 Misrepresentation Writings. The C&L Defendants breached the duty owed to the BMF 100 Class when they negligently misrepresented material facts in the C&L BMF 100 Misrepresentation Writings.

177. Specifically, the C&L Defendants misrepresented to Plaintiffs and members of the BMF 100 Class in the BMF 100 prospectus the related party transactions that BMF Management, Inc. had already entered into and the vast amount of liabilities BMF Management, Inc. had incurred and which remained outstanding as a result of such related party transactions.

178. Moreover, the C&L Defendants misrepresented to the BMF 100 Class in the annual 10K reports from 1987, through and including 1993, that BMF 100 was operating successfully and was generating a substantial profit to the BMF 100 Class members. These facts were in fact false as trust deeds purchased by BMF 100 were experiencing losses and monies were being diverted by Defendants Cooper, Lindley, Jensen and Belka for other than legitimate partnership purposes, and thus, were in fact causing a loss to the BMF 100 Class members' investments in BMF 100.

179. The C&L Defendants made such representations with the intent to induce Plaintiffs and members of the BMF 100 Class to act in reliance upon such representations in order to maintain and increase their investments in BMF 100. Plaintiffs and members of the BMF 100 Class received and expressly relied on the audit reports of the C&L Defendants made in connection with BMF 100's annual 10K reports. The BMF 100 Class relied on the misrepresentations of the C&L Defendants to

their detriment when they maintained and increased their investments in BMF 100 and suffered damages complained of as alleged in this operative complaint.

8. Duty to Not Aid and Abet Clients' Breaches of Fiduciary Duty as to Accountholder Class

180. The C&L Defendants knew that a fiduciary relationship existed between VestCorp, VestCorp Securities, First Pension, and Defendants Cooper, Lindley, Belka, and Jensen and the Accountholder Class. The C&L Defendants knew that VestCorp, VestCorp Securities, First Pension and Defendants Cooper, Lindley, Belka, and Jensen were engaging in imprudent, prohibited, and fraudulent transactions with the Accountholder Class in violations of VestCorp, VestCorp Securities, First Pension, and Defendants Cooper, Lindley, Belka, and Jensen's fiduciary duties of full disclosure, impartiality, and avoidance of conflicts of interests. The C&L Defendants knew these breaches were serious violations of fiduciary duties that were costing plaintiffs substantial damages. The C&L Defendants knew these facts from the knowledge it had gained in providing the extensive accounting services detailed in this operative complaint.

181. The C&L Defendants purposefully drafted financial reports and provided accounting services and advice knowing that the documents would be filed with the DOC, SEC, and the DRE, and otherwise communicated to, directly or indirectly, and relied upon by the Accountholder Class in refraining from closing their First Pension/VestCorp account, going along with the switch over from VestCorp/First Pension investment system to the VestCorp Securities investment system, and continuing to buy additional fraudulent and unlawful securities from Defendant Cooper,

Lindley, Belka, and Jensen's companies. Such conduct by the C&L Defendants acted as substantial assistance in the breaches of fiduciary duties by Defendants Cooper, Lindley, Jensen and Belka.

182. The C&L Defendants knew that a fiduciary relationship existed between Defendants Cooper, Lindley, Jensen, Belka and their related entities involved in BMF 100 and the BMF 100 Class. The C&L Defendants knew that Defendants Cooper, Lindley, Jensen, Belka and their related entities involved in BMF 100 were engaging in imprudent, prohibited and fraudulent transactions in violation of their fiduciary duties of full disclosure, impartiality and avoidance of conflicts of interests. The C&L Defendants knew these breaches were serious violations of fiduciary duties that were costing plaintiffs substantial damages. The C&L Defendants knew these facts from the knowledge it had gained in providing the extensive accounting services detailed in this operative complaint.

183. The C&L Defendants purposefully drafted the C&L BMF 100 Misrepresentation Writings and provided accounting services and advice knowing that the documents would be communicated to, directly or indirectly, and relied upon by the BMF 100 Class in their decision to invest and their decision whether or not to increase their investments in BMF 100.

9. Breach of Duty to Not Aid and Abet Clients' Breaches of Fiduciary Duty as to the Accountholder Class and the BMF 100 Class

184. As detailed in this operative complaint, VestCorp, First Pension and Defendants Cooper, Lindley, Jensen and Belka were breaching fiduciary duties owed

to the Accountholder Class. Those fiduciary duties breached by VestCorp, First Pension, and Defendants Cooper, Lindley, Belka and Jensen about which the C&L Defendants were aware were the duty to avoid conflicts of interests, the duty to control and preserve trust property, the duty to report and account, and the duty to avoid self-dealing. VestCorp, First Pension and Defendants Cooper, Belka, Jensen and Lindley undertook on behalf of those to whom they owed a fiduciary duty, the Accountholder Class, a program of investing in over-priced trust deeds sold by Defendant Cooper's trust deed sales company, Continental, in non-arms length transactions. This investment program was imprudent, unsuitable for the Accountholder Class, and dishonest.

185. As detailed in this operative complaint, First Pension and Defendants Cooper, Lindley, Jensen and Belka were breaching fiduciary duties owed to the BMF 100 Class. Those fiduciary duties breached by First Pension, and Defendants Cooper, Lindley, Belka, and Jensen about which the C&L Defendants were aware were the duty to avoid conflicts of interests, the to duty to control and preserve trust property, the duty to report and account, and the duty to avoid self-dealing. Defendants Cooper, Belka, Jensen and Lindley undertook on behalf of those to whom they owed a fiduciary duty, the BMF 100 Class, a program of investing in over priced trust deeds for BMF 100. This investment program was imprudent, unsuitable for the BMF 100 Class, and dishonest.

186. The C&L Defendants breached the duties they owed to the Accountholder and BMF 100 Class to not knowingly or recklessly aid and abet those violations of fiduciary duties by VestCorp, First Pension, and Defendants Cooper, Lindley, Belka

and Jensen when they provided Defendants Cooper, Lindley, Belka & Jensen substantial assistance in the breaches of their fiduciary duties. The C&L Defendants aiding and abetting of the breaches of fiduciary duties by First Pension and Defendants Cooper, Lindley, Jensen and Belka caused the damages they complain of herein.

D. DUTIES DEFENDANTS LATHAM, STAHR, COX AND MENDOZA OWED TO THE ACCOUNTHOLDER CLASS AND THE BMF 100 CLASS AND BREACH THEREOF

1. Creation of Attorney-Client Relationship By Express Agreement of Agent For Principals

187. Defendants Cooper, Lindley, Belka, and Jensen between 1980 and 1984 induced the Accountholder Class to sign, on behalf of plaintiff class= pensions and IRAs, an investment advisor, management agreement and Power of Attorney. ("Investment Management Agreement and Power of Attorney"). Under the terms of the Investment Management Agreement and Power of Attorney the Accountholder class members granted actual implied authority to VestCorp to: 1) select, manage, and control investments; and (2) A Power of Attorney to transact, select, manage and control deposits and withdrawals at the custodian banks to accomplish the purposes of the Investment Management Agreement and Power of Attorney. VestCorp=s authority and discretion to make decisions for, and on behalf of, the Accountholders was complete. VestCorp was in effect a trustee for the accountholders. VestCorp=s agents carried out a standard sales campaign in which they represented to accountholders that they would take all steps needed to invest and manage accountholders accounts including the hiring and contracting with professionals providing related services. Upon these

premises, Vestcorp had the authority to do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of its agency with the plaintiff accountholders. VestCorp represented its principal accountholders for all purposes within the scope of VestCorp=s actual authority and all the rights which would accrue to Vestcorp from transactions within such limit, if they had been entered into Vestcorp=s own account accrued to the principal accountholders.

188. Implicit from the clearly expressed grant of authority from the principal accountholder class to agent VestCorp was the granting of authority by accountholders to Vestcorp to hire professionals necessary to accomplish the purposes of the Investment Management Agreement and Power of Attorney.

189. By July 1984 Vestcorp, as agent for the accountholder principals, retained Latham to provide legal services to the accountholders, in connection with the creation of a new public trust deed fund, in which accountholder trust deed interests were to be exchanged for interests in the new public trust deed fund. Latham was retained by Vestcorp, as agent for plaintiff accountholders, to structure, organize, plan, and advise the new public trust deed fund, which Latham was also to cause to be registered with the SEC and the DOC. The plaintiff accountholder class members by virtue of the actions of their agent, Vestcorp, entered into an attorney client relationship with Latham. Upon these premises Latham owed the plaintiff accountholder class the attorney duties of skill and conduct.

190. The trust deed fund was to be organized by Latham for accountholders so that Vestcorp, pursuant to express authority granted by plans under its management,

could exchange up to $18 million of trust deed loans presently owned by the accountholders for interests in the new trust deed fund. Latham was to draft both a registration statement for filing with the SEC and an application for qualification which was to be filed with the DOC. A prospectus, to be drafted by Latham, and delivered to each accountholder, together with a revised Investment Adviser Agreement, also to be drafted by Latham, was to expressly provide language authorizing Vestcorp to invest all or part of the assets of the particular accountholder into the new trust deed fund.

191. Vestcorp had organized some Accountholders trust deed loan interests into a quasi-mortgage pool in 1982, known as the Bank Mortgage Fund. Vestcorp told accountholders in the First Pension/Vestcorp News letter for the first quarter of 1983 that the quasi-mortgage pool had been designed by Vestcorp to help Aus@ diversify Aour@ overall portfolio and to provide investors with an alternative method of investing in mortgages.

192. Vestcorp, through the First Quarter 1983 Newsletter, represented to accountholders that the Bank Mortgage Fund has been incredibly successful because of the compounding effect and the on-going reinvestment capability that it provided and that the fund would soon be Vestcorp=s most consistent income producing investment category. Investors were then told in the newsletter that three Orange County law firms had been retained to represent Vestcorp and First Pension in submitting Bank Mortgage Fund for a public offering qualification. Vestcorp represented in the newsletter that a public offering registration was required for Bank Mortgage Fund to merge all of the accountholder=s trust deed investments, both pension and private, into

the Bank Mortgage Fund. Accountholders were also told in the newsletter that Vestcorp had been limited as to the types of product that could be incorporated into the Bank Mortgage Fund and that registration was being pursued to broaden the fund=s earning power because registration would allow all of the accountholder=s trust deed investments to be merged into the Bank Mortgage Fund. Defendants Latham, Cox, Stahr and Mendoza knew or should have known of the content and existence of the First Quarter 1983 and related newsletters.

193. By July 1984 Latham was retained by Vestcorp as agent for the accountholders to perform the legal services described above. At the time Latham was retained, Vestcorp and First Pension were under investigation by the SEC. On 26 March 1984 the SEC wrote defendant Jensen asking for 7 categories of documents relating to 15 different entities, which included Vestcorp, First Pension and their affiliated companies. In August 1984 the SEC commenced a formal investigation of Vestcorp and First Pension. Latham knew or should have known of the March 1984 SEC request for documents directed at defendant Jensen and the existence of the informal and formal investigation of Vestcorp and/or First Pension.

194. Vestcorp, as agent for the accountholder principals, retained Latham to advise accountholders regarding International Central Bank and Trust succeeding Valencia Bank as the plaintiff accoutholders custodian/trustee. Latham consented to so represent plaintiff accountholders. On 17 July 1984 defendant Belka provided defendant Cox a ASubstitution of Sponsor and Appointment of Successor Trustee form@ (Valencia Resignation) by which Valencia Bank resigned as the custodian and

sponsor for First Pension. The Valencia Resignation provided that Valencia wished to resign as custodian and sponsor for the accountholders. Thereafter defendant Cox advised and assisted in the preparation of the July 1984 First Pension newsletter mailed to Vestcorp accountholders that represented to accountholders that International Central Bank and Trust (ICBT) had succeeded Valencia Bank as the accountholders custodian/trustee. The newsletter suggested that the change to ICBT had been made because ICBT was a large corporate bank which provided the opportunity to increase flexibility while assuring financial security for accountholders. Defendant Cox and Latham also advised in connection with a ADear Accountholder@ letter that advised Vestcorp accountholders of ICBT=s substitution for Valencia Bank.

195. From July 1984 until March 1986 defendant Cox, and from July 1984 until December 1988 defendants Latham and Stahr, and from July 1984 until 1988 defendant Mendoza, in connection with their representation of the accountholder class members, drafted documents, advised, and otherwise provided legal services pursuant to the attorney client agreement reached between Latham and Vestcorp, as plaintiffs' agent.

196. Latham received tens of thousands of dollars as its fee for the services it consented to perform for the Accountholder Class. Those fees were paid from the Accountholder Class funds. The Accountholder Class principals are entitled to maintain a claim on the Latham Retention Agreement because as principals they are entitled to maintain a claim on a contract made by their agent with third party Latham. Latham is liable to the Accountholder Class principals to the same extent as if they had

contracted with principals in person.

197. Defendants Latham, Stahr, Cox and Mendoza undertook to and did represent the Accountholder Class in connection with the organization and structuring of a new trust deed fund so the Accountholder Class could transform their existing trust deed holdings into a safer and more liquid investment without losing current yield. Defendants Latham, Stahr, Cox and Mendoza organized the legal structure for the new fund, established how it would relate to the Accountholder Class' current and future investments, set up its management system, wrote the document that described to the Accountholder Class how it was supposed to work, prepared the filings needed to qualify it with the DOC and SEC, and continued to represent it after it was formed. As such, Defendants Latham, Stahr, Cox and Mendoza owed the Accountholder Class duties of care and conduct.

198. While performing the initial services, Defendants Latham, Stahr, Cox and Mendoza were retained by VestCorp, again as the Accountholder Class' authorized representative, to represent the Accountholder Class in connection with the reorganization of the Accountholder Class' contractual and legal relationship with VestCorp, VestCorp Securities and First Pension. Defendants Latham, Stahr, Cox and Mendoza undertook to and did perform for the Accountholder Class those legal services necessary to switch the Accountholder Class from the VestCorp investment system to the VestCorp Securities investment system.

199. VestCorp, as the Accountholder Class' authorized representative, retained Defendants Latham, Stahr, Cox and Mendoza to perform the legal services

described herein for the Accountholder Class through Defendants Cooper, Belka, Jensen and Lindley. Thus, an attorney client relationship existed between Defendants Latham, Stahr, Cox and Mendoza and the Accountholder Class. Defendants Latham, Stahr, Cox and Mendoza owed the Accountholder Class duties of care and conduct in connection with the legal services Defendants Latham, Stahr, Cox and Mendoza were retained to perform.

200. Defendants Latham, Stahr, Cox and Mendoza undertook to and did represent the Accountholder Class in connection with the restructuring of the legal relationships between the Accountholder Class and First Pension, the Accountholder Class and VestCorp, the Accountholder Class and VestCorp Securities, and the Accountholder Class and Defendants Cooper, Belka, Jensen and Lindley. Defendants Latham, Stahr, Cox and Mendoza also performed legal services for the Accountholder Class in the drafting of the disclosure documents used to advise the Accountholder Class in connection with such legal services.

201. In summary, Defendants Latham, Stahr, Cox and Mendoza in connection with duties owed the Accountholder Class performed what proved to be an ever expanding scope of legal services, which consisted of:

- restructuring the fund offering for which Defendants Latham and its attorneys had been retained;
- designing and implementing the reorganization of the existing pension investment system, in which the Accountholder Class' investments were made by VestCorp as the Accountholder Class' investment manager, into

a new system in which VestCorp Securities would provide, on paper, only discount brokerage services;

- helping to prepare the 28 November 1984 letter to the Accountholder Class which misinformed and:
  - advised the Accountholder Class about the distinctions between the existing and new pension and investment system;
  - represented that many of the responsibilities formerly carried out by VestCorp would be carried out by a broker dealer, VestCorp Securities;
  - informed the Accountholder Class that VestCorp Securities would be their account broker;
  - claimed the Accountholder Class would be able to select from a far greater variety of investments than previously possible;
  - represented that the Accountholder Class' investment manager VestCorp was changing its name to Pension Asset Management (PAM), that PAM would continue to act as an investment advisor, but would limit its role to advising funds in which the Accountholder Class were investors;
  - represented that the Accountholder Class' deposits would be deposited into International Central Bank and Trust (ICBT);
  - informed the Accountholder Class that VestCorp Securities would contact them for specific investment instructions whereupon the

Accountholder Class' funds at ICBT would be drawn upon to make the selected investment;

- represented that First Pension would report to the Accountholder Class about the results of investments;
- represented that under the new system the Accountholder Class would have the opportunity to direct their own account through the services of VestCorp Securities;
- advised that VestCorp would no longer be needed to act as the Accountholder Class's investment advisor;
- assured the Accountholder Class that even though VestCorp was resigning they would continue to receive the same or even more of the services they had come to expect from VestCorp;
- requested the Accountholder Class to fill out an enclosed investment related postcard; and
- asked the Accountholder Class to contact their account representative to answer any questions about their accounts.

- reviewing offerings of securities to the Accountholder Class made by letter from VestCorp;
- representing the Accountholder Class in connection with maintaining their custodial accounts at International Central Bank & Trust (ICBT);
- valuing of a portion of the Accountholder Class' trust deed portfolio;
- researching the Investment Advisers Act provisions relating to prohibited

transactions;

! researching federal prohibited transaction pension law;

! researching federal tax laws relating to prohibited transactions; and

! researching fiduciary duty law.

202. Defendants Latham, Stahr, Cox and Mendoza performed these and other legal services on behalf of the Accountholder Class.

203. While representing the Accountholder Class, Defendants Latham, Stahr, Cox and Mendoza also represented Defendants VestCorp, First Pension, and Defendants Cooper, Belka, Lindley and Jensen in rearranging ownership of VestCorp, VestCorp Securities and First Pension; in reorganizing the VestCorp Investment system into the VestCorp Securities investment system; in connection with an SEC investigation into VestCorp and First Pension's unlawful activities; in connection with the acquisition of Citizens National Bank; in connection with the organization of a bank holding company; in connection with various personal legal matters; in connection with the organization of BMF Management, Inc. and in connection with other related matters.

204. In connection with Defendants Latham, Stahr, Cox and Mendoza's joint or simultaneous representation of the Accountholder Class on the one hand, and VestCorp, VestCorp Securities, First Pension and Defendants Cooper, Lindley, Belka and Jensen on the other, there were conflicts of interests which interfered with Defendants Latham, Stahr, Cox and Mendoza's fiduciary obligations of undivided loyalty, confidentiality, and competent representation owed to the Accountholder Class. Those interests in conflict were as follows. It was in the Accountholder Class' interest

to know about the prohibited transactions Defendants Cooper, Belka, Jensen and Lindley had caused in connection with the sale of trust deeds from Cooper's trust deed sales company, Continental. It was in Defendants Cooper, Belka, Lindley and Jensen's interest to keep such conduct from the Accountholder Class. It was in the Accountholder Class' interest to immediately withdraw their funds from their First Pension accounts and to refrain from making any further deposits in those accounts. In other words, the Accountholder Class needed the kind of disclosure that would cause a run on the First Pension/VestCorp system. It was in Defendants Cooper, Lindley, Jensen and Belka's interest to avoid such a "run on the system" and to make disclosures only to the point of avoiding the disclosures of material facts to the Accountholder Class that would legitimately cause such a "run on the system."

205. There was a conflict of interest in connection with the SEC investigation of First Pension and VestCorp. It was in the Accountholder Class' interest to know of the SEC investigation. It was in Defendant Cooper, Lindley, Belka, and Jensen's interest to keep the Accountholder Class from finding out about the SEC investigation. It was in Defendants Cooper, Belka, Lindley & Jensen's interest to keep the Accountholder Class from finding out that Defendant Cooper's real estate license had been revoked by the DRE for misappropriating funds under the control of L.B. Mortgage Servicing, the trust deed servicing company that was servicing the Accountholder Class' trust deeds. It was in the Accountholder Class' interest to be informed of the loss of Defendant Cooper's real estate license.

206. Under these circumstances, Defendants Latham, Stahr, Cox and

Mendoza owed the Accountholder Class a duty of full disclosure concerning such conflicts of interest. Additionally, Defendants Latham, Stahr, Cox and Mendoza had a duty to disclose all facts and circumstances which, in the judgment of a lawyer of ordinary skill and capacity, are necessary to enable the client to make free and intelligent decisions regarding Defendants Latham, Stahr, Cox and Mendoza's retention.

207. Under the circumstances, Defendants Latham, Stahr, Cox and Mendoza owed the Accountholder Class the duty to warn them about the risks of on-going prohibited transactions, self-dealing, overvaluation of trust deeds and related wrongful conduct by Defendants Cooper, Belka, Jensen and Lindley. Defendants Latham, Stahr, Cox and Mendoza had such a duty because it appreciated both the risk of Defendants Cooper, Belka, Jensen and Lindley's unlawful conduct to the Accountholder Class, and, despite such knowledge, Defendants Latham, Stahr, Cox and Mendoza continued to perform the legal services described in this operative complaint which negligently created the opportunity for such harm to the Accountholder Class to occur. Under the circumstances, the Accountholder Class' injury and the manner of its occurrence was clearly foreseeable to a reasonable person making an inventory of the possibilities of harm which the conduct might produce.

a. Defendant Stahr's Duties

208. Defendant Stahr was the principal partner in charge of the legal services rendered by Latham to the Accountholder Class. Defendant Stahr directed Latham's overall legal services performed unlawfully in furtherance of the scheme or otherwise in

violation of duties owed to the Accountholder Class.

b. Defendant Cox's Duties

209. Defendant Cox, in the words of his co-Defendant Mendoza, was the person that was most directly involved in running the BMF Mortgage Income Fund transaction during Defendant Cox's tenure at Defendant Latham. Defendant Cox was a principal participant in a paper restructuring of the defendants pension and investment system which was simultaneously misrepresented to VestCorp accountholders (in a letter Defendant Cox helped to prepare) as an expansion of investment advisory services VestCorp was to provide accountholders and to the SEC as an end of such investment advisory services. Defendant Cox also prepared the documents used to conceal Defendant Cooper's on-going control of the companies through which the defendants were operating the pension and advisory system in order to make it appear that on-going prohibited transactions had stopped. Defendant Cox was also materially involved in the development of a false valuation of existing trust deeds which was to be directed to accountholders and potential investors to whom offers to purchase BMF Mortgage Income Fund were directed. Defendant Cox also prepared material portions of a registration statement, qualification application, and prospectus with false and misleading statements which were used to make sales of interests in BMF Mortgage Income Fund.

210. Defendant Cox engaged in these acts after obtaining knowledge of the underlying wrongdoing being engaged in by Defendants Cooper, Belka, Lindley and Jensen. This knowledge was obtained from the review of internal operating

documents, adverse financial information generated in connection with work Defendant Cox did to help the defendants organize a bank holding company and acquire a bank, due diligence work done in connection with the preparation of the BMF Mortgage Income offering, discussions with the defendants, subpoenas issued by the SEC and discussions amongst and between the lawyers and accountants working for Defendants Cooper, Belka, Lindley and Jensen and the Accountholder Class. The net result of Defendant Cox's involvement was to expand the fraud and to make it more difficult to detect. It also assisted Defendants Cooper, Belka, Lindley and Jensen to raise an ever increasing amount of funds from accountholders and new investors.

211. Defendant Cox had in excess of 150 entries in his time sheets for work performed on behalf of defendants and the Accountholder Class. Defendants Latham, Stahr, Cox and Mendoza have not produced all related time sheets in discovery so the total universe of time spent by Defendant Cox cannot be alleged at this time. For example, Defendants Latham, Stahr, Cox and Mendoza have failed to produce time records for time spent on defendants efforts to acquire a bank and organize a bank holding company for Defendants Cooper, Belka, Lindley and Jensen.

212. Defendant Cox, a partner of Defendant Latham, departed from Latham in March or April 1986. Defendant Cox, having been a member the Latham partnership when it contracted to perform legal services for the Accountholder Class, continued to be a partner for purposes of that contract until it was discharged, and as a partner he would have vicarious liability for the negligent acts of his partners in performing the contract.

c. Defendant Mendoza's Duties

213. Defendant Mendoza, in addition to being a lawyer licensed to practice law in the State of California, was a certified public accountant during the time he was involved in the wrongdoing alleged in this operative complaint. Defendant Mendoza was involved in each of the actions in which Defendant Cox was involved. Defendant Mendoza also continued on with the wrong doing after Defendant Cox left Latham in April 1986. Defendant Mendoza prepared material portions of the false registration statement, qualification application, and prospectus that was used to sell interests in BMF Mortgage Income Fund to the BMF 100 Class. Defendant Mendoza acted as legal counsel for Defendants Cooper, Belka, Lindley and Jensen, the Accountholder Class and the BMF 100 Class, BMF Mortgage Income Fund, VestCorp, and their affiliated companies. Defendant Mendoza continued in this capacity until May 1988.

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214. Defendant Mendoza reunited with Defendants Cooper, Belka, Lindley and Jensen by at least September 1992 in which he was retained to provide legal services for BMF Mortgage Income Fund and the BMF 100 Class in connection with the proposed liquidation of BMF Mortgage Income Fund. Defendant Mendoza prepared a false consent solicitation for the liquidation of BMF Mortgage Income Fund which was circulated to the BMF 100 Class and which contained false and misleading statements which Defendant Mendoza recklessly or knowingly prepared.

d. Defendant Latham's Time Records

215. According to Defendant Latham's own time records, no less than 14 attorneys, 8 of whom were partners, worked on the subject matter of this complaint. These attorneys attended law school at such prestigious institutions as Harvard, Yale, the University of California, Columbia University, Georgetown University, Vanderbilt University, George Washington University and the University of Virginia. Six of them served as editors (one as managing editor and two as editor in chief) of law reviews and law journals at their schools. Two are also certified public accountants. Another has a Master's of Business Administration from Harvard and formerly served on the faculty of the Harvard Business School. Still another was formerly the Director of the Division of Corporate Finance of the Securities and Exchange Commission. By 1984 these attorneys had a total of one hundred and five years of experience practicing law in California.

216. Defendant Latham's 14 attorneys engaged in research, correspondence and conferences with Defendants Cooper, Jensen, Lindley, Belka, Coopers and

Lybrand, Smith and Hilbig, and Rogers and Wells regarding the subject matter of this complaint. This work by Defendant Latham's 14 attorneys included researching: tax aspects of partnerships, trust deed funds and public offerings, due diligence for mortgage trust deed funds, California law on real estate regulations re: the BMF 100 accountant's letter, E.R.I.S.A ramifications, the Investment Advisers Act, and fiduciary duties re: the "prudent person standard" and prohibited transactions under E.R.I.S.A. Defendant Latham's 14 attorneys also engaged in researching reviewing, revising and drafting: The BMF 100 prospectus, financial statements, stock options, partnership allocations, the S-11 for BMF 100 (including correspondence with the S.E.C., the D.O.C., and the N.A.S.D.), the loan packages at Pension Asset Management, the factual certificate, the undertaking, the participation agreement, the placement agreement, the partnership agreement, the subscription agreement, the servicing agreement, the management agreement, the escrow agreement, ancillary documents, Schedule A, incorporation of BMF Inc., the opinion re: validity, the tax opinion, the tax certificate, the response to the S.E.C. opinion, the Exhibit 8 opinion, the transmittal letter to the N.A.S.D., the due diligence request, "client packages," the 10K, the 10Q, and revisions to the investment adviser agreement, advertising review and assistance, and AZ & CO qualification filings. They also engaged in preparation for discussions with the Congressional Joint Committee Staff regarding pending legislation.

217. In addition to the above services, Defendant Latham's time records reflect services rendered for a bank acquisition, formation of a holding company, preparation of documents regarding the departure of Defendant Belka from the Defendant Cooper

related entities, meetings with Michael Gosselyn and Defendant Belka regarding real estate public offerings and limited partnerships and mortgage and CD funds, the preparation and maintenance of Tiffany Escrow corporation documents, meetings with Defendant Belka regarding the Outpatient Surgical Centers of America, and the representation of Defendants Cooper, Jensen, Lindley and Belka in the SEC investigation of VestCorp. Plaintiffs are also in possession of the calendars of Defendant Cooper which reflect meetings with Defendant Stahr as early as 1980. No time records have been produced prior to May 1984. Defendant Latham's time records are attached hereto as Exhibit 2 and are incorporated herein by reference as though fully set forth herein.

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2. Breach of Duty of Attorneys to Their Clients as to the Accountholder Class

218. Defendants Latham, Stahr, Cox, and Mendoza breached the duty of care and the duty of conduct owed to the Accountholder Class. The breaches of duty of care and conduct owed the Accountholder Class were directed at keeping the Accountholder Class from closing their First Pension accounts, misleading accountholders to go along with the switch over from VestCorp to VestCorp Securities, and inducing the Accountholder Class to buy more securities issued by Defendants Cooper, Lindley, Belka, and Jensen's companies and sold by VestCorp Securities.

219. Defendants Latham, Stahr, Cox, and Mendoza failed to exercise their knowledge, skill, and diligence in connection with the legal services they rendered in connection with the Accountholder Class in:

- Not reviewing or ignoring the 1983 First Pension/VestCorp Newsletters and communications sent to the Accountholder Class which clearly spelled out that the Accountholder Class' trust deeds had already been pooled, and, not determining or ignoring under the circumstances that the pooling had been accomplished without registration or qualification with the SEC or DOC;
- Not advising and implementing an offer to repurchase under California Corporations Code Section 25507(b), California Code of Regulations 260.507, and California Corporations Commission Release No. 36-C in connection with Defendants Cooper, Belka, Jensen, and Lindley's (1) sale

of trust deed loans to the Accountholder Class in violation of California securities law prohibiting material omissions and misstatements of facts in connection with the sale of securities; and (2) the pooling of trust deed loans without qualification with the DOC;

- Advising and implementing the plan to create a new trust deed fund (BMF Mortgage Income Fund, aka VestCorp Trust Deed Fund) in which the Accountholder Class was to exchange their individual trust deed loans for interests in the new pool, when the Accountholder Class no longer held individual trust deed loans because they had already been merged into the Bank Mortgage Fund No. 1;
- Structuring the new pool so that only one third of the trust deed loans sold to the Accountholder Class were eligible to be included when all the members of the Accountholder Class were told repeatedly in newsletters and other communications that the fund was being registered and qualified for their benefit;
- Failing to secure an independent appraiser to value the trust deeds listed on Schedule A of the BMF Mortgage Income Fund registration, qualification and offering documents which were supposedly eligible to be exchanged for interests in the new fund;
- Preparing tax opinions and rendering tax advice contained between 1985 to 1988, which were included in newsletters sent to the Accountholder Class that were erroneous because they failed to take into consideration

the on-going tax and pension law violations in which Defendants Cooper, Lindley, Jensen and Belka were engaged;

- Designing and implementing the reorganization of the existing pension and investment system into a new system in which the Accountholder Class was to: lose their rights under the existing agreement with VestCorp; make their own investment decisions, and have their private financial information provided to the broker-dealer, VestCorp Securities, which was controlled by Defendant Cooper, in order to help VestCorp Securities sell securities to the Accountholder Class;
- Failing to research or ignoring California fiduciary laws relating to prohibited transactions, self-dealing, duties to disclose, and duties to avoid conflicts of interests that would pertain to VestCorp, First Pension, and Defendants Cooper, Lindley, Belka, and Jensen's obligations to the Accountholder Class;
- Participating in the drafting of a disclosure document sent to the Accountholder Class that (a) erroneously advised the Accountholder Class about the distinctions between the existing and new pension and investment system, (b) failing to explain adequately what responsibilities formerly carried out by VestCorp would be carried out by a broker dealer, VestCorp Securities, (c) failing to inform the Accountholder Class that their consent to the changes were required, including the change of an accountholder from an investment adviser client of VestCorp to a

customer of VestCorp Securities; (d) failing to explain the legal significance and impact on the Accountholder Class of changing the Accountholder Class accounts to being self-directed; (e) failing to explain adequately the what was proposed to happen to VestCorp in changing its name to Pension Asset Management (PAM), and the role PAM would play as an investment advisor and the impact on the Accountholder Class; (g) failing to inform the Accountholder Class of the risks and rights in connection with VestCorp Securities contacting them for specific investment instruction; (h) failing to explain the risks of First Pension accurately reporting to the Accountholder Class about the results of their investments, (i) failing to explain adequately and why under the new system the Accountholder Class would have the opportunity to direct their own accounts through the services of VestCorp Securities, (j) failing to explain adequately the impact and why VestCorp would no longer be needed to act as the Accountholder Class' accounts investment adviser, (k) assuring the Accountholder Class that even though VestCorp was resigning, they would continue to receive the same or even more of the services they had come to expect from VestCorp, and (l) without advising the Accountholder Class to seek independent investment advice and without informing the Accountholder Class of the potential for undue influence, encouraging the Accountholder Class to contact their account representative to answer any questions about their accounts;

- Failing to competently value the trust deed loans that were listed as exchangeable on Schedule A of the BMF Mortgage Income Fund offering;
- Failing to create a system which removed Defendant Cooper's control of the BMF Mortgage Income Fund while representing in the BMF Mortgage Income Fund that Defendant Cooper would not be exerting such control;
- Drafting the BMF Mortgage Income Fund registration, qualification filings and related prospectus without disclosing material facts relating to defendants on-going unlawful scheme because Defendant Latham failed to investigate the facts or ignored them;
- Preparing filings before the DOC aimed at lifting a DOC requirement for independent appraisal of the trust deed loans that were exchangeable for interests in the BMF Mortgage Income Fund;
- Failing to adequately research or ignoring the Investment Advisers Act provisions relating to prohibited transactions;
- Preparing BMF Mortgage Income Fund 10-Q's and a 10-K without including related material facts about Defendant Cooper, Lindley, Belka, and Jensen's on-going unlawful scheme because Defendant Latham, Stahr, Cox and Mendoza failed to adequately investigate the facts or ignored the facts;
- Failing to adequately research or ignoring the prohibited transactions of federal pension law;
- Failing to research or ignoring federal tax laws relating to prohibited

transaction; and

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! Failing to explain the actual relationship between International Central Bank and Trust (ICBT), represented to the Accountholder Class as their custodian, and the Accountholder Class.

220. Defendant Latham, Stahr, Cox and Mendoza's breaches of the duty of care owed to the Accountholder Class fundamentally consisted of providing legal services below the applicable standard in connection with the undertakings described in the applicable Duty section of this operative complaint.

221. Defendants Latham, Stahr, Cox and Mendoza all breached their duty of care owed to the Accountholder Class by failing to warn the Accountholder Class about the risks of on-going prohibited transactions, self-dealing, overvaluation of trust deeds and related wrongful conduct by Defendants Cooper, Belka, Jensen and Lindley. Defendant Latham, Stahr, Cox, and Mendoza appreciated both the risk of Defendants Cooper, Belka, Jensen and Lindley's unlawful conduct to the Accountholder Class and, despite such knowledge, Defendants Latham, Stahr, Cox and Mendoza continued to perform the legal services described in this operative complaint which negligently created the opportunity for such harm to the Accountholder Class to occur. Under the circumstances the Accountholder Class' injury and the manner of its occurrence was clearly foreseeable to a reasonable person making an inventory of the possibilities of harm which the conduct might produce.

222. The breaches of duty of conduct by Defendants Latham, Stahr, Cox, and Mendoza involved the failure to inform the Accountholder Class of the existence of the conflicts and obtaining the Accountholder Class' knowing consent to Defendants

Latham, Stahr, Cox and Mendoza continuing on as counsel. While representing the Accountholder Class, Defendants Latham, Stahr, Cox and Mendoza also represented Defendant VestCorp, First Pension, and Defendants Cooper, Belka, Lindley and Jensen.

223. Defendants Latham, Stahr, Cox and Mendoza, in connection with their joint representation of the Accountholder Class on the one hand, and VestCorp, First Pension and Defendants Cooper, Lindley, Belka and Jensen on the other hand, had conflicts of interests which interfered with Defendants Latham, Stahr, Cox and Mendoza's fiduciary obligations of undivided loyalty, confidentiality, and competent representation owed to the Accountholder Class. Specifically, it was in the Accountholder Class' interest to know about the prohibited transactions Defendants Cooper, Belka, Jensen and Belka had caused in connection with the sale of trust deeds from Cooper's trust deed sales company, Continental. On the other hand, it was in Defendants Cooper, Belka, Lindley and Jensen's interest to keep such conduct from the Accountholder Class. It was in the Accountholder Class' interest to immediately withdraw their funds from their First Pension accounts and to refrain from making any further deposits in those accounts. In other words, the Accountholder Class needed the kind of disclosure that would cause a run on the First Pension, VestCorp system. On the other hand, it was in Defendants Cooper, Lindley, Jensen and Belka's interests to avoid such a "run on the system" and to make disclosures only to the point of avoiding the disclosures of material facts to the Accountholder Class that would legitimately cause such a "run on the system."

224. There was a conflict of interest in connection with the SEC investigation of First Pension and VestCorp. It was in the Accountholder Class' interest to know of the SEC investigation. On the other hand, it was Defendants Cooper, Lindley, Belka, and Jensen's interest to keep the Accountholder Class from finding out about the SEC investigation. It was in Defendants Cooper, Belka, Lindley & Jensen's interest to keep the Accountholder Class from finding out that Defendant Cooper's real estate license had been revoked by the DRE for misappropriating funds under the control of L.B. Mortgage Servicing, the trust deed servicing company that was servicing the Accountholder Class trust deeds. On the other hand, it was in the Accountholder Class' interest to be informed of the loss of Defendant Cooper's loss of real estate license.

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225. Under these circumstances, Defendants Latham, Stahr, Cox and Mendoza owed the Accountholder Class a duty of full disclosure concerning such conflicts of interests. Defendants Latham, Stahr, Cox and Mendoza breached this duty when they failed to disclose all facts and circumstances which, in the judgment of a lawyer of ordinary skill and capacity, are necessary to enable the client to make free and intelligent decisions regarding Defendants Latham, Stahr, Cox and Mendoza's retention. Specifically, Defendants Latham, Stahr, Cox and Mendoza breached the duty of conduct by failing to fully inform the Accountholder Class of the underlying facts and failing to obtain the Accountholder Class' fully informed consent to the joint representation.

226. The Accountholder representative plaintiffs and the Accountholder class and the BMF 100 representative plaintiffs and the Accountholder class read and justifiably relied upon the misrepresentations and omissions contained in or omitted from the writings described above. Alternatively, the Accountholder representative plaintiffs and the Accountholder Class and the BMF 100 representative plaintiffs and the BMF 100 class justifiably relied upon the misrepresentations and omissions, although not made directly to them, because they were made to a third person and defendants Latham, Stahr, Cox, and Mendoza intended or had reason to expect that their terms would be repeated or its substance communicated to the Accountholder representative plaintiffs and the Accountholder class and the BMF 100 representative plaintiffs and that such misrepresentations and omissions would influence the Accountholder Class and the Accountholder representatives and the BMF 100 Class

and the BMF 100 representative plaintiffs in the transactions or type of transactions involved, including opening of accounts, closing of accounts, depositing funds into plaintiffs accounts, buying additional securities, and limited partnership interests.

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3. Latham Implied Duty of BMF 100 Class Based on Partnership Representation

227. There was an implied duty owed by Latham to the BMF 100 Class of limited partners based on Latham=s representation of the BMF 100 limited partnership and the nature and scope of Latham=s representation, the kind and extent of contacts between Latham and the individual partners, Latham=s access to partner financial information, and the totality of circumstances. The existence and terms of which were manifested by the conduct of Latham, Vestcorp and the plaintiff BMF 100 class members.

228. By December 1984 Latham was representing the BMF 100 limited partnership (then known as the VestCorp Trust Deed Fund) and continued to represent the BMF 100 limited partnership until December 1988. During this period Latham performed legal services and rendered legal advice to the BMF 100 limited partnership with respect to negotiations between the BMF 100 partnership and its service and management providers, BMF Management Inc., NPB Loan Service, and First Pension Corporation. BMF Management Inc was to provide management services to the BMF 100 partnership. NPB Loan Service was to provide trust deed loan servicing services to the BMF 100 partnership. First Pension was to provide accounting and administrative services to the BMF 100 partnership. In this regard, defendant Latham drafted the fund agreement, servicing agreement, and agreement with First Pension.

229. Defendant Latham also performed legal services and rendered legal advice to the BMF 100 partnership in connection with the placement agreement with Vestcorp Securities, the broker dealer controlled by defendants Cooper, Lindley, Belka,

and Jensen, through which BMF 100 limited partnership interests were to be sold.

230. Defendant Latham also performed legal services and rendered legal advice to the BMF 100 partnership and limited partners by materially and substantially participating in the drafting of the registration statement, application for permit, and prospectus used to qualify and sell interests in the BMF 100 limited partnerships. Defendant Latham=s name appeared in the prospectus and Latham knew its legal advice and legal services would be used and in fact was used to induce potential investors to purchase interests in BMF 100.

231. Defendant Latham also performed legal services and rendered legal advice to the BMF 100 partnership and limited partners by providing an opinion of Counsel finding that the BMF 100 limited partnership would be classified as a partnership. Defendant Latham also performed legal services and rendered legal advice to the BMF 100 limited partnership and limited partners regarding the tax consequences of the limited partners making an investment in the BMF 100 limited partnership. This tax opinion was included in the prospectus used to sell interests in BMF 100 and Latham was specifically identified as the source of the tax opinion in the prospectus. Defendant Latham also performed legal services and rendered legal advice to the BMF 100 limited partnership in which Latham advised that the BMF 100 limited partnership securities, when offered and sold, would represent duly authorized and validly issued, fully paid and nonassessable limited partner interests in the BMF 100 limited partnership.

232. Defendant Latham also performed legal services and rendered legal

advice to the BMF 100 limited partnership and its limited partners in connection with the valuation of the existing trust deed portfolio that was purportedly to be exchangeable for interests in the BMF 100 limited partnership. Defendant Latham also performed legal services and rendered legal advice to the BMF 100 limited partnership by participating in the drafting of and supplying to the DOC newspaper advertisements, and brochures which were to be used in connection with the BMF 100 limited partnership.

233. Defendant Latham also performed legal services and rendered legal advice to the BMF 100 limited partnership by participating substantially in the drafting of the 10-Q and 10-K filings and the renewal of the registration statement in 1988 made by the BMF 100 limited partnership with the SEC and/or the DOC in 1987 and 1988. Defendant Latham also performed legal services and rendered legal advice to the BMF 100 limited partnership in connection with an agreement with First Pension Corporation whereby First Pension Corporation was to waive fees under certain conditions which were due from the BMF 100 limited partnership. Defendant Latham also performed legal services and rendered legal advice to the BMF 100 limited partnership in connection with advising the price at which additional BMF 100 limited partnership interests were to be sold in 1988 under the second registration and permit. 234.

Defendant Latham also performed legal services and rendered legal advice to the BMF 100 limited partnership in connection with the financial statements issued for the BMF 100 limited partnership and in connection with audits of Coopers & Lybrand of the BMF 100 limited partnership.

235. The nature and scope of Latham=s engagement was extensive, broad, and of a type which was directly related to the individual interests of the BMF 100 limited partners. The representation lasted almost four years. It involved a series of transactions in which the BMF 100 limited partners had a direct interest. Such undertakings strengthen the implication of individual representation.

236. The kind and extent of contacts between Latham and the individual BMF 100 limited partners also supports the implication of individual representation. First, in many instances there was already a prior existing relationship between Latham and the BMF 100 limited partner because the BMF 100 limited partner was already a member of the Accountholder class for whose benefit and on whose behalf Latham was retained to create and perform all of the legal work to create the BMF 100 limited partnership, which was to provide a safer investment for and thereby directly benefit the Accountholder class member. Further, Latham knew or should have known that Accountholder class members were regularly informed and had been informed of the progress of legal work on the creation of such an investment fund, which was to become known as the BMF 100 limited partnership. Latham had a direct hand in preparing several of these communications to the Accountholder class members and knew or should have known that such communications had taken place at the time Latham began performing legal services in 1984. Further, Latham regularly prepared disclosure reports which were provided to each and every BMF 100 class member and which purported to report to each and every class member the status of BMF 100.

237. Further, through defendants Cooper, Lindley, Belka, and Jensen and their

affiliated companies, Latham had access to financial information relating to the partner=s interests. As to Accountholder class members who became BMF 100 limited partners, Latham had access to extensive personal financial information regarding the Accountholder=s pension holdings and funds available for investment. Latham had access to this information through First Pension and VestCorp and VestCorp Securities records for Accountholder class members. For all BMF 100 class members, Latham had access to personal financial information through Vestcorp Securities, which maintained financial information regarding its customers who were the investors in BMF 100. Latham also had extensive financial information regarding the value of current trust deed holdings of Accountholder class members who invested in BMF 100. In fact, Latham had complied such information in order to perform certain valuation related services regarding those holdings. The product of Latham=s valuation was included in the prospectus used to sell limited partnership interests in BMF 100. Latham=s access to financial information relating to the individual partners was pervasive and extensive and supports the implication of individual representation.

238. Given the prior existing relationship between the Accountholder class members who became BMF 100 investors and Latham, the fact that Latham was retained for the purpose of conferring a benefit upon these Accountholder class members so they could make safer their investments by becoming BMF 100 limited partners, the on-going nature of Latham=s representation of BMF 100 after it was formed and its partners admitted, the extensive access to individual limited partners financial information, the close relationship between the representation and the

underlying facts in this case, the extensive communications in which Latham was involved or knew or should have known preceded Latham=s involvement with Accountholder class members regarding the benefit that was being conferred upon Accountholder class members by creating BMF 100, the extensive communications with BMF100 partners after BMF 100's creation, the pervasive and continuous nature of the representation, and the other factors alleged in this operative complaint, an implied agreement by Latham to represent the individual partners existed.

239. In all of the foregoing undertakings, Latham was retained to represent BMF 100 limited partnership interests generally and to some substantial extent Latham performed this service. Regarding that service, in accordance with the Rules of Professional Conduct, Rule 3-600A, Latham=s presumed client was the BMF 100 limited partnership. The undertaking by Latham to represent the BMF 100 limited partnership generally, imposed upon Latham an obligation of loyalty to the BMF 100 limited partnership and to all partners in terms of their entitlement to the benefits of the BMF 100 limited partnership. Latham, upon these premises, had a duty to look out for all the partners= interests, and if this could not be accomplished because of conflicts of interest among them, Latham had a duty to terminate the representation (or obtain appropriate waivers of the conflicts) under Professional Rule of Conduct, Rule 3-310.

240. Latham attorneys Stahr, Cox, and Mendoza were the specific attorneys who undertook to carry out the foregoing undertakings as follows: as to all matters described above which took place between 1984 and March 1986 attorneys Stahr, Cox and Mendoza were the responsible attorneys; as to all matters described above that

took place between March 1986 and mid-1988 attorneys Stahr and Mendoza were the responsible attorneys; as to all matters between mid-1988 attorney Stahr was the responsible attorney; as to all matters between 1986 and 1988 attorney Cox was a responsible attorney in his capacity as a partner of the firm who=s duty did not end because of his departure from Latham, because the BMF 100 limited partnership did not knowingly agree to terminate his duty to the BMF 100 limited partnership.

241. As to the period 1992 and 1993 defendant Mendoza performed legal services and rendered legal advice to the BMF 100 limited partnership in connection with a consent solicitation prepared for the BMF 100 limited partnership. With regard to this undertaking defendant Mendoza was retained to represent BMF 100 limited partnership interests generally and to some substantial extent defendant Mendoza performed this service. Regarding that service, in accordance with the Rules of Professional Conduct, Rule 3-600A defendant Mendoza=s presumed client was the BMF 100 limited partnership. The undertaking by defendant Mendoza to represent the BMF 100 limited partnership generally, imposed upon defendant Mendoza an obligation of loyalty to the BMF 100 limited partnership and to all partners in terms of their entitlement to the benefits of the BMF 100 limited partnership. Defendant Mendoza, upon these premises, had a duty to look out for all the partners= interests, and if this could not be accomplished because of conflicts of interest among them, Latham had a duty to terminate the representation (or obtain appropriate waivers of the conflicts) under Professional Rule of Conduct, Rule 3-310.

4. Breach of Duty of Attorney For Limited Partnership To Limited Partners As To The BMF 100 Class

242. Defendants Latham, Stahr, Cox and Mendoza breached their duty of care owed to the BMF 100 class who were limited partners of BMF 100 while Defendants Latham, Stahr, Cox and Mendoza were counsel for or responsible for those who acted as counsel for the BMF 100 limited partnership.

243. Defendants Latham, Stahr, Cox, and Mendoza failed to exercise their knowledge, skill, and diligence in connection with the legal services they rendered in connection with the legal services performed for the BMF 100 limited partnership and its limited partners as follows:

- Failing to secure an independent appraiser to value the trust deeds listed on Schedule A of the BMF Mortgage Income Fund registration, qualification and offering documents which were supposedly eligible to be exchanged for interests in the new fund;
- Preparing a tax opinion letter that was predicated on materially erroneous premises which rendered the opinion false and misleading and wrong. The premises were that Defendants Cooper and Belka had financial net worth which satisfied tax requirements for such offerings to be eligible for certain tax advantages;
- Failing to competently value the trust deed loans that were listed as exchangeable on Schedule A of the BMF Mortgage Income Fund offering;
- Failing to create a system which removed Defendant Cooper's control of the BMF Mortgage Income Fund while representing in the BMF Mortgage

Income Fund that Defendant Cooper would not be exerting such control;

- Drafting the BMF Mortgage Income Fund registration, qualification filings and related prospectus without disclosing material facts relating to defendants on-going unlawful scheme because Defendant Latham, Stahr, Cox and Mendoza failed to investigate the facts or ignored them;
- Preparing filings before the DOC aimed at lifting a DOC requirement for independent appraisal of the trust deed loans that were exchangeable for interests in the BMF Mortgage Income Fund; and
- Preparing BMF Mortgage Income Fund 10-Q's and a 10-K without including related material facts about Defendant Cooper, Lindley, Belka, and Jensen's on-going unlawful scheme because Defendants Latham, Stahr, Cox and Mendoza failed to adequately investigate the facts or ignored the facts.

244. Defendants Latham, Stahr, Cox and Mendoza as the attorney for the BMF 100 limited partnership breached their duty of care owed to the BMF 100 limited partners, as described above. This breach of duty extended to those limited partners to include BMF 100's formation stage. This follows from the fact that Defendants Latham, Stahr, Cox and Mendoza were dealing with matters which directly impacted existing accountholders who were to become limited partners as well as new limited partners. Under these circumstances, the transaction in which Defendants Latham, Stahr, Cox and Mendoza represented the BMF 100 Class as limited partners in BMF Mortgage Income Fund is deemed to be the entire continuum of activity which includes both the

formation and operational stages of BMF Mortgage Income Fund. As such, Defendants Latham, Stahr, Cox and Mendoza breached the attorney duties of care and conduct they owed the BMF 100 Class in connection with BMF 100.

245. The Accountholder representative plaintiffs and the Accountholder class and the BMF 100 representative plaintiffs and the Accountholder class read and justifiably relied upon the misrepresentations and omissions contained in or omitted from the writings described above. Alternatively, the Accountholder representative plaintiffs and the Accountholder Class and the BMF 100 representative plaintiffs and the BMF 100 class justifiably relied upon the misrepresentations and omissions, although not made directly to them, because they were made to a third person, and defendants Latham, Stahr, Cox, and Mendoza intended or had reason to expect that their terms would be repeated or its substance communicated to the Accountholder representative plaintiffs and the Accountholder class and the BMF 100 representative plaintiffs, and that such misrepresentations and omissions would influence the Accountholder Class and the Accountholder representatives and the BMF 100 Class and the BMF 100 representative plaintiffs in the transactions or type of transactions involved, including opening of accounts, closing of accounts, depositing funds into plaintiffs accounts, buying additional securities, and limited partnership interests.

5. Duty of Attorney to Intended Beneficiaries of Legal Services Imposed By Public Policy as to the Accountholder Class and the BMF 100 Class

246. The creation of the BMF 100 (and its predecessor VestCorp Trust Deed Fund) was intended to benefit both the Accountholder class and the BMF 100 class.

Defendant Cox drafted several documents in which the intent to benefit the Accountholder class members was admitted. On 26 July 1984 defendant Cox admitted in an internal Latham memorandum: AIt is anticipated that VC (Vestcorp), pursuant to express authority granted by Plans [pension plans, IRAs or Keogh plans ("Plans") administered by First Pension Corporation] under its management, may exchange up to $18,000,000 of trust deed loans presently owned by such Plans for Certificates immediately following the effective date of the Registration Statement to be filed with the Securities and Exchange Commission in connection with the offering.@ Defendant Cox repeated this admission in another memo, this one dated 17 August 1984. Defendant Mendoza made a similar admission in a 4 December 1984 letter to the DOC: AThe Fund is designed, in part, **to give these people** (Accountholder class members) **an opportunity** to contribute their trust deed loans to the Fund, which will be composed of a number of trust deed loans, in exchange for Participation Interests which will have approximately **the same yield** as the trust deed loan contributed to the Fund. At the same time, the **investor=s risk will be reduced** by means of diversification and his investment will have greater liquidity than an individual trust deed loan.@

247. Defendants Cox and Mendoza made further admissions that the transaction was for the benefit of the Accountholder class. In an 11 January 1985 letter to the DOC prepared by defendants Cox and Mendoza and signed by defendant Mendoza, defendant Latham admitted: AThe fund is being formed to permit holders of such small trust deed loans to diversify their risk and to enhance the liquidity of their

investment.@ Again on 22 February 1985 defendant Cox wrote the DOC regarding the BMF 100 fund: AAn investor who owns a single trust deed loan will be acquiring a less risky investment than the one he already owns.@ And later in the same letter: AWithout the opportunity that the Fund will provide, individuals, IRAs and the like will continue to invest in individual trust deed loans. The specific risk inherent in such an investment is absolutely unnecessary when a single trust deed loan turns sour without warning, an investor might lose everything. Yet the same default on a trust deed loan held by the Fund would have little, if any, impact on the individual investor. The Fund not only will have spread that specific risk over a very large pool of similar loans, but also will have the wherewithal and expertise to realize upon the underlying security.A And again later: AThe Fund is meant to offer a new opportunity to investors, but the fact that it is new and has not been done is not a reasonable basis for determining that it cannot or should not be done now. It is a good idea. It is not only fair but advantageous to purchasers, and it represents the best method for achieving the objectives of a high rate of return, low fees, and diversification to the small investor.@

248. The foreseeability of harm by a negligent performance of its legal services was clear to defendants Latham, Cox, Stahr and Mendoza and such threat of harm to investors was great. In fact, defendant Belka laid out the foreseeable harm in his letter to defendant Cox on 8 November 1984. Defendant Cox was informed by that letter that defendant Belka wanted to limit the disclosure to the Accountholder class so as to avoid a Arun on the system.@ Had investors known the facts they would have closed their accounts at First Pension and VestCorp and would have refrained from opening

accounts at Vestcorp Securities and thereby stopped their losses. Further, defendant Latham based upon the totality of its knowledge knew that the negligent performance of the legal services it undertook to perform described in this operative complaint if performed negligently, would cause substantial harm to the plaintiffs.

249. There is a high degree of certainty that the plaintiffs suffered harm. Instead of the plaintiffs being properly informed and the beneficiaries of non-negligent legal services by defendant Latham, plaintiffs find themselves having lost tens of millions of dollars. Further, there is a close connection between the negligence of Latham and its lawyers and plaintiffs harm. Defendant Latham=s services embraced the central activities of the transactions that plaintiffs were to and did invest in and from which plaintiffs suffered their damages.

250. Further, there is substantial moral blame that should be visited upon defendants Latham, Cox, Stahr and Mendoza. Defendants Latham received well over $100,000 in legal fees and stood to gain several hundreds of thousands more for representing the Cooper empire and performing legal services for the Accountholder and BMF 100 class. Defendants Cox and Mendoza adopted a "success at any cost" approach to the legal services and did not perform those services with diligence, honesty, and fidelity free of conflict of interests. Further, the policy of preventing future harm weighs heavy in extending a duty to the facts of this case to defendant Latham in these circumstances. The underlying investors were pension plans into which plaintiffs deposited funds for over 10 years in many instances and those funds represented substantial if not all of the funds plaintiffs had for their retirement. Latham and its

lawyers displayed a callous disregard for the plaintiffs and the fact that plaintiffs were trusting that their pensions were safe and secure. The Latham lawyers knew that it would be years, if ever, before their wrongful conduct would be discovered given the fact that plaintiffs would have to wait for several years to be eligible to draw funds from their pensions. The Latham lawyers knew they would be far away from the plaintiffs if, and when, the Latham lawyers conduct would be discovered, and possibly protected by the statute of limitations. Under these premises their is a strong policy favoring finding a duty to exist.

251. Defendants Latham, Stahr, Cox and Mendoza issued the following writings to the Accountholder Class for the purpose of securing a benefit, monetary and otherwise, for Defendants Latham, Stahr, Cox and Mendoza's clients, Defendants Cooper, Belka, Jensen, Lindley, VestCorp and First Pension:

- 28 November 1984 Accountholder Reorganization Letter which omitted to disclose the reason for the switch over from VestCorp to VestCorp Securities was to conceal Defendant Cooper's continued control of the transactions which constituted prohibited or unlawful transactions;
- January 1985 IRA/Keogh VestCorp Investment System Brochure;
- April 1985 First Pension Newsletter;
- July 1985 First Pension Newsletter;
- November 1985 First Pension Newsletter;
- 1986 First Pension Tax Advice Newsletter No. 1;
- 1986 First Pension Tax Advice Newsletter No. 2;

! February 1987 First Pension Tax Advice Newsletter No. 3; and

! January 1988 IRA Pension Tax Advice Newsletter No. 4.

(Hereinafter collectively referred to as the "Latham Accountholder Duty of Care Writings")

252. Alternatively, Defendants Latham, Stahr, Cox and Mendoza issued the following writings to the BMF 100 Class for the purpose of securing a benefit, monetary and otherwise, for Defendants Latham, Stahr, Cox and Mendoza's clients, Defendants Cooper, Belka, Jensen, Lindley, VestCorp and First Pension:

! BMF 100 prospectus;

! BMF 100 10-K and 10-Q's; and

! 1993 Consent Solicitation (Defendant Mendoza only).

(Hereinafter collectively referred to as the "Latham BMF 100 Duty of Care Writings")

253. With respect to the Latham Accountholder Duty of Care Writings and the Latham BMF 100 Duty of Care Writings, Defendants Latham, Stahr, Cox and Mendoza attempted or expected to influence the Accountholder Class and the BMF 100 Class on behalf of their clients Defendants Cooper, Belka, Jensen, Lindley, VestCorp and First Pension. Thus, Defendants Latham, Stahr, Cox and Mendoza owed the Accountholder Class and the BMF 100 Class a duty to prepare these documents and render the related legal advice and services with due care.

254. Defendants Latham, Stahr, Cox and Mendoza issued to the Accountholder Class the Latham Accountholder Duty of Care Writings and the Latham BMF 100 Duty of Care Writings for the purpose of securing a benefit, monetary and

otherwise, for Defendants Cooper, Belka, Jensen, Lindley, VestCorp and First Pension. With these communications, Defendants Latham, Stahr, Cox and Mendoza attempted or expected to influence the Accountholder Class and the BMF 100 Class on behalf of their clients, Defendants Cooper, Belka, Jensen, Lindley, VestCorp and First Pension. Defendants Latham, Stahr, Cox and Mendoza breached their duty of care to the Accountholder Class and the BMF 100 Class by providing advice in writings that Defendants Latham, Stahr, Cox and Mendoza anticipated the Accountholder Class and the BMF 100 Class would rely upon, which was the end and aim of the transaction.

255. The benefit Defendants Latham, Stahr, Cox, and Mendoza were attempting to gain from the Accountholder Class and the BMF 100 Class was a decision to refrain from closing their First Pension/VestCorp account, an acceptance of the switch over from the VestCorp investment system to the VestCorp Securities investment system, and the purchase of additional securities from Defendant Cooper, Lindley, Belka, and Jensen's companies, including BMF 100 interests.

256. Upon issuing the Latham Duty of Care Writings and the Latham BMF 100 Duty of Care Writings to the Accountholder Class and the BMF 100 Class, which contained misrepresentations and misleading statements, respectively, Defendants Latham, Stahr, Cox and Mendoza engaged in conduct which breached their required duty of care.

257. The Latham attorneys were acting as counsel for Vestcorp, which in essence was a trustee for the Accountholder plaintiffs. As attorney for the trustee, the Latham attorneys provided advice and guidance as to how that trustee may and must

have acted to fulfil its obligations to all beneficiaries. By undertaking this relationship as advisor to a trustee, the Latham attorneys assumed a relationship with the Accountholder plaintiffs akin to that between the trustee and the Accountholder plaintiffs. The Accountholder plaintiffs were not parties with whom Vestcorp, defendants Cooper, Lindley, Jensen and Belka, or any of their affiliated companies were dealing with at arms length. Under these premises the Latham attorneys owed plaintiff Accountholders a duty of skill and a limited duty of loyalty which required disclosure of the conflicts of interests between the Accountholders and their fiduciaries and the Latham attorneys.

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6. Breach of Duty of Attorney to Persons Who Were to Benefit By Attorneys Legal Services Imposed By Public Policy as to the Accountholder Class and the BMF 100 Class

258. Defendants Latham, Stahr, Cox and Mendoza breached their duty of care imposed by public policy owed to the Accountholder Class and the BMF 100 Class, the persons who were to benefit by their legal services, by preparing the Latham Accountholder Duty of Care Writings and the Latham BMF 100 Duty of Care Writings below the applicable standard of care as described in this operative complaint and further by preparing them so that they contained the misrepresentations, misleading statements, or omitted the material facts as alleged in this operative complaint.

259. The Accountholder representative plaintiffs and the Accountholder class and the BMF 100 representative plaintiffs and the Accountholder class read and justifiably relied upon the misrepresentations and omissions contained in or omitted from the writings described above. Alternatively, the Accountholder representative plaintiffs and the Accountholder Class and the BMF 100 representative plaintiffs and the BMF 100 class justifiably relied upon the misrepresentations and omissions, although not made directly to them, because they were made to a third person and defendants Latham, Stahr, Cox, and Mendoza intended or had reason to expect that their terms would be repeated or its substance communicated to the Accountholder representative plaintiffs and the Accountholder class and the BMF 100 representative plaintiffs and that such misrepresentations and omissions would influence the Accountholder Class and the Accountholder representatives and the BMF 100 Class and the BMF 100 representative plaintiffs in the transactions or type of transactions

involved, including opening of accounts, closing of accounts, depositing funds into plaintiffs accounts, buying additional securities, and limited partnership interests.

7. Duty To Not Actively Conceal Material Facts As To The Accountholder Class and The BMF 100 Class

260. THIS CAUSE OF ACTION WAS DISMISSED BY THE COURT BASED UPON DEFENDANTS LATHAM, MENDOZA, STAHR, AND COX=S DEMURRER. PLAINTIFFS REASSERT THIS CAUSE OF ACTION IF, AND ONLY IF, THE COURT FINDS THAT LATHAM, STAHR, COX AND MENDOZA HAD AN ATTORNEY DUTY BASED UPON ONE OF THE FOREGOING LEGAL MALPRACTICE CAUSES OF ACTION. ALTERNATIVELY, IF THE COURT DETERMINES BY DEMURRER TO THIS OPERATIVE COMPLAINT THAT NO SUCH ATTORNEY DUTY EXISTS PLAINTIFFS ASSERT THIS CAUSE OF ACTION BASED UPON THE BREACH OF THIS DUTY FOR THE SOLE PURPOSE OF PRESERVING PLAINTIFFS APPELLATE RIGHTS AS TO THIS CAUSE OF ACTION. PLAINTIFFS DO NOT INTEND TO ASSERT AND DO NOT ASSERT THIS CAUSE OF ACTION IF THE COURT DETERMINES THERE IS NO ATTORNEY DUTY BASED UPON THE NEW ALLEGATIONS OF THIS OPERATIVE COMPLAINT. PLAINTIFFS INCORPORATE BY REFERENCE THE ALLEGATIONS CONTAINED IN THE ATTORNEY DUTY SECTION OF THIS OPERATIVE COMPLAINT AS THOUGH SET FORTH HEREIN.

261. Defendants Latham, Stahr, Cox and Mendoza had a duty to refrain from actively concealing material facts from both the Accountholder and BMF 100 Classes, which Defendants Latham, Stahr, Cox and Mendoza knew were beyond the reach of these class members. Defendants Latham, Stahr, Cox and Mendoza owed the

Accountholder Class and the BMF 100 Class a duty to refrain from actively concealing: (1) prohibited transactions by VestCorp, First Pension, or Defendants Cooper, Lindley, Belka, and Jensen relating to VestCorp accounts; (2) common ownership and control of Defendant Cooper of First Pension and VestCorp; (3) Defendant Cooper's interest in and control of the transactions in which trust deed loans were sold by Defendant Cooper's company, Continental, to the Accountholder Class' pensions; (4) the fact that the trust deeds sold to the Accountholder Class by Continental were materially overvalued; (5) the DRE's revocation of Defendant Cooper's real estate license for misapplication of funds entrusted to him at L.B. Mortgage Servicing; (6) that there was a substantial risk that the merging of the trust deed loans into BMF 1 violated state and federal qualification and registration requirements; (7) that at least two thirds of the trust deed loan portfolio in the accounts were not to be included in the BMF 100 offering; (8) the need for an independent appraisal of the trust deed portfolio exchangeable for interests in BMF 100; (9) that Defendants Latham and Mendoza had performed the valuation of the trust deed loans listed as exchangeable in the BMF 100 prospectus; (10) the relationship between BMF 100 and BMF 1 as specified in the letter written by accountholder Lucille Reynolds; (11) Mendoza had performed the valuation of the trust deed loans listed as exchangeable in the BMF 100 prospectus; and (12) as otherwise alleged in this operative complaint.

262. Defendants Latham, Stahr, Cox and Mendoza's duty to not conceal the foregoing facts from the Accountholder Class extended to the following writings, amongst others:

- 17 August 1984 Latham letter re: Ownership of VestCorp, First Pension and Providence;
- 30 August 1984 Latham letter re: Ownership of VestCorp, First Pension and Providence Holding Company;
- 29 October 1984 letter to C&L re: Name and Function Change;
- 28 November 1984 Accountholder Reorganization Letter which omitted to disclose the reason for the switch over from VestCorp to VestCorp Securities was to conceal Defendant Cooper's continued control of the transactions which constituted prohibited or unlawful transactions;
- 4 December 1984 VestCorp Trust Deed Fund S-11, and Application for Qualification which concealed the full trust deed portfolio, and falsely valued the trust deeds listed on Schedule A of the S-11 and Application for Qualification;
- January 1985 IRA/Keogh VestCorp Investment System Brochure 11;
- January 1985 Latham letter to the DOC re: Schedule A loans;
- 11 January 1985 letter to the DOC re: Trust Deed Values;
- 8 February 1985 PAM letter Re: VestCorp Investment System;
- 22 February 1985 Latham letter to the DOC re: independent appraisal;
- 1 March 1985 ownership documents prepared by Defendants Latham, Stahr, Cox and Mendoza referred to in Defendant Belka's 1 March 1985 SEC testimony (Belka 1 March 1985 Transcript 14: 6-9; 15:5-10; 15:23-25;

28:14-18);

- 1 March 1985 misleading statements of Defendant Belka that VestCorp had notified its accountholders that VestCorp had resigned as the trustee making the Accountholder Class investments and the investment system had been changed to a self-directed system in which each accountholder was "solely on his own." And further that VestCorp Securities function was to be a "discount broker dealer" (Belka SEC Transcript 32:22-25, 33:1-10 38:2-5; 41:19-20);
- 1 March 1985 misleading statement in investment manager representations through Defendant Belka claiming that (1) a letter of resignation had been sent in the "last part of August or first part of November 1984"; (2) VestCorp Securities was a "discount broker dealer"; (3) "each individual client is solely on his own." (Belka SEC 1 March 1985 Transcript 31:23-25, 32:1-2; 38:2-5);
- April 1985 First Pension Newsletter;
- July 1985 First Pension Newsletter;
- 5 August 1985 Latham letter relating to the criteria to be used to falsely value the trust deeds on schedule A of the BMF 100 prospectus;
- 18 October 1985 investment and pension racketeering and fraud lawsuits against Defendants Belka and Jensen arising out of their involvement with convicted felon John Rinaldo;
- November 1985 First Pension Newsletter;

- 21 November 1985 Latham letter to Belka, Cooper, Lindley, and Jensen re: rearrangement of ownership;
- 7 December 1985 letter stating the reasons for International Central Bank & Trust's termination of custodial relations with First Pension;
- 1986 First Pension Tax Advice Newsletter No. 1;
- 1986 First Pension Tax Advice Newsletter No. 2;
- February 1987 First Pension Tax Advice Newsletter No. 3;
- April 1987 BMF 100 Prospectus;
- January 1988 IRA Pension Tax Advice Newsletter No. 4; and
- 1993 Consent Solicitation (Defendant Mendoza only).

(Hereinafter collectively referred to as the "Latham Accountholder Concealment Writings")

263. Defendant Latham's duty to not conceal the foregoing facts from the Accountholder Class extended to the following activities, amongst others:

- Advising, planning and implementing a paper rearrangement of the ownership of VestCorp, VestCorp Securities, and First Pension in order to conceal Defendant Cooper's ownership and control;
- Advising, planning and implementing a paper resignation of VestCorp with an assumption of VestCorp's primary functions by VestCorp Securities in order to conceal from the SEC the ongoing securities law violations detailed in this operative complaint;

- Organizing for presentation to the SEC false and misleading ownership documents for VestCorp, VestCorp Securities and First Pension with the objective of misleading the SEC to believe that these three companies were not under Defendant Cooper's control;
- Omitting from the Schedule A on the BMF 100 S-11 and Application two-thirds of the trust deed portfolio sold to the Accountholder Class in order to conceal losses from the Accountholder Class, the SEC and the DOC;
- Preparing false valuations of the Schedule A Trust Deeds included in the application for qualification and S-11 and amendments thereto with the intent of concealing the loss of trust deed values from the DOC and the Accountholder Class;
- Failing to respond directly, and having Defendant Belka respond, to the Lucille Reynolds letter which had asked for an explanation of the relationship between BMF 1 and BMF 100.

(Hereinafter collectively referred to as the "Latham Accountholder Concealment Activities")

264. Defendants Latham, Stahr, Cox and Mendoza's duty to not conceal the foregoing facts from the BMF 100 Class extended to the following documents, amongst others:

- BMF 100 S-11 and applications for qualifications and each of their variations filed with the SEC and DOC and any related filings with the DOC and SEC;

- BMF 100 prospectus;
- BMF 100 10-K and 10-Q's;
- 28 November 1984 Accountholder Reorganization Letter which omitted to disclose the reason for the switch over from VestCorp to VestCorp Securities was to conceal Defendant Cooper's continued control of the transactions which constituted prohibited or unlawful transactions;
- 4 December 1984 VestCorp Trust Deed Fund S-11, and Application for Qualification which concealed the full trust deed portfolio, and falsely valued the trust deeds listed on Schedule A of the S-11 and Application for Qualification;
- 11 January 1985 letter to the DOC re: Trust Deed Values;
- 22 February 1985 Latham letter to the DOC re: independent appraisal;
- 1 March 1985 ownership documents prepared by Defendants Latham, Stahr, Cox and Mendoza and referred to in Defendant Belka's 1 March 1985 SEC testimony (Belka 1 March 1985 Transcript 14: 6-9; 15:5-10; 15:23-25; 28:14-18);
- 1 March 1985 misleading statements of Defendant Belka that VestCorp had notified its accountholders that VestCorp had resigned as the trustee making the Accountholder Class investments and the investment system had been changed to a self-directed system in which each accountholder was "solely on his own," and that VestCorp Securities function was to be a "discount broker dealer" (Belka SEC Transcript 32:22-25, 33:1-10 38:2-5;

41:19-20);

- 1 March 1985 misleading statement in investment manager representations through Defendant Belka claiming that (1) a letter of resignation had been sent in the "last part of August or first part of November 1984"; (2) VestCorp Securities was a "discount broker dealer"; (3) "each individual client is solely on his own." (Belka SEC 1 March 1985 Transcript 31:23-25, 32:1-2; 38:2-5);
- 5 August 1985 Latham letter relating to the criteria to be used to false value the trust deeds on schedule A of the BMF 100 prospectus;
- 18 October 1985 investment and pension racketeering and fraud lawsuits against Defendants Belka and Jensen arising out of their involvement with convicted felon John Rinaldo;
- 21 November 1985 Latham letter to Belka, Cooper, Lindley, and Jensen re: rearrangement of ownership;
- 7 December 1985 letter stating the reasons for International Central Bank & Trust's termination of custodial relations with First Pension; and
- 1993 Consent Solicitation (Defendant Mendoza only).

(Hereinafter collectively referred to as the "Latham BMF 100 Concealment Writings")

265. Defendant Latham's duty to not conceal material facts from the BMF 100 Class extended to the following activities, amongst others:

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- Omitting from the Schedule A on the BMF 100 S-11 and Application two-thirds of the trust deed portfolio sold to the Accountholder Class in order to conceal losses from the Accountholder Class, the SEC and the DOC; and
- Preparing a false valuation of the Schedule A Trust Deeds included in the application for qualification and S-11 and amendments thereto with the intent of concealing the loss of trust deed values from the DOC and the Accountholder Class;

(Hereinafter collectively referred to as the "Latham BMF 100 Concealment Activities")

266. Defendants Latham, Stahr, Cox and Mendoza owed the Accountholder Class and the BMF 100 Class a duty to not actively conceal material facts in preparing these documents and rendering the related legal advice.

8. Breach of Duty to Not Actively Conceal Material Facts as to the Accountholder Class and the BMF 100 Class

267. Defendants Latham, Stahr, Cox and Mendoza breached their duty to refrain from actively concealing material facts from the Accountholder and BMF 100 Classes, which material facts Defendants Latham, Stahr, Cox and Mendoza knew were beyond the reach of these class members.

268. Defendants Latham, Stahr, Cox and Mendoza, through Defendants Cooper, Belka, Lindley and Jensen, learned material facts which should have been disclosed to the Accountholder Class and the BMF 100 Class. Defendants Latham, Stahr, Cox and Mendoza reviewed the underlying documents relating to Defendant Cooper, Lindley, Jensen, and Belka's business activities at VestCorp, First Pension, Continental, L.B. Mortgage Servicing. Defendants Cox and Mendoza visited the

Defendants Cooper, Belka, Lindley and Jensen at the VestCorp/First Pension offices. Defendants Cox and Mendoza also conducted an in-field review of Defendants Cooper, Lindley, Belka, and Jensen's business activities.

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269. Related to their factual review, Defendants Cox and Mendoza developed concerns that Defendants Cooper, Lindley, Jensen, and Belka were violating federal and state investment adviser laws, federal pension law, and state fiduciary laws. Defendants Cox and Mendoza discussed these matters with Defendant Stahr and a decision was made to research the issues of the foregoing described violations of law. Defendants Latham, Cox and Mendoza directed research into the duties of a fiduciary, and the prudent person rule. Defendant Cox also conducted research into the Investment Advisers Act, federal pension law, and related state law. The research confirmed that Defendants Cooper, Lindley, Belka and Jensen were engaging in violations of the foregoing provisions of law.

270. From their factual review Defendants Latham, Stahr, Cox and Mendoza learned or consciously avoided learning that Defendant Cooper controlled Continental, VestCorp, VestCorp Securities, and First Pension and that while those corporations were under his control they had engaged in a series of transactions in which Continental sold trust deeds loans to VestCorp's clients. Defendants Latham, Stahr, Cox and Mendoza learned that such trust deed loan sales were not made at arms length under bona fide market conditions. Defendants Latham, Stahr, Cox and Mendoza learned or consciously avoided learning that Defendant Cooper's real estate license was revoked by the DRE because of his misappropriation of trust funds entrusted to him at L.B. Mortgage Servicing. Defendants Latham, Stahr, Cox and Mendoza also learned that VestCorp and First Pension were under investigation by the SEC for possible violations of federal securities law violations. Defendants Latham,

Stahr, Cox and Mendoza also learned or consciously avoided learning that the value of the trust deed loan portfolio held by the Accountholder Class was substantially below the price it had been sold to the Accountholder Class. Defendants Latham, Stahr, Cox and Mendoza learned or consciously avoided learning that the accountholder trust deeds had been merged into a single pool in violation of federal and state securities laws. Additionally, Defendants Latham, Stahr, Cox and Mendoza learned the other matters as alleged in this operative complaint.

271. The facts unknown to the Accountholder Class and the BMF 100 Class which Defendants Latham, Stahr, Cox and Mendoza breached their duty to refrain from actively concealing, were in summary: (1) Defendant Cooper had controlled both the buyer and seller of the trust deeds sold to accountholders; (2) those sales had been made in non-arms length, non-market transactions; (3) the trust deeds had values materially less than had been charged to the accounts for the trust deeds; (4) VestCorp was under investigation by the SEC; (5) the DRE had revoked Defendant Cooper's real estate license for misappropriating funds entrusted to L.B. Mortgage Servicing; (6) Defendants Cooper, Lindley, Belka, & Jensen were engaging in on-going violations of federal and state law; and (7) the other facts alleged above which were known to Defendants Latham, Stahr, Cox, and Mendoza.

272. Defendants Latham, Stahr, Cox and Mendoza actively concealed the material facts alleged herein from the Accountholder Class and the BMF 100 Class by omitting such information from writings they prepared. Defendants Latham, Stahr, Cox and Mendoza actively concealed Defendant Cooper's common ownership and control

of the companies having fiduciary and other duties to the Accountholder Class and the BMF 100 Class by rearranging on paper the ownership of the companies through which defendants were operating their unlawful scheme to make it appear that Defendant Cooper was not in control. Defendants Latham, Stahr, Cox and Mendoza also advised, planned, and implemented several rearrangements of ownerships of VestCorp, VestCorp Securities, and First Pension to conceal Defendant Cooper's common ownership and control. Defendants Latham, Stahr, Cox and Mendoza also advised, planned and implemented a change of the investment system from the VestCorp system to the VestCorp system to make it appear that past violations of federal and state law by Defendants Cooper, Lindley, Belka and Jensen had ceased.

273. Defendant Latham prepared documents for government regulators which contained false and misleading statements to keep them from discovering the on-going violations of law by Defendants Cooper, Belka, Jensen and Lindley, prepared a false valuation of the trust deed portfolio included on Schedule A of the BMF 100 offering.

274. In addition to the Latham Accountholder Concealment Writings and the Latham BMF 100 Concealment Writings, Defendants Latham, Stahr, Cox and Mendoza prepared other documents and engaged in other acts in furtherance of its breach of duty to not actively conceal the Accountholder Class and the BMF 100 Class.

275. The Accountholder representative plaintiffs and the Accountholder class and the BMF 100 representative plaintiffs and the Accountholder class read and justifiably relied upon the misrepresentations and omissions contained in or omitted from the writings described above. Alternatively, the Accountholder representative

plaintiffs and the Accountholder Class and the BMF 100 representative plaintiffs and the BMF 100 class justifiably relied upon the misrepresentations and omissions, although not made directly to them, because they were made to a third person and defendants Latham, Stahr, Cox, and Mendoza intended or had reason to expect that their terms would be repeated or its substance communicated to the Accountholder representative plaintiffs and the Accountholder class and the BMF 100 representative plaintiffs and that such misrepresentations and omissions would influence the Accountholder Class and the Accountholder representatives and the BMF 100 Class and the BMF 100 representative plaintiffs in the transactions or type of transactions involved, including opening of accounts, closing of accounts, depositing funds into plaintiffs accounts, buying additional securities, and limited partnership interests.

9. Duty To Not Knowingly or Recklessly Misrepresent Material Facts As To The Accountholder Class and The BMF 100 Class

276. Defendants Latham, Stahr, Cox and Mendoza owed the Accountholder Class a duty to refrain from false or misleading representations of facts made knowingly or recklessly. This duty extended to the following writings which Defendants Latham, Stahr, Cox and Mendoza knew were directed to the Accountholder Class:

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- 28 November 1984 Accountholder Reorganization Letter which omitted to disclose the reason for the switch over from VestCorp to VestCorp Securities was to conceal Defendant Cooper's continued control of the transactions which constituted prohibited or unlawful transactions;
- January 1985 IRA/Keogh VestCorp Investment System Brochure 11;
- 8 February 1985 PAM letter to the Accountholder Class Re: VestCorp Investment System;
- April 1985 First Pension Newsletter;
- July 1985 First Pension Newsletter;
- November 1985 First Pension Newsletter;
- 1986 First Pension Tax Advice Newsletter No. 1;
- 1986 First Pension Tax Advice Newsletter No. 2;
- February 1987 First Pension Tax Advice Newsletter No. 3; and
- January 1988 IRA Pension Tax Advice Newsletter No. 4.

(Hereinafter collectively referred to as the "Latham Accountholder misrepresentation writings")

277. Defendant Latham, Stahr, Cox and Mendoza owed the BMF 100 Class a duty to refrain from false or misleading representations of material facts made knowingly or recklessly. This duty extended to the following writings which Defendants Latham, Stahr, Cox and Mendoza knew were directed to the BMF 100 Class:

- BMF 100 prospectus;

! BMF 100 10-K and 10-Q's; and

! 1993 Consent Solicitation (Defendant Mendoza only).

(Hereinafter collectively referred to as the "Latham BMF 100 misrepresentation writings")

278. In undertaking to draft, revise and advise concerning the documents referenced in the two preceding paragraphs, Defendants Latham, Stahr, Cox and Mendoza undertook the responsibility of ensuring that the documents:

! Did not suggest, as a fact, something which was not true, if they believed at the time they were making the statement that it was not true;

! Did not assert as a fact, something which was not true, without a reasonable ground for believing it to be true; and

! Did not suppress a material fact.

279. As detailed below, Defendants Latham, Stahr, Cox and Mendoza breached these duties to the Accountholder and BMF 100 Classes.

280. The Accountholder representative plaintiffs and the Accountholder class and the BMF 100 representative plaintiffs and the Accountholder class read and justifiably relied upon the misrepresentations and omissions contained in or omitted from the writings described above. Alternatively, the Accountholder representative plaintiffs and the Accountholder Class and the BMF 100 representative plaintiffs and the BMF 100 class justifiably relied upon the misrepresentations and omissions, although not made directly to them, because they were made to a third person and defendants Latham, Stahr, Cox, and Mendoza intended or had reason to expect that

their terms would be repeated or its substance communicated to the Accountholder representative plaintiffs and the Accountholder class and the BMF 100 representative plaintiffs and that such misrepresentations and omissions would influence the Accountholder Class and the Accountholder representatives and the BMF 100 Class and the BMF 100 representative plaintiffs in the transactions or type of transactions involved, including opening of accounts, closing of accounts, depositing funds into plaintiffs accounts, buying additional securities, and limited partnership interests.

10. Breach of Duty To Not Knowingly or Recklessly Misrepresent Material Facts As To The Accountholder Class and The BMF 100 Class

281. Defendants Latham, Stahr, Cox and Mendoza owed the Accountholder and BMF 100 Classes a duty to refrain from false or misleading representations of facts made knowingly or recklessly, as set forth above. This duty extended to documents and advise Defendants Latham, Stahr, Cox and Mendoza prepared and provided which they knew were directed to the Accountholder Class and the BMF 100 Class. Under these premises Defendants Latham, Stahr, Cox and Mendoza had a duty to accurately state the facts and to speak the whole truth and not conceal any fact which materially qualified those stated, as set forth above.

282. Defendants Latham, Stahr, Cox and Mendoza's duty to refrain from making knowing or reckless false or misleading statements extended, as to the Accountholder Class, to the Latham Accountholder misrepresentation writings.

283. As to the BMF 100 Class, Defendants Latham, Stahr, Cox and Mendoza prepared and advised in the preparation of the Latham BMF 100 misrepresentation writings, knowing said documents would be sent to, received and relied upon by the

members of the BMF 100 Class, and thus, breached their duty to ensure that there were no omissions or misrepresentations of material facts contained therein.

284. Defendants Latham, Stahr, Cox, and Mendoza breached their duty to not knowingly or recklessly make material misrepresentations or misleading statements. The misleading statements and misrepresentations were intended to induce the Accountholder Class and the BMF 100 Class to rely on them in order to get them to refrain from closing their First Pension account, go along with the switch over from VestCorp to VestCorp Securities, and purchase limited partnership interests in BMF 100.

285. With their connivance and with the intent to deceive plaintiffs, and to induce plaintiffs to enter into or refrain from closing their accounts, defendants Latham, Stahr, Cox and Mendoza: (1) suggested as facts to plaintiffs that which was not true when defendants Cox, Stahr, Latham and Mendoza did not believe them to be true; (2) asserted as facts to plaintiffs, in a manner not warranted by the information or without a reasonable ground for believing them to be true; (3) suppressed facts from plaintiffs, when defendants Latham, Cox, Stahr, and Mendoza were bound to disclose them to plaintiffs; (4) suppressed facts from plaintiffs while giving information of other facts which were likely to mislead for want of the communication of the suppressed facts; (5) engaged as to plaintiffs in other acts fitted to deceive. Defendants Latham, Stahr, Cox and Mendoza participated actively in and assisted in defrauding and concealing truth from plaintiffs. Such actions consisted of the following.

286. In the 28 November 1984 letter to Accountholders, Defendants Latham,

Stahr, Cox and Mendoza suggested and/or asserted the following material facts which were not true and otherwise misleading in light of facts not stated. Defendant Cox participated in the drafting of the letter and the underlying work described in the letter from 8 November 1984 to 28 November 1984. Defendants Latham, Stahr, Cox and Mendoza knew to be untrue, misleading or had no reasonable basis for believing the following facts:

- "In order that we at Vest-Corp of California might also provide to you and our other accountholders the benefits of a "financial supermarket" format, we too have made and are in the process of making a number of organizational changes in our system which we believe will be of ever increasing benefit to you as an accountholder." (This assertion of fact was false and either Defendants Latham, Stahr, Cox and Mendoza did not believe it to be true or had no reasonable ground for believing to be true or which required additional facts to not make it misleading. The reorganization was prompted for Defendants Cooper, Lindley, Belka, and Jensen's benefit to escape responsibility for past and on-going violations of law);
- "VestCorp ... would thereafter select investments for you and make regular reports to you on your account." (This assertion of fact was false and Defendants Latham, Stahr, Cox and Mendoza did not believe it was true, did not have a reasonable ground for believing it to be true, or knew additional facts were needed to make it not misleading. The fact was

false because the investments were not selected primarily by VestCorp but rather by Defendant Cooper as described above);

! "VestCorp would .... make regular reports to you on your account." (This assertion of fact was false in that additional facts were needed to make it not misleading. The "reports" to the Accountholder Class did not report that the trust deed values were materially less than the amounts charged to purchase them. Defendants Latham, Stahr, Cox and Mendoza knew of this discrepancy or consciously avoided knowing it to be false, as set forth above);

! "The purpose of this letter is to explain briefly the efforts we have made and will be making in the near future to improve our services to you." (This assertion of fact was false and either Defendants Latham, Stahr, Cox and Mendoza did not believe to be true or had no reasonable ground for believing to be true or which required additional facts to not make it misleading. The change was not to improve the service to the Accountholder Class but to make it more difficult for them to find out about past and on-going violations of law by Defendants Cooper, Lindley, Belka, and Jensen);

! "Under our new system, many of the responsibilities formerly carried out by Vest-Corp of California will be carried out by VestCorp Securities." (This assertion of fact was misleading because on paper the investment management function performed by the VestCorp companies was being

terminated and VestCorp Securities was only a discount broker with no investment advisory or management duties to the Accountholder Class. This is what the SEC was told in the proceeding in which Defendants Latham, Stahr, Cox and Mendoza were co-counsel);

! "When you make a deposit into your account, the funds will be deposited with International Central Bank and Trust (ICBT) pending their application to the specific investment(s) of your choice." (This assertion of fact was false because ICBT had not agreed to perform this function and in fact terminated its relationship with First Pension when it discovered such representations were being made without its authority. Defendants Latham, Stahr, Cox and Mendoza knew this assertion of fact was false or consciously avoided learning it was false); and

! "Because under our new system you have the opportunity to direct your own account (through the services of Vest-Corp Securities), Vest-Corp of California will no longer be needed to act as you account investment advisor. Therefore, as a part of our new program, Vest-Corp of California will resign as your investment advisor effective December 31, 1984. Even though Vest-Corp of California will be resigning, you will continue to receive the same fine service that you have come to expect from Vest-Corp of California, and more, from its affiliate, Vest-Corp Securities." (These assertions of fact were both false and misleading. Vest-Corp was not resigning because it was not needed, but rather to avoid the

appearance of on-going violations of law. The defendants were representing to the SEC that the Accountholder Class was on their own and that Vest-Corp Securities was only a discount broker. Yet this statement suggests that the VestCorp companies and affiliates are going to continue to provide investment advisory and other services to the Accountholder Class, even more. Defendants Latham, Stahr, Cox and Mendoza knew these statements were false or consciously avoided knowing of their falsity).

287. In the Sales Brochure "VestCorp Investment System" provided to accountholders beginning in 1985, Defendants Cooper, Lindley, Belka, Jensen, Latham, Stahr, Cox and Mendoza suggested and/or asserted the following material facts which were not true and otherwise misleading in light of facts not stated. The misrepresentations and half-truths already discussed that are repeated in sum and substance in the Sales Brochure are not repeated. Defendants Latham, Stahr, Cox and Mendoza knew the assertions of fact were untrue or consciously avoided learning of their falsity with respect to the following:

! "The VestCorp Investment System (VCIS) is a network of specialized independent companies working together to provide complete investment and administrative services for IRA/Keogh, Corporate Plans and individual investors." (This was false because the companies comprising VCIS were either not independent as VestCorp Securities, First Pension were owned and controlled by Defendant Cooper or were not working

together, ICBT had not given its permission to be included and when it learned that it was being represented otherwise by Defendants Cooper, Lindley, Belka, and Jensen, ICBT terminated its relationship with First Pension);

! "First Pension Corporation's personnel bring 25 years of pension experience in the VCIS program." (This assertion of fact was misleading because not disclosed was the very poor track record of the VCIS personnel which resulted in substantial losses to investors doing business with the VCIS personnel);

! "First Pension specializes in pension plan administration and trust accounting services. As such it administers a variety of IRS approved programs including IRA, Keogh, and Corporate retirement plans. First Pension provides all the "back office" reporting and disclosure documentation and services in compliance with Federal and State laws for individual plans, banks, savings & loans, broker/dealer, limited partnerships and other institutions." (This assertion of fact was misleading in that First Pension's bad track record and control by Defendant Cooper was not disclosed and was needed to make the statement not misleading. It was also misleading or false because it did not disclose that First Pension and its control persons, Defendants Cooper, Belka, and Jensen had a history of regulatory transgressions);

! "First Pension ... is subject to regulation by the Employees Plans and

Exempt Organization (EP/EO) of the IRS, Pension Welfare Benefit Plans Division (PW/BP) of the Department of Labor and State of California Department of Corporations. As required by the Employee Retirement Income Security Act of 1974, it carries a blanket Fidelity Bond." (This assertion of fact was false or misleading for a number of reasons. First not disclosed were the numerous violations of state and federal laws mentioned in the assertion of fact by First Pension. Second, the fidelity bond did not provide any particular relief for those who were investing in the millions of dollars and the fidelity bond was not large enough to come close to covering the losses); and

- The Sales Brochure also contains numerous other references to the work performed by First Pension and its affiliates and the kind of securities offered. Each of these additional statements of fact were false and misleading for the reasons stated above.

288. In the April 1985 First Pension Newsletter to Accountholders, Defendants Latham, Stahr, Cox and Mendoza suggested and/or asserted the following material facts which were not true or otherwise misleading in light of facts not stated. Defendants Latham, Stahr, Cox and Mendoza either knew these facts were untrue or misleading or had no reasonable basis for believing the facts to be true:

- "Most of you are no doubt aware that the mortgage fund is pending registration as a public offering";
- "Until such time as the registration is complete, VestCorp Securities

cannot accept investments into that product [BMF 1]";

- "PAM informs us that they have been working with several law firms in qualifying their products with federal and state agencies";
- "Must (sic) of the legal issues were approved last year (1984) and all indications were that PAM would have its three major funds ready in January 1985";
- "They indicate to us that they hope to work out the remaining issues within the next few months";
- "The Bank Mortgage Fund [Accountholder investments] on the other hand has maintained a consistent 14 - 14.5% rate of return for several years";
- "However, because of the decline in rates at which trust deeds can be written, the mortgage fund will ultimately be affected to a slight degree";
- "It is anticipated that the fund may fluctuate during the remainder of 1985 between 13.5-14%."

289. In the July 1985 First Pension Newsletter to Accountholders, Defendants Latham, Stahr, Cox and Mendoza suggested and/or asserted the following material facts which were not true or otherwise misleading in light of facts not stated. Defendants Latham, Stahr, Cox and Mendoza either knew these facts were untrue or misleading or had no reasonable basis for believing the facts to be true:

- "BANK MORTGAGE FUND - As was expected, the Bank Mortgage Fund has experienced a slight reduction in the rate of return. Many variables come into play when calculating the rate of return, but the primary reason

for the decline is due to a steady lowering of interest rates within the industry as a whole. However, the fund should still maintain an average annual yield of between 13.0% and 13.5%. Still very competitive with other income producing investments in the marketplace";

- "You will be pleased to know (we know we are) that Pension Asset Management has informed us that their attorneys, who are working on the qualification of the fund, have indicated that the registration process should be completed within 6 weeks";
- "At VestCorp Securities, you are able to control and direct your money to where it will work most effectively toward your retirement";

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- "Your VestCorp Securities representative reviews your investments at least quarterly to compare its performance with alternative investments";
- "To summarize, as a client of VestCorp Securities you enjoy
    (1) investment flexibility,
    (2) self direction,
    (3) counsel to help you make informed investment choices,
    (4) quarterly review of your portfolio performance,
    (5) discount brokerage commissions."

290. In each of the communications discussed in the preceding paragraphs, and in all other dealings with the Accountholder Class, Defendants Latham, Stahr, Cox and Mendoza suppressed the following material facts while they were under a duty to the members of the Accountholder Class to disclose those facts and/or while providing other facts which made them misleading;

- The desire of Defendants Cooper, Belka, Lindley and Jensen to avoid a run on the system;
- The reason for the creation of VestCorp Securities;
- The reason for the change of name from VestCorp of California to Pension Asset Management;
- The reason that VestCorp of California was resigning as the Investment Advisor for the Accountholder Class;
- The desire of Defendants Cooper, Belka, Lindley and Jensen to avoid making the appropriate fiduciary disclosures;

- The intent to withhold information from the Accountholder Class concerning past and present breaches of fiduciary duties;
- The Accountholder Class' right to rescind their investment contract with Defendants Cooper, Belka, Lindley and Jensen in light of the unilateral restructuring of the investments and fiduciary responsibilities;

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- The similarities in the operations of Merrill Lynch and Sears as compared with Defendants Cooper, Belka, Lindley and Jensen;
- The benefits that the restructuring would provide to the Accountholder Class;
- The existence of an SEC examination into the Receivership Entities and Defendants Cooper, Belka, Lindley and Jensen;
- The reason for the creation of VestCorp Securities;
- The reason for the change of name from VestCorp of California to Pension Asset Management;
- The reason that VestCorp of California was resigning as the Investment Advisor for the Accountholder Class;
- The prohibited transactions engaged in by the Receivership Entities and Defendants Cooper, Belka, Lindley and Jensen;
- The financial conditions of the Receivership Entities and First Pension Defendants;
- The prohibited transactions engaged in by the Receivership Entities and Defendants Cooper, Belka, Lindley and Jensen;
- The propriety of exchanging their interests in BMF 1 for interests in BMF 100;
- The financial conditions of the Receivership Entities;
- That the DOC had raised a number of concerns about the BMF 100

offering;

- That the problems with the DOC would take a long time to resolve;
- That regulatory proceedings undertaken by the DRE against Defendant Cooper made him unfit to serve in the positions he held concerning BMF 100 class member funds, in particular the fact that Cooper was charged with mishandling trust funds of persons in a similar position to the BMF 100 investors;
- That on 23 January 1987 there were eleven legal proceedings involving Defendants Cooper, Lindley, Jensen and Belka [Documentation concerning these proceedings were provided to Defendants Latham, Stahr, Cox and Mendoza on 23 January 1987];
- That on 5 August 1985, Defendant Cooper petitioned for reinstatement of his real estate broker's license which was denied on 26 January 1987;
- That on 27 February 1987, Defendant Cooper petitioned for reconsideration of the Order denying the reinstatement of his license which was denied on 31 March 1987;
- That the BMF1 trust deeds had been pooled, and as a result of the pooling, BMF1 was in violation of the qualification provisions of the California securities laws;
- The true financial condition of BMF1, which in fact, had a material shortfall of funds;
- Prior investigations into First Pension Corporation and Vestcorp by the

DOC and the SEC;

- Ms. Lucille Reynold's letter and claim regarding her request for a liquidation distribution of her investment in BMF1;
- The fact that various trust deeds reviewed by Defendant Latham and Watkins were in fact non-performing trust deeds;
- That Defendants Cooper, Belka, Lindley and Jensen were conducting an on-going fraud on the BMF 100 Class members and the Accountholder Class members;
- That Defendants Cooper, Belka, Lindley and Jensen and Receivership Entities were diverting and commingling funds;
- That the pooling of the individual trust deeds into BMF1 was unlawful as the interests sold in BMF1 had neither been qualified or registered with any regulatory agency;
- That there was a substantial shortfall in the assets of BMF1;
- That Defendants Cooper, Belka, Lindley and Jensen pooled the individual trust deeds into BMF1 to hide the mounting losses resulting from non-performing trust deeds sold to Accountholder Class Members;
- That Defendants Cooper, Belka, Lindley and Jensen owned and operated a series of inter-related companies which they used to divert money from the BMF 100 Class Members' investments;
- That Defendants Cooper, Belka, Lindley and Jensen's companies selling the trust deeds to the BMF 100 Class Members had a bad track record;

- That the trust deeds purchased by the BMF 100 Class Members had a negative financial performance;
- That, in light of its financial condition, it was likely that First Pension would be required to file bankruptcy within the life of the funds;
- That Defendants Cooper, Belka, Lindley and Jensen created fraudulent trust deeds and included them in the portfolio of Defendants Cooper, Belka, Lindley and Jensen's securities in which the Accountholder Class and the BMF 100 Class invested in;
- That Defendants Cooper, Belka, Lindley and Jensen diverted investor funds to make political contributions to individuals whom they perceived could exert influence over government regulators; and
- That Defendants Cooper, Belka, Lindley and Jensen and their affiliated companies were being investigated by the DOC, the SEC, the DRE, the DOL and the NASD.

291. Defendants Latham, Stahr, Cox, and Mendoza made these fraudulent misrepresentations, misleading statements or omitted these facts to the Accountholder Class. The Accountholder Class were persons whom defendants Latham, Stahr, Cox and Mendoza intended or had reason to expect to act or to refrain from action in reliance upon the misrepresentations, misleading statements, or omissions in the type of transactions in which defendants Latham, Stahr, Cox and Mendoza had reason to expect the Accountholder Class's conduct to be influenced. The transactions were the plaintiffs opening of accounts, closing of accounts, depositing funds into plaintiffs

accounts, buying additional securities. Defendants Latham, Stahr, Cox, and Mendoza are therefore subject to liability to the Accountholder Class for pecuniary loss suffered by the Accountholder Class through their justifiable reliance in the type of transactions because defendants Latham, Stahr, Cox, and Mendoza had reason to expect the Accountholder Class' conduct to be influenced in plaintiffs opening of accounts, closing of accounts, depositing funds into plaintiffs accounts, buying additional securities.

292. These suppressed, misleading and false statements were made or omitted by Defendants Latham, Stahr, Cox and Mendoza to the BMF 100 Class members and were breaches of defendants Latham, Stahr, Cox, and Mendoza's duty to not knowingly or recklessly misrepresent material facts, and were intended to induce the BMF 100 Class to purchase BMF 100 interests.

293. In drafting the BMF 100 Prospectus, including ancillary documents, contracts and agreement such as the BMF 100 Subscription Agreement, BMF 100 Placement Agreement, BMF 100 Participation Agreement, BMF 100 Servicing Agreement and the BMF 100 First Pension Management Agreement, sent to members of the BMF 100 class intending to induce their reliance on the same, Defendants Latham, Stahr, Cox and Mendoza suggested and/or asserted the following material facts which were not true or otherwise misleading in light of facts not stated. Throughout the time Defendants Latham, Stahr, Cox and Mendoza worked in preparing these documents, between May 1984 through April 1987, Defendants Latham, Stahr, Cox and Mendoza either knew the following facts were untrue or misleading or had no reasonable basis for believing the following facts to be true:

- "Substantially all of the principal payments received by the Fund on Trust Deed Loans, including prepayments and the proceeds from the sale of loans, net of Fund expenses, will be reinvested in additional Trust Deed Loans or, at the election of a Participant, passed through quarterly. Prior to such reinvestment or distribution, principal payments received by the Fund, net of Fund expenses, will be invested in short-term interest-bearing investments." (page 2)
- "It is anticipated that former investment advisory clients of PAM will exchange up to approximately $2,164,000 of Trust Deed Loans presently owned by them for Participation Interests." (page 3)
- "Up to $2,164,000 of the Trust Deed Loans comprising the Fund may be contributed by PAM's former investment advisory clients in exchange for Participation interests. ... While the Fund Manager believes the valuation to be applied to Existing Trust Deed Loans that may be exchanged for Participation interests are theoretically sound and justified...." (page 4)
- "As of March 31, 1987, a substantial portion of the Existing Trust Deed Loans have exchange values greater than their respective principal balances. ... Given the interest rates payable on such Existing Trust Deed Loans, the Fund Manager believes that prepayment of a substantial portion of these loans may occur." (page 5)
- "At March 31, 1985, 1986 and 1987, approximately 17.2%, 6.5% and 0%, respectively, of the outstanding principal balances of Trust Deed Loans

owned by former investment clients of PAM were delinquent for more than 45 days. It has been PAM's experience that less than 6% of such loans do not have the delinquency cured and are actually foreclosed upon. ... The delinquency rate could be considered an indication of the possible future incidence of foreclosures and possible losses on Trust Deed Loans." (page 9)

- "The Existing Trust Deed Loans, currently held by former investment advisory clients of PAM, that may be exchanged for Participation Interests offered by this Prospectus, will be valued in accordance with valuation criteria developed with reference to current market conditions and in light of the collective experience of the Fund Manager's executive officer and directors and PAM in evaluating Trust Deed Loans. ... Under this analysis, payments to be received pursuant to each Existing Trust Deed Loan, including periodic interest and principal payments, together with the principal balance due upon maturity of the respective Existing Trust Deed Loan, will be discounted to its present value applying the interest rate, or discount factor, calculated as described hereinbelow." (page 17-18)
- "Because the Fund Manager cannot predict which Existing Trust Deed Loans will be prepaid or when such prepayment will occur, it has not made an adjustment to the discount factor which would take into account the possibility of prepayment in the calculation of exchange value. Therefore it is Possible that investors who paid cash for their Participation

Interests or who exchanged Existing Trust Deed Loans which are not prepaid by their borrowers may be somewhat disadvantaged compared to those investors who exchanged Existing Trust Deed Loans which are later prepaid." (page 19)

- "The Fund Manager believes that, assuming a substantial number of the Existing Trust Deed Loans are exchanged for Participation Interests, the Fund should provide a diversified portfolio of Trust Deed Loans with varying interest rates, maturity dates, amortization schedules and locations within the State of California." (page 20)
- "In connection with each Existing Trust Deed Loan to be exchanged for Participation Interests and each additional Trust Deed Loan to be acquired by the Fund, the Fund Manager will obtain prior to acceptance by or acquisition by the Fund, a preliminary title report to verify the status of the borrower's title and to determine what liens exist against the property." (page 28)

294. In drafting the Consent Solicitation sent to members of the BMF 100 class, Defendant Mendoza suggested and/or asserted essentially the same material facts which were not true or otherwise misleading in light of facts not stated intending to induce their reliance. In 1992 and 1993, while Defendant Mendoza was working on this document, Defendant Mendoza either knew the following facts were untrue or misleading or had no reasonable basis for believing the facts to be true.

295. In each of the communications discussed above, and in all other dealings

with the BMF 100 Class, Defendants Latham, Stahr, Cox and Mendoza suppressed the following material facts while they were under a duty to the members of the BMF 100 Class to disclose those facts and/or while providing other facts which made them misleading;

- Information which the DOC considered necessary to be included in offering for full disclosure;
- The historical regulatory problems of the corporate and individual general partners;
- The DOC's concerns regarding sliding scale and guaranteed interest provisions;
- That trust deeds that failed to meet the appropriate criteria would be exchanged into BMF 100 thereby diminishing the value of each BMF 100 unit;
- The fact that various trust deeds reviewed by Defendant Latham and Watkins were in fact non-performing trust deeds;
- That Defendants Cooper, Belka, Lindley and Jensen were conducting an on-going fraud on the BMF 100 Class members and the Accountholder Class members; and
- That Defendants Cooper, Belka, Lindley and Jensen and Receivership Entities were diverting and commingling funds.

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296. These suppressed, misleading and false statements referenced in the preceding paragraphs which were conveyed by Defendants Latham, Stahr, Cox and Mendoza to the BMF 100 Class members were material in that:

- Payments received by the Fund were used for other purposes undisclosed to investors, such as to pay operating expenses of the related entities;
- The former investment advisory clients at the time of this offering did not own an individual interest in a trust deed, but rather had a pro rata interest in a pool trust deeds. Thus, the valuation criteria could not have been theoretically sound and justified as applied to the existing trust deed loans as these loans were already non-performing;
- The exchange values of the existing trust deed could not be greater than their respective principal balances as these trust deeds were already in default. As many of the existing trust deeds were in default, it is not a fair representation that it could be anticipated that many of them would be prepaid, especially since these loans were "hard money loans;"
- As most, if not all trust deeds were non-performing, the delinquent figures in the prospectus are misrepresentations. Moreover, the disclosed delinquency rate is not a fair indicator of future delinquencies as the disclosed rate is incorrect;
- The valuation criteria is misleading as the criteria incorporates payments to be received pursuant to each existing trust deed loan as these loans

were already non-performing, thus no future payments could be expected;

! Investors were materially misled to believe that some of the existing trust deed loans would be prepaid when in fact it was very unlikely at best that a prepayment would occur, as most, if not all of the trust deed loans were non-performing;

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- As most, if not all trust deeds were non-performing, the contribution of that trust deed, if it was possible, would dilute the value of BMF MIF as that existing trust deed was most likely non-performing; and
- If a preliminary title report had been obtained with regard to the existing trust deed loans, it would have been discovered that these loans were either non-performing or already in default.

297. Defendants Latham, Stahr, Cox, and Mendoza made these fraudulent misrepresentations, misleading statements or omitted these facts to the BMF 100 Class. The BMF 100 Class were persons whom defendants Latham, Stahr, Cox and Mendoza intended or had reason to expect to act or to refrain from action in reliance upon the misrepresentations, misleading statements, or omissions in the type of transactions in which defendants Latham, Stahr, Cox and Mendoza had reason to expect the Accountholder Class's conduct to be influenced. The transactions were the plaintiffs buying BMF 100 limited partnership units. Defendants Latham, Stahr, Cox, and Mendoza are therefore subject to liability to the BMF 100 Class for pecuniary loss suffered by the BMF 100 Class through their justifiable reliance in the type of transactions because defendants Latham, Stahr, Cox, and Mendoza had reason to expect the Accountholder Class' conduct to be influenced in plaintiffs buying BMF 100 limited partnership units.

298. Defendants Latham, Stahr, Cox and Mendoza breached their duty to not knowingly or recklessly misrepresent material facts as to the Accountholder Class and the BMF 100 Class as stated above.

299. The Accountholder representative plaintiffs and the Accountholder class and the BMF 100 representative plaintiffs and the Accountholder class read and justifiably relied upon the misrepresentations and omissions contained in or omitted from the writings described above. Alternatively, the Accountholder representative plaintiffs and the Accountholder Class and the BMF 100 representative plaintiffs and the BMF 100 class justifiably relied upon the misrepresentations and omissions, although not made directly to them, because they were made to a third person and defendants Latham, Stahr, Cox, and Mendoza intended or had reason to expect that their terms would be repeated or its substance communicated to the Accountholder representative plaintiffs and the Accountholder class and the BMF 100 representative plaintiffs and that such misrepresentations and omissions would influence the Accountholder Class and the Accountholder representatives and the BMF 100 Class and the BMF 100 representative plaintiffs in the transactions or type of transactions involved, including opening of accounts, closing of accounts, depositing funds into plaintiffs accounts, buying additional securities, and limited partnership interests.

11. Duty To Not Negligently Misrepresent Facts As To The Accountholder Class and The BMF 100 Class

300. Alternatively, Defendants Latham, Stahr, Cox and Mendoza also owed a duty to the Accountholder and BMF 100 Classes to not negligently make the misrepresentations and misleading statements identified in the misrepresentation section above to the Accountholder and BMF 100 Classes. Defendants Latham, Stahr, Cox and Mendoza had such a duty because they made representations to the Accountholder and BMF 100 Classes as described in the preceding duty, with the

intent to induce the Accountholder and BMF 100 Classes to act in reliance upon the representations in a specific transaction (the VestCorp to VestCorp Securities switch over, and the purchase of BMF Mortgage Income Fund interests) that Defendants Latham, Stahr, Cox and Mendoza intended to influence. Defendants Latham, Stahr, Cox and Mendoza are deemed to have intended to influence the VestCorp of California to VestCorp Securities switch and purchases of BMF 100 interests because Defendants Latham, Stahr, Cox and Mendoza knew with substantial certainty that the Accountholder and BMF 100 Classes would rely on the representation in the course of the transaction.

301. As to the Accountholder Class, Defendants Latham, Stahr, Cox and Mendoza prepared and advised in the preparation of the Latham Accountholder misrepresentation writings, knowing they would be sent to, received and relied upon by the Accountholder Class in refraining from closing their accounts, going along with the switch over from the VestCorp investment system to the VestCorp Securities investment system and to purchase additional fraudulent and unlawful securities from Defendants Cooper, Belka, Lindley and Jensen's companies which Latham intended to influence, and thus, had a duty to ensure that there were no omissions or misrepresentations of material facts contained therein.

302. As to the BMF 100 Class, Defendants Latham, Stahr, Cox and Mendoza prepared and advised in the preparation of the Latham BMF 100 misrepresentation writings, knowing they would be sent to, received and relied upon by the members of the BMF 100 Class in connection with BMF 100 Class purchases of BMF 100 units,

which Defendants Latham, Stahr, Cox and Mendoza intended to influence and thus had a duty of care to ensure that there were no omissions or misrepresentations of material facts contained therein.

303. As detailed in the Latham Breach of Duty section of this operative complaint, Defendants Latham, Stahr, Cox and Mendoza had a duty to not negligently misrepresent material facts to the Accountholder Class and the BMF 100 Class.

12. Breach of Duty to Not Negligently Misrepresent Facts as to the Accountholder Class and The BMF 100 Class

304. Alternatively, Defendants Latham, Stahr, Cox and Mendoza breached their duty to the Accountholder Class to not make the misrepresentations or misleading statements. Defendants Latham, Stahr, Cox and Mendoza had such a duty because it made representations to the Accountholder Class and the BMF 100 Class, as described above, with the intent to induce them to act in reliance upon the representations in a specific transaction (i.e., the VestCorp to VestCorp Securities switch over, the purchase of BMF Mortgage Income Fund interests) that Defendants Latham, Stahr, Cox and Mendoza intended to influence. Defendants Latham, Stahr, Cox and Mendoza are deemed to have intended to influence the VestCorp of California to VestCorp Securities switch and purchases of BMF 100 interests because Defendants Latham, Stahr, Cox and Mendoza knew with substantial certainty that the particular class of persons (the Accountholder and BMF 100 Class members) would rely on the representations in the course of the transaction.

305. As detailed above, Defendants Latham, Stahr, Cox and Mendoza negligently breached these duties to the Accountholder and BMF 100 Classes.

306. The Accountholder representative plaintiffs and the Accountholder class and the BMF 100 representative plaintiffs and the Accountholder class read and justifiably relied upon the misrepresentations and omissions contained in or omitted from the writings described above. Alternatively, the Accountholder representative plaintiffs and the Accountholder Class and the BMF 100 representative plaintiffs and the BMF 100 class justifiably relied upon the misrepresentations and omissions, although not made directly to them, because they were made to a third person and defendants Latham, Stahr, Cox, and Mendoza intended or had reason to expect that their terms would be repeated or its substance communicated to the Accountholder representative plaintiffs and the Accountholder class and the BMF 100 representative plaintiffs and that such misrepresentations and omissions would influence the Accountholder Class and the Accountholder representatives and the BMF 100 Class and the BMF 100 representative plaintiffs in the transactions or type of transactions involved, including opening of accounts, closing of accounts, depositing funds into plaintiffs accounts, buying additional securities, and limited partnership interests.

13. Duty to Not Aid & Abet Breaches of Fiduciary Duties as to the Accountholder Class and the BMF 100 Class

307. VestCorp, VestCorp Securities, First Pension, and Defendants Cooper, Lindley, Belka, and Jensen owed the Accountholder Class and the BMF 100 Class fiduciary duties because of VestCorp, VestCorp Securities, First Pension and Defendants Cooper, Belka, Lindley and Jensen's role as investment managers, broker-dealers, pension administrators or persons who were in control of such parties owing the Accountholder Class and the BMF 100 Class such duties. Those fiduciary duties

were breached by VestCorp, VestCorp Securities, First Pension, and Defendants Cooper, Lindley, Belka, and Jensen as detailed in this operative complaint. Defendants Latham, Stahr, Cox and Mendoza knew of such breaches as detailed in this operative complaint. Those breaches included: not avoiding conflicts of interests, not controlling and preserving trust property, not reporting and accounting, not avoiding self-dealing and lack of prudence.

308. VestCorp, First Pension and Defendants Cooper, Belka, Jensen and Lindley undertook on behalf of those to whom they owed a fiduciary duty, a program of investing in over priced trust deeds sold by Defendant Cooper's trust deed sales company, Continental in non-arm length transactions. This investment program was imprudent, unsuitable for the Accountholder Class, and dishonest. These breaches of fiduciary duty by VestCorp, First Pension and Defendants Cooper, Lindley, Jensen and Belka depleted the Accountholder Class' accounts of millions of dollars. Such breaches also constituted violations of California investment adviser law by VestCorp, a California registered investment adviser. VestCorp was supervised by the DOC and the SEC.

309. Defendants Latham, Stahr, Cox and Mendoza owed the accountholder class and the BMF 100 class a duty to not knowingly or recklessly aid and abet those violations of fiduciary duty by VestCorp, First Pension, and Defendants Cooper, Lindley, Belka and Jensen.

14. Breach of Duty to Not Aid & Abet Breaches of Fiduciary Duties as to the Accountholder Class and the BMF 100 Class

310. As detailed in this operative complaint VestCorp, First Pension, and

Defendants Cooper, Lindley, Belka, and Jensen breached fiduciary duties owed to the Accountholder Class and the BMF 100 Class. Those fiduciary duties breached by VestCorp, First Pension, and Defendants Cooper, Lindley, Belka, and Jensen about which Defendants Latham, Stahr, Cox and Mendoza were aware were: the duty to avoid conflicts of interests, the duty to control and preserve trust property, the duty to report and account, and the duty to avoid self-dealing. VestCorp, First Pension and Defendants Cooper, Belka, Jensen and Lindley undertook on behalf of those to whom they owed a fiduciary duty, the Accountholder Class, a program of investing in over priced trust deeds sold by Defendant Cooper's trust deed sales company, Continental in non-arm length transactions. This investment program was imprudent, unsuitable for the Accountholder Class, and dishonest. All of the foregoing facts known to defendants Latham, Cox, Mendoza and Stahr should have been disclosed by them to the SEC, DOC and plaintiffs. Moreover, Latham, Stahr, Cox and Mendoza purposefully drafted and filed with the SEC, DOC and sent or caused to be sent to investors writings (described above) in such a manner as to conceal from the SEC, DOC and plaintiffs that defendants Cooper, Lindley, Belka, Jensen and their affiliated companies were engaged in violations of fiduciary duties owed to plaintiffs. These breaches of fiduciary duty by VestCorp, First Pension and Defendants Cooper, Lindley, Jensen and Belka depleted the Accountholder Class accounts of millions of dollars. Such breaches also constituted violations of California investment adviser law by VestCorp, a California registered investment adviser. VestCorp was supervised by the DOC and the SEC.

311. Defendants Latham, Stahr, Cox and Mendoza breached their duty to the

Accountholder Class and the BMF 100 Class to not knowingly or recklessly aid and abet those violations of fiduciary duty by VestCorp, First Pension, and Defendants Cooper, Lindley, Belka and Jensen.

312. Defendants Latham, Stahr, Cox and Mendoza legal advice was in part driven by self-interest in generating more business for their firm, beyond that for which they had been retained. For example, despite knowing its impractability, defendants Latham, Cox, Mendoza and Stahr advised defendant Cooper to organize a holding company for the purpose of holding a bank and related financial corporations which defendants Cooper was to acquire, organize, or reorganize. Defendant Latham, Stahr, Cox and Mendoza used the knowledge they acquired from their position as counsel for Cooper, Lindley, Belka, Jensen, VestCorp and plaintiffs to position themselves to do the legal work associated with the bank acquisition and holding company. Defendants Latham, Stahr, Cox and Mendoza positioned Latham to get this additional work by engaging in the excessive, reckless conduct described herein. The bank was never acquired. Defendant Latham, Cox, Stahr and Mendoza also charged excessive fees in connection with the BMF Mortgage Income Fund. One of the fund's primary purposes was to change the interests of the 2,000 accountholders in 450 individual trust deeds to interests in a pool of those trust deeds. Latham charged several thousands of dollars and took three years to get the process started and fewer than 10 investors made the change over. Defendant Lindley recorded the excessive nature of Latham's fees in this regard. On 12 January 1987 defendant Lindley wrote defendant Mendoza:

Dear Gary:

> I have just recently received a copy of your November 30, 1987 billing to Pension Asset Management. **I have a problem imagining how you could have spent this much time in connection with the mortgage income fund**. Please give us a more detailed breakdown.

313. Again defendant Cooper pointed out the excessive charges by defendant Latham in a 25 May 1988 letter to defendant Stahr:

> As soon as we have completed the analysis, we will forward a copy of it to you, so that we can resolve, the outstanding legal bills. The legal bills are another example of the problems. The bills are general statements of amounts owed, without detail. An example, of this is the March billing for $9,500.00. If Linda's billing rate is $150.00/hour, we were billed for sixty-three hours of time. The only thing that occurred in March was the Form 10-K and the Extension of the Form 10-K; this could not have been more than twenty hours of work. **The bill is totally outrageous**.

314. Defendant Latham extracted a premium above its normal charges for the work its attorneys were performing for defendants Cooper, Lindley, Belka, and Jensen and the plaintiff classes.

315. Further, defendants Latham, Stahr, Cox and Mendoza were motivated to aid and abet the breaches of fiduciary duty in order to escape possible liability for their own involvement in the scheme. These defendants became involved by March 1984. By November 1984 these defendants had provided extensive assistance in the wrongdoing. Defendants Latham, Stahr, Cox, and Mendoza were concerned that their involvement could result in their being named in investor lawsuits, should a run on the system take place.

316. From March 1984 until November 1984 defendant Latham had provided knowing substantial assistance to defendants Cooper, Lindley, Belka, and Jensen, in aiding and abetting the breach of fiduciary duties owed by these defendants and their related entities, including VestCorp. The following occurred during this period:

* By 19 January 1984 defendant Stahr was meeting with defendant Cooper regarding one aspect of the scheme, which involved a series of failed limited partnership offerings sold to accountholders which were known as the Beam partnerships. This bad aspect of the defendant Cooper, Lindley, Jensen, and Belka was not properly disclosed to investors in the documents prepared by defendants Cooper, Cox, Lindley, Mendoza, Jensen and Belka.
* On 9 February 1984 defendants Belka and Jensen were sued for fraud, breach of fiduciary duty and fraud in connection with another trust deed investment adviser company both had been principals. Defendant Stahr met with defendant Cooper two weeks later on 28 February 1984. By 5 March 1984 the defendants were already reviewing drafts of offering circulars, pooling and servicing agreements for a mortgage pool. The BMF 1 unlawful pool had already been created.

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* On 26 March 1984 the SEC requested defendant Jensen for her "voluntary cooperation in appearing to testify" in the Matter of Vest-Corp. of California. They also asked her to bring documents described in 7 separate paragraphs.
* On 30 March 1984 defendant Stahr was directing the preparation of escrow agreements consummating the acquisition by defendants Cooper, Lindley, Jensen and Belka of Citizens National Bank.
* From 8 May 1984 to 30 May 1984 defendants Cox was drafting the offering documents, advised defendants Cooper, Lindley, Belka and Jensen about how to revise the offering.
* In June 1984 defendant Cox drafted documents aimed at concealing defendant Cooper's control of Providence Securities and its affiliated companies.
* On 28 June 1984 the DRE revoked defendant Cooper's license for misappropriating trust funds. Defendant Cox did not include this information in a letter that went to investors discussing the change of the trustee for accountholders. He also did not include the information in the First Pension newsletter that was sent to accountholders.
* In July 1984 defendant Cox drafted a SUMMARY OF ESSENTIAL TERMS OF PROPOSED OFFERING OF UP TO $25,000,000 OF TRUST DEED POOL INVESTMENT CERTIFICATES IN EXCHANGE FOR UP TO $25,000,000 OF TRUST DEED LOANS

* In July 1984 defendant Cox created a calendar of events for the offering by defendants Cooper, Lindley, Belka, and Jensen. The calendar called for the filing with the SEC and DOC on 30 August 1984, for them to be declared effective on 8 October 1984, and for final distribution of the prospectus on 11 October.

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* In July 1984 defendant Cox had prepared an amendment to the investment advisors agreement between VestCorp and the accountholders.
* On 8 August 1984 defendant Cox participated in the drafting of an "All Accountholder" letter.
* On 17 August 1984 defendant Cox drafted a plan for the distributing on paper the ownership of VestCorp, Providence Securities and First Pension which created the appearance but not the reality that defendant Cooper was no longer in control of all three entities.
* On 17 August 1984 defendant Cox prepared a second draft of the proposed offering which was to be filed with the SEC and DOC.
* On 20 August 1984 defendant Cox wrote another letter regarding the ownership distribution of VestCorp, Providence Securities and First Pension so as to conceal defendant Cooper's control over each of the entities.
* By 27 August 1984 defendants Cox, Mendoza and Stahr had prepared a Form S-11 for the Providence Trust Deed Fund, which defendant Cox forwarded to defendant Belka on 27 August 1984.
* On 29 August 1984 defendant Belka met with defendant Latham attorneys to go over final documents. Belka had been requested to provide more information for accountholders for BMF 1. "We really need to write up something on the BMF", Belka was told. "Something that explains (in

more detail) what it is and the built-in safety features because we have had many requests for this but all we've got to send these people is the small blurb on the Investment Preference Summary." Belka responded that he was meeting with Latham attorneys on the final documents, that they would be ready in the near future, and that the prospectus would be sent to all accountholders. Defendant Cox and Mendoza knew there was an urgency in getting the offering launched.

* On 30 August 1984 defendant Latham, Cox, and Mendoza prepared another letter entitled "Ownership of VestCorp, First Pension, and Providence-Holding Company" which again focused on how the defendants might hide defendant Cooper's control of the subject entities. This letter expanded the plan to hide defendant Cooper's control by burying it in a bank holding company.

* In August through September defendants Latham, Cox, Mendoza and Stahr continued to advise defendants Cooper, Belka, Lindley, and Jensen on how they could continue the scheme. During this period defendant Cox, Stahr, Mendoza and Latham continued to draft and redraft the BMF Mortgage Income Fund prospectus (which was also known as VestCorp Trust Deed Fund).

* On 25 September 1984 defendant Mendoza forwarded to the VestCorp Trust Deed Fund Working Group (defendants Belka, Jensen, Cooper, Stahr, and Cox) the latest copy of the fund prospectus requesting

comments to be forwarded to him or defendant Cox.

* On 17 October 1984 defendant Mendoza (with copies to defendants Cooper, Lindley, and Cox) forwarded documents relating to the hidden control by defendant Cooper of the related companies through which the fraud was being perpetrated.

* On 19 October 1984 Latham attorney William R. Nicholas forwarded to defendant Mendoza his comments on the tax section of the fund prospectus.

* On 23 October 1984 defendant Cox forwarded to Richard Holzman of Security Pacific National Bank a copy of the most recent draft agreement between Citizens National Bank and the principals of Newport Pacific Bankcorp (defendants Cooper, Lindley, Jensen and Belka).

* On 26 October 1984 through 29 October 1984 defendants Latham, Mendoza and Cox reported in writing or orally to defendant Coopers & Lybrand that defendant Latham had "not been engaged to give substantive attention to, or to represent the Company in connection with, any matters which, as of June 30, 1984 or October 26, 1984, were material loss contingencies coming within the scope of clause (a) of Paragraph 5 of the ABA Statement of Policy. (This was a false statement in as much as Latham had been engaged in working on legal matters in which there were loss contingencies of several millions of dollars).

* On 5 November 1984 defendants Latham and Mendoza sent by mail to

defendants Belka and Jensen a draft of a promissory note that was to be executed by First Pension Corporation in favor of Pension Asset Management and an agreement that purported to set out the parties intentions with respect to the rearrangement of ownership of Providence Securities, VestCorp, and First Pension. This was a sham transaction and the documents were designed to conceal defendant Cooper's control over all three corporations.

* On 13 November 1984 defendant Cox and Latham forwarded to defendant Belka a revised draft letter to accountholders incorporating the points defendant Cox had discussed with defendant Belka. The draft suggested as facts that which were not true and which the defendants did not believe to be true; asserted as fact that which was not true by one who had no reasonable ground for believing them to be true; suppressed facts by one who was bound to disclose them or who gave information of other facts which were likely to mislead for want of communicating of those facts.

* During the period from January 1984 to 28 November 1984 defendants Latham, Cox, Mendoza and Stahr had: (1) joined with their clients Cooper, Lindley, Belka, Jensen, VestCorp and its affiliated companies in the intentional deceit of plaintiffs and thereby thrusted themselves into a primary and nefarious role in keeping accountholders depositing funds into their accounts and maintaining their accounts with VestCorp and its

affiliated companies; and/or (2) undertaken, on behalf of their clients, defendants Cooper, Belka, Jensen, Lindley, VestCorp and its affiliated companies to assist in securing accountholders to continue to deposit funds into their accounts and to refrain from closing their accounts, for the benefit of VestCorp and its affiliated companies by providing legal opinions, and writings to plaintiffs which fell below the required professional standards or were false and were issued with out a reasonable basis; and/or (3) issued legal opinions and services that involved transactions intended to affect plaintiffs, were the harm to plaintiffs was foreseeable to defendants Latham, Stahr, Cox, and Mendoza, damages to plaintiffs are certain, in which there was a close connection between defendants conduct and plaintiffs injury, defendants conduct was morally blameworthy, and there is a strong policy in favor of preventing future harm; and/or (4) aided and abetted breaches of defendants Cooper, Lindley, Belka, Jensen, VestCorp and related entities fiduciary duties to plaintiffs in which defendants Cox, Mendoza, Latham and Stahr had the personal interests set forth above, including the interest in getting paid for their services which depended on their not being a run on VestCorp; and (5) aided and abetted fraud of defendants Cooper, Lindley, Belka, and Jensen.

317. Defendants Latham, Stahr, Cox and Mendoza were also motivated to conceal the on-going wrong doing to avoid liability for their own possible malpractice.

Defendant Cooper raised the prospect of Latham's malpractice in a 25 May 1988 letter to defendant Stahr:

> ***
>
> As you know, our relationship started based upon personal referral and the reputation of your firm. Our mutual work on the fund and the service provided through the initial period of time, was satisfactory. However, things changed when Chris Cox left the firm, leaving our very crucial project in the hands of people who have proven to be inexperienced. I am actually embarrassed by what has occurred in the last year and a half. It is obvious from the difficulties we have had in getting the fund effective that, Gary Mendoza and Linda Bray have had little or not experience in dealing with regulators and bureaucrats. After carefully reviewing the fund, the items that we were forced to agree to do, such as waiving fees, the thirty percent (30%) affiliated restrictions and the prohibition of my active management in the fund, along with many other agreements, were the result of poor or inadequate legal advice and inexperience.
> Our problem was further compounded when Gary Mendoza left the firm. Our fund was then handled entirely by Linday Bray, who has no understanding of what she is doing. On Monday, February 1, 1988, Linda Bray, Gary Mendoza, Russell Hoffman and I had a conference call to confirm that Latham & Watkins would submit the application for renewal of our permit to the Department of Corporations. During that call, we

explained to Linda and Gary that we were committed to a $50,000.00 advertising campaign for the fund and could not allow our permit to expire, because the campaign went through April 15th, the IRA season.

***

We are currently assessing what appears to be substantial financial damage to the fund and to ourselves, which has occurred because of Latham & Watkins' failures.

318. The concerns about Latham's related personal liability was detailed in a December 1988 Mutual General Release, prepared by defendants Latham, and Stahr, which provided specifically referred to defendants Mendoza and Cox. It provided in part:

> This Mutual General Release (Release) is made and entered into by and among Latham & Watkins ("Law Firm") and BMF Mortgage Income Fund, NPB Loan Service, First Pension Corporation, BMF Management, Inc., Pension Asset Management, Inc., and William E. Cooper (collectively, the Fund Parties).
>
> In consideration of the execution of this Release, the payment of $20,000 in cash by BMF Mortgage Income Fund to Law Firm upon the execution of this Release and the execution by BMF Mortgage Income Fund, BMF Management, Inc., and William E. Cooper of a promissory note in the principal amount of $20,000 in favor of Law Firm in the form attached hereto as Exhibit "A," Law Firm and Fund Parties agree to release their respective claims and potential claims and to abide by the covenant and provisions all as set forth herein.
>
> ***
>
> Each of the Fund Parties hereby releases and forever discharges Law Firm, its predecessors, successors and assigns and its part, present and future partners, associates employees, agents, representatives, attorneys, and all persons acting by, through or under or in concert with Law Firm, or any of them, including but not limited to **John R. Stahr, C. Christopher**

> **Cox**, Boyd J. Black, **Gary S. Mendoza** and Linda R. Bray, of and from any and all manner of equity, suits, debts, liens, contracts, agreements, promises, liabilities, claims, demands, damages, losses, costs, or expenses, of any nature whatsoever, known or unknown, fixed or contingent (collectively, the "Claims"), which the Fund Parties now have or may hereafter have against the persons being released arising out of, based upon, or relating to the legal services provided by Law Firm in connection with BMF Mortgage Income Fund.

319. On 21 December 1988 defendant Cooper wrote defendant Stahr returning the proposed release unexecuted. Defendant Cooper asked that the release be redrafted so as to exclude BMF Mortgage Income Fund. On 15 December 1988 Latham lawyer Linda Bray wrote defendant Stahr a memorandum enclosing a draft of the mutual release and promissory note. She indicated that Joe Wheelock had reviewed the release and that the draft incorporated his changes. She noted the concerns about defendant Latham's concern about personal liability:

/ / /

Enclosed is a draft of a mutual release/promissory note in connection with VestCorp. Joe Wheelock has reviewed the Release and this draft incorporates his changes. One thing you should emphasize in your letter -- their right to get independent counsel to review the documents. That will save us breach of fiduciary duty/fraud problems later should we have to sue on the Note.

320. The Accountholder representative plaintiffs and the Accountholder class and the BMF 100 representative plaintiffs and the Accountholder class read and justifiably relied upon the misrepresentations and omissions contained in or omitted from the writings described above. Alternatively, the Accountholder representative plaintiffs and the Accountholder Class and the BMF 100 representative plaintiffs and the BMF 100 class justifiably relied upon the misrepresentations and omissions, although not made directly to them, because they were made to a third person and defendants Latham, Stahr, Cox, and Mendoza intended or had reason to expect that their terms would be repeated or its substance communicated to the Accountholder representative plaintiffs and the Accountholder class and the BMF 100 representative plaintiffs and that such misrepresentations and omissions would influence the Accountholder Class and the Accountholder representatives and the BMF 100 Class and the BMF 100 representative plaintiffs in the transactions or type of transactions involved, including opening of accounts, closing of accounts, depositing funds into plaintiffs accounts, buying additional securities, and limited partnership interests.

15. Duty to Not Aid & Abet Fraud as to the Accountholder Class and the BMF 100 Class

321. VestCorp, VestCorp Securities, First Pension, and Defendants Cooper, Lindley, Belka, and Jensen owed the Accountholder Class and the BMF 100 Class duties to refrain from: (1) suggesting as facts that which was not true, when they did not believe it to be true; (2) asserting as facts that which was not true, when they had no reasonable ground for believing it to be true; (3) suppressing facts because they were bound to disclose them; (4) suppressing facts having given information of other facts which were likely to mislead for want of communicating of the suppressed fact.

322. VestCorp, VestCorp Securities, First Pension, and Defendants Cooper, Lindley, Belka, and Jensen breached their duty to not engage in deceits of plaintiffs, as detailed in this operative complaint. Defendants Latham, Stahr, Cox and Mendoza knew of such breaches, as detailed in this operative complaint. Those breaches included: (1) suggesting as facts to plaintiffs that which was not true, when they did not believe it to be true; (2) asserting as facts to plaintiffs that which was not true, when they had no reasonable ground for believing it to be true; (3) suppressing facts from plaintiffs when they were bound to disclose them; (4) suppressing facts from plaintiffs having given information of other facts to plaintiffs which were likely to mislead for want of communicating of the suppressed fact.

323. Defendants Latham, Stahr, Cox and Mendoza owed the accountholder class and the BMF 100 class a duty to not knowingly or recklessly aid and abet those violations of fiduciary duty by VestCorp, First Pension, and Defendants Cooper, Lindley, Belka and Jensen.

16. Breach of Duty to Not Aid & Abet Breaches of Fiduciary Duties as to

the Accountholder Class and the BMF 100 Class

324. Defendants Latham, Stahr, Cox and Mendoza knew that VestCorp, VestCorp Securities, First Pension, and Defendants Cooper, Lindley, Belka, and Jensen owed the Accountholder Class and the BMF 100 Class duties to refrain from: (1) suggesting as facts that which was not true, when they did not believe it to be true; (2) asserting as facts that which was not true, when they had no reasonable ground for believing it to be true; (3) suppressing facts because they were bound to disclose them; (4) suppressing facts having given information of other facts which were likely to mislead for want of communicating of the suppressed fact.

325. Defendants Latham, Stahr, Cox and Mendoza knew that VestCorp, VestCorp Securities, First Pension, and Defendants Cooper, Lindley, Belka, and Jensen were breaching their duty to not deceive the Accountholder Class and the BMF 100 Class by: (1) suggesting as facts that which was not true, when they did not believe it to be true; (2) asserting as facts that which was not true, when they had no reasonable ground for believing it to be true; (3) suppressing facts because they were bound to disclose them; (4) suppressing facts having given information of other facts which were likely to mislead for want of communicating of the suppressed fact.

326. With knowledge VestCorp, VestCorp Securities, First Pension, and Defendants Cooper, Lindley, Belka, and Jensen deceit of plaintiffs, as set forth in this operative complaint, defendants Latham, Stahr, Cox and Mendoza engaged in the acts described in this operative complaint to substantially assist in the deceit and those actions did in fact substantially assist deceiving plaintiffs. This substantial assistance

consisted of advising and planning how VestCorp, VestCorp Securities, First Pension, and Defendants Cooper, Lindley, Belka, and Jensen could continue to conceal the deceit from plaintiffs, preparing false documents which were directed at plaintiffs with the intent of deceiving plaintiffs to not close their accounts, to continue to deposit funds into their accounts, and to transfer more funds to defendants Cooper, Lindley, Belka, Jensen and their related entities. The substantial assistance also included defendants Latham, Cox, and Mendoza making representations to government agents who's job it was to protect plaintiffs from fraud. These false statements were made in filings and orally by defendants Latham, Stahr, Cox, and Mendoza.

327. The Accountholder representative plaintiffs and the Accountholder class and the BMF 100 representative plaintiffs and the Accountholder class read and justifiably relied upon the misrepresentations and omissions contained in or omitted from the writings described above. Alternatively, the Accountholder representative plaintiffs and the Accountholder Class and the BMF 100 representative plaintiffs and the BMF 100 class justifiably relied upon the misrepresentations and omissions, although not made directly to them, because they were made to a third person and defendants Latham, Stahr, Cox, and Mendoza intended or had reason to expect that their terms would be repeated or its substance communicated to the Accountholder representative plaintiffs and the Accountholder class and the BMF 100 representative plaintiffs and that such misrepresentations and omissions would influence the Accountholder Class and the Accountholder representatives and the BMF 100 Class and the BMF 100 representative plaintiffs in the transactions or type of transactions

involved, including opening of accounts, closing of accounts, depositing funds into plaintiffs accounts, buying additional securities, and limited partnership interests.

E. DUTIES THE S&H DEFENDANTS OWED TO THE ACCOUNTHOLDER CLASS AND THE BMF 100 CLASS AND BREACHES THEREOF

1. Duty of Attorneys to Their Clients as to the Accountholder Class

328. The S&H Defendants owed the Accountholder Class duties of due care and fiduciary conduct. In and around March 1980, VestCorp, as the authorized representative of the Accountholder Class of VestCorp, retained the S&H Defendants to represent the Accountholder Class in connection with the reorganization of their trust deed holdings into a new public trust deed fund. Although the lead in this undertaking was assumed by Defendants Latham, Stahr, Cox and Mendoza, the S&H Defendants were active participants in the preparation of the documents purportedly drafted to accomplish the objectives of the undertakings.

329. Thus, an attorney client relationship existed between the S&H Defendants and the Accountholder Class. The S&H Defendants owed the Accountholder Class duties of care and conduct in connection with the legal services Defendants Smith & Hilbig were retained to perform for the Accountholder Class by their agent VestCorp. The S&H Defendants undertook to and did work with Defendants Latham, Stahr, Cox and Mendoza in connection with the organization and structuring of a new trust deed fund so the Accountholder Class could transform their existing trust deed holding into a safer and more liquid investment without losing current yield. The S&H Defendants participated in the drafting of material portions of the S-11, the application for qualification, and the prospectus for BMF 100 especially those sections which

misrepresented Defendant Cooper's track record and failed to disclose the denial of his application for reinstatement of an unrestricted license.

2. Breach of Duty of Attorneys To Clients As To The Accountholder Class and The BMF 100 Class

330. The S&H Defendants breached their duties of care and conduct to the Accountholder Class. The breach of duty of care and conduct owed the Accountholder class was directed at keeping the Accountholder Class from closing their First Pension accounts; misleading the Accountholder Class to go along with the switch over from the VestCorp investment system to the VestCorp Securities system; and inducing the Accountholder Class to buy more securities issued by Defendants Cooper, Lindley, Belka, and Jensen's companies and sold by VestCorp Securities including those issued by BMF 100. The breach of duty of care and conduct owed the BMF 100 Class was directed at getting plaintiffs to purchase interests in BMF 100.

331. The S&H Defendants failed to exercise their knowledge, skill, and diligence in connection with the legal services they rendered in connection with the Accountholder Class by:

- Despite having participated in the drafting of the 1983 First Pension/VestCorp Newsletters and communications sent to the Accountholder Class which clearly spelled out that the Accountholder Class trust deeds had already been pooled, and providing legal services that assumed that the merger had not taken place;
- Not advising and implementing an offer to repurchase under California Corporations Code Section 25507(b), California Code of Regulations

260.507, and California Corporations Commission Release No. 36-C in connection with Defendants Cooper, Belka, Jensen, and Lindley's (1) sale of trust deed loans to the Accountholder Class in violation of California securities law prohibiting material omissions and misstatements of facts in connection with the sale of securities; (2) the pooling of trust deed loans without qualification with the DOC;

- Advising and implementing the plan to create a new trust deed fund (BMF 100, aka VestCorp Trust Deed Fund) in which the Accountholder Class were to exchange their individual trust deed loans for interests in the new pool, when the Accountholder Class no longer held individual trust deed loans because they had already been merged into the Bank Mortgage Fund No. 1;
- Helping to structure the new pool so that only one third of the trust deed loans sold to the Accountholder Class were eligible to be included when they were told repeatedly in newsletters and other communications that the fund was being registered and qualified for their benefit;
- Failing to secure an independent appraiser to value the trust deeds listed on Schedule A of the BMF Mortgage Income Fund registration, qualification and offering documents which were supposedly eligible to be exchanged for interests in the new fund;
- Participating in the design and implementation of the reorganization of the existing pension and investment system into a new system in which the

Accountholder Class were to lose their rights under the existing agreement with VestCorp; were to make their own investment decisions; and were to have their private financial information provided to broker dealer VestCorp Securities, which was controlled by Defendant Cooper, in order to help VestCorp Securities sell securities to the Accountholder Class;

- Failing to research or ignoring California fiduciary law relating to prohibited transactions, self-dealing, duties to disclose, duties to avoid conflicts of interests that would pertain to VestCorp, First Pension, and Defendants Cooper, Lindley, Belka, and Jensen's obligations to the Accountholder Class;
- Participating in the drafting of a disclosure document sent to the Accountholder Class that: erroneously advised the Accountholder Class about the distinctions between the existing and new pension and investment system; failed to explain adequately what responsibilities formerly carried out by VestCorp would be carried out by a broker dealer, VestCorp Securities; failed to inform the Accountholder Class that their consent to the changes was required, including the change of the Accountholder Class from investment adviser clients of VestCorp to customers of VestCorp Securities; failed to explain the legal significance and impact on the Accountholder Class of changing the Accountholder Class accounts being changed to self-directed; failed to explain

adequately that what was proposed to happen to VestCorp in changing its name to Pension Asset Management (PAM), and the role PAM would play as an investment adviser and the impact on the Accountholder Class; failed to inform the Accountholder Class of the risks and rights of the Accountholder Class in connection with VestCorp Securities contacting them for specific investment instruction; failed to explain the risks of First Pension accurately reporting to the Accountholder Class about the results of their investments; failed to explain adequately and why under the new system the Accountholder Class would have the opportunity to direct their own accounts through the services of VestCorp Securities; failed to explain adequately the impact and why VestCorp would no longer be needed to act as the Accountholder Class' investment advisor; assured the Accountholder Class that even though VestCorp was resigning, they would continue to receive the same or even more of the services they had come to expect from VestCorp; without advising the Accountholder Class to seek independent investment advice and without informing the Accountholder Class of the potential for undue influence, encouraged the Accountholder Class to contact their account representative to answer any questions about their accounts;

! Failing to create a system which removed Defendant Cooper's control of the BMF Mortgage Income Fund while representing in the BMF Mortgage Income Fund that Defendant Cooper would not be exerting such control;

- Drafting the BMF Mortgage Income Fund registration, qualification filings and related prospectus without disclosing material facts relating to defendants on-going unlawful scheme because the S&H Defendants failed to investigate the facts or ignored them;
- Failing to adequately research or ignoring the Investment Advisers Act provisions relating to prohibited transactions;
- Failing to adequately research or ignoring the prohibited transactions of federal pension law; and
- Failing to research or ignoring federal tax laws relating to prohibited transaction.

332. The foregoing are a sample of the S&H Defendants' breaches of the duty of care owed to the Accountholder Class. Those breaches fundamentally consisted of providing legal services below the applicable standard in connection with the undertakings described in detail in the application Duty Section of this Complaint.

333. The S&H Defendants breached their duty of care owed to the Accountholder Class by failing to warn the Accountholder Class about the risks of on-going prohibited transactions, self-dealing, overvaluation of trust deeds and related wrongful conduct by Defendants Cooper, Belka, Jensen and Lindley. The S&H Defendants appreciated both the risk of Defendants Cooper, Belka, Jensen and Lindley's unlawful conduct to the Accountholder Class and the BMF 100 Class. Despite such knowledge, the S&H Defendants continued to perform the legal services described in this operative complaint which negligently created the opportunity for such

harm to the Accountholder Class and the BMF 100 Class to occur. Under the circumstances, the Accountholder Class and the BMF 100 Class' injury and the manner of its occurrence was clearly foreseeable to a reasonable person making an inventory of the possibilities of harm which the conduct might produce.

334. The S&H Defendants' breaches also consisted of failing to inform the Accountholder Class of the existence of the conflicts of interest and obtaining the Accountholder Class' knowing consent to the S&H Defendants continuing on as counsel. While representing the Accountholder Class, the S&H Defendants also represented Defendant VestCorp, First Pension, and Defendants Cooper, Belka, Lindley and Jensen. Included in these latter representations were undertakings to represent Defendant Cooper in the proceedings before the DRE in which Defendant Cooper's real estate license was revoked. Also included in these undertakings was the S&H Defendant's representation of Defendants Cooper, Belka, Lindley and Jensen before the SEC.

335. There was a conflict of interest in connection with the SEC investigation of First Pension and VestCorp. It was in the Accountholder Class' interests to know of the SEC investigation and it was Defendant Cooper, Lindley, Belka, and Jensen's interests to keep the Accountholder Class from finding out about the SEC investigation. On the other hand, it was in Defendants Cooper, Belka, Jensen & Jensen's interest to keep the Accountholder Class from finding out that Defendant Cooper's real estate license had been revoked by the DRE for misappropriating funds under the control of L.B. Mortgage Servicing, the trust deed servicing company that was servicing the Accountholder

Class' trust deeds. On the other hand, it was in the Accountholder Class' interests to be informed of the loss of Defendant Cooper's real estate license.

336. In these circumstances, the S&H Defendants owed the Accountholder Class a duty of full disclosure concerning such conflicts of interests. Under these circumstances the S&H Defendants had a duty to disclose all facts and circumstances which, in the judgment of a lawyer of ordinary skill and capacity are necessary to enable the client to make free and intelligent decisions regarding the S&H Defendants retention. The S&H Defendants breached the duty of conduct by failing to fully inform the Accountholder Class of the underlying facts and failing to obtain the Accountholder Class' full and informed consent to the joint representation.

337. The S&H Defendants also breached their duty of care and conduct specifically in connection with work they performed in connection with the First Pension/VestCorp 1983 Newsletters regarding BMF 1. Those newsletters advised the Accountholder Class that their trust deeds had been merged into BMF 1 as of September 1983 and that to accommodate that merger and a further merger of trust deeds, the S&H Defendants, among other attorneys, had been retained. The advice that BMF 1 could be registered or qualified with the SEC and DOC fell below the standard of care and the standard of conduct. Since BMF 1 had already been merged the whole basis of the proposed merger, that accountholders could exchange their trust deeds for interests in the new public fund, was erroneous since they did not hold such interests anymore. Also, the DOC and the SEC were more likely to begin an enforcement action or require an offer to repurchase since the merger had been in

violation of federal and state securities laws which required such mergers to be approved or reviewed by the SEC and DOC before they were consummated.

338. The S&H Defendants also engaged in violations of their duties of conduct and care in regards to the preparation and dissemination of the 1983 VestCorp investment adviser report to the Accountholder Class when they misrepresented material facts and used misleading statements.

3. Duty of Attorney to Those to Whom He Renders Legal Services to Secure Benefit for Client Imposed By Public Policy as to the Accountholder Class and the BMF 100 Class

339. The S&H Defendants participated in the issuance of a legal opinion and communications to the Accountholder Class and the BMF 100 Class for the purpose of securing a benefit, monetary and otherwise, from Defendants Cooper, Belka, Jensen, Lindley, VestCorp and First Pension. These communications included the 28 November 1984 Reorganization Letter and the BMF 100 Prospectus. With these communications, the S&H Defendants attempted to or expected to influence the Accountholder Class and the BMF 100 Class on behalf of their clients Defendants Cooper, Belka, Jensen, Lindley, VestCorp and First Pension. The S&H Defendants owed the Accountholder Class and the BMF 100 Class a duty of care in providing the advice and communications because their anticipated reliance upon it was the end and aim of the transaction. The S&H Defendants owed the Accountholder Class and the BMF 100 Class a duty to prepare these documents and render the related legal advise and services with due care.

340. The S&H Defendants participated in a series of documents directed at the

Accountholder Class and the BMF 100 Class that were designed to confer a benefit on the Accountholder Class and the BMF 100 Class. Amongst the documents so issued were the November 28, 1984, accountholder letter that transformed the Accountholder Class relationship with VestCorp and created a new relationship with VestCorp Securities; newsletters that were issued to all the Accountholder Class that assured the Accountholder Class and the BMF 100 Class that BMF 1 was getting registered with the SEC and DOC. The S&H Defendants owed the Accountholder Class and the BMF 100 Class a duty to prepare these documents and render the related legal advice and services with due care.

4. Breach of Duty of Attorney to Those to Whom He Renders Legal Services to Secure Benefit for Client Imposed by Public Policy as to the Accountholder Class and the BMF 100 Class

341. The S&H Defendants issued a legal opinion and communications to the Accountholder Class and the BMF 100 Class for the purpose of securing a benefit, monetary and otherwise, to Defendants Cooper, Belka, Jensen, Lindley, VestCorp and First Pension. Through these communications, the S&H Defendants breached their duties when they attempted or expected to influence the Accountholder Class and the BMF 100 Class on behalf of their clients Defendants Cooper, Belka, Jensen, Lindley, VestCorp and First Pension. The S&H Defendants owed the Accountholder Class and the BMF 100 Class a duty of care in providing the advice and communications because their anticipated reliance upon it, was the end and aim of the transaction.

342. The S&H Defendants participated in the preparation of the S&H Concealment Writings that were designed to confer a benefit on the S&H Defendants

clients', VestCorp, First Pension, and Defendants Cooper, Lindley, Belka, and Jensen.

343. The benefit S&H Defendants were attempting to gain from the Accountholder Class and the BMF 100 Class was a decision to refrain from closing their accounts, an acceptance of the switch over from the VestCorp investment system to VestCorp Securities investment system, the purchase of additional securities from Defendant Cooper, Lindley, Belka, and Jensen's companies, including BMF 100 interests.

5. Duty of Attorney to Persons Who Were to Benefit By Attorneys Legal Services Imposed By Public Policy as to the Accountholder Class and the BMF 100 Class

344. The S&H Defendants owed the Accountholder Class and the BMF 100 Class a duty of care because the transaction in which the S&H Defendants performed legal services were intended to affect the Accountholder Class and the BMF 100 Class' rights, the harm to the Accountholder Class and the BMF 100 Class was foreseeable, the Accountholder Class and the BMF 100 Class suffered certain damages, there was a close connection between the S&H Defendants legal services and the Accountholder Class and the BMF 100 Class' injuries, there is a strong policy of avoiding such future harm, and recognition of liability under the circumstances would not impose an undue burden on the legal profession.

345. The S&H Defendants participated in a series of documents directed at the Accountholder Class and the BMF 100 Class that were designed to confer a benefit on the Accountholder Class and the BMF 100 Class. Amongst the documents so issued were the November 28, 1984, accountholder letter that transformed the Accountholder

Class relationship with VestCorp and created a new relationship with VestCorp Securities; newsletters that were issued to all the Accountholder Class that assured them that BMF 1 was getting registered with the SEC and DOC. The S&H Defendants owed the Accountholder Class and the BMF 100 Class a duty to prepare these documents and render the related legal advise and services with due care.

6. Breach of Duty of Attorney to Persons Who Were to Benefit By Attorneys Legal Services Imposed By Public Policy as to the Accountholder Class and the BMF 100 Class

346. The S&H Defendants issued legal opinion and communications to the Accountholder Class and the BMF 100 Class for the purpose of securing a benefit, monetary and otherwise, to Defendants Cooper, Belka, Jensen, Lindley, VestCorp and First Pension. Through these communications, the S&H Defendants breached their duties when they attempted or expected to influence the Accountholder Class and the BMF 100 Class on behalf of their clients Defendants Cooper, Belka, Jensen, Lindley, VestCorp and First Pension. The S&H Defendants owed the Accountholder Class and the BMF 100 Class a duty of care in providing the advice and communications because the Accountholder Class and the BMF 100 Class anticipated reliance upon it was the end and aim of the transaction.

347. The S&H Defendants participated in the preparation of the Smith & Hilbig Accountholder Duty of Care Writings that were designed to confer a benefit on the S&H Defendants' clients, VestCorp, First Pension, and Defendants Cooper, Lindley, Belka, and Jensen.

348. The benefit the S&H Defendants were attempting to gain from the

Accountholder Class and the BMF 100 Class was a decision to refrain from closing their accounts, an acceptance of the switch over from the VestCorp investment system to VestCorp Securities investment system, the purchase of additional securities from Defendant Cooper, Lindley, Belka, and Jensen's companies, including BMF 100 interests.

7. Duty to Not Actively Conceal Material Facts as to the Accountholder Class and the BMF 100 Class

349. The S&H Defendants had a duty to refrain from actively concealing information from the Accountholder Class and the BMF 100 Class, which the S&H Defendants knew was beyond their reach.

350. The S&H Defendants owed the Accountholder Class and BMF 100 Class a duty to refrain from actively concealing (1) prohibited transactions by VestCorp, First Pension, or Defendants Cooper, Lindley, Belka, and Jensen relating to the Accountholder Class' VestCorp accounts; (2) common ownership and control of Defendant Cooper of First Pension and VestCorp; (3) Defendant Cooper's interest in and control of the transactions in which trust deed loans were sold by Defendant Cooper's company, Continental, to the Accountholder Class' pensions; (4) the fact that the trust deeds sold to the Accountholder Class by Continental were materially overvalued; (5) the DRE's revocation of Defendant Cooper's real estate license for misapplication of funds entrusted to him at L.B. Mortgage Servicing; (6) that there was a substantial risk that the merging of trust deed loans into BMF 1 violated state and federal qualification and registration requirements; (7) that at least two thirds of the trust deed loan portfolio in the accounts were not to be included in the BMF 100 offering; (8)

the need for an independent appraisal of the trust deed portfolio exchangeable for interests in BMF 100; (9) that Defendants Latham and Mendoza had performed the valuation of the trust deed loans listed as exchangeable in the BMF 100 prospectus; (10) the relationship between BMF 100 and BMF 1 as specified in the letter written by accountholder Lucille Reynolds; and (11) as otherwise alleged in this operative complaint.

351. The S&H Defendants' duty to not conceal the foregoing facts from the Accountholder Class extended to the following documents and activities, amongst others: drafting documents for dissemination to the Accountholder Class which provided legal advice; concealing past and on-going transactions prohibited under state and federal investment advisory and securities laws, federal pension and tax laws, state laws, and which purported to terminate duties owed to and rights of the Accountholder Class against their investment manager, VestCorp.

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8. Breach of Duty to Not Actively Conceal Material Facts as to the Accountholder Class and the BMF 100 Class

352. The S&H Defendants breached their duty to refrain from actively concealing material facts from the Accountholder and BMF 100 Classes, which material facts the S&H Defendants knew was beyond the reach of these class members.

353. The S&H Defendants through Defendant Smith learned material facts which should have been disclosed to the Accountholder Class and the BMF 100 Class. The S&H Defendants reviewed the underlying documents relating to Defendant Cooper, Lindley, Jensen, and Belka's business activities at VestCorp, First Pension, Continental, L.B. Mortgage Servicing over a several month period beginning by at least 1983. The S&H Defendants developed a detailed understanding of the on-going violations of law in which Defendants Cooper, Lindley, Belka and Jensen were engaged. This knowledge came from, among other sources, information the S&H Defendants learned in connection with representing Defendant Cooper in the DRE proceeding in 1983 to 1984 in which Defendant Cooper's real estate license was revoked. The S&H Defendants also learned that Defendants Cooper, Lindley, Belka, and Jensen's activities at First Pension and VestCorp were the subject of an investigation after the SEC had determined that SEC laws had been and were being violated.

354. Related to its factual review, the S&H Defendants developed, or should have had, concerns that Defendants Cooper, Lindley, Jensen, and Belka were violating federal and state investment adviser laws, federal pension law, and state fiduciary law. The S&H Defendant's research confirmed, or should have confirmed, these concerns.

355. From their factual review, the S&H Defendants learned or consciously avoided learning that Defendant Cooper controlled Continental, VestCorp, VestCorp Securities, and First Pension and that while those corporations were under his control they had engaged in a series of transactions in which Continental sold trust deed loans to VestCorp's clients. The S&H Defendants learned that such trust deed loan sales were not made at arms length under bona fide market conditions. The S&H Defendants learned or consciously avoided learning that Defendant Cooper's real estate license was revoked by the DRE because of his misappropriation of trust funds entrusted to him at L.B. Mortgage Servicing. The S&H Defendants also learned or consciously avoided learning that the value of the trust deed loan portfolio held by the Accountholder Class was substantially below the price it had been sold at. The S&H Defendants learned or consciously avoided learning that the accountholder trust deeds had been merged into a single pool in violation of federal and state securities laws. The S&H Defendants also learned that accountholders were being told in First Pension/VestCorp newsletters that Smith & Hilbig, amongst other attorneys, had been retained to get BMF 1 registered and qualified with federal and state securities authorities.

356. The facts unknown to the Accountholder Class and the BMF 100 Class which the S&H Defendants actively concealed were, in summary, that: Defendant Cooper had controlled both the buyer and seller of the trust deeds sold to accountholders; those sales had been made in non-arms length, non-market transactions; the trust deeds had values materially less than had been charged to the

accounts for the trust deeds; VestCorp was under investigation by the SEC; the DRE had revoked Defendant Cooper's real estate license for misappropriating funds entrusted to L.B. Mortgage Servicing; Defendants Cooper, Lindley, Belka, & Jensen were engaging in on-going violations of federal and state law; and the other facts alleged above which were known to the S&H Defendants.

357. In addition, the S&H Defendants actively concealed material facts from the Accountholder Class and the BMF 100 Class by omitting such information from documents prepared by the S&H Defendants to avoid the information reaching the Accountholder Class and the BMF 100 Class. The S&H Defendants actively concealed Defendant Cooper's common ownership and control of the companies having fiduciary and other duties to the Accountholder Class and the BMF 100 Class by rearranging on paper the ownership of the companies through which defendants were operating their unlawful scheme to make it appear that Defendant Cooper was not in control. The S&H Defendants also advised, planned, and implemented several rearrangements of ownerships of VestCorp, VestCorp Securities, and First Pension to conceal Defendant Cooper's common ownership and control. The S&H Defendants also advised, planned and implemented a change of the investment system from the VestCorp Investment System to the VestCorp Securities System to make it appear that past violations of federal and state law by Defendants Cooper, Lindley, Belka and Jensen had ceased.

358. The S&H Defendants presented documents for government regulators which contained false and misleading statements to keep them from discovering the on-going violations of law by Defendants Cooper, Belka, Jensen and Lindley, and by

preparing a false valuation of the trust deed portfolio included on Schedule A of the BMF 100 offering circular.

359. Amongst the writings the S&H Defendants prepared or participated in the preparation of, and the activities undertaken by the S&H Defendants to actively conceal the facts of defendants unlawful conduct from the Accountholder Class and the BMF 100 Class were as follows:

- 28 November 1984 Accountholder Reorganization Letter which omitted to disclose the reason for the switch over from VestCorp to VestCorp Securities was to conceal Defendant Cooper's continued control of the transactions which constituted prohibited or unlawful transactions;
- 4 December 1984 VestCorp Trust Deed Fund S-11, and Application for Qualification which concealed the full trust deed portfolio, and falsely valued the trust deeds listed on Schedule A of the S-11 and Application for Qualification;
- January 1985 IRA/Keogh VestCorp Investment System Brochure;
- 8 February 1985 PAM letter Re: VestCorp Investment System;

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- 1 March 1985 ownership documents prepared by Defendant Latham and presented by the S&H Defendants referred to in Defendant Belka's 1 March 1985 SEC testimony. (Belka 1 March 1985 Transcript 14: 6-9; 15:5-10; 15:23-25; 28:14-18);
- 1 March 1985 misleading statements of Defendant Belka that VestCorp had notified its accountholders that VestCorp had resigned as the trustee, making the Accountholder Class investments and the investment system a self-directed system in which each accountholder was "solely on his own." And further that VestCorp Securities function was to be a "discount broker dealer." (Belka SEC Transcript 32:22-25, 33:1-10 38:2-5; 41:19-20);
- 1 March 1985 misleading statement investment manager representations through Defendant Belka claiming that (1) a letter of resignation had been sent in the "last part of August or first part of November 1984"; (2) VestCorp Securities was a "discount broker dealer"; (3) "each individual client is solely on his own."; (4) (Belka SEC 1 March 1985 Transcript 31:23-25, 32:1-2; 38:2-5);
- April 1985 First Pension Newsletter;
- July 1985 First Pension Newsletter; and
- April 1987 BMF 100 Prospectus.

(hereinafter collectively referred to S&H Concealment Writings).

360. The S&H Defendants prepared other documents and engaged in other

acts in furtherance of its active concealment of material facts from the Accountholder Class and the BMF 100 Class in violation of its duty to not actively conceal material facts.

361. In preparing these writings and in carrying out these activities the S&H Defendants breached their duties to the accountholder and BMF 100 classes because the writings and activities concealed the following (1) prohibited transactions by VestCorp, First Pension, or Defendants Cooper, Lindley, Belka, and Jensen relating to VestCorp accounts; (2) common ownership and control of Defendant Cooper of First Pension and VestCorp; (3) Defendant Cooper's interest in and control of the transactions in which trust deed loans were sold by Defendant Cooper's company, Continental, to the Accountholder Class' pensions; (4) the fact that the trust deeds sold to the Accountholder Trust by Continental were materially overvalued; (5) the DRE's revocation of Defendant Cooper's real estate license for misapplication of funds entrusted to him at L.B. Mortgage Servicing; (6) that there was a substantial risk that the merging of the trust deed loans into BMF 1 violated state and federal qualification and registration requirements; (7) that at least two thirds of the trust deed loan portfolio in the accounts were not to be included in the BMF 100 offering; (8) the need for an independent appraisal of the trust deed portfolio exchangeable for interests in BMF 100; and (9) as otherwise alleged in this operative complaint.

9. Duty to Not Knowingly or Recklessly Misrepresent Material Facts as to the Accountholder Class and the BMF 100 Class

362. The S&H Defendants owed the Accountholder Class and the BMF 100 Class a duty to refrain from false or misleading representations of facts made knowingly

or recklessly. This duty extended to documents prepared by the S&H Defendants for dissemination to the Accountholder Class and the BMF 100 Class and which the S&H Defendants knew were directed to the Accountholder Class and the BMF 100 Class.

363. Under these premises the S&H Defendants had a duty to accurately state the facts and to speak the whole truth and to not conceal any fact which materially qualified those stated.

364. The S&H Defendants' duty to refrain from making knowing or reckless false or misleading statements extended to the BMF 100 prospectus and any other communication the S&H Defendants participated in preparing which they knew would be communicated to the BMF 100 Class.

10. Breach of Duty to Not Knowingly or Recklessly Misrepresent Material Facts as to the Accountholder Class and the BMF 100 Class

365. The S&H Defendants owed the Accountholder Class and the BMF 100 Class a duty to refrain from false or misleading representations of facts made knowingly or recklessly. This duty extended to documents and advice the S&H Defendants prepared and provided which the S&H Defendants knew were directed to the Accountholder Class and the BMF 100 Class. Under these premises, the S&H Defendants had a duty to accurately state the facts and to speak the whole truth and not conceal any fact which materially qualified those stated.

366. The S&H Defendants' duty to refrain from making knowing or reckless false or misleading statements extended, as to the Accountholder Class, to the S&H Accountholder Concealment Writings which the S&H Defendants prepared and advised in the preparation of and which the S&H Defendants knew would be sent to,

received and relied upon by the members of the Accountholder Class.

367. As to the BMF 100 Class, the S&H Defendants prepared and advised in the preparation of the BMF 100 prospectus and other BMF 100 related documents, knowing said documents would be sent to, received and relied upon by the members of the BMF 100 Class and thus had a duty to ensure that there were no omissions or misrepresentations of material facts contained therein.

368. The S&H Defendants breached their duty to not knowingly or recklessly make material misrepresentations or misleading statements. The misleading statements and misrepresentations were intended to induce the Accountholder Class and the BMF 100 Class to rely on them in order to get the Accountholder Class and the BMF 100 Class to refrain from closing their First Pension account, go along with the switch over from VestCorp to VestCorp Securities, and purchase limited partnership interests in BMF 100.

369. In the 28 November 1984 letter to Accountholders, the S&H Defendants suggested and/or asserted the following material facts which were not true and were otherwise misleading in light of facts not stated. The S&H Defendants knew to be untrue, misleading or had no reasonable basis for believing the following facts:

- "In order that we at Vest-Corp of California might also provide to you and our other accountholders the benefits of a "financial supermarket" format, we too have made and are in the process of making a number of organizational changes in our system which we believe will be of ever increasing benefit to you as an accountholder." (This assertion of fact was

false and either the S&H Defendants did not believe it to be true or had no reasonable ground for believing it to be true or which required additional facts to not make it misleading. The reorganization was prompted for Defendants Cooper, Lindley, Belka, and Jensen's benefit to escape responsibility for past and on-going violations of law);

- "VestCorp ... would thereafter select investments for you and make regular reports to you on your account." (This assertion of fact was false and the S&H Defendants did not believe it was true, did not have a reasonable ground for believing it to be true, or knew additional facts were needed to make it not misleading. The fact was false because the investments were not selected primarily by VestCorp but rather by Defendant Cooper as described above);
- "VestCorp would .... make regular reports to you on your account." (This assertion of fact was false in that additional facts were needed to make it not misleading. The "reports" to the Accountholder Class did not report that the trust deed values were materially less than the amounts charged to purchase them. The S&H Defendants knew of this discrepancy or consciously avoided knowing it to be false, as set forth above);
- "The purpose of this letter is to explain briefly the efforts we have made and will be making in the near future to improve our services to you." (This assertion of fact was false and either the S&H Defendants did not believe it to be true or had no reasonable ground for believing it to be true

or which required additional facts to not make it misleading. The change was not to improve the service to the Accountholder Class, but to make it more difficult for the them to find out about past and on-going violations of law by Defendants Cooper, Lindley, Belka, and Jensen);

- Under our new system, many of the responsibilities formerly carried out by Vest-Corp of California will be carried out by VestCorp Securities. (This assertion of fact was misleading because on paper the investment management function performed by the VestCorp companies was being terminated and VestCorp Securities was only a discount broker with no investment advisory or management duties to the Accountholder Class. This is what the SEC was told in the proceeding in which the S&H Defendants were co-counsel);
- When you make a deposit into your account, the funds will be deposited with International Central Bank and Trust (ICBT) pending their application to the specific investment(s) of your choice. (This assertion of fact was false because ICBT had not agreed to perform this function and in fact terminated its relationship with First Pension when it discovered such representations were being made without its authority. The S&H Defendants knew this assertion of fact was false or consciously avoided learning it was false); and
- Because under our new system you have the opportunity to direct your own account (through the services of Vest-Corp Securities), Vest-Corp of

California will no longer be needed to act as you account investment adviser. Therefore, as a part of our new program, Vest-Corp of California will resign as your investment adviser effective December 31, 1984. Even though Vest-Corp of California will be resigning, you will continue to receive the same fine service that you have come to expect from Vest-Corp of California, and more, from its affiliate, Vest-Corp Securities. (These assertions of fact were both false and misleading. Vest-Corp was not resigning because it was not needed, but rather to avoid the appearance of on-going violations of law. The defendants were representing to the SEC that the Accountholder Class were on their own and that Vest-Corp Securities was only a discount broker. Yet this statement suggests that the VestCorp companies and affiliates are going to continue to provide investment advisory and other services to the Accountholder Class, even more. The S&H Defendants knew these statements were false or consciously avoided knowing of their falsity).

370. In the Sales Brochure "VestCorp Investment System" provided to accountholders beginning in 1985, the S&H Defendants suggested and/or asserted the following material facts which were not true and otherwise misleading in light of facts not stated. The misrepresentations and half-truths already discussed that are repeated in sum and substance in the Sales Brochure are not repeated. The S&H Defendants knew the assertions of fact were untrue or consciously avoided learning of their falsity with regard to the following representations:

- The VestCorp Investment System (VCIS) is a network of specialized independent companies working together to provide complete investment and administrative services for IRA/Keogh, Corporate Plans and individual investors (This was false because the companies comprising VCIS were either not independent (VestCorp Securities, First Pension were owned and controlled by Defendant Cooper) or were not working together, ICBT had not given its permission to be included and when it learned that it was being represented otherwise by Defendants Cooper, Lindley, Belka, and Jensen ICBT terminated its relationship with First Pension);
- First Pension Corporation's personnel bring 25 years of pension experience in the VCIS program (this assertion of fact was misleading because not disclosed, was the very poor track record of the VCIS personnel which resulted in substantial losses to investors doing business with the VCIS personnel);
- First Pension specializes in pension plan administration and trust accounting services. As such it administers a variety of IRS approved programs including IRA, Keogh, and Corporate retirement plans. First Pension provides all the "back office" reporting and disclosure documentation and services in compliance with Federal and State laws for individual plans, banks, savings & loans, broker/dealer, limited partnerships and other institutions. (This assertion of fact was misleading

in that First Pension's bad track record and control by Defendant Cooper were not disclosed and were needed to make the statement not misleading. It was also misleading or false because it did not disclose that First Pension and its control persons, Defendants Cooper, Belka, and Jensen had a history of regulatory transgressions);

! First Pension ... is subject to regulation by the Employees Plans and Exempt Organization (EP/EO) of the IRS, Pension Welfare Benefit Plans Division (PW/BP) of the Department of Labor and State of California Department of Corporations. As required by the Employee Retirement Income Security Act of 1974, it carries a blanket Fidelity Bond. (This assertion of fact was false or misleading for a number of reasons. First not disclosed were the numerous violations of state and federal laws mentioned in the assertion of fact by First Pension. Second, the fidelity bond did not provide any particular relief for the Accountholder Class and the BMF 100 Class who were investing millions of dollars as the fidelity bond was not large enough to come close to covering the losses);

! The Sales Brochure also contains numerous other references to the work performed by First Pension and its affiliates and the kind of securities offered. Each of these additional statements of fact were false and misleading for the reasons stated above;

371. In the April 1985 First Pension Newsletter to Accountholders, the S&H Defendants suggested and/or asserted the following material facts which were not true

or otherwise misleading in light of facts not stated. The S&H Defendants either knew these facts were untrue or misleading or had no reasonable basis for believing the facts to be true, specifically:

- "Most of you are no doubt aware that the mortgage fund is pending registration as a public offering";
- "Until such time as the registration is complete, VestCorp Securities cannot accept investments into that product [BMF 1];
- "PAM informs us that they have been working with several law firms in qualifying their products with federal and state agencies";
- "Must (sic) of the legal issues were approved last year (1984) and all indications were that PAM would have its three major funds ready in January 1985";
- "They indicate to us that they hope to work out the remaining issues within the next few months";
- "The Bank Mortgage Fund [Accountholder investments] on the other hand has maintained a consistent 14 - 14.5% rate of return for several years;
- "However, because of the decline in rates at which trust deeds can be written, the mortgage fund will ultimately be affected to a slight degree"; and
- "It is anticipated that the fund may fluctuate during the remainder of 1985 between 13.5-14%."

372. In the July 1985 First Pension Newsletter to Accountholders, the S&H

Defendants suggested and/or asserted the following material facts which were not true or otherwise misleading in light of facts not stated. The S&H Defendants either knew these facts were untrue or misleading or had no reasonable basis for believing the following facts to be true:

- BANK MORTGAGE FUND - As was expected, the Bank Mortgage Fund has experienced a slight reduction in the rate of return. Many variables come into play when calculating the rate of return, but the primary reason for the decline is due to a steady lowering of interest rates within the industry as a whole. However, the fund should still maintain an average annual yield of between 13.0% and 13.5%. Still very competitive with other income producing investments in the marketplace;
- "You will be pleased to know (we know we are) that Pension Asset Management has informed us that their attorneys, who are working on the qualification of the fund, have indicated that the registration process should be completed within 6 weeks";
- "At VestCorp Securities, you are able to control and direct your money to where it will work most effectively toward your retirement";
- "Your VestCorp Securities representative reviews your investments at least quarterly to compare its performance with alternative investments";
- "To summarize, as a client of VestCorp Securities you enjoy
    - (1) investment flexibility,
    - (2) self direction,

(3) counsel to help you make informed investment choices,

(4) quarterly review of your portfolio performance,

(5) discount brokerage commissions."

373. In the November 1985 First Pension Newsletter to Accountholders, the S&H Defendants suggested and/or asserted the following material facts which were not true or otherwise misleading in light of facts not stated. The S&H Defendants participated in the drafting of this document to the accountholder class and at that time they knew the following facts were untrue or misleading or had no reasonable basis for believing the following facts to be true, specifically:

! "BANK MORTGAGE FUND - BMF - Pension Assets Management's attorneys are putting the final touches to the prospectus and have indicated the that the offering should be available around mid to late November. We will keep you informed of its progress."

374. In the First Pension Newsletters dated October 1986, 4th Quarter 1986; February 1987, January 1988, provided tax advice to members of the Accountholder Class. In so doing, the S&H Defendants suggested and/or asserted the following material facts which were not true or otherwise misleading in light of facts not stated. At multiple times through 1986, 1987 and early 1988, the S&H Defendants drafted information to be included in the newsletters to the members of the Accountholder Class and at the time they drafted these materials, these defendants knew that the following facts were untrue or misleading or had no reasonable basis for believing the stated facts to be true.

375. In each of the communications discussed in the preceding paragraphs, and in all other dealings with Members of the Accountholder Class, the S&H Defendants suppressed the following material facts while they were under a duty to the members of the Accountholder Class to disclose those facts and/or while providing other facts which made them misleading:

- The desire of Defendants Cooper, Belka, Lindley and Jensen to avoid a run on the system;
- The reason for the creation of VestCorp Securities;
- The reason for the change of name from VestCorp of California to Pension Asset Management;
- The reason that VestCorp of California was resigning as the Investment Advisor for the Accountholder Class;
- The desire of Defendants Cooper, Belka, Lindley and Jensen to avoid making the appropriate fiduciary disclosures;
- The intent to withhold information from the Accountholder Class concerning past and present breaches of fiduciary duties;
- The Accountholder Class' right to rescind their investment contract with Defendants Cooper, Belka, Lindley and Jensen in light of the unilateral restructuring of the investments and fiduciary responsibilities;
- The similarities in the operations of Merrill Lynch and Sears as compared with Defendants Cooper, Belka, Lindley and Jensen;
- The benefits that the restructuring would provide to the Accountholder

Class;

- The existence of an SEC examination into the Receivership Entities and Defendants Cooper, Belka, Lindley and Jensen;
- The prohibited transactions engaged in by the Receivership Entities and Defendants Cooper, Belka, Lindley and Jensen;
- The financial conditions of the Receivership Entities and First Pension Defendants;
- The propriety of exchanging their interests in BMF 1 for interests in BMF 100;
- That the DOC had raised a number of concerns about the BMF 100 offering;
- That the problems with the DOC would take a long time to resolve;
- That regulatory proceedings undertaken by the DRE against Defendant Cooper made him unfit to serve in the positions he held concerning BMF 100 class member funds, in particular the fact that the Cooper was charged with mishandling trust funds of persons in a similar position to the BMF 100 investors;
- That on 23 January 1987 there were eleven legal proceedings involving Defendants Cooper, Lindley, Jensen and Belka;

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- That on 5 August 1985, Defendant Cooper petitioned for reinstatement of his real estate broker's license which was denied on 26 January 1987;
- That on 27 February 1987, Defendant Cooper petitioned for reconsideration of the Order denying the reinstatement of his license which was denied on 31 March 1987;
- That the BMF1 trust deeds had been pooled, and as a result of the pooling, BMF1 was in violation of the qualification provisions of the California securities laws;
- The true financial condition of BMF1, which in fact, had a material shortfall of funds;
- Prior investigations into First Pension Corporation and Vestcorp by the DOC and the SEC;
- That Defendants Cooper, Belka, Lindley and Jensen were conducting an on-going fraud on the BMF 100 Class members and the Accountholder Class members;
- That the pooling of the individual trust deeds into BMF1 was unlawful as the interests sold in BMF1 had neither been qualified or registered with any regulatory agency;
- That there was a substantial shortfall in the assets of BMF1;
- That Defendants Cooper, Belka, Lindley and Jensen pooled the individual trust deeds into BMF1 to hide the mounting losses resulting from non-performing trust deeds sold to Accountholder Class Members;

- That Defendants Cooper, Belka, Lindley and Jensen owned and operated a series of inter-related companies which they used to divert money from the BMF 100 Class Members' investments;
- That Defendants Cooper, Belka, Lindley and Jensen's companies selling the trust deeds to the BMF 100 Class Members had a bad track record;

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- That the trust deeds purchased by the BMF 100 Class Members had a negative financial performance;
- That, in light of its financial condition, it was likely that First Pension would be required to file bankruptcy within the life of the funds;
- That Defendants Cooper, Belka, Lindley and Jensen created fraudulent trust deeds and included them in the portfolio of Defendants Cooper, Belka, Lindley and Jensen's securities in which the Accountholder Class and the BMF 100 Class invested in;
- That Defendants Cooper, Belka, Lindley and Jensen diverted investor funds to make political contributions to individuals whom they perceived could exert influence over government regulators; and
- That Defendants Cooper, Belka, Lindley and Jensen and their affiliated companies were being investigated by the DOC, the SEC, the DRE, the DOL and the NASD.

376. These suppressed, misleading and false statements conveyed by the S&H Defendants to the BMF 100 Class were material, and were intended to induce the BMF 100 Class to buy BMF 100 interests.

377. In drafting the BMF 100 Prospectus, including ancillary documents, contracts and agreements such as the BMF 100 Subscription Agreement, BMF 100 Placement Agreement, BMF 100 Participation Agreement, BMF 100 Servicing Agreement and the BMF 100 First Pension Management Agreement, sent to members of the BMF 100 class intending to induce their reliance on the same, the S&H

Defendants suggested and/or asserted the following material facts which were not true or otherwise misleading in light of facts not stated. Throughout the time the S&H Defendants worked in preparing these documents, between May 1984 through April 1987, the S&H Defendants either knew the following facts were untrue or misleading or had no reasonable basis for believing the following facts to be true:

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- "Substantially all of the principal payments received by the Fund on Trust Deed Loans, including prepayments and the proceeds from the sale of loans, net of Fund expenses, will be reinvested in additional Trust Deed Loans or, at the election of a Participant, passed through quarterly. Prior to such reinvestment or distribution, principal payments received by the Fund, net of Fund expenses, will be invested in short-term interest-bearing investments." (page 2)
- "It is anticipated that former investment advisory clients of PAM will exchange up to approximately $2,164,000 of Trust Deed Loans presently owned by them for Participation Interests." (page 3)
- "Up to $2,164,000 of the Trust Deed Loans comprising the Fund may be contributed by PAM's former investment advisory clients in exchange for Participation interests. ... While the Fund Manager believes the valuation to be applied to Existing Trust Deed Loans that may be exchanged for Participation interests are theoretically sound and justified...." (page 4)
- "As of March 31, 1987, a substantial portion of the Existing Trust Deed Loans have exchange values greater than their respective principal balances. ... Given the interest rates payable on such Existing Trust Deed Loans, the Fund Manager believes that prepayment of a substantial portion of these loans may occur." (page 5)
- "At March 31, 1985, 1986 and 1987, approximately 17.2%, 6.5% and 0%, respectively, of the outstanding principal balances of Trust Deed Loans

owned by former investment clients of PAM were delinquent for more than 45 days. It has been PAM's experience that less than 6% of such loans do not have the delinquency cured and are actually foreclosed upon. ... The delinquency rate could be considered an indication of the possible future incidence of foreclosures and possible losses on Trust Deed Loans." (page 9)

- "The Existing Trust Deed Loans, currently held by former investment advisory clients of PAM, that may be exchanged for Participation Interests offered by this Prospectus, will be valued in accordance with valuation criteria developed with reference to current market conditions and in light of the collective experience of the Fund Manager's executive officer and directors and PAM in evaluating Trust Deed Loans. ... Under this analysis, payments to be received pursuant to each Existing Trust Deed Loan, including periodic interest and principal payments, together with the principal balance due upon maturity of the respective Existing Trust Deed Loan, will be discounted to its present value applying the interest rate, or discount factor, calculated as described hereinbelow." (page 17-18)
- "Because the Fund Manager cannot predict which Existing Trust Deed Loans will be prepaid or when such prepayment will occur, it has not made an adjustment to the discount factor which would take into account the possibility of prepayment in the calculation of exchange value. Therefore it is possible that investors who paid cash for their Participation

Interests or who exchanged Existing Trust Deed Loans which are not prepaid by their borrowers may be somewhat disadvantaged compared to those investors who exchanged Existing Trust Deed Loans which are later prepaid." (page 19)

- "The Fund Manager believes that, assuming a substantial number of the Existing Trust Deed Loans are exchanged for Participation Interests, the Fund should provide a diversified portfolio of Trust Deed Loans with varying interest rates, maturity dates, amortization schedules and locations within the State of California." (page 20)
- "In connection with each Existing Trust Deed Loan to be exchanged for Participation Interests and each additional Trust Deed Loan to be acquired by the Fund, the Fund Manager will obtain prior to acceptance by or acquisition by the Fund, a preliminary title report to verify the status of the borrower's title and to determine what liens exist against the property." (page 28)

378. In each of the communications discussed in the preceding paragraphs, and in all other dealings with Members of the BMF 100 Class, the S&H Defendants suppressed the following material facts while they were under a duty to the members of the Accountholder Class to disclose those facts and/or while providing other facts which made them misleading;

- That regulatory proceedings undertaken by the DRE against Defendant Cooper made him unfit to serve in the positions he held concerning BMF

100 class member funds, in particular the fact that Cooper was charged with mishandling trust funds of persons in a similar position to the BMF 100 investors;

- That on 23 January 1987 there were eleven legal proceedings involving Defendants Cooper, Lindley, Jensen and Belka. [Documentation concerning these proceedings were provided to the S&H Defendants on 23 January 1987];
- That on 5 August 1985, Defendant Cooper petitioned for reinstatement of his real estate broker's license which was denied on 26 January 1987;
- That on 27 February 1987, Defendant Cooper petitioned for reconsideration of the Order denying the reinstatement of his license which was denied on 31 March 1987;
- That the BMF1 trust deeds had been pooled, and as a result of the pooling, BMF1 was in violation of the qualification provisions of the California securities laws;
- The true financial condition of BMF1, which in fact, had a material shortfall of funds;

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- Prior investigations into First Pension Corporation and Vestcorp by the DOC and the SEC;
- Ms. Lucille Reynold's letter and claim regarding her request for a liquidation distribution of her investment in BMF1;
- The existence of an SEC examination into the Receivership Entities and Defendants Cooper, Belka, Lindley and Jensen;
- Information which the DOC considered necessary to be included in offering for full disclosure;
- The historical regulatory problems of the corporate and individual general partners;
- The financial conditions of the Receivership Entities and First Pension Defendants;
- The DOC's concerns regarding sliding scale and guaranteed interest provisions;
- That trust deeds that failed to meet the appropriate criteria would be exchanged into BMF 100 thereby diminishing the value of each BMF 100 unit;
- That Defendants Cooper, Belka, Lindley and Jensen were conducting an on-going fraud on the BMF 100 Class members and the Accountholder Class members;
- That Defendants Cooper, Belka, Lindley and Jensen and Receivership Entities were diverting and commingling funds;

- That the pooling of the individual trust deeds into BMF1 was unlawful as the interests sold in BMF1 had neither been qualified or registered with any regulatory agency;
- That there was a substantial shortfall in the assets of BMF1;
- That Defendants Cooper, Belka, Lindley and Jensen pooled the individual trust deeds into BMF1 to hide the mounting losses resulting from non-performing trust deeds sold to Accountholder Class Members;
- That Defendants Cooper, Belka, Lindley and Jensen owned and operated a series of inter-related companies which they used to divert money from the BMF 100 Class Members' investments;
- That Defendants Cooper, Belka, Lindley and Jensen's companies selling the trust deeds to the BMF 100 Class Members had a bad track record;
- That the trust deeds purchased by the BMF 100 Class Members had a negative financial performance;
- That, in light of its financial condition, it was likely that First Pension would be required to file bankruptcy within the life of the funds;
- That Defendants Cooper, Belka, Lindley and Jensen created fraudulent trust deeds and included them in the portfolio of Defendants Cooper, Belka, Lindley and Jensen's securities in which the Accountholder Class and the BMF 100 Class invested in;
- That Defendants Cooper, Belka, Lindley and Jensen diverted investor funds to make political contributions to individuals whom they perceived

could exert influence over government regulators; and

- That Defendants Cooper, Belka, Lindley and Jensen and their affiliated companies were being investigated by the DOC, the SEC, the DRE, the DOL and the NASD.

379. These suppressed, misleading and false statements referenced in the preceding paragraphs which were conveyed by the S&H Defendants to the BMF 100 Class members were material in that:

- Payments received by the Fund were used for other purposes undisclosed to investors, such as to pay operating expenses of the related entities;
- The former investment advisory clients at the time of this offering did not own an individual interest in a trust deed, but rather had a pro rata interest in a pool of trust deeds;
- The former investment advisory clients at the time of this offering did not own an individual interest in a trust deed, but rather had a pro rata interest in a pool of trust deeds. Thus, the valuation criteria could not have been theoretically sound and justified as applied to the existing trust deed loans as these loans were already non-performing;
- The exchange values of the existing trust deeds could not be greater than their respective principal balances as these trust deeds were already in default. As many of the existing trust deeds were in default, it is not a fair representation that it could be anticipated that many of them would be

prepaid, especially since these loans were "hard money loans";

- As most, if not all trust deeds were non-performing, the delinquent figures in the prospectus are misrepresentations. Moreover, the disclosed delinquency rate is not a fair indicator of future delinquencies as the disclosed rate is incorrect;
- The valuation criteria is misleading as the criteria incorporates payments to be received pursuant to each existing trust deed loan as these loans were already non-performing, thus no future payments could be expected;
- Investors were materially misled to believe that some of the existing trust deed loans would be prepaid when in fact it was very unlikely at best that a prepayment would occur, as most, if not all of the trust deed loans were non-performing;
- As most, if not all trust deeds were non-performing, the contribution of that trust deed, if it was possible, would dilute the value of BMF MIF as that existing trust deed was most likely non-performing; and
- If a preliminary title report had been obtained with regard to the existing trust deed loans, it would have been discovered that these loans were either non-performing or already in default.

11. Duty to Not Negligently Misrepresent Facts as to the Accountholder Class and the BMF 100 Class

380. The S&H Defendants also owed a duty to the Accountholder Class and the BMF 100 Class to not make negligent misrepresentations. The S&H Defendants

had such a duty because it made representations to the Accountholder Class and the BMF 100 Class, as described above, with the intent to induce the Accountholder and BMF 100 classes to act in reliance upon the representations in specific transactions (to refrain from closing their VestCorp/First Pension accounts, going along with the VestCorp to VestCorp Securities switch over, the purchase of BMF 100 interests) that the S&H Defendants intended to influence. The S&H Defendants are deemed to have intended to influence the Accountholder Class and the BMF 100 Class refraining from closing their VestCorp/First Pension accounts, the VestCorp to VestCorp Securities switch over and purchases of BMF 100 interests because the S&H Defendants knew with substantial certainty that the Accountholder and BMF 100 Class members, would rely on the representation in the course of the transaction.

381. As to the Accountholder Class, the S&H Defendants prepared and advised in the preparation of the S&H Concealment Writings, knowing said documents would be sent to, received and relied upon by the members of the Accountholder Class in connection with getting them to refrain from closing their VestCorp/First Pension accounts, going along with the VestCorp to VestCorp Securities switch over which the S&H Defendants intended to influence and thus had a duty to ensure that there were no omissions or misrepresentations of material facts contained therein.

382. As to the BMF 100 Class, the S&H Defendants participated in the preparation of and advised in the preparation of the BMF 100 Prospectus and related BMF 100 documents, knowing said documents would be sent to, received and relied upon by the members of the BMF 100 Class in connection with BMF 100 Class

Members purchases of BMF 100 units, which the S&H Defendants intended to influence and thus had a duty to ensure that there were no omissions or misrepresentations of material facts contained therein.

383. In undertaking to draft, revise and advise concerning the documents referenced in the two preceding paragraphs, the S&H Defendants undertook some of the responsibility of ensuring that the documents:

- Did not suggest, as a fact, something which was not true, if they believed at the time they were making the statement that it was not true;
- Did not assert as a fact, something which was not true, without a reasonable ground for believing it to be true; and
- Did not suppress a material fact.

384. As detailed below, the S&H Defendants breached these duties to the Accountholder and BMF 100 Classes.

12. Breach of Duty to Not Negligently Misrepresent Facts as to the Accountholder Class and the BMF 100 Class

385. Alternatively, the S&H Defendants also owed a duty to the Accountholder Class and the BMF 100 Class to not make negligent misrepresentations. The S&H Defendants had such a duty because they made representations to the Accountholder Class and the BMF 100 Class as described above, with the intent to induce the Accountholder and BMF 100 Classes, to act in reliance upon the representations in a specific transaction (refrain from closing the Accountholder Class accounts with First Pension/VestCorp, the VestCorp to VestCorp Securities switch over, the purchase of more securities including, BMF Mortgage Income Fund interests) that the S&H

Defendants intended to influence. The S&H Defendants are deemed to have intended to influence the Accountholder Class to not close their First Pension/VestCorp accounts, go along with the switch from the VestCorp investment system to VestCorp Securities investment system, and purchase additional securities of BMF 100 interests because the S&H Defendants knew with substantial certainty that a particular class of persons (Accountholders and BMF 100 class members) would rely on the misrepresentations and misleading statements in the course of the types of transactions (refrain from closing their First Pension accounts, go along with the switch from the VestCorp investment system to the VestCorp securities system, buy additional securities including BMF 100 interests), the S&H Defendants were trying to influence with the preparation and distribution of the documents they drafted or participated in drafted.

386. The S&H Defendants knew with substantial certainty that the following documents they drafted or participated in drafting would be communicated to the Accountholder Class, which contained the following misrepresentations and misleading statements, and which the S&H Defendants knew would be relied upon by the Accountholder Class in refraining from closing their First Pension/VestCorp accounts, and go along with the switch from the VestCorp investment system to the VestCorp Securities investment system:

- First Quarter 1983 First Pension/VestCorp Newsletter to Accountholders;
- Second Quarter 1983 First Pension/VestCorp Newsletter to Accountholders;

- Third Quarter 1983 First Pension/VestCorp Newsletter (with Supplement) to Accountholders;
- VestCorp 1983 Annual Report to Accountholders;
- 28 November 1984 Accountholder Reorganization Letter;
- January 1985 IRA/Keogh VestCorp Investment System Brochure;
- 8 February 1985 PAM letter Re: VestCorp Investment System;
- April 1985 First Pension Newsletter to Accountholders;
- July 1985 First Pension Newsletter to Accountholders;
- November 1985 First Pension Newsletter to Accountholders;
- 1986 First Pension Tax Advice Newsletter No. 1 to Accountholders;
- 1986 First Pension Tax Advice Newsletter No. 2 to Accountholders; and
- April 1987 BMF 100 Prospectus.

387. As to the BMF 100 Class, the S&H Defendants prepared and advised in the preparation of the BMF 100 prospectus and the BMF 100 related documents, knowing said documents would be sent to, received and relied upon by the members of the BMF 100 Class in connection with BMF 100 Class Members purchases of BMF 100 units, which the S&H Defendants intended to influence, and thus, had a duty to ensure that there were no omissions or misrepresentations of material facts contained therein.

388. In undertaking to draft, revise and advise the Accountholder Class and the BMF 100 Class concerning the documents referenced in the two preceding paragraphs, the S&H Defendants undertook the responsibility of ensuring that the

documents:

- ! Did not suggest, as a fact, something which was not true, if they believed at the time they were making the statement that it was not true;
- ! Did not assert as a fact, something which was not true, without a reasonable ground for believing it to be true; and
- ! Did not suppress a material fact.

389. The S&H Defendants breached their duties to not negligently make material misrepresentations or misleading statements of material facts as is detailed above in the knowing and reckless misrepresentation section.

13. Duty To Not Aid & Abet Breaches of Fiduciary Duties As To The Accountholder Class and The BMF 100 Class

390. As detailed in this operative complaint VestCorp, First Pension, and Defendants Cooper, Lindley, Belka, and Jensen were breaching fiduciary duties owed to the Accountholder Class. Those fiduciary duties breached by VestCorp, First Pension, and Defendants Cooper, Lindley, Belka, and Jensen about which the S&H Defendants were aware were: the duty to avoid conflicts of interests, the duty to control and preserve trust property, the duty to report and account, and the duty to avoid self-dealing. VestCorp, First Pension and Defendants Cooper, Belka, Jensen and Lindley undertook on behalf of those to whom they owed a fiduciary duty, the Accountholder Class, a program of investing in over priced trust deeds sold by Defendant Cooper's trust deed sales company, Continental, in non-arm length transactions. This investment program was imprudent, unsuitable for the Accountholder Class, and dishonest. These breaches of fiduciary duty by VestCorp, First Pension and

Defendants Cooper, Lindley, Jensen and Belka depleted the Accountholder Class and the BMF 100 Class' accounts of millions of dollars. Such breaches also constituted violations of California investment adviser law by VestCorp, a California registered investment adviser. VestCorp was supervised by the DOC and the SEC.

391. The S&H Defendants owed the accountholder class and the BMF 100 class a duty to not knowingly or recklessly aid and abet those violations of fiduciary duties by VestCorp, First Pension, and Defendants Cooper, Lindley, Belka and Jensen.

392. The S&H Defendants provided legal services to Defendants Cooper, Belka, Lindley and Jensen and the Accountholder Class and the BMF 100 Class over a 10 year period in a variety of capacities through principally its head partner Defendant Smith. Included in the services provided were the preparation of material portions of the BMF Mortgage Income Fund registration statement, qualification application, and prospectus, which contained false and misleading statements, that were used to sell interests in BMF Mortgage Income Fund.

14. Breach of Duty To Not Aid & Abet Breaches of Fiduciary Duties As To The Accountholder Class and The BMF 100 Class

393. As detailed in this operative complaint VestCorp, First Pension, and Defendants Cooper, Lindley, Belka, and Jensen were breaching fiduciary duties owed to the Accountholder Class. Those fiduciary duties breached by VestCorp, First Pension, and Defendants Cooper, Lindley, Belka, and Jensen about which the S&H Defendants were aware were: the duty to avoid conflicts of interests, the duty to control and preserve trust property, the duty to report and account, and the duty to avoid self-dealing. VestCorp, First Pension and Defendants Cooper, Belka, Jensen and Lindley

undertook on behalf of those to whom they owed a fiduciary duty, the Accountholder Class, a program of investing in over priced trust deeds sold by Defendant Cooper's trust deed sales company, Continental, in non-arms length transactions. This investment program was imprudent, unsuitable for the Accountholder Class, and dishonest. These breaches of fiduciary duty by VestCorp, First Pension and Defendants Cooper, Lindley, Jensen and Belka depleted the Accountholder Class and the BMF 100 Class' accounts of millions of dollars. Such breaches also constituted violations of California investment adviser law by VestCorp, a California registered investment adviser. VestCorp was supervised by the DOC and the SEC.

394. By engaging in the knowing or reckless misstatements or misleading statements and active concealments, the S&H Defendants breached their duty to the Accountholder Class and the BMF 100 Class by knowingly or recklessly aiding and abetting the above described violations of fiduciary duty by VestCorp, First Pension, and Defendants Cooper, Lindley, Belka and Jensen.

Milan Smith's Duties

395. Defendant Milan Smith provided legal services to Defendants Cooper, Belka, Lindley and Jensen and the Accountholder Class and the BMF 100 Class over a 10 year period in a wide variety of undertakings including preparing material portions of the false registration statement, application for qualification and prospectus used to make sales of interests in BMF Mortgage Income Fund and advising defendants to make sales of a series of limited partnerships which were unregistered with the SEC or not qualified by the SEC or DOC.

V.

DEFENDANTS DUTIES OF BREACHES WERE THE CAUSE OF DAMAGES TO THE ACCOUNTHOLDER AND BMF 100 CLASSES

A. DAMAGES CAUSED BY DEFENDANTS COOPER, BELKA, LINDLEY AND JENSEN

396. As a direct and proximate result of these defendants' conduct, the BMF 100 investors purchased their investments and were damaged thereby, including, but not limited to, loss of principal investment, lost profits, loss of future income, injury to economic credit and other general and specific damages with interest thereon, to be determined according to proof at trial.

B. DAMAGES CAUSED BY DEFENDANT BELKA

397. As a direct and proximate result of this defendant's conduct, the BMF 100 investors purchased their investments and were damaged thereby, including, but not limited to, loss of principal investment, lost profits, loss of future income, injury to economic credit and other general and specific damages with interest thereon, to be determined according to proof at trial.

C. DAMAGES CAUSED BY THE C&L DEFENDANTS

398. As a direct and proximate result of these defendants' conduct, the BMF 100 investors purchased their investments and were damaged thereby, including, but not limited to, loss of principal investment, lost profits, loss of future income, injury to economic credit and other general and specific damages with interest thereon, to be determined according to proof at trial.

D. DAMAGES CAUSED BY DEFENDANTS LATHAM, STAHR, COX AND MENDOZA

399. As a direct and proximate result of Defendant's Latham, Stahr, Cox, and Mendoza's unlawful conduct, the Accountholder Class retained their VestCorp/First Pension accounts, deposited funds into those accounts, and purchased additional securities and the BMF 100 investors purchased limited partnership interests in BMF 100. On these premises the Accountholder Class and the BMF 100 Class were damaged thereby, including, but not limited to, loss of principal investment, lost profits, loss of future income, injury to economic credit and other general and specific damages with interest thereon, to be determined according to proof at trial.

E. DAMAGES CAUSED BY THE S&H DEFENDANTS

400. As a direct and proximate result of the S&H Defendants' unlawful conduct, the Accountholder Class retained their VestCorp/First Pension account and the BMF 100 investors purchased limited partnership interests in BMF 100. On these premises the Accountholder Class and the BMF 100 Class were damaged thereby, including, but not limited to, loss of principal investment, lost profits, loss of future income, injury to economic credit and other general and specific damages with interest thereon, to be determined according to proof at trial.

VI.

STATUTE OF LIMITATIONS AND TOLLING OF THE STATUTE OF STATUTE OF LIMITATIONS

401. The Accountholder Class and the BMF 100 Class' knowing, reckless or negligent misrepresentation and active concealment causes of action are for actual fraud as to Defendants Cooper, Belka, Jensen and Lindley. The knowing, reckless or

negligent misrepresentation and active concealment causes of action against Defendants Cooper, Lindley, Jensen and Belka, occurred in and around August 1994 at which time Defendants Cooper, Lindley and Jensen were convicted of mail fraud in connection with their activities at First Pension, VestCorp, Continental and VestCorp Securities. The Accountholder Class and the BMF 100 Class filed their complaint against Defendants Cooper, Lindley, Belka and Jensen on 30 December 1994 thus Plaintiffs are within three years of discovery of the facts constituting the fraud.

402. The Accountholder Class and the BMF 100 Class' knowing, reckless, or negligent misrepresentation and active concealment (the actual concealment cause of action is asserted only as set forth in this operative complaint) causes of action against Defendants Latham, Stahr, Cox, Mendoza, and Smith & Hilbig are for actual fraud. The knowing, reckless or negligent misrepresentation and active concealment causes of action against Defendants C&L, Hurwitz, Latham, Stahr, Cox, Mendoza, and Smith & Hilbig occurred no earlier than in and around December 1994, at which time the Accountholder Class and the BMF 100 Class had conducted an investigation of these defendants' conduct or, in the case of Defendants C&L, Hurwitz, Cox, and Smith & Hilbig were on notice of facts suggesting possible involvement in the alleged fraud. The Accountholder Class and the BMF 100 Class filed their complaint against Defendants Latham, Stahr, and Mendoza on 30 December 1994 and against C&L, Hurwitz, Cox, and Smith & Hilbig were doe amended into the complaint, and thus, all Accountholder Class and BMF Class causes of action are within three years of discovery of facts constituting the fraud.

403. The Accountholder Class and the BMF 100 Class' breach of fiduciary duty and aiding and abetting breach of fiduciary duty causes of action occurred in and around August 1994 as to Defendants Cooper, Lindley, Jensen and Belka, at which time Defendants Cooper Lindley and Jensen were convicted of mail fraud in connection with their activities at First Pension, VestCorp, Continental and VestCorp Securities. The Accountholder Class and the BMF 100 Class filed their complaint against Defendants Cooper, Lindley, Belka and Jensen on 30 December 1994, within four years of discovery of the facts constituting the breaches of fiduciary duty and aiding and abetting the breaches of fiduciary duty.

404. The Accountholder Class and the BMF 100 Class' aiding and abetting breach of fiduciary duty causes of action against Defendants C&L, Hurwitz, Latham, Stahr, Cox, Mendoza, and Smith & Hilbig were first alleged on 30 December 1994 at which time the Accountholder Class and the BMF 100 Class had conducted an investigation of these defendants' conduct, and as to Defendants C&L, Hurwitz, Cox, and Smith & Hilbig, who were doe amended into the complaint, these causes of action relate back to the date the original complaint was filed.

405. The Accountholder Class and the BMF 100 Class' causes of action against Defendants Latham, Stahr, Cox, Mendoza, and the S&H Defendants for wrongful acts and omissions arising in the performance of professional duties were commenced within one year after they discovered or through the use of reasonable diligence should have discovered, the facts constituting the wrongful acts or omissions. The Accountholder Class and the BMF 100 Class' causes of action against Defendants

Latham, Stahr, Cox, Mendoza, and the S&H Defendants occurred in and around December 1994 at which time the Accountholder Class and the BMF 100 Class had conducted an investigation of these defendants conduct, or as to Defendants Cox, and the S&H Defendants were on notice of facts suggesting possible involvement in the alleged aiding and abetting breaches of fiduciary duties.

406. The Accountholder Class and the BMF 100 Class' causes of action against Defendants Latham, Stahr, Cox, Mendoza, and the S&H Defendants for wrongful acts and omissions arising in the performance of professional duties were commenced within four years from the time the Accountholder Class and the BMF 100 Class discovered Defendants Latham, Stahr, Cox, Mendoza, the S&H Defendant's malpractice. The four year limitations period was tolled until the Accountholder Class and the BMF 100 Class suffered actual injury from the malpractice and the Accountholder Class and the BMF 100 Class knew they had sustained actual injury. The Accountholder Class and the BMF 100 Class brought their action within this period. The Accountholder Class and the BMF 100 Class had been provided with a steady stream of quarterly account statements showing a continuing rise in their accounts with First Pension. In fact these account statements were false and the Accountholder Class and the BMF 100 Class did not discover they were false and could not have so discovered until the account statements were shown to be false in August 1994 when Defendants Cooper, Lindley and Jensen pled guilty to fraud in connection with mailing false quarterly reports to both the First Pension/VestCorp Accountholder Class and the BMF 100 Class.

407. The Accountholder Class and the BMF 100 Class' causes of action against Defendants Mendoza and the S&H Defendants for wrongful acts and omissions arising in the performance of professional duties were commenced within four years from the date in which Defendant Mendoza and the S&H Defendants continued to represent the Accountholder Class and the BMF 100 Class regarding the specific subject matter in which the alleged wrongful act or omission occurred. Defendant Mendoza continued such representation until June 1993 when he caused to be filed a consent solicitation with the SEC for BMF 100. The S&H Defendants continued such representation into 1994 during which time the S&H Defendants were issuing statements through the media that charges against Defendants Cooper, Lindley, and Jensen were unfounded and that the Accountholder Class and the BMF 100 Class funds were safe.

408. The Accountholder Class and the BMF 100 Class' causes of action against Defendants Latham, Stahr, Cox, Mendoza, and the S&H Defendants for wrongful acts and omissions arising in the performance of professional duties were commenced within four years from the date Defendants Latham, Stahr, Cox, Mendoza, and the S&H Defendants wilfully concealed the facts constituting the wrongful acts or omissions when such facts were known to the attorney. Each of these defendants were aware of the facts underlying their wrongful acts and omissions arising in the performance of professional duties and that the Accountholder Class and the BMF 100 Class were not so aware. Despite this knowledge, Defendants Latham, Stahr, Cox, Mendoza, and the S&H Defendants wilfully concealed and withheld from the

Accountholder Class and the BMF 100 Class the facts showing these defendants had engaged in wrongful acts or omissions that are detailed in the operative complaint.

409. An additional act of concealment by Defendants Latham and Stahr occurred in the context of a proposed mutual general release agreement between Defendant Latham and BMF 100 that was prepared in and around 22 December 1988. The mutual release proposed that BMF 100, NPB Loan Service, First Pension, BMF Management, VestCorp Securities, First Diversified Financial Services, and Pension Asset Management release Defendants Latham, Stahr, Cox, and Mendoza, and Latham attorneys Boyd J. Black, and Linda Bray. Defendant Latham and Stahr agreed to remove BMF 100 from the release so that it was not shown as a liability on BMF 100 financial report. Defendant Latham agreed to this provision to keep BMF 100 class members from finding out facts that might lead to their discovery of their claims against Defendants Latham, Stahr, Cox, and Mendoza.

410. Defendants Latham, Stahr, Cox, and Mendoza were able to conceal their wrongful acts or omissions arising in their performance of professional services from the Accountholder Class and the BMF 100 Class in the knowing or reckless misrepresentations and misleading statements and the active concealment alleged above. When a conflict ensued between Defendants Latham, Stahr, Cox, and Mendoza and Defendants Cooper, Lindley and Jensen, Defendant Latham, Stahr, Cox and Mendoza agreed to terms of a release that kept the dispute from spilling out to the Accountholder Class and the BMF 100 Class to keep them from starting their own investigation into possible liabilities of the defendants.

411. Defendant Latham, Cox, Mendoza and Stahr=s unlawful conduct not only deprived the plaintiffs of their funds but kept them in ignorance of their rights. To hold that the statute of limitations has run on the professional malpractice claims would be to permit the Latham defendants to take advantage of their own wrong. Plaintiffs were clearly hindered from pursuing a cause of action for relief based on fraudulent concealment of the facts upon the existence of which the causes of action accrued. The plaintiffs brought this action within one year of plaintiffs becoming aware of the facts from which they could conclude that the Latham defendants may have concealed their acts of malpractice. From 1988 until the filing of this operative complaint defendant Latham and its attorneys Cox, Mendoza, and Stahr have willfully and actively concealed the facts constituting the wrongful act and omissions when such facts were known to these Latham attorneys. The Latham defendants by engaging in the fraud and deceit alleged concealed material facts which hid from the plaintiffs the underlying wrong and Latham=s related breaches of professional attorney duties and duties to refrain from fraud, aiding and abetting of fraud, negligent misrepresentations and aiding and abetting of fiduciary duties. The Latham attorneys active and wilful concealment hindered the plaintiffs from bringing this action until December 1994 and the Latham attorneys should not be permitted to shield themselves behind the statute of limitations where their own fraud and wrongdoing has placed them.

412. The Latham attorneys knew and wilfully concealed from the Accountholder class that: (1) the November 1984 Accountholder letter, which the

Latham defendants helped to draft, was false and misleading; (2) the full portfolio of trust deeds had not been presented by the Latham attorneys to the DOC or SEC as part of the BMF 100 offering; (3) Cooper=s application to reinstate his real estate license had been denied by the Department of Real Estate because defendant Cooper had sued numerous times by investors and that the Latham attorneys had kept this information out of the BMF 100 offering circular; (4) the DOC had requested that each of the trust deeds in the Accountholder class portfolio that was presented as part of the BMF 100 offering (aka Vestcorp Trust Deed Fund) in December 1984 be independently appraised.; (5) the Latham attorneys had materially participated in the valuation of the trust deeds listed on the BMF 100 portfolio and that such valuation resulted in substantial numbers of trust deeds being excluded from the Accountholder list of trust deeds; (6) the Latham attorneys were not fulfilling the obligations involved in getting the entire portfolio registered with the DOC and SEC, which was contrary to what plaintiffs had been told in the First Pension/Vestcorp Newsletters and communications. In those newsletters the plaintiffs were told that steps were being taken to cause the entire Accountholder portfolio, which involved some $18 million of trust deeds, to be eligible to exchanged for interests in a new registered fund which was being filed with the DOC and SEC; (7) the facts that the trust deeds were sold to plaintiffs in a series of unlawful related party transactions in which defendant Cooper controlled or had a substantial financial interest in both entities that negotiated the sales; (8) there was an alternative course of action in which an offer to repurchase the trust deeds unlawfully sold to plaintiffs could be made by defendants Cooper, Lindley, Jensen and Belka and their

affiliated companies; (9) BMF 1 was required to be and should have been registered with the SEC and DOC; (10) there was a decision to not use an independent appraiser because such appraisals would show a substantial and material loss of value of the trust deeds sold to the Accountholder class; (11) material facts had been omitted from the tax opinion and other legal opinions prepared by Latham that would have materially affected the opinions rendered; (12) the SEC investigating lawyers were being told that Vestcorp clients were no longer receiving investment advisory services from the defendants companies while at the same time the clients were being told such services were being expanded; (13) the Latham lawyers had participated in an effort to mislead both the SEC and DOC in order to conceal the wrongdoing of defendants Belka, Lindley, Jensen and Cooper; (14) the Latham attorneys had devised and help to implement a plan in which First Pension, Pension Asset Management, Vestcorp Securities and their affiliated companies were made to look as if they were not jointly owned and controlled by defendant Cooper when in fact defendant Cooper remained in control; (15) Latham was failing to comply with the Rules of Professional conduct which required attorneys to refrain from adverse interests, conflicts of interests and which required attorneys to be candid and diligent; and (16) and the other facts set forth in detail which constituted unlawful or fraudulent conduct by Latham and which the Latham attorneys knew to be so unlawful or fraudulent.

413. At all times alleged the defendants or the clients of defendants owed plaintiffs fiduciary duties of full disclosure. Plaintiffs reposed trust and confidence in First Pension, Vestcorp, Vestcorp Securities, Cooper, Lindley, Belka and Jensen. As

set forth above plaintiffs received a continuous flow of account reports, news letter, and oral statements from Vestcorp or Vestcorp Securities representatives which painted a picture that plaintiffs funds were safe and earning interest or money. Plaintiffs based on this trust and confidence accepted these representations to be trustworthy and reliable. No fact was presented to plaintiffs which aroused their suspicion or shook their confidence in defendants. Under the circumstances, a prudent person would not be put upon inquiry notice.

414. Defendants Cooper, Belka, Lindley and Jensen, working through their attorneys, including the S&H Defendants, attempted to keep the government investigations and adverse actions from investors. The S&H Defendants were able to persuade the DRE to not issue a press release on the DRE's revocation of Defendant Cooper's real estate license in August 1984. When the NASD found violations of NASD rules and regulations by VestCorp Securities in 1992, Defendants Cooper, Belka, Lindley and Jensen's attorney was able to negotiate a fine down to a number that the NASD had a practice of not reporting to the press.

415. As a further part of the cover-up and concealment of defendants' wrongdoing, Defendant Mendoza in 1992 and 1993 prepared a Consent Solicitation for the proposed liquidation of an investment fund which had been sold and operated unlawfully, as detailed hereinafter. The Consent Solicitation contained material misrepresentations and omitted to state material facts. Defendant Mendoza caused the Consent Solicitation to be filed with the SEC on 24 June 1993.

416. At the time Defendant Mendoza prepared the false Consent Solicitation,

he was actively involved in seeking appointment from Governor Pete Wilson to be Commissioner of the California Department of Corporations.

417. Thus, Defendant Mendoza had a personal motivation to engage in the creation of the false Consent Solicitation. First, Defendant Mendoza knew that if the fraud were to be disclosed, such disclosure would affect Defendant Mendoza's appointment hope. Second, Defendant Mendoza knew Defendant Cooper had built powerful connections to Governor Wilson's inner political circle. Defendant Cooper had contributed several thousands of dollars to Governor Wilson's political campaigns and had developed close political contacts with Governor Wilson. For example, on 3 March 1993 Governor Wilson called Defendant Cooper to inform Defendant Cooper that "he is announcing his replacement for Board of Supervisors today @ 5: 00 pm. It is going to be Bill Steiner." Consequently, Defendant Mendoza wanted to avoid alienating Defendant Cooper as he feared Defendant Cooper might use his contacts to impede Defendant Mendoza's appointment.

418. Defendant Mendoza called Defendant Cooper on 16 October 1992 and left the following message, "Would like to extend an invitation to 10/22 dinner for Chris Cox @ Hyatt Regency Irvine @ 7:00 pm, you would come as his guest." Within three weeks of this message Pamela S. Reiter, a former employee of Defendants Cooper, Lindley and Jensen's parent company, First Diversified Financial Services, informed the State Attorney General that First Diversified Financial Services had hired an actress to impersonate a California Department of Corporations auditor and had forged Department of Corporations letterhead and business cards. This complaint was

forwarded by the Attorney General to the California Department of Corporations on 24 November 1992.

419. In July 1993 Defendant Mendoza was appointed Commissioner of the California Department of Corporations, the agency to which Ms. Reiter's complaint had been referred to and which Defendant Mendoza had addressed writings on behalf of Defendants Cooper, Belka, Lindley and Jensen which contained material false statements. Defendant Mendoza failed to make any disclosure of his knowledge of unprivileged information about the fraud to the California Department of Corporations, at this time or anytime.

420. On 23 April 1994, an article appeared in the Orange County Register reporting that one of the corporations Defendants Cooper, Belka, Lindley and Jensen used to accomplish their fraud, Summit Trust Co, the caretaker of investor funds, had been seized by the Colorado Division of Banking and another corporation used in the fraud First Pension had filed for bankruptcy. On 11 May 1994, Defendant Smith began making false representations to the investors through a Los Angeles Times article, in which he claimed that less than $10 million of investor funds were missing. On 17 May 1994, Defendant Smith, with the intent to mislead investors into not taking action, told investors in an Investors Daily article, "There's very little that the SEC has outside of its own conjecture. To get the judge to sign their order, they had to make the worst accusations they could possibly make." Defendant Smith made these false statements in response to an SEC lawsuit which alleged that Defendants Cooper, Lindley and Jensen had sold $99 million of fake mortgages and had stolen $2.1 million to pay

"interest" on the fake mortgages.

421. In June 1994, the Orange County register reported that Defendant Lindley had told federal investigators that the illegal diversions started during 1981-1982. On 18 May 1994, Defendant Cox, in a response to a request for help from a victim of the fraud concealed his own involvement in the scheme and instead wrote back, "I remain committed to doing everything possible to resolve this matter favorably for you. As soon as I receive any definite information on this situation, I will be back in touch with you." Defendant Cox repeated this statement on 15 June 1994. On 17 September 1994, Defendant Cox falsely told investors, through an article in the Los Angeles Times, that he was "simply talking to them [Defendants Cooper, Belka, Lindley and Jensen] about how it [the offering] would be done." On 19 October 1994, Cox wrote, "It has been a privilege to represent you in this matter."

422. As part of the effort to wilfully conceal from plaintiffs the existence of defendant Mendoza's involvement in the underlying wrongdoing defendant Mendoza made certain misleading statements to DOC personnel after defendant Mendoza became the Commissioner of DOC that concealed defendant Mendoza's continued involvement in the scheme until June 1993.

423. Further, defendant Mendoza continued to stay in contact with defendant Cooper even after defendant Mendoza became Commissioner of the DOC for the purpose of encouraging defendant Cooper from implicating defendant Mendoza in the wrongdoing and thereby exposing defendant Mendoza to possible civil action by the defendants. In this regard, between 1 September 1993 and 20 September 1993 the

Department of Corporations conducted an audit of the broker dealer, VestCorp Securities, through which unlawful sales of securities were made to the class, which were controlled by Defendant Cooper. Defendant Mendoza received two phone calls on 24 and 30 August 1993 from Defendant Cooper's personal telephone line. On 10 September 1993, two phone calls were placed from Defendant Mendoza's direct line at the California Department of Corporations to Defendant Cooper's home telephone number.

424. Had Defendant Mendoza not concealed his unprivilieged knowledge of the facts underlying the scheme, the DOC could have stopped the fraud seven months earlier. Defendant Mendoza failed to take such action or to order such action in order to conceal from the Accountholder Class and the BMF 100 Class Defendants Latham, Stahr, Cox and Mendoza's liabilities to the Accountholder Class and the BMF 100 Class.

425. As a further part of his effort to mislead investors about his personal involvement in the wrongdoing, defendant Mendoza testified falsely under oath about when and how he came to learn of Defendant Cooper's illegal activities. At his 1 December 1994 deposition, Defendant Mendoza was asked when he first learned of Defendant Cooper's illegal conduct. Defendant Mendoza responded that he learned of it through the "paper." However, Defendant Mendoza wrote an 2 May 1994 internal DOC memo to DOC Chief Deputy Commissioner, Brian Thompson, regarding the "investigation of and potential enforcement action against First Pension, First Diversified Services, VestCorp Securities and any of their affiliated principals." In the

memo Defendant Mendoza states that he learned that an enforcement attorney "Alan Weinger spoke to representatives of the SEC" and they "confidentially informed Alan that the SEC intended to file an enforcement action in this regard next week."

426. Defendant Mendoza failed to disclose that he was involved with defendant Cooper providing legal advice and services on the BMF 100 fund until June 1993. Defendant Mendoza concealed from the DOC, in an internal DOC writing, that he, defendant Cooper, had been involved in representing defendant Cooper and the BMF 100 fund until June 1993: "One of the principals of First Diversified, Bill Cooper, is the general partner of limited partnership known as BMF Mortgage Income Fund. This Fund received a permit as part of a coordination that went effective I believe in 1987. VestCorp was the broker/dealer that handled this offering. I worked on this offering when I was an associate at Latham." Defendant Mendoza did not mention that he had acted as counsel to BMF MIF as late as June 1993. Defendant Mendoza did not mention that Defendant Cooper was a personal friend. Defendant Mendoza did not mention that he might have information that could be useful in investigating the case.

427. Although Defendant Mendoza, in his 2 May 1994 memorandum suggests the DOC had an ongoing investigation into the activities of First Pension, that was and is not the case. The lack of any DOC investigation was confirmed by the DRE two weeks after Mendoza's 2 May 1994 memo. A DRE internal memo reports the following conversation with Alan Weinger, the same person Defendant Mendoza states he learned of an investigation from, "Spoke with Weinger who told me "**We don't have any investigation re: Cooper and First Pension Corp**." [emphasis added]

428. Defendant Belka took an active hand in concealing from and making misstatements to plaintiffs which had the effect of hiding the underlying facts supporting plaintiffs causes of action alleged in this operative complaint. Defendant Belka=s concealments began almost from the inception of his relationship with plaintiffs. Defendant Belka took a direct hand in drafting the basic documents by which plaintiffs were induced to become and by which they became accountholders. These documents held defendant Belka out as an independent investment adviser who intended to select trust deed investments based upon honest and objective criteria. In fact defendant Belka was not independent, and the trust deeds were intended to be and were purchased in large measure from defendant Cooper=s companies in non-arms length transactions.

429. Defendant Belka concealed the fact that the trust deeds sold to plaintiffs were suffering continued reductions in value and to further hide such losses defendant Belka had participated in the organization of BMF 1. All of the Accountholder trust deeds were merged into BMF 1 and defendant Belka concealed that such a merger was a violation of the federal and state securities laws. Defendant Belka also concealed from plaintiffs an on-going SEC investigation, the DRE investigation which resulted in the revocation of defendant Cooper=s real estate license.

430. Defendant Belka further concealed that in response to the SEC investigation he had engaged in a series of false and misleading statements relating to the relationship and ownership of Vestcorp, Vestcorp Securities, First Pension and the plaintiff accountholders. Defendant Belka prepared with the Latham attorneys in

several instances a series of misleading and false written communications sent to Accountholders and in some instances to the BMF 100 plaintiffs. These communications consisted of newsletters, letters, and offering circulars. In each of these writings defendant Belka either made the foregoing misrepresentations or those otherwise identified in this operative complaint.

431. All of the foregoing had the effect of keeping plaintiffs from discovering the underlying facts giving rise to their causes of action. Further, in 1988 defendant Belka departed from First Pension. A series of writings was prepared and sent to plaintiffs, which defendant Belka materially assisted in drafting, which misrepresented or concealed facts constituting the underlying wrongdoing.

VII.

CAUSES OF ACTION

First Cause of Action
Violations of ' 25401 of the California Corporations Code
Untrue Statement or Omission in Connection with
Purchase or Sale of Securities

(Against Defendants Cooper, Belka, Lindley and Jensen)

432. The Accountholder Class and the BMF 100 Class incorporate by reference all prior paragraphs of the Fourth Amended Complaint as though fully set forth herein. This cause of action is brought on behalf of the Accountholder and the BMF 100 Class members.

433. Defendants Cooper, Jensen, Lindley, and Belka, and each of them, offered to sell and sold securities in the state of California by means of both written and

oral communications which included untrue statements of material facts and omitted to state material facts necessary to make those statements made, in light of the circumstances under which they were made, not misleading.

434. The securities Defendants Cooper, Belka, Lindley and Jensen sold to the Accountholder Class members were interests in a trust deed mortgage pool called BMF 1 and other securities investments such as limited partnership interests. The securities Defendants Cooper, Belka, Lindley and Jensen sold to the BMF 100 Class members were interests in a publicly registered limited partnership called BMF Mortgage Income Fund or BMF 100.

435. Defendants Cooper, Belka, Lindley and Jensen made misrepresentations and omissions of material facts to the Accountholder Class through correspondence, newsletters, offering and promotional materials, and other written and oral communications. Defendants Cooper, Belka, Lindley and Jensen made misrepresentations and omissions of material facts to the BMF 100 Class members through the BMF 100 prospectus, BMF 100 annual and quarterly reports, correspondence, and other written and oral communications. These misrepresentations and omissions of material facts are further detailed in the Breach section of this Complaint and are incorporated herein by reference.

436. By virtue of Defendants Cooper, Belka, Lindley and Jensen's wrongful conduct, the Accountholder and BMF 100 Class members were induced to and did purchase securities offered and sold by Defendants Cooper, Belka, Lindley and Jensen.

437. Many of the acts complained of herein occurred within four years from the filing of the original Complaint and the Accountholder Class and the BMF 100 Class filed their Complaint within one year of discovery of these facts. As to acts which occurred earlier than four years from the filing of the original Complaint, the statute of limitations under Corporations Code ' 25506 is tolled until The Accountholder Class and the BMF 100 Class' discovery because these defendants fraudulently concealed the material facts which constitute this cause of action.

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438. As a direct and proximate result of Defendants Cooper, Belka, Lindley and Jensen's wrongful conduct, the Accountholder and BMF 100 Class members suffered damages, with interest thereon, to be determined according to proof at trial.

Second Cause of Action
Violations of ' 25504.1 of the California Corporations Code
Persons Jointly and Severally Liable with Violator: Aiding and Abetting

(Against Defendants Cooper, Belka, Lindley and Jensen)

439. The Accountholder Class and the BMF 100 Class incorporate by reference all prior paragraphs of the Fourth Amended Complaint as though fully set forth herein. This cause of action is brought on behalf of the Accountholder and BMF 100 Class members against Defendants Cooper, Belka, Lindley and Jensen.[3]

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[3] As to Defendants Latham, Stahr, and Mendoza, this Court has sustained their demurrers to this cause of action without leave to amend. However, as there has been no final judgment in this action, plaintiffs reserve their right and do not waive their right to appeal the Court's dismissal of a cause of action for violations of ' 25504.1 of the Corporations Code against Defendants Latham, Stahr, and Mendoza. As to Defendants Cox, Coopers & Lybrand, Hurwitz, Smith & Hilbig, and Smith, for the purpose of judicial economy, plaintiffs stipulate that these defendants have filed demurrers to this cause of action and that based upon those demurrers the Court ruled that the statute of limitations on this cause of action has expired, and thus the Court has sustained the demurrers without leave to amend. However, plaintiffs reserve their right

440. Defendants Cooper, Lindley, Jensen, and Belka, and each of them, violated ' 25401 of the Corporations Code as described above. Defendants Cooper, Belka, Lindley and Jensen, and each of them, had knowledge of the violations of Corporations Code ' 25401 described above.

441. Defendants Cooper, Lindley, Jensen, and Belka materially assisted each other in violating Corporations Code ' 25401 in the manner described in the Breach section of this Complaint. Defendants Cooper, Belka, Lindley and Jensen acted with the intent to deceive or defraud the Accountholder and BMF 100 Class members when they materially assisted in the primary violations of Corporations Code ' 25401.

442. Many of the acts complained of herein occurred within four years from the filing of the original Complaint and The Accountholder Class and the BMF 100 Class filed their original Complaint within one year of discovery of these facts. As to acts which occurred earlier than four years from the filing of the original Complaint, the statute of limitations under Corporations Code ' 25506 is tolled until the Accountholder Class and the BMF 100 Class' discovery because these defendants fraudulently concealed the material facts which constitute this cause of action.

443. As a direct and proximate result of Defendants Cooper, Belka, Lindley and Jensen's wrongful conduct, the Accountholder and BMF 100 Classes were

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and do not waive their right to appeal a cause of action for violations of ' 25504.1 of the Corporations Code against Defendants Cox, Coopers & Lybrand, Hurwitz, Smith & Hilbig, and Smith.

damaged, with interest thereon, to be determined according to proof at trial.

Third Cause of Action
Violations of Section 25504 of the California Corporations Code
Control Person Liability

(Against Defendants Cooper, Belka, Lindley and Jensen)

444. The Accountholder Class and the BMF 100 Class incorporate by reference all prior paragraphs of the Fourth Amended Complaint as though fully set forth herein. This cause of action is brought on behalf of the Accountholder and BMF 100 Class members against Defendants Cooper, Belka, Lindley and Jensen.

445. At all relevant times, Defendant Cooper was: the founder and owner of Continental Home Loan, a general partner of BMF 100, a partial owner of First Diversified Financial Services ("FDFS"), President of FDFS, a principal shareholder and sometime President of First Pension, and founder of FDFS and First Pension. Defendant Cooper was a control person of Continental Home Loan, FDFS, BMF 100, First Pension, VestCorp of California, VestCorp Securities, Pension Asset Management, BMF Management, Inc., and Diversified Financial Services ("DFS") (collectively the "Controlled Entities"). Defendant Cooper had the power to direct the actions of and exercised the power to cause the Controlled Entities to engage in the unlawful acts and conduct complained of herein. Defendant Cooper exercised control over the general operations of the Controlled Entities and possessed the power to control the specific activities which constitute the primary securities violations about which the Accountholder and BMF 100 Class members complain.

446. At all relevant times Defendant Jensen was a partial owner of FDFS and

VestCorp Securities, CEO of VestCorp Securities, and President and Vice-President of First Pension. Defendant Jensen had the power to direct the actions of and exercised the power to cause the Controlled Entities to engage in the unlawful acts and conduct complained of herein. Defendant Jensen exercised control over the general operations of the Controlled Entities and possessed the power to control the specific activities which constitute the primary securities violations about which the Accountholder and BMF 100 Class members complain.

447. At all relevant times Defendant Lindley was the president of BMF Management Fund, Inc., partial owner of FDFS, Treasurer and Secretary of VestCorp Securities, Chief Financial Officer and Treasurer of DFS, a director of Summit Trust Services, Inc., the Treasurer of Ernest-Edwards & Associates, and the Chairman of the Board of NPB Loan Service. Defendant Lindley had the power to direct the actions of and exercised the power to cause the Controlled Entities to engage in the unlawful acts and conduct complained of herein. Defendant Lindley exercised control over the general operations of the Controlled Entities and possessed the power to control the specific activities which constitute the primary securities violations about which the Accountholder Class and the BMF 100 Class complain.

448. At all relevant times Defendant Belka was a co-general partner of BMF 100, a founder and the President of VestCorp of California, and the sole director and sole shareholder of PAM. Defendant Belka had the power to direct the actions of and exercised the power to cause the Controlled Entities to engage in the unlawful acts and conduct complained of herein. Defendant Belka exercised control over the general

operations of the controlled persons and possessed the power to control the specific activities which constitute the primary violations about which the Accountholder and BMF 100 Class members complain.

449. Defendants Cooper, Belka, Lindley and Jensen were control persons of the Controlled Entities as defined by Corporations Code ' 25504 and caused them to commit violations of Corporations Code ' 25401, and are therefore jointly and severally liable with and to the same extent as the Controlled Entities.

450. Many of the acts complained of herein occurred within four years of the filing of the original Complaint and the Accountholder Class and the BMF 100 Class filed the original Complaint within one year of discovery of the acts which constituted the violations described herein. As to those violations which occurred more than four years from the filing of the Original Complaint, the statute of limitations under Corporations Code ' 25506 is tolled because Defendants Cooper, Belka, Lindley and Jensen fraudulently concealed the material facts alleged above.

451. As a direct and proximate result of Defendants Cooper, Belka, Lindley and Jensen's wrongful conduct and control over the primary securities violators, the Accountholder and BMF 100 Class members suffered damages, with interest thereon, in an amount to be determined at trial.

Fourth Cause of Action
Fraud and Deceit By Active Concealment

(Against Defendants Cooper, Belka, Lindley and Jensen)

452. The Accountholder Class and the BMF 100 Class reallege and

incorporate by reference all prior paragraphs of the Fourth Amended Complaint as though fully set forth herein. This cause of action is brought on behalf of the Accountholder and BMF 100 Class members against Defendants Cooper, Belka, Lindley and Jensen.

453. Defendants Cooper, Lindley, Jensen, and Belka, and each of them, actively concealed material facts affecting the Accountholder and BMF 100 Class members as alleged more specifically in the Breach section of this Complaint.

454. Defendants Cooper, Belka, Lindley and Jensen knew the material facts affecting the Accountholder and BMF 100 Class members, which they actively concealed, were unknown or beyond the reach of the Accountholder and BMF 100 Class members.

455. Defendants Cooper, Belka, Lindley and Jensen actively concealed material facts in the manner described in the Breach section of this Complaint with the intent to defraud or the intent to induce reliance thereon by the Accountholder and BMF 100 Class members. The material facts which Defendants Cooper, Belka, Lindley and Jensen actively concealed induced reliance by the Accountholder and BMF 100 Class members. Had the material facts which Defendants Cooper, Belka, Lindley and Jensen actively concealed been known, then the Accountholder Class members would not have set up or maintained accounts at First Pension/VestCorp and the BMF 100 Class members would not have purchased interests in BMF 100.

456. The Accountholder Class and the BMF 100 Class 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 August 1994 when Defendants Cooper, Lindley and Jensen pled guilty to the Criminal Information. The Accountholder Class and the BMF 100 Class filed their original Complaint within three years of discovery of the facts which constitute this cause of action.

457. As a direct and proximate result of Defendants Cooper, Belka, Lindley and Jensen's active concealment of material facts, the Accountholder and BMF 100 Class members were damaged, together with interest thereon, in an amount to be determined at trial.

Fifth Cause of Action
Fraud and Deceit Based Upon Omissions and Misrepresentations of Material Facts

(Against Defendants Cooper, Belka, Lindley and Jensen)

458. The Accountholder Class and the BMF 100 Class reallege and incorporate by reference all prior paragraphs of the Fourth Amended Complaint as though fully set forth herein. This cause of action is brought on behalf of the Accountholder and BMF 100 Class Members against Defendants Cooper, Belka, Lindley and Jensen.

459. At all relevant times Defendants Cooper, Lindley, Jensen and Belka, and each of them, had a duty to disclose all material facts to the Accountholder and BMF 100 Class members. This duty arose from Defendant Cooper, Lindley, Jensen, and Belka's positions as alleged more fully in the Identification of the Parties section of this Complaint.

460. Defendants Cooper, Belka, Lindley and Jensen made misrepresentations

of facts, omitted facts and/or suppressed facts from the Accountholder and BMF 100 Class members, despite the duty to disclose by way of their fiduciary and confidential relationship with the Accountholder and BMF 100 Class members. These misrepresentations, omissions, and suppressions of facts, and the manner in which they were communicated to the Accountholder and BMF 100 Class members, is further detailed in the Breach section of this Complaint and incorporated by reference.

461. Defendants Cooper, Belka, Lindley and Jensen, and each of them, knew the representations, omissions, and misleading statements they made to the Accountholder and BMF 100 Class members were false, or did not believe them to be true, or did not reasonably believe them to be true when made.

462. Defendants Cooper, Belka, Lindley and Jensen made these misrepresentations, omissions and suppressions of facts with the intent to defraud or with intent to induce reliance by the Accountholder and BMF 100 Class members. Had Defendants Cooper, Belka, Lindley and Jensen not made such misrepresentations, omissions, or suppressions of facts, the Accountholder Class members would not have set up or maintained accounts with First Pension/VestCorp and the BMF 100 Class members would not have purchased interests in BMF 100. The Accountholder and BMF 100 Class members justifiably relied on the misrepresentations, omissions, and suppressions of facts made by Defendants Cooper, Belka, Lindley and Jensen. Defendants Cooper, Belka, Lindley and Jensen's misrepresentations, omissions and suppressions of facts were the immediate cause of the Accountholder and BMF F 100 Class members' injuries.

463. In the exercise of reasonable diligence the Accountholder Class and the BMF 100 Class did not and could not have discovered the wrongful acts constituting this cause of action until after in or around August 1994 when Defendants Cooper, Lindley and Jensen pled guilty to the Criminal Information. The Accountholder Class and the BMF 100 Class filed the original Complaint within three years of the discovery of the acts which constitute this cause of action.

464. As a direct and proximate result of Defendants Cooper, Belka, Lindley and Jensen's intentional misrepresentations, omissions and misleading statements, the Accountholder and BMF 100 Class members were damaged in an amount to be determined according to proof at trial, together with interest thereon as provided by law.

465. Defendants Cooper, Belka, Lindley and Jensen acted maliciously and with an evil mind when they committed the wrongful acts which constitute this cause of action such that its warrants the imposition of punitive and exemplary damages to the Accountholder and BMF 100 Class members.

Sixth Cause of Action
Negligent Misrepresentation

(Against Defendants Cooper, Belka, Lindley and Jensen)

466. The Accountholder Class and the BMF 100 Class incorporate by reference and reallege all prior paragraphs of the Fourth Amended Complaint as though set forth fully herein. This cause of action is brought on behalf of the Accountholder and BMF 100 Class members against Defendants Cooper, Belka, Lindley and Jensen.

467. Defendants Cooper, Lindley, Jensen, and Belka, and each of them, made misrepresentations of facts, through oral and written communications, to the Accountholder and BMF 100 Class members. These misrepresentations, and the manner in which they were communicated to the Accountholder and BMF 100 Class members, are further detailed in the Breach section of this Complaint and incorporated by reference.

468. Defendants Cooper, Belka, Lindley and Jensen made these misrepresentations of facts to the Accountholder and BMF 100 Class members without any reasonable grounds for believing the representations were true when made. The Accountholder and BMF 100 Class members justifiably relied on Defendants Cooper, Belka, Lindley and Jensen's misrepresentations of facts. Defendants Cooper, Belka, Lindley and Jensen's misrepresentations of facts were the immediate cause of the Accountholder and BMF 100 Class members' injuries. Had Defendants Cooper, Belka, Lindley and Jensen's misrepresentations of facts not been made to the Accountholder and BMF 100 Class members, the Accountholder Class members would not have set up or maintained accounts at First Pension, and the BMF 100 Class members would not have purchased interests in BMF 100.

469. The Accountholder Class and the BMF 100 Class did not and could not have, in the exercise of reasonable diligence, discovered the facts constituting this cause of action until in or around August 1994 when Defendants Cooper, Lindley and Jensen pled guilty to the Criminal Information. The Accountholder Class and the BMF 100 Class filed the original Complaint within three years of discovery of the facts

constituting this cause of action.

470. As a direct and proximate result of Defendants Cooper, Belka, Lindley and Jensen's negligent misrepresentations of facts, the Accountholder and BMF 100 Class suffered damages, with interest thereon, to be determined according to proof at trial.

Seventh Cause of Action
Breach of Fiduciary Duty

(Against Defendants Cooper, Belka, Lindley and Jensen)

471. The Accountholder Class and the BMF 100 Class reallege and incorporate by reference all prior paragraphs of the Fourth Amended Complaint as though fully set forth herein. This cause of action is brought on behalf of the Accountholder and BMF 100 Class members against Defendants Cooper, Belka, Lindley and Jensen.

472. Defendants Cooper, Lindley, Jensen, and Belka, and each of them, had a fiduciary and confidential relationship with the Accountholder and BMF 100 Class members. This fiduciary and confidential relationship arose from Defendants Cooper, Lindley, Jensen, and Belka's positions as described in the Identification of Parties section of this Complaint and incorporated by reference.

473. The duties expressly assumed by Defendants Cooper, Belka, Lindley and Jensen and owed to the Accountholder and BMF 100 Classes include, *inter alia*:

! The duty to act with reasonable care to ascertain that the information set forth in the offering and promotional newsletters, correspondence,

materials and oral representations communicated to and relied upon by the Accountholder and BMF 100 Class members in deciding to make their investment decisions was accurate and did not contain misleading statements or omissions of material facts;

- The duty to deal fairly and honestly with the Accountholder and BMF 100 Class members. The duty to avoid placing oneself in situations involving a conflict of interest with the Accountholder and BMF 100 Class members;
- The duty to disclose all material facts affecting the Accountholder and BMF 100 Class members;
- The duty to administer the Accountholder Class members' pension funds properly and the duty to administer the BMF 100 Class members' funds properly;
- The duty of loyalty to the Accountholder and BMF 100 Class members and to not put their own interests before the interests of the Accountholder and BMF 100 Class members;

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- ! The duty to keep the Accountholder and BMF 100 Class members' trust funds separate and identified;
- ! The duty to make the Accountholder and BMF 100 Class members funds productive;
- ! The duty to dispose of improper investments; and
- ! The duty to apply the full extent of their special skills in handling the Accountholder Class and BMF 100 Class members' funds and property.

474. Defendants Cooper, Belka, Lindley and Jensen failed to fulfill their fiduciary duties owed to the Accountholder and BMF 100 Class members. Instead of complying with the duties alleged above, Defendants Cooper, Belka, Lindley and Jensen's activities and conduct, as alleged in the Breach section of this Complaint and incorporated by reference, breached these fiduciary duties and thereby injured the Accountholder and BMF 100 Class members.

475. The Accountholder Class and the BMF 100 Class did not and could not have, in the exercise of reasonable diligence, discovered the facts constituting this cause of action until in or around August 1994, when Defendants Cooper, Lindley and Jensen pled guilty to the Criminal Information. The Accountholder Class and the BMF 100 Class filed their original Complaint within four years of discovery of the facts constituting this cause of action.

476. As a direct and proximate result of Defendants Cooper, Belka, Lindley and Jensen's breaches of fiduciary duty, the Accountholder and BMF 100 Class members were damaged, with interest thereon, in an amount to be determined at trial.

Eighth Cause of Action
Negligence

(Against Defendants Cooper, Belka, Lindley and Jensen)

477. The Accountholder Class and the BMF 100 Class reallege and incorporate by reference all prior paragraphs of the Fourth Amended Complaint as though fully set forth herein. This cause of action is brought on behalf of the Accountholder and BMF 100 Class members against Defendants Cooper, Belka, Lindley and Jensen.

478. Defendants Cooper, Lindley, Jensen and Belka, and each of them, owed the Accountholder and BMF 100 Class members a duty of due care. This duty arose from the Defendants Cooper, Lindley, Jensen and Belka's positions as described in the Identification of Parties section of this Complaint.

479. Defendants Cooper, Belka, Lindley and Jensen breached their duty of due care toward the Accountholder and BMF 100 Class members by their conduct described in the Breach section of this Complaint.

480. The Accountholder Class and the BMF 100 Class did not and could not have, in the exercise of reasonable diligence, discovered the facts constituting this cause of action until in or around August 1994, when Defendants Cooper, Lindley, and Jensen pled guilty to the Criminal Information. The Accountholder Class and the BMF 100 Class filed the original complaint within three years of discovery of the facts constituting this cause of action.

481. As a direct and proximate result of Defendants Cooper, Belka, Lindley

and Jensen's negligence and breaches of due care, the Accountholder and BMF 100 Class members were damaged, with interest thereon, in an amount to be determined at trial.

Ninth Cause of Action
Accounting

(Against Defendants Cooper, Belka, Lindley and Jensen)

482. The Accountholder Class and the BMF 100 Class incorporate by reference all prior paragraphs in the Fourth Amended Complaint as though set forth fully herein. This cause of action brought on behalf of the Accountholder and BMF 100 Class members against Defendants Cooper, Belka, Lindley and Jensen.

483. The accounts between the Accountholder and BMF 100 Class members and Defendants Cooper, Belka, Lindley and Jensen are so complicated that an ordinary legal action demanding a fixed sum is impracticable.

484. The exact amount of money due from Defendants Cooper, Belka, Lindley and Jensen to the Accountholder and BMF 100 Class members is unknown and cannot be ascertained without an accounting of the records of Defendants Cooper, Belka, Lindley and Jensen. Therefore, the Accountholder Class and the BMF 100 Class demand an accounting from Defendants Cooper, Belka, Lindley and Jensen.

Tenth Cause of Action
Fraud and Deceit By Active Concealment

(Against The C&L Defendants)

485. The Accountholder Class and the BMF 100 Class reallege and incorporate by reference all prior paragraphs of the Fourth Amended Complaint as

though fully set forth herein. This cause of action is brought on behalf of the Accountholder and BMF 100 Class members against the C&L Defendants.

486. The C&L Defendants, and each of them, actively concealed material facts affecting the Accountholder and BMF 100 Class members as more fully described above in the Duty and Breach sections of this Complaint and incorporated by reference. The C&L Defendants active concealment of material facts consisted of the C&L Accountholder Concealment Writings, the C&L Accountholder Concealment Activities, the C&L Accountholder Misrepresentation Writings, the C&L BMF 100 Concealment Writings, the C&L BMF 100 Concealment Activities and the C&L BMF 100 Misrepresentation Writings.

487. The C&L Defendants knew the material facts affecting the Accountholder and BMF 100 Class members, which they actively concealed, were unknown and beyond the reach of the Accountholder and BMF 100 Class members.

488. The C&L Defendants actively concealed material facts in the manner described above with the intent to defraud or the intent to induce reliance by the Accountholder and BMF 100 Class members. The material facts which C&L Defendants actively concealed induced reliance by the Accountholder and BMF 100 Class members. Had the C&L Defendants not actively concealed material facts, the Accountholder Class members would not have maintained their accounts at First Pension/VestCorp and the BMF 100 Class members would not have purchased interests in BMF 100.

489. In the exercise of reasonable diligence the Accountholder Class and the

BMF 100 Class did not and could not have discovered the fraudulent acts constituting this cause of action until after August 1994 when Defendants Cooper, Lindley and Jensen pled guilty to the Criminal Information. The Accountholder Class and the BMF 100 Class filed their original Complaint within three years of discovery of the facts which constitute this cause of action.

490. As a direct and proximate result of the C&L Defendants' active concealment of material facts, the Accountholder and BMF 100 Class members were damaged, together with interest thereon, in an amount to be determined at trial.

Eleventh Cause of Action
Fraud and Deceit Based Upon Omissions
and Misrepresentations of Material Facts

(Against The C&L Defendants)

491. The Accountholder Class and the BMF 100 Class reallege and incorporate by reference all prior paragraphs of the Fourth Amended Complaint as though fully set forth herein. This cause of action is brought on behalf of the Accountholder and BMF 100 Class members against the C&L Defendants.

492. The C&L Defendants, and each of them, had a duty to speak honestly when communicating with the Accountholder Class and the BMF 100 Class members and to not omit facts necessary to make those statements made not misleading. The C&L Defendants duties are more fully described in the Duty section of this Complaint and are incorporated herein by reference.

493. The C&L Defendants made misrepresentations of facts and misleading statements to the Accountholder and BMF 100 Class members in the manner

described above in the Breach section of this Complaint and incorporated by reference. The C&L Defendants' misrepresentations and misleading statements consisted of the C&L Accountholder Misrepresentation Writings and the C&L BMF 100 Misrepresentation Writings as more fully described above.

494. The C&L Defendants knew the representations and misleading statements they made to the Accountholder and BMF 100 Class members were false or misleading, or did not believe them to be true, or did not reasonably believe them to be true when made.

495. The C&L Defendants made these misrepresentations and misleading statements with the intent to defraud and to induce reliance thereon by the Accountholder and BMF 100 Class members. The Accountholder and BMF 100 Class members justifiably relied on the misrepresentations and misleading statements made by the C&L Defendants. Had the C&L Defendants not made misrepresentations or misleading statements, the Accountholder Class members would not have maintained their accounts with First Pension /VestCorp and the BMF 100 Class members would not have purchased interests in BMF 100.

496. The C&L Defendants also made intentional misrepresentations and misleading statements to Defendants Cooper, Belka, Lindley and Jensen and their affiliates which the C&L Defendants intended or had reason to expect would be repeated or its substance communicated to the Accountholder and BMF 100 Class members. The Accountholder and BMF 100 Class members justifiably relied on these indirect misrepresentations and misleading statements to their detriment and

influenced their conduct concerning their respective First Pension/VestCorp accounts or BMF 100 interests.

497. In the exercise of reasonable diligence the Accountholder Class and the BMF 100 Class could not have discovered and did not discover the wrongful acts which constitute this cause of action until after in or around August 1994 when Defendants Cooper, Lindley and Jensen pled guilty to the Criminal Information. The Accountholder Class and the BMF 100 Class filed the original Complaint within three years of the discovery of the facts which constitute this cause of action.

498. As a direct and proximate result of C&L Defendants' fraudulent misrepresentations and misleading statements, the Accountholder and BMF 100 Class members were damaged in an amount to be determined according to proof at trial, together with interest thereon as provided by law.

Twelfth Cause of Action
Negligent Misrepresentation

(Against The C&L Defendants)

499. The Accountholder Class and the BMF 100 Class incorporate by reference and reallege all prior paragraphs of the Fourth Amended Complaint as though set forth fully herein. This cause of action is brought on behalf of the Accountholder and BMF 100 Class members against the C&L Defendants.

500. The C&L Defendants, and each of them, made misrepresentations of facts to the Accountholder and BMF 100 Class members which are more fully described above in the Duty and Breach section of this Complaint and are incorporated by

reference. The C&L Defendants' misrepresentations of facts consisted of the C&L Accountholder Misrepresentation Writings and the C&L BMF 100 Misrepresentation Writings as more fully described above.

501. The C&L Defendants made these misrepresentations to the Accountholder and BMF 100 Class members without any reasonable grounds for believing these representations were true when made.

502. The C&L Defendants made these misrepresentations knowing or expecting that they would be used to influence or affect the Accountholder and BMF 100 Class members . The Accountholder and BMF 100 Class members were the intended beneficiaries of the C&L Defendants' negligent misrepresentations.

503. The C&L Defendants intended that the Accountholder and BMF 100 Class member would rely on the misrepresentations the C&L Defendants made. The Accountholder and BMF 100 Class members justifiably relied on C&L Defendants' misrepresentations of facts. The C&L Defendants' misrepresentations were the immediate cause of the Accountholder and BMF 100 Class members' injuries. Had C&L Defendants' negligent misrepresentations of facts not been made, the Accountholder Class members would not have maintained their accounts at First Pension/VestCorp and the BMF 100 Class members would not have purchased interests in BMF 100.

504. The C&L Defendants also made negligent misrepresentations to Defendants Cooper, Belka, Lindley and Jensen and their affiliates which the C&L Defendants intended or had reason to expect would be repeated or its substance

communicated to the Accountholder and BMF 100 Class members. The Accountholder and BMF 100 Class members justifiably relied on these indirect misrepresentations to their detriment and influenced their conduct concerning their respective First Pension/VestCorp accounts or BMF 100 interests.

505. The Accountholder Class and the BMF 100 Class did not, and in the exercise of reasonable diligence, could not have discovered the facts constituting this cause of action until after August 1994, when Defendants Cooper, Lindley, and Jensen pled guilty to the Criminal Information. The Accountholder Class and the BMF 100 Class filed the original Complaint within three years of discovery of the facts constituting this cause of action.

506. As a direct and proximate result of the C&L Defendants' negligent misrepresentations, the Accountholder and BMF 100 Class members suffered damages, with interest thereon, to be determined according to proof at trial.

Thirteenth Cause of Action
Violations of Section 25504.2 of the California Corporations Code

Written Consent to Be Named in a Prospectus

507. The Accountholder Class and the BMF 100 Class incorporate by reference all prior paragraphs of the Fourth Amended Complaint as though fully set forth herein. This cause of action is brought on behalf of the BMF 100 Class members.[4]

[4] This cause of action was originally brought against Defendant Latham and was subsequently dismissed, on statute of limitations grounds, when Defendant Latham filed its first demurrer. Based on the Court's prior ruling, plaintiffs stipulate that they have brought the same cause of action against Defendant C&L, that C&L demurred thereto, and that the Court dismissed this cause of action without leave to amend based on the statute of limitations. Plaintiffs do not waive their right to bring an appeal of the

Fourteenth Cause of Action
Fraud and Deceit By Active Concealment

(Against Defendants Latham, Stahr, Cox and Mendoza)

508. The Accountholder Class and the BMF 100 Class reallege and incorporate by reference all prior paragraphs of the Fourth Amended Complaint as though fully set forth herein. This cause of action is brought on behalf of the Accountholder and BMF 100 Class members against Defendants Latham, Stahr, Cox and Mendoza.

509. Defendants Latham, Cox, Mendoza, and Stahr, and each of them, actively concealed material facts affecting the Accountholder and BMF 100 Class members as more fully described in the Duty and Breach section of this Complaint and incorporated by reference. Defendants Latham, Cox, Mendoza, and Stahr's active concealment conduct consists of the Latham Accountholder Concealment Writings, the Latham Accountholder Concealment Activities, the Latham Accountholder Misrepresentation Writings, the Latham BMF 100 Concealment Writings, the Latham BMF 100 Concealment Activities and the Latham BMF 100 Misrepresentation Writings as more fully described above.

510. Defendants Latham, Stahr, Cox and Mendoza knew the material facts

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Court's dismissal of this cause of action against Defendants Latham and C&L. If and when a final judgment is entered in this action as to Defendants Latham or C&L, plaintiffs reserve their right to appeal the dismissal without leave to amend of this cause of action against Defendants Latham and C&L.

which they actively concealed were unknown or beyond the reach of the Accountholder and BMF 100 Class members.

511. Defendants Latham, Stahr, Cox and Mendoza actively concealed material facts with the intent to defraud and induce reliance by the Accountholder and BMF 100 Class members. Had the material facts which Defendants Latham, Stahr, Cox and Mendoza actively concealed been known to the Accountholder and BMF 100 Class members, the Accountholder Class members would not have maintained their accounts with First Pension/VestCorp and the BMF 100 Class members would not have purchased interests in BMF 100.

512. In the exercise of reasonable diligence the Accountholder and BMF 100 Class members could not have discovered the acts constituting this cause of action until after August 1994 when Defendants Cooper, Lindley and Jensen pled guilty to the Criminal Information. The Accountholder Class and the BMF 100 Class filed their original Complaint within three years of discovery of the facts which constitute this cause of action.

513. As a direct and proximate result of Defendants Latham, Stahr, Cox and Mendoza's active concealment of material facts, the Accountholder and BMF 100 Class members were damaged, together with interest thereon, in an amount to be determined at trial.

Fifteenth Cause of Action
Fraud and Deceit Based Upon Omissions
and Misrepresentations of Material Facts

(Against Defendants Latham, Stahr, Cox and Mendoza)

514. The Accountholder Class and the BMF 100 Class reallege and incorporate by reference all prior paragraphs of the Fourth Amended Complaint as though fully set forth herein. This cause of action is brought on behalf of the Accountholder and BMF100 Class members against Defendants Latham, Stahr, Cox and Mendoza.

515. At all relevant times Defendants Latham, Cox, Mendoza, and Stahr, and each of them, had a duty to disclose all material facts to the Accountholder and BMF 100 Class members and a duty to speak honestly when they did communicate with the Accountholder and BMF 100 Class members and to not omit facts necessary to make those statements made not misleading. These duties are more fully described in the Duty section of this Complaint and incorporated by reference. As to Defendant Cox, his duty to disclose continued even though he left Defendant Latham in or around March 1986 because 1) he never obtained a release from the client Accountholder and BMF 100 Class members for which he provided legal services, 2) his liability as a former partner of Defendant Latham continues until his termination is noticed and given to the Accountholder Class and the BMF 100 Class, and 3) Defendant Latham had Defendants Cooper, Belka, Lindley and Jensen sign a purported release of liability which included Defendant Cox.

516. Defendants Latham, Stahr, Cox and Mendoza made misrepresentations, omissions, and suppressions of facts to the Accountholder and BMF 100 Class members. Defendants Latham, Stahr, Cox and Mendoza also omitted facts from the Accountholder and BMF 100 Class members which should have been disclosed in

order to make those statements made not misleading. These misrepresentations, omissions, and suppressions of facts are more fully described above in the Breach section of this Complaint and incorporated by reference. These misrepresentations, omissions and misleading statements consist of the Latham Accountholder Misrepresentation Writings and the Latham BMF 100 Misrepresentation Writings.

517. Defendants Latham, Stahr, Cox and Mendoza made these misrepresentations, omissions and misleading statements to the Accountholder and BMF 100 Class members knowing they were false, not believing them to be true, or not reasonably believing them to be true when made. Defendants Latham, Stahr, Cox and Mendoza made these misrepresentations, omissions, and suppressions of facts with the intent to defraud and induce reliance thereon by the Accountholder and the BMF 100 Class members.

518. The Accountholder and BMF 100 Class members justifiably relied on the misrepresentations, omissions, and suppressions of facts made by Defendants Latham, Stahr, Cox and Mendoza. The misrepresentations, omissions, and suppressions of facts by Defendants Latham, Stahr, Cox and Mendoza were the immediate cause of the Accountholder and the BMF 100 Class members' injuries. Had Defendants Latham, Stahr, Cox and Mendoza not made these misrepresentations, omissions, and suppressions of facts, the Accountholder Class members would not have maintained their pension accounts at First Pension/Vestcorp and the BMF 100 Class members would not have purchased interests in BMF 100.

519. Defendants Latham, Cox, Mendoza, and Stahr also made intentional

misrepresentations and misleading statements to Defendants Cooper, Belka, Lindley and Jensen and their affiliates which Defendants Latham, Cox, Mendoza, and Stahr intended or had reason to expect would be repeated or its substance communicated to the Accountholder and BMF 100 Class members. The Accountholder and BMF 100 Class members justifiably relied on these indirect misrepresentations to their detriment and it influenced their conduct concerning their respective First Pension/VestCorp accounts or BMF 100 interests.

520. In the exercise of reasonable diligence the Accountholder Class and the BMF 100 Class could not have discovered and did not discover the wrongful acts which constitute this cause of action until after August 1994 when Defendants Cooper, Lindley and Jensen pled guilty to the Criminal Information. The Accountholder Class and the BMF 100 Class filed the original Complaint within three years of the discovery of the acts which constitute this cause of action.

521. As a direct and proximate result of Defendants Latham, Stahr, Cox and Mendoza's intentional misrepresentations, omissions, and suppressions of facts, the Accountholder and BMF 100 Class members were damaged in an amount to be determined according to proof at trial, together with interest thereon as provided by law.

522. Defendants Latham, Stahr, Cox and Mendoza acted maliciously and with an evil mind when they committed the wrongful acts which constitute this cause of action such that it warrants the imposition of punitive and exemplary damages to the Accountholder and BMF 100 Class members.

Sixteenth Cause of Action
Negligent Misrepresentation

(Against Defendants Latham, Stahr, Cox and Mendoza)

523. The Accountholder Class and the BMF 100 Class incorporate by reference and reallege all prior paragraphs of the Fourth Amended Complaint as though set forth fully herein. This cause of action is brought on behalf of the Accountholder and BMF 100 Class members against Defendants Latham, Stahr, Cox and Mendoza.

524. Defendants Latham, Stahr, Cox, and Mendoza, and each of them, made misrepresentations of facts to the Accountholder and BMF 100 Class members as alleged more fully above in the Breach section of this Complaint and incorporated by reference. These misrepresentations consist of the Latham Accountholder Misrepresentation Writings and the BMF 100 Misrepresentations Writings as more fully described above.

525. Defendants Latham, Stahr, Cox and Mendoza made these misrepresentations of facts to the Accountholder and BMF 100 Class members without any reasonable grounds for believing the representations were true when made and made them without due care.

526. Defendants Latham, Cox, Mendoza, and Stahr made misrepresentations of facts to the Accountholder and BMF 100 Class members who were the intended beneficiaries of Defendants Latham, Cox, Mendoza, and Stahr's misrepresentations and advice. Defendants Latham, Cox, Mendoza, and Stahr made these misrepresentations intending and expecting to influencing the Accountholder and BMF

100 Class members' reliance thereon.

527. The Accountholder and BMF 100 Class members justifiably relied on Defendants Latham, Stahr, Cox and Mendoza's misrepresentations of facts. Defendants Latham, Stahr, Cox and Mendoza's misrepresentations of facts were the immediate cause of the Accountholder Class and BMF 100 Class members' injuries. Had Defendants Latham, Stahr, Cox and Mendoza not made negligent misrepresentations of facts to the Accountholder and BMF 100 Class members, the Accountholder Class members would not have maintained their accounts at First Pension and the BMF 100 Class members would not have purchased interests in BMF 100.

528. Defendants Latham, Cox, Mendoza, and Stahr also made negligent misrepresentations of facts to Defendants Cooper, Belka, Lindley and Jensen and their affiliates which Defendants Latham, Cox, Mendoza, and Stahr intended or had reason to expect would be repeated or its substance communicated to the Accountholder and BMF 100 Class members. The Accountholder and BMF 100 Class members justifiably relied on these indirect misrepresentations to their detriment and influenced their conduct concerning their respective First Pension/VestCorp accounts or BMF 100 interests.

529. The Accountholder Class and the BMF 100 Class did not and could not have, in the exercise of reasonable diligence, discovered the facts constituting this cause of action until in or around August 1994 when Defendants Cooper, Lindley and Jensen pled guilty to the Criminal Information. The Accountholder Class and the BMF

100 Class filed the original Complaint within three years of discovery of the facts constituting this cause of action.

530. As a direct and proximate result of Defendants Latham, Stahr, Cox and Mendoza's negligent misrepresentations of facts, the Accountholder and BMF 100 Class members suffered damages, with interest thereon, in an amount to be determined according to proof at trial.

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Seventeenth Cause of Action
Professional Malpractice

(Against Defendants Latham, Stahr, Cox and Mendoza)

531. The Accountholder Class and the BMF 100 Class reallege and incorporate by reference all prior paragraphs of the Fourth Amended Complaint as though fully set forth herein. This cause of action is brought on behalf of the Accountholder and BMF 100 Class members against Defendants Latham, Stahr, Cox and Mendoza.

532. Defendants Latham, Cox, Stahr, and Mendoza, and each of them, owed a fiduciary duty and a duty of due care to the Accountholder and BMF 100 Class members. These duties are more fully described above in the duty section of this Complaint and are incorporated by reference.

533. In performing legal services for which they owed a duty to the Accountholder and BMF 100 Class members, Defendants Latham, Stahr, Cox and Mendoza were required to perform those services at the standard of care and conduct for attorneys with similar expertise in the same or similar locality. In performing those services, Defendants Latham, Stahr, Cox and Mendoza's actions fell below this standard of care and conduct. Defendants Latham, Cox, Stahr, and Mendoza acted either intentionally or negligently in breaching their duties to the Accountholder and BMF 100 Class members. Defendants Latham, Cox, Mendoza, and Stahr's actions which fell below the proper standard of care and the standard of conduct are more fully described in the breach section of this Complaint and incorporated by reference.

Moreover, Defendants Latham, Cox, Mendoza and Stahr failed to conduct the proper due diligence required for the BMF 100 registration statement filed in December 1984 which was required to be completed before the registration statement was filed with the SEC and the DOC.

534. The Accountholder and BMF 100 Class members were the intended beneficiaries of Defendants Latham, Cox, Mendoza, and Stahr's legal services and advice. Defendants Latham, Cox, Mendoza, and Stahr's actions had the purpose and affect of influencing the Accountholder and BMF 100 Class members to their detriment.

535. The Accountholder Class and the BMF 100 Class did not discover the facts constituting this cause of action until after August 1994 when Defendants Cooper, Lindley and Jensen pled guilty to the Criminal Information. Although many of the wrongful acts constituting this cause of action occurred more than four years from the filing of the original Complaint, the four year statute of limitations period for this cause of action is tolled because 1) the BMF 100 Class did not suffer "actual injury" until First Pension/VestCorp and the affiliated entities declared bankruptcy in or around April 1994, and 2) Defendants Latham, Stahr, Cox and Mendoza willfully concealed the material facts constituting this cause of action from the Accountholder and BMF 100 Class members.

536. The Accountholder and BMF 100 Class members did not suffer "actual injury" until the First Pension bankruptcy because prior to that time the Accountholder and BMF 100 Class members could have sought a return of their funds if they had discovered the acts constituting this cause of action. Prior to April 1994, the damages

were potential but not certain, i.e. it had not reached a point of empirical certainty. When First Pension/VestCorp and its affiliates declared bankruptcy, the Accountholder and BMF 100 Class members' funds became jeopardized and the damages had reached a point of empirical certainty. The statute of limitations for this cause of action against Defendants Latham, Stahr, Cox and Mendoza was tolled until April 1994 and the Accountholder Class and the BMF 100 Class filed the present action within one year of that date.

537. The statute of limitations was also tolled because Defendants Latham, Stahr, Cox and Mendoza willfully concealed the material facts constituting this cause of action from the Accountholder and BMF 100 Class members. Defendants Latham, Stahr, Cox and Mendoza's willful concealment tolled the statute of limitations until either Defendants Latham, Stahr, Cox and Mendoza disclosed the facts constituting their willful concealment or the Accountholder Class and the BMF 100 Class discovered the facts constituting this cause of action. Defendants Latham, Stahr, Cox and Mendoza's willful concealment is more fully described in the duty section of this Complaint and is incorporated herein by reference. The Accountholder Class and the BMF 100 Class filed the original Complaint within one year of discovery of the facts constituting this cause of action.

538. In addition, Defendant Mendoza returned in or around 1992 to conduct further willful concealment activities when Defendant Mendoza participated in a false and misleading BMF 100 Consent Solicitation which was disseminated to the BMF 100 Class members and was done with the purpose and effect of concealing material facts

from the BMF 100 Class members.

539. As a direct and proximate result of Defendants Latham, Stahr, Cox and Mendoza's professional malpractice, the Accountholder and BMF 100 Class members suffered damages, together with interest thereon, in an amount to be determined at trial.

Eighteenth Cause of Action
Fraud and Deceit By Active Concealment

(Against The S&H Defendants)

540. The Accountholder Class and the BMF 100 Class reallege and incorporate by reference all prior paragraphs of the Fourth Amended Complaint as though fully set forth herein. This cause of action is brought on behalf of the Accountholder and BMF 100 Class members against the S&H Defendants.

541. Defendants S&H and Smith, and each of them, actively concealed material facts affecting the Accountholder and BMF 100 Class members as more fully described in the Duty and Breach sections of this Complaint and incorporated by reference. The S&H Defendants' active concealment consists of the S&H Accountholder Concealment Writings, the S&H Accountholder Concealment Activities, the S&H BMF 100 Concealment Writings, the S&H BMF 100 Concealment Activities, the S&H Accountholder Misrepresentation Writings and the S&H BMF 100 Misrepresentation Writings which are more fully described above.

542. The S&H Defendants knew the material facts affecting the Accountholder and BMF 100 Class members which they actively concealed were unknown or beyond

the reach of the Accountholder and BMF 100 Class members.

543. The S&H Defendants actively concealed material facts with the intent to defraud or the intent to induce reliance therein by the Accountholder and BMF 100 Class members. Had the true facts which the S&H Defendants actively concealed been known to the Accountholder and BMF 100 Class members, the Accountholder Class members would not have maintained their accounts at First Pension/VestCorp and the BMF 100 Class members would not have purchased interests in BMF 100.

544. In the exercise of reasonable diligence the Accountholder Class and the BMF 100 Class could not have discovered the fraudulent acts constituting this cause of action until after August 1994 when Defendants Cooper, Lindley and Jensen pled guilty to the Criminal Information. The Accountholder Class and the BMF 100 Class filed their original Complaint within three years of discovery of the facts which constitute this cause of action.

545. As a direct and proximate result of the S&H Defendants' active concealment of material facts, the Accountholder and BMF 100 Class members were damaged, together with interest thereon, in an amount to be determined at trial.

Nineteenth Cause of Action
Fraud and Deceit Based Upon Omissions
and Misrepresentations of Material Facts

(Against The S&H Defendants)

546. The Accountholder Class and the BMF 100 Class reallege and incorporate by reference all prior paragraphs of the Fourth Amended Complaint as though fully set forth herein. This cause of action is brought on behalf of the

Accountholder and BMF 100 Class members against the S&H Defendants.

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547. At all relevant times Defendants S&H and Smith, and each of them, had a duty to disclose material facts, to speak honestly when communicating, and to not omit facts necessary to make those statements made not misleading to the Accountholder and BMF 100 Class members. These duties are more fully described in the Duty section of this Complaint and incorporated by reference.

548. The S&H Defendants made misrepresentations, omissions and suppressed facts necessary to make those statements made not misleading to the Accountholder and BMF 100 Class members. These misrepresentations, omissions, and misleading statements are more fully described in the Breach section of this Complaint and incorporated by reference. The S&H Defendants' misrepresentations, omissions, and misleading statements consist of the S&H Accountholder Misrepresentation Writings and the S&H BMF 100 Misrepresentation Writings which are fully described above.

549. The S&H Defendants knew the representations, omissions and misleading statements made to the Accountholder and BMF 100 Class members were false, or did not believe them to be true, or did not reasonably believe them to be true when made. The S&H Defendants made these misrepresentations, omissions and misleading statements of facts with the intent to defraud and to induce reliance thereon by the Accountholder and BMF 100 Class members.

550. The Accountholder and BMF 100 Class members justifiably relied on the misrepresentations, omissions and misleading statements of facts made by the S&H Defendants. The S&H Defendants' misrepresentations, omissions and misleading

statements of facts were the immediate cause of the Accountholder and BMF 100 Class members' injuries. Had the S&H Defendants not made these misrepresentations, omissions and misleading statements of facts, the Accountholder Class members would not have maintained their accounts at First Pension/VestCorp and the BMF 100 Class members would not have purchased interests in BMF 100.

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551. The S&H Defendants also made intentional misrepresentations and misleading statements to Defendants Cooper, Belka, Lindley and Jensen and their affiliates which the S&H Defendants intended or had reason to expect would be repeated or its substance communicated to the Accountholder and BMF 100 Class members. The Accountholder and BMF 100 Class members justifiably relied on these indirect misrepresentations and misleading statements to their detriment and it influenced their conduct concerning their respective First Pension/VestCorp accounts or BMF 100 interests.

552. In the exercise of reasonable diligence the Accountholder Class and the BMF 100 Class could not have discovered and did not discover the wrongful acts which constitute this cause of action until after August 1994 when Defendants Cooper, Lindley and Jensen pled guilty to the Criminal Information. The Accountholder Class and the BMF 100 Class filed the original Complaint within three years of the discovery of the acts which constitute this cause of action.

553. As a direct and proximate result of the S&H Defendants' intentional misrepresentations, omissions and misleading statements, the Accountholder and BMF 100 Class members were damaged, with interest thereon, in an amount to be determined according to proof at trial.

554. The S&H Defendants acted maliciously and with an evil mind when they committed the wrongful acts which constitute this cause of action such that it warrants the imposition of punitive and exemplary damages to the Accountholder and BMF 100 Class members.

Twentieth Cause of Action
Negligent Misrepresentation

(Against The S&H Defendants)

555. The Accountholder Class and the BMF 100 Class incorporate by reference and reallege all prior paragraphs of the Fourth Amended Complaint as though set forth fully herein. This cause of action is brought on behalf of the Accountholder and BMF 100 Class members against the S&H Defendants.

556. Defendants S&H and Smith, and each of them, made misrepresentations of facts to the Accountholder and BMF 100 Class members. These misrepresentations are more fully described in the Duty and Breach sections of this Complaint and incorporated herein by reference. The S&H Defendants' misrepresentations consist of the S&H Accountholder Misrepresentation Writings and the S&H BMF 100 Misrepresentation Writings as more fully described above.

557. The S&H Defendants made these misrepresentations of facts to the Accountholder and BMF 100 Class without any reasonable grounds for believing the representations were true when made and without due care.

558. The S&H Defendants made these misrepresentations of facts intending or expecting that the Accountholder and BMF 100 Class members would rely thereon to their detriment. The Accountholder and BMF 100 Class members were the intended beneficiaries of the S&H Defendants' negligent misrepresentations.

559. The Accountholder and BMF 100 Class members justifiably relied on the S&H Defendants' misrepresentations of facts. The S&H Defendants'

misrepresentations of facts were the immediate cause of the Accountholder and BMF 100 Class members' injuries. Had the S&H Defendants' not made negligent misrepresentations of facts, the Accountholder Class members would not have maintained their accounts with First Pension/VestCorp and the BMF 100 Class members would not have purchased interests in BMF 100.

560. The S&H Defendants also made negligent misrepresentations of facts to Defendants Cooper, Belka, Lindley and Jensen and their affiliates which the S&H Defendants intended or had reason to expect would be repeated or its substance communicated to the Accountholder and BMF 100 Class members. The Accountholder and BMF 100 Class members justifiably relied on these indirect misrepresentations to their detriment and it influenced their conduct concerning their respective First Pension/VestCorp accounts and BMF 100 interests.

561. The Accountholder Class and the BMF 100 Class did not nor could have, in the exercise of reasonable diligence, discovered the facts constituting this cause of action until in or around August 1994 when Defendants Cooper, Lindley, and Jensen pled guilty to the Criminal Information. The Accountholder Class and the BMF 100 Class filed the original Complaint within three years of discovery of the facts constituting this cause of action.

562. As a direct and proximate result of the S&H Defendants' negligent misrepresentations, the Accountholder and BMF 100 Class members suffered damages with interest thereon, to be determined according to proof at trial.

Twenty-First Cause of Action
Professional Malpractice

(Against the S&H Defendants)

563. The Accountholder Class and the BMF 100 Class reallege and incorporate by reference all prior paragraphs of the Fourth Amended Complaint as though fully set forth herein. This cause of action is brought on behalf of the Accountholder and BMF 100 Class members against the S&H Defendants.

564. The S&H Defendants, and each of them, owed the Accountholder and BMF 100 Class members a fiduciary duty and a duty of due care. These duties are more fully described in the Duty section of this Complaint and incorporated by reference.

565. In performing legal services for which they owed a duty to the Accountholder and BMF 100 Class members, the S&H Defendants were required to perform those services at the standard of care and conduct for attorneys with similar expertise in the same or similar locality. In performing those services, the S&H Defendants fell below this standard of care and conduct.

566. The Smith Defendants breached their fiduciary and due care duties toward the Accountholder and BMF 100 Class members by their actions which are more fully described above in the Breach section of the Complaint and incorporated by reference. The S&H Defendants also breached their duties by their acts which constitute fraud by active concealment, fraud by misrepresentations and omissions, and negligent misrepresentations.

567. The Accountholder and BMF 100 Class members were the intended beneficiaries of the S&H Defendants' legal services and advice. The S&H Defendants'

actions had the purpose and effect of influencing the Accountholder and BMF 100 Class members to their detriment.

568. The statute of limitations for this cause of action is tolled as to the S&H Defendants because 1) the Accountholder and BMF 100 Class members did not suffer "actual injury" until in or around April 1994, and 2) the S&H Defendants willfully concealed the material facts constituting this cause of action. The Accountholder and BMF 100 Class members did not suffer "actual injury" until the First Pension bankruptcy in or around April 1994 because prior to that time the Accountholder and BMF 100 Class members could have sought a return of their funds if they had discovered the acts constituting this cause of action. Prior to April 1994, the damages were potential but not certain, i.e. it had not reached a point of empirical certainty. When First Pension/VestCorp and its affiliates declared bankruptcy in or around April 1994, the Accountholder and BMF 100 Class members' funds became jeopardized and the damages had reached a point of empirical certainty. The Accountholder Class and the BMF 100 Class filed the original Complaint within one year of the April 1994 First Pension bankruptcy.

569. The statute of limitations was also tolled because the S&H Defendants willfully concealed the material facts constituting this cause of action from the Accountholder and BMF 100 Class members. The S&H Defendants' willful concealment tolled the statute of limitations until either the S&H Defendants disclosed the material facts or the Accountholder Class and the BMF 100 Class discovered the facts constituting this cause of action. The Accountholder Class and the BMF 100

Class did not and could not have discovered the facts constituting this cause of action until in or around August 1994 when Defendants Cooper, Lindley and Jensen pled guilty the Criminal Information.

570. As a direct and proximate result of the S&H Defendants' professional malpractice, the Accountholder and BMF 100 Class members were damaged, with interest thereon, in an amount to be determined at trial.

Twenty-Second Cause of Action
Aiding and Abetting Fraud and Deceit

(Against All Defendants)

571. The Accountholder Class and the BMF 100 Class reallege and incorporate by reference all prior paragraphs of the Fourth Amended Complaint as though fully set forth herein. This cause of action is brought on behalf of the Accountholder and BMF 100 Class members against all defendants.

572. Defendants, and each of them, had knowledge of the facts which constitute fraud by active concealment and fraud by misrepresentations and omissions as conducted by Defendants Cooper, Lindley, Belka, Jensen, Latham, Cox, Stahr, Mendoza, Smith, Smith & Hilbig, Coopers & Lybrand, and Hurwitz.

573. Defendants, and each of them, substantially assisted every other defendants' fraud by active concealment and fraud by misrepresentations and omissions. Defendants substantially assisted each others' fraud and deceit by conducting the wrongful acts described above in the Duty and Breach sections of this Complaint and incorporated by reference.

574. As a direct and proximate result of the defendants' aiding and abetting fraud and deceit, the Accountholder and BMF 100 Class members suffered damages, together with interest thereon, in an amount to be determined at trial.

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Twenty-Third Cause of Action
Aiding and Abetting Breach of Fiduciary Duty

(Against All Defendants)

575. The Accountholder Class and the BMF 100 Class reallege and incorporate by reference all prior paragraphs of the Fourth Amended Complaint as though fully set forth herein. This cause of action is brought on behalf of the Accountholder and BMF 100 Class members against all defendants

576. Defendants, and each of them, had knowledge of the fiduciary duties that Defendants Cooper, Belka, Lindley and Jensen, Defendants Latham, Stahr, Cox and Mendoza, and the S&H Defendants owed the Accountholder and BMF 100 Class members. These fiduciary duties are more fully described in the Duty section of this Complaint and incorporated by reference. Defendants, and each of them, had knowledge of the facts which constituted breaches of fiduciary duties by Defendants Cooper, Belka, Lindley and Jensen, Defendants Latham, Stahr, Cox and Mendoza, and the S&H Defendants against the Accountholder and BMF 100 Class members.

577. Defendants, and each of them, substantially assisted Defendants Cooper, Belka, Lindley and Jensen, Defendants Latham, Stahr, Cox and Mendoza, and the S&H Defendants' breaches of fiduciary duties against the Accountholder and BMF 100 Class members. Defendants' substantial assistance is more fully described in the Breach section of this Complaint and incorporated by reference.

578. As a direct and proximate result of defendants' aiding and abetting breaches of fiduciary duties, the Accountholder and BMF 100 Class members suffered

damages, together with interest thereon, in an amount to determined at trial.

VIII.

PRAYER

WHEREFORE, the Accountholder Class and the BMF 100 Class, request judgment against defendants, and each of them as follows:

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UPON THE FIRST THROUGH TWENTY-THIRD CAUSES OF ACTION

For Economic Damages, the Exact Amount According to Proof at Trial;

For Attorney Fees, Costs and Expenses; and

For Prejudgment Interest at the Statutory Rate of 10%.

UPON THE FIFTH, FIFTEENTH AND NINETEENTH CAUSES OF ACTION:

For Economic Damages, the Exact Amount According to Proof at Trial;

For Attorney Fees, Costs and Expenses;

For Punitive and Exemplary Damages; and

For Prejudgment Interest at the Statutory Rate of 10%.

UPON THE NINTH CAUSE OF ACTION:

For an Accounting of All Monies Invested by the Accountholder and BMF 100 Class Members and the Uses Thereof Made by Defendants Cooper, Belka, Lindley and Jensen; and

For an Order Requiring Defendants Cooper, Belka, Lindley and Jensen to Pay All Costs and Expenses, Including Attorneys' Fees Incurred by the Accountholder and BMF 100 Class Members In Seeking An Accounting.

UPON ALL CAUSES OF ACTION:

For All Other Relief the Court Deems Just and Proper.

Respectfully submitted,

AGUIRRE & MEYER

Dated: September 26, 1996

By:_____

Michael J. Aguirre, Esq.
Attorneys for Plaintiffs and the Classes