

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

DON HANDAL, individually and as trustee of the Don Handal Revocable Trust; REDEC AND ASSOCIATES, LLC; and JERMAR INC., Individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

CIVIL ACTION NO. \_\_\_\_\_

**DEMAND FOR JURY TRIAL**

**CLASS ACTION COMPLAINT**

**NATURE OF THE CASE**

Plaintiffs DON HANDAL, individually and on behalf of the Don Handal Revocable Trust (“Handal”), REDEC AND ASSOCIATES, LLC (“Redec”), and JERMAR INC. (“Jermar”) (collectively, the “Plaintiffs”) by and through their attorneys, for this Class Action Complaint against Defendant, STATE STREET BANK AND TRUST COMPANY (“State Street” or “Defendant”), on behalf of themselves and other similarly situated individuals who had custodian accounts at State Street pursuant to custodial agreements managed by TAG Virgin Islands Inc. (“TAG”) (the “Class” or “Class Members”), allege as follows upon personal knowledge as to Plaintiffs, and upon information and belief as to all other matters.

**NATURE OF THE ACTION**

1. This is a class action to recover in excess of \$100 million of investment losses caused by State Street's gross negligence and willful violations of its duties as custodian of the TAG-managed accounts. This action asserts claims against State Street for breach of contract, gross negligence, unjust enrichment, breach of fiduciary duty, aiding and abetting TAG's breach of fiduciary duty and aiding and abetting TAG's fraud.

2. State Street is a trust company organized under the laws of Massachusetts, and is a leading provider of services to mutual funds and their advisers, collective investment funds, corporate and public pension funds, insurance companies, operating companies and non-profit organizations. It is a subsidiary of State Street Corporation, a leading provider of financial services to institutional investors. State Street and its parent State Street Corp. specialize in providing core investment custody, fund or investment/securities accounting, fund administration, securities finance and transfer agent services to institutional clients.

3. At the end of the third quarter of 2011, State Street Corp. reported \$22.8 *trillion* in assets under custody and administration, and touts its "longstanding reputation as a capable and experienced service provider." It is partly because of this industry-leading expertise in providing custodian services and standing that State Street's conduct and failures, described below, are so egregious.

4. Plaintiffs and other Class Members were all customers of State Street who had custodial accounts held at State Street and managed by TAG, which was an investment manager for all Class Members. TAG is an SEC-registered investment advisor that is required to use a "qualified custodian" for its customer accounts. TAG manages and makes investment decisions for the Class Members' accounts and provides instructions to State Street, the

custodian. State Street was responsible for, *inter alia*, executing TAG's instructions, settling transactions, holding customer of investments, transferring/disbursing funds and providing accurate periodic statements to customers. Additionally, State Street was also the custodian for Class Members' retirement accounts, including IRAs and profit sharing accounts, under applicable IRS Rules and Regulations and other laws.

5. Beginning in 2007, and continuing thereafter, State Street breached its contracts with, and core duties of care and fiduciary duties owed to, all Class Members. In sum:

- a. State Street settled numerous fraudulent transactions submitted by TAG in the form of obviously fake subordinated notes. TAG's President, *not the purported issuers*, signed these subordinated "notes."
- b. State Street failed to obtain documents sufficient to evidence or settle purchases of securities that had supposedly occurred.
- c. State Street disbursed and transferred funds and/or securities to third parties and between accounts at false and/or inflated values.
- d. State Street disbursed funds to third parties for purchases of securities that were not received until months later.
- e. State Street disbursed funds to third parties in exchange for securities even when the securities received did not match the instructions given.
- f. State Street disbursed funds from the custodian accounts to TAG without proper authorization.

7. In addition, Plaintiffs and the other Class Members relied upon State Street to diligently settle and accurately report the transactions in their accounts, but were never informed of the true nature of the transactions. Although State Street received subordinated

notes from TAG that were obviously fake, State Street falsely reflected purchases of notes from issuers on account statements sent to Class Members. State Street even falsely reported phantom CUSIP numbers for the fake TAG notes held by Class Members. State Street's inaccurate descriptions of securities disguised the purchases of worthless securities in their accounts by TAG and the looting of their accounts. Only State Street knew that TAG was issuing worthless subordinated notes to the Class Members who were never so informed.

8. In short, State Street had actual knowledge that TAG was engaged in a widespread fraud based in part on the fake subordinated notes it received as well as other irregularities in transactions by TAG. Notwithstanding this knowledge, State Street aided and abetted TAG's fraud and concealed it for years from Plaintiffs and other Class Members. State Street settled countless transactions in fake subordinated notes, settled transactions in notes that called for illegal kickbacks to TAG, and settled transactions in defaulted notes at face value. State Street's conduct and acts were deceptive and misled Class Members.

9. As a direct result of State Street's gross negligence, breach of fiduciary duties, breach of contract and knowing aiding and abetting of TAG's fraud and breaches of fiduciary duty, Class Members have suffered losses in excess of \$100 million in their TAG-managed custodial accounts at State Street. Furthermore, had State Street provided accurate periodic statements to Class Members, TAG's fraud would have been detected and prevented. State Street is thus liable for all harm and damage suffered as the result of TAG's fraud.

#### **THE PARTIES**

10. Plaintiff Don Handal ("Handal") is an adult individual domiciled in Old Greenwich, Connecticut. Handal is the trustee of the Don Handal Revocable Trust ("Handal

Trust”). Handal maintained TAG-managed custodial accounts at State Street, including an IRA account.

11. Handal sustained approximately \$1.5 million of losses across his State Street accounts as a direct result of State Street’s actions complained of herein.

12. Plaintiff Redec and Associates, LLC (“Redec”) is a Delaware limited liability company based in Florida. Redec maintained two TAG-managed custodial accounts at State Street.

13. Plaintiff Jermar Inc. (“Jermar”) is a Delaware corporation based in Florida. Jermar maintained a TAG-managed custodial account at State Street.

14. Redec and Jermar are managed by Jerry Ceder. Redec and Jermar together sustained approximately \$20 million in aggregate damages across their State Street accounts as a direct result of State Street’s actions complained of herein.

15. Defendant State Street Bank and Trust Company (“State Street”) is a trust company duly organized and existing under the laws of the Commonwealth of Massachusetts that maintains its principal place of business at 800 Boylston Street, Boston, Massachusetts. It is a subsidiary of State Street Corp., a Massachusetts company that maintains its principal place of business at One Lincoln Street, Boston, Massachusetts.

#### **JURISDICTION AND VENUE**

16. This is a class action brought pursuant to Fed. R. Civ. P. 23(a) and (b)(3).

17. This Court has jurisdiction over the subject matter presented by this class action complaint because it is a class action arising under the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (2005), which provides for the original jurisdiction of the Federal Courts of any class action in which any member of the plaintiff class is a citizen of a

state different from any defendant, and in which the matter in controversy exceeds in the aggregate the sum of \$5,000,000.00, exclusive of interest and costs. Plaintiffs allege that the total claims of the individual members of the Class in this action are in excess of \$5,000,000.00 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. §1332(d)(2), (5).

18. For purposes of diversity, Plaintiffs are citizens of Connecticut, Delaware and Florida, and Defendant is a citizen of Massachusetts. Therefore, diversity of citizenship exists under CAFA as required by 28 U.S.C. § 1332(d)(2)(A). Furthermore, Plaintiffs allege that more than two-thirds of all of the members of the proposed Class in the aggregate are citizens of a state other than Massachusetts, where this action is originally being filed, and that the total number of members of the proposed Class is greater than 50, pursuant to 28 U.S.C. § 1332(d)(5)(B).

19. This Court also has general diversity jurisdiction over this action pursuant to 28 U.S.C. §1332, because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and there is complete diversity between Plaintiffs and Defendant.

20. Venue in this judicial district is proper pursuant to 28 U.S.C. §1391 because Defendant conducts business in, and may be found in, this District.

### **UNDERLYING ALLEGATIONS**

#### **A. Plaintiffs' Custodial Accounts With State Street**

21. Since at least mid-2007, Plaintiffs and Class Members all had custody accounts at State Street. These accounts were established pursuant to custodial agreements between Class Members and State Street or its predecessors.

22. During this same time, Class Members were all customers of TAG Virgin Islands Inc. ("TAG"), an SEC-registered investment advisor, employed to manage their accounts. James Tagliaferri ("Tagliaferri") is, and at all relevant times was, the President of TAG and its

predecessor Taurus Advisory Group LLC (“Taurus”). Tagliaferri, through TAG and Taurus, has been managing many of the Class Members’ accounts since the 1990s.

23. In 2007, Tagliaferri moved his principal office from Stamford, Connecticut to St. Thomas in the Virgin Islands, and reorganized his investment advisor firm as TAG. The United States Treasury Department’s Office of Comptroller of the Currency (“OCC”) which regulates national banks such as State Street designates the Virgin Islands as a High Intensity Financial Crime Area (“HIFCA”). Banks transacting business in HIFCA areas are required to operate with higher degrees of care and greater attention to possible financial crimes.

24. Plaintiffs and other Class Members became State Street customers at approximately the same time as TAG’s move to the Virgin Islands. Under Securities and Exchange Commission (“SEC”) Rule 206(4)-2, 17 C.F.R. 275.206(4)-2, under the Investment Adviser’s Act of 1940, 15 U.S.C. 80b, registered investment advisor firms such as TAG are required to use a “qualified custodian” for customer accounts which includes banks and trust companies such as State Street.

25. State Street had direct contractual relationships with Class Members under custodial agreements which authorized TAG to issue instructions on their accounts. State Street took custody of Class Members’ funds and securities, and assumed duties and obligations to hold and safeguard funds and securities, execute instructions, settle transactions, and to report and account for transactions and holdings. Class Members also opened IRA accounts which appointed State Street as IRA custodian and trustee under Section 408 of the IRS Code and federal regulations thereunder, 26 C.F.R. § 1.408-2 et seq.

26. The custodial agreements further imposed duties and obligations on State Street as follows:

- a. "...to hold all property turned over to State Street from time to time by Customer or on behalf of Customer at State Street's premises, in a Securities System or **in any other manner acceptable by State Street and permitted by law**...";
- b. "...to present obligations (including coupons) for payment upon maturity, when called for redemption and when income payments are due..."
- c. "Securities held by State Street or its Subcustodian (other than bearer securities or securities held in a Securities System) shall be registered in the name of any of its nominees or in the name of State Street, or of any of its Subcustodians or of their nominees...Neither State Street nor its Subcustodians will be obligated to accept securities on Customer's behalf unless such securities are in "street name" **or other good delivery form**.";
- d. "State Street shall have no obligation to act in accordance with purported Instructions to the extent that ...(ii) such Instructions fail to comply with an applicable Security Procedure or State Street otherwise believes in good faith that such Instructions would violate applicable law or Operating Rule that are applicable with respect to such Instructions...";
- e. "...the provision of the Services by State Street shall be subject to applicable Operating Rules..."
- f. "...**attending to all nondiscretionary details** in connection with the sale, exchange, purchase and other dealings with securities and other Property held in the Account(s)."
- g. "State Street shall at all times **exercise reasonable care** and act in good faith in the performance of its duties under the Agreement, taking into account the laws,

customs, and facts and circumstances prevailing in the jurisdictions in which Customer elects to invest...”

27. State Street further provided accounting and reporting services to all Class Members. State Street sent transaction reports and monthly account statements to Class Members, which were required to accurately reflect the investments State Street held as custodian for Class Members, the value of the investments, transactions such as purchases and sales of securities, receipt or delivery of securities, receipt or disbursement of funds, and corporate actions. Plaintiffs relied upon the truthfulness and accuracy of State Street’s reporting as they were not privy to the instructions given by TAG to State Street.

28. In addition to these contractual provisions, and all of the duties contemplated by them, State Street also had duties imposed by law. These duties include compliance with OCC Regulations and local laws for custodian banks and SEC regulations relating to custodians for registered investment advisors.

**B. State Street’s Obligations With Respect to Class Members’ IRA Accounts**

29. As custodian for Class Members’ IRA accounts, State Street also had duties arising under federal law. IRAs came into existence in 1974, when they were created by the federal government in a statute known as the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, Title II, Sept. 2, 1974, codified at 29 U.S.C. § 1001 *et seq.*

30. An IRA is a “trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, **but only if the written governing instrument creating the trust** meets the following requirements: ... (2) The trustee is a bank [as defined by statute] or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirement of this section. (3) No part of the trust funds will be invested in life insurance

contracts. (4) The interest of an individual in the balance in his account is nonforfeitable. (5) The assets of the trust will not be commingled with other property except in a common trust or common investment fund...”. Code § 408(a) (2008); *see also*, 26 C.F.R. Treas. Reg. §1.408-2(a-b).

31. The “written governing instrument creating the trust” in this case was the Defendant’s standardized form contract that was entered by all Class Members. This contract was drafted in its entirety by Defendant. This non-negotiable contract was presented on a take-it-or-leave-it basis to Class Members and was not drafted, amended or negotiated in any way by Plaintiff or Class Members.

32. Section 408 and the federal regulations promulgated thereunder, including 26 C.F.R. § 1.408-2, use the language and terminology of trust law (such as “participant,” “beneficiary,” “fiduciary” and “trustee”) in specifying the trust and the relationship that any form contract or “written governing instrument creating the trust” was required to create.

33. Under federal law, State Street is obligated to comply with the following minimum standards and owed the following duties to preserve the Trust *res* of each Plaintiff and Class Member:

- a. The fiduciary duty to acquire and hold particular investments specified by the trust instrument. Treas. Reg. 1.408-2(e)(viii)(6)(i)(A).
- b. The fiduciary duty to keep custody of investments and, except for investments pooled in a common investment fund in accordance with the provisions of the Treasury Regulations, to refrain from commingling the investments of each account with any other property. Treas. Reg. 1.408-2(e)(v)(A).

- c. The fiduciary duty to deposit assets of accounts requiring safekeeping in an adequate vault. Treas. Reg. 1.408-2(e)(v)(B).
- d. The fiduciary duty to determine the assets held by it in trust and the value of such assets at least once in each calendar year and no more than 18 months after the preceding valuation. Treas. Reg. 1.408-2(e)(5)(ii)(E).
- e. The fiduciary duty to receive, issue receipts for, and safely keep securities. Treas. Reg. 1.408-2(e)(4)(ii)(A).

**C. State Street's Settlement of Transactions For Fake Subordinated Notes Issued By TAG**

34. Beginning in 2007, TAG suddenly changed its long-standing management style. For more than 10 years prior to 2007, Tagliaferri invested his customers' accounts in portfolios of municipal bonds and high-quality "blue chip" stocks. Tagliaferri was known for his expertise with municipal bonds, and many Class Members, including the Plaintiffs, had sought him out for this trading strategy. Moreover, Tagliaferri's clientele consisted of many elderly investors who sought principal preservation and safe income returns.

35. In 2007, TAG began investing Class Members' accounts in highly speculative stocks of micro-cap companies, notes of these same companies and personal loans and mortgages. These securities were completely different in nature and character from TAG's previous investing for the last 10 years, and Class Members received no disclosure from TAG or Tagliaferri about this change in style. The risks associated with TAG's new investment style increased exponentially. Neither Plaintiffs nor any other Class Members consented to the increased risks.

36. SEC Rule 206 requires registered investment advisors such as TAG to invest

suitably for their clients. TAG's new strategy was not suitable for Plaintiffs. Plaintiffs did not execute new suitability forms with TAG acknowledging the change in strategy, nor any disclosure.

37. As custodian, State Street knew from its processing and settling of TAG's transactions that the type and nature of the securities changed dramatically. State Street even reserved the right to increase its fees for services where there was increased difficulty associated with settling unusual transactions or transactions in illiquid securities.

38. As part of its new strategy, TAG issued instructions to State Street to disburse funds from Plaintiffs' and other Class Members' accounts for purchases of notes in micro-cap companies. In these instances, State Street wired money out of the TAG accounts for the purchase of securities, and reported to Class Members on account statements that these securities were purchased. However, State Street failed to settle the transactions by receiving securities in proper form to be held in the Class Members' accounts.

39. Instead, on numerous occasions, State Street received and accepted subordinated notes issued and *signed by TAG and Tagliaferri*, not the purported company-issuers. These subordinated notes purported to be on the issuer letterhead, yet represent obligations of TAG to repay the note that were signed by Tagliaferri. No representative from the company-issuer signed the subordinated notes. The subordinated notes also reference a "Master Note" between TAG and the company-issuer. State Street admitted to Plaintiff Handal that it had no copies of the purported "Master Notes."

40. The subordinated notes from TAG reflect an obvious fraud on their face. The subordinated notes are essentially IOUs issued by TAG to Plaintiffs, and fake representations of an investment in notes of the company. State Street should never have accepted these fake

subordinated notes from TAG to settle transactions in Plaintiffs' accounts. Upon receipt of these fake securities, State Street should have immediately informed Plaintiffs and other Class Members of TAG's attempted fraud. Copies of several these fake subordinated notes are annexed hereto as **Exhibit A**.

41. State Street should never have settled Plaintiffs' transactions in the fake subordinated notes. These notes are such unusual transactions that a State Street employee had to be involved and reviewed the notes. State Street could not settle these transactions on any automated basis. State Street acquired knowledge that TAG was engaged in a fraud through these fake securities.

42. State Street also settled transactions in securities for Plaintiffs' accounts that were purported promissory notes issued by International Equine Acquisition Holdings Inc. ("IEAH"). If it followed proper procedures for settling transactions, State Street should have obtained copies of the IEAH notes. The IEAH notes contain provisions for TAG to receive payment of consulting fees in the amount of five percent of the face amount of the note. This payment which IEAH's President has described as a "kickback" represents unlawful compensation to TAG under the Investment Advisers' Act.

43. To make matters worse, State Street falsely reported transactions in the fake subordinated notes to Plaintiffs and other Class Members as though they had purchased and held notes in the underlying company-issuers. State Street falsely reflected the TAG subordinated notes on account statements sent to Plaintiffs as obligations of the company-issuer, falsely reflected that the securities had CUSIP numbers and failed to reflect even the subordinated nature of the security. State Street's representations of these securities on the account statements were

highly misleading as Plaintiffs and other Class Members were not privy to the instructions given by TAG or copies of the subordinated notes.

44. State Street also settled transactions for stock share certificates without receiving timely possession of the stock certificates. State Street disbursed funds for purchases without ensuring timely delivery of evidence of stock ownership. Notwithstanding, State Street reported that Plaintiffs held stock in the companies.

45. In short, Plaintiffs were grossly misled about what he held, and the related risks.

**D. State Street's Transactions in Class Members' Accounts**

46. The transactions outlined below in Plaintiff Handal's accounts are representative of the transactions in all Class Members' accounts. State Street's misconduct and failures in properly handling these accounts are thus representative of its misconduct and failures in properly handling all Class Members' accounts.

47. The following are representative transactions in Handal's accounts:

Handal's IRA

- On 11-6-09, \$50,000 is disbursed for the purchase of an M-2 Note. No note is received into the account until December 2009. The note that is received later is revealed to be a TAG subordinated note, not an M-2 Note.
- On 11-16-09, \$20,000 is disbursed for the purchase of an IEHA Note. No note ever appears on the account statements through December 2010.
- On 1-22-10 \$60,000 is disbursed for the purchase of Blood Cell Storage Note. The note that is received later is revealed to be a TAG subordinated note, not a Blood Cell Storage Note.

Handal's Trust Account

- On 7-21-09, \$55,000 is disbursed for the purchase of an IEAH Note, and one 11-16-09, \$20,000 is disbursed for the purchase of an IEAH

Note. No notes are ever received into the account through December 2010.

- On 11-16-09, \$20,000 is disbursed for the purchase of an IEHA Note. No note ever appears on the account statements through December 2010.
- On 4-15-10 \$50,000 is disbursed for the purchase of Blood Cell Storage Note. The note that is received later is revealed to be a TAG subordinated note, not a Blood Cell Storage Note.

48. Likewise, State Street breached similar duties with respect to its handling of other Class Members' accounts. For example, in a TAG-managed account held by a relative of Plaintiff Handal, State Street reported a purchase of notes from an entity called "UMS Partners." However, *no notes from UMS Partners ever were received into the account.* Instead, approximately six months later, the account received notes from a National Digital Medical Archives ("NDMA"). Handal contacted UMS Partners on behalf of his relative, and was advised that TAG never invested in NDMA, rather TAG invested in UMS Partners Fund II which, in turn, made an investment in i3Archive Inc, which, in turn, invested in the funds in NMDA. Handal inquired of State Street about what evidence it had to settle the transaction and was advised that it had only TAG's fake subordinated notes from NMDA, and no evidence that any other transaction existed.

49. Another TAG-managed Handal family account was invested notes from a Scott Newman and 1920 Bel Air LLC, which purchases were settled and held by State Street. State Street reflected the values of these notes at or about face value while held in the Plaintiffs' accounts. These were supposedly "secured notes" but *State Street failed to obtain copies of the notes or any evidence that the notes were secured.*

50. State Street also settled a transaction involving the purchase of a note that was trading at or about par, yet in default.

51. State Street would also suddenly change the maturity dates on notes held in accounts. These changes were not legitimate corporate actions by likely changes by TAG on its worthless fake subordinated notes.

52. State Street's custody agreements permitted it to collect custodian fees from Plaintiffs' accounts that were calculated based upon the percentage of total assets held by State Street in the accounts. By settling transactions without receiving delivery of securities or by receiving securities that were not in proper or acceptable form, State Street charged excessive fees to Plaintiffs' accounts based on inflated assets values.

**E. State Street's Acknowledged Failures**

53. In late 2010, a large investor with TAG-managed accounts filed a lawsuit against TAG alleging fraud. The lawsuit sets forth in detail TAG's fraud associated with its management of accounts, and numerous undisclosed material conflicts of interest between TAG and the companies in which he invested. The lawsuit further describes the IEAH kickbacks demanded and received by Tagliaferri.

54. After that lawsuit was filed, State Street made significant downward adjustments to the prices and value of securities held in Plaintiffs' accounts. Plaintiffs suddenly suffered losses of 50-60% of their accounts, due to the adjustments to reflect the reality of worthless paper they were holding.

55. Handal began questioning State Street about the instructions it received from TAG, and the documents it obtained to settle and hold custody of his and his family's investments. Handal made repeated inquiries and had at least one sit down meeting with State Street. What Handal learned was shocking.

56. State Street acknowledged that it held only the TAG-issued fake subordinated

notes in custody for the note purchases in the Handal family's accounts. State Street acknowledged that it never obtained copies of the Master Notes referenced in TAG's subordinated notes, or even verified their existence. State Street further provided Handal with the copies of the notes annexed as Exhibit A, which it represented were all it had for transactions in his family's accounts. These notes represent only a portion of the total transactions.

57. After Handal informed TAG of the results of his inquiry to UMS Partners over whether TAG ever invested, State Street itself contacted UMS. State Street then sent Handal and the other Class Members who held NDMA notes a letter acknowledging that it only had TAG's subordinated notes, and that the notes "raised issues" about TAG's conduct. A copy of the letter is annexed hereto as **Exhibit B**.

58. State Street attempted to respond to numerous other issues raised by Handal over actions it should have taken to properly settle the transactions in the first instance and/or protect the Plaintiffs' rights to proper title or ownership of purported securities held in their accounts. However, it became clear that State Street never took its role as custodian for Plaintiffs' accounts seriously.

59. In 2011, Handal also tried to get information from Tagliaferri about securities held in his family's accounts. Tagliaferri communicated with him for a while, then ceased. Tagliaferri did tell Handal, who had at least one of his family's accounts custodied at Charles Schwab & Co. Inc. ("Schwab") through mid-2009, that Schwab would not permit him to do the things that he could do at State Street. As a result, Tagliaferri convinced Handal to move the account to State Street.

60. Tagliaferri is currently under investigation by the SEC with respect to the allegations in this complaint. Without State Street's substantial aid and assistance, and violations

of proper settlement and custodial procedures, he never would have been able to commit his fraud.

61. The Class has suffered in excess of \$100 million in losses as the result of State Street's misconduct and failures.

### **CLASS ACTION ALLEGATIONS**

62. This action is brought by Plaintiffs, for themselves and on behalf of all others similarly situated, as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3).

#### **Class Definition**

63. The proposed Class (the "Class") is defined as follows:

All persons who were clients of TAG who had custodial accounts with State Street and were injured as a result of State Street's gross negligence and/or willful actions. Excluded from the class are: Defendant, any judge or judicial officer who may hear any aspect of this case (and his or her law clerks), and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendant or TAG.

#### **Numerosity**

64. State Street served as a custodian for hundreds of TAG-managed custodial accounts affected by the wrongdoing described herein.

65. The members of the Class are so numerous and geographically dispersed that joinder of all members is impracticable. While the exact number of Class Members remains unknown at this time, Plaintiffs believe there are at least 50 members of the proposed Class. The exact number of such accounts is within the knowledge of State Street.

#### **Commonality**

66. There are common questions of law and fact in this class action that relate to and affect the rights of each member of the Class including, *inter alia*:

- a. Whether State Street misrepresented to each member of the class that it owned and/or held securities on their behalf when, in fact, it did not;
- b. Whether State Street misrepresented to each member of the class that legitimate transactions in securities that were properly confirmed and settled occurred in their accounts when, they did not;
- c. Whether State Street failed to disclose the actual knowledge of TAG's fraud that it had from the fake subordinated notes in its possession;
- d. Whether State Street failed to conduct proper review and due diligence and/or ignored numerous red flags when investing Class Members' funds;
- e. Whether State Street breached its contractual obligations to Plaintiffs and members of the Class under the terms of its custodial account agreements or other legal duties it had;
- f. Whether State Street breached its obligations its had as IRA custodians to Plaintiffs and members of the Class;
- g. Whether State Street's breaches entitle Plaintiffs and members of the Class to money damages for the loss of the amounts invested by Plaintiffs and members of the Class;
- h. Whether State Street owed fiduciary duties to Plaintiffs and members of the Class, including a duty of loyalty, a duty of candor, a duty of fair dealing, a duty to avoid self-dealing, an affirmative duty to furnish information and disclose all material facts involving the beneficiaries'

fiduciary accounts, and a duty to administer and custody such accounts solely in the beneficiaries' interests, rather than in its own interests;

- i. Whether State Street aided and abetted TAG in a fraudulent scheme;
- j. Whether State Street aided and abetted TAG's breaches of fiduciary duties owed to Plaintiffs and the Class;
- k. Whether State Street's conduct constituted self-dealing at the expense of Plaintiffs and the members of the Class;
- l. Whether State Street's conduct constituted gross negligence at the expense of Plaintiffs and the members of the Class;
- m. Whether the Plaintiffs and members of the Class are entitled to a reasonable award of attorneys' fees, interest and costs of suit.

#### **Typicality**

67. The claims of Plaintiffs are typical of the claims of all Class members. Plaintiffs are situated identically to all members of the Class with respect to the issues presented in this case. The claims of Plaintiffs are based on the same fundamental factual allegations and legal theories as the claims of all other members of the Class.

68. All persons with custodial accounts with State Street, which were invested with TAG, have been adversely affected by the wrongdoing of State Street as described herein.

69. The use of custodial accounts maintained by State Street in which retirement funds was designed by Principal to generate management and/or other fees and benefits without regard to the best interests of the holders or beneficiaries of such accounts such as Plaintiffs and the members of the Class.

**Adequacy of Representation**

70. Plaintiffs will adequately represent and protect the interests of the Class and has no interests that conflict with or are antagonistic to the interests of the Class.

71. The attorneys for Plaintiffs are experienced and capable of prosecuting complex litigation such as this case. The attorneys for Plaintiffs and the Class will actively conduct and be responsible for the prosecution of this litigation and the expenses thereof. The attorneys for Plaintiffs have adequate resources, experience and commitment to litigate this matter.

**Predominance and Superiority**

72. A class action is superior to any other method available for the fair and efficient adjudication of this controversy because it would be impractical and undesirable for each of the individual Class Members who have suffered damages to bring separate actions. Moreover, State Street has acted and will continue to act on grounds generally applicable to the Class, thereby making appropriate final relief with respect to the Class as a whole.

73. The prosecution of separate claims or defenses by or against individual members of the Class would also create a risk of adjudications concerning individual members of the Class which would, as a practical matter, be dispositive of the interests of other Members of the Class who are not parties to the adjudications, or substantially impair or impede the ability of other members of the Class who are not parties to the adjudications to protect their interests.

**FIRST CLAIM FOR RELIEF**  
**BREACH OF CONTRACT**

74. Plaintiffs incorporate by reference each and every allegation set forth above as though fully set forth herein.

75. The custodial agreements between State Street and Plaintiffs and the other members of the Class are valid and enforceable contracts.

76. Plaintiffs and the members of the Class fully performed their obligations under the custodial agreements.

77. State Street breached the custodial agreements by its grossly negligent and/or willful disbursement of funds in exchange for securities that were an obvious fraud on their face.

78. State Street breached the custodial agreements by its grossly negligent and/or willful disbursement of funds in exchange for securities that were not in good form as a matter of law and accepted practice and usage.

79. State Street breached the custodial agreements by its grossly negligent and/or willful failure to properly confirm and settle securities transactions in their accounts.

80. State Street breached the custodial agreements by its grossly negligent and/or willful disbursement of funds for the purpose of purchasing securities that were not received timely.

81. State Street breached the custodial agreements by its grossly negligent and/or willful disbursement of funds for the purpose of purchasing securities without taking custody of securities in exchange.

82. State Street breached the custodial agreements by its grossly negligent and/or willful misreporting of the value or descriptions of securities purchased and held in the accounts.

83. State Street breached the custodial agreements by its grossly negligent and/or willful disbursement of funds for transactions that were suspicious or irregular on their face.

84. State Street breached the custodial agreements by its grossly negligent and/or willful failure to perform the audits, reporting and custodial duties required of IRA custodians.

85. State Street breached the custodial agreements by its grossly negligently and/or willful disbursement of funds for excessive custodial fees.

86. State Street breached the custodial agreements by its grossly negligent and/or willful failure to report obvious fraud to securities regulators and/or to Plaintiffs and the other members of the Class.

87. As a direct and proximate result of the foregoing, Plaintiffs and the members of the Class have suffered and will continue to suffer damages in an amount to be determined at trial.

**SECOND CLAIM FOR RELIEF**  
**GROSS NEGLIGENCE**

88. Plaintiffs incorporate by reference each and every allegation set forth above as though fully set forth herein.

89. State Street owed Plaintiffs and the members of the Class a duty of care to settle their transactions and to maintain custody of their assets in a manner that would safeguard against misuse and misappropriation by TAG.

90. State Street owed Plaintiffs and the members of the Class a duty of care to accurately report on transactions and securities held in their accounts.

91. State Street breached its duties of care its grossly negligent and/or willful disbursement of funds in exchange for securities that were an obvious fraud on their face.

92. State Street breached its duties of care by its grossly negligent and/or willful disbursement of funds in exchange for securities that were not in good form as a matter of law and accepted practice and usage.

93. State Street breached its duties of care by its grossly negligent and/or willful failure to properly confirm and settle securities transactions in their accounts.

94. State Street breached its duties of care by its grossly negligent and/or willful disbursement of funds for the purpose of purchasing securities that were not received timely.

95. State Street breached its duties of care by grossly negligent and/or willful disbursement of funds for the purpose of purchasing securities without taking custody of securities in exchange.

96. State Street breached its duties of care by its grossly negligent and/or willful misreporting of the value or descriptions of securities purchased and held in the accounts.

97. State Street breached its duties of care by its grossly negligent and/or willful disbursement of funds for transactions that were suspicious or irregular on their face.

98. State Street breached its duties of care by its grossly negligent and/or willful disbursement of funds for excessive custodial fees.

99. State Street breached its duties of care by its grossly negligent and/or willful failure to report obvious fraud to securities regulators and/or to Plaintiffs and the other members of the Class.

100. State Street's breaches of its duties of care amount to gross negligence.

101. The foregoing breaches were the direct and proximate cause of damage to the Plaintiffs and the members of the Class.

102. As a direct and proximate result of the foregoing, Plaintiffs and the members of the Class have suffered and will continue to suffer damages in an amount to be determined at trial.

**THIRD CLAIM FOR RELIEF**  
**UNJUST ENRICHMENT**

103. Plaintiffs incorporate by reference each and every allegation set forth above as though fully set forth herein.

104. State Street collected custodian fees from Plaintiffs and the other members of the Class that were calculated improperly based upon asset values that were inflated through false

promissory notes and securities not valued in a legitimate good faith manner under accepted practice and usage.

105. State Street was enriched by the retention of excessive custodial fees at the expense of Plaintiffs and the other members of the Class.

106. It is against fundamental principles of equity, fairness and justice for State Street to retain these excessive custodial fees in these circumstances.

**FOURTH CLAIM FOR RELIEF**  
**BREACH OF FIDUCIARY DUTY**

107. Plaintiffs incorporate by reference each and every allegation set forth above as though fully set forth herein.

108. State Street owed Plaintiffs and the other members of the Class fiduciary duties as the result of taking custody of their funds and assets.

109. State Street breached its fiduciary duties by its grossly negligent and/or willful disbursement of funds in exchange for securities that were an obvious fraud on their face.

110. State Street breached its fiduciary duties by its grossly negligent and/or willful disbursement of funds in exchange for securities that were not in good form as a matter of law and accepted practice and usage.

111. State Street breached its fiduciary duties by its grossly negligent and/or willful failure to properly confirm and settle securities transactions in their accounts.

112. State Street breached its fiduciary duties by its grossly negligent and/or willful disbursement of funds for the purpose of purchasing securities that were not received timely.

113. State Street breached its fiduciary duties by its grossly negligent and/or willful disbursement of funds for the purpose of purchasing securities without taking custody of securities in exchange.

114. State Street breached its fiduciary duties by its grossly negligent and/or willful misreporting of the value or descriptions of securities purchased and held in the accounts.

115. State Street breached its fiduciary duties by its grossly negligent and/or willful disbursement of funds for transactions that were suspicious or irregular on their face.

116. State Street breached its fiduciary duties by its grossly negligent and/or willful disbursement of funds for charging excessive custodial fees.

117. State Street breached its fiduciary duties by its grossly negligent and/or willful failure to report obvious fraud to securities regulators and/or to Plaintiffs and the others members of the Class.

118. The foregoing breaches were the direct and proximate cause of damage to the Plaintiffs and the other members of the Class.

119. As a direct and proximate result of the foregoing, Plaintiffs and the other members of the Class have suffered and will continue to suffer damages in an amount to be determined at trial.

**FIFTH CLAIM FOR RELIEF**  
**AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**

120. Plaintiffs incorporate by reference each and every allegation set forth above as though fully set forth herein.

121. As State Street knew TAG served as an investment advisor to Plaintiffs and the members of the Class, and stood in a fiduciary relationship to Plaintiffs and the members of the Class.

122. TAG breached its fiduciary duties to Plaintiffs and the other members of the Class by: i) issuing fake subordinated notes to Plaintiffs and the other members of the Class; ii) receiving kickbacks from companies in which it invested Plaintiffs and the other members of the

Class; iii) reported false values for Plaintiffs' securities and for the securities of the other members of the Class; iv) engaging in unsuitable investments for clients; and v) failing to disclose material conflicts of interest.

123. State Street had actual knowledge of TAG's breach of fiduciary duty to Plaintiffs and the members of the Class which arose from State Street's relationship with TAG, knowledge of instructions given by TAG, receipt of the fake subordinated notes from TAG, knowledge that TAG's values were inaccurate for various securities, knowledge that securities were not received timely although payment was made and knowledge of TAG's management of all of the accounts of Plaintiffs and the other members of the Class.

124. State Street aided and abetted TAG's breach of fiduciary duty by willfully disbursing funds in exchange for securities that were an obvious fraud on their face.

125. State Street aided and abetted TAG's breach of fiduciary duty by willfully disbursing funds in exchange for securities that were not in good form as a matter of law and accepted practice and usage.

126. State Street aided and abetted TAG's breach of fiduciary duty by willfully failing to properly confirm and settle securities transactions in their accounts.

127. State Street aided and abetted TAG's breach of fiduciary duty by willfully disbursing funds for the purpose of purchasing securities that were not received timely;

128. State Street aided and abetted TAG's breach of fiduciary duty by willfully disbursing funds for the purpose of purchasing securities without taking custody of securities in exchange.

129. State Street aided and abetted TAG's breach of fiduciary duty by willfully misreporting the value or descriptions of securities purchased and held in the accounts.

130. State Street aided and abetted TAG's breach of fiduciary duty by willfully disbursing funds for transactions that were suspicious or irregular on their face.

131. State Street aided and abetted TAG's breach of fiduciary duty by willfully disbursing funds for charging excessive custodial fees.

132. State Street aided and abetted TAG's breach of fiduciary duty by willfully failing to report obvious fraud to securities regulators and/or to Plaintiffs and the other members of the Class.

133. The foregoing breaches were the direct and proximate cause of damage to the Plaintiffs and the other members of the Class.

134. As a direct and proximate result of the foregoing, Plaintiffs and the other members of the Class have suffered and will continue to suffer damages in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs demand judgment:

A. Determining this action is a proper class action, and certifying Plaintiffs as class representatives;

B. Awarding compensatory damages against Defendant in favor of Plaintiffs and the Class for damages sustained as a result of Defendant's wrongdoing together with interest thereon;

C. Awarding prejudgment interest;

D. Awarding extraordinary, equitable and/or injunctive relief as permitted by law (including but not limited to disgorgement);

E. Awarding Plaintiffs and the Class their costs and disbursements of this suit, including reasonable attorneys' fees, accountants' fees, and experts' fees; and

F. Awarding such other and further relief as may be just and proper.

**JURY DEMAND**

Plaintiffs demand trial by a jury on all of the triable issues of this Complaint.

Dated: January 11, 2012

Respectfully submitted,

**SHAPIRO HABER & URMY LLP**

By:           /s/ Michelle H. Blauner            
Thomas G. Shapiro BBO # 454680  
Michelle H. Blauner BBO # 549049  
53 State Street  
Boston, MA 02109  
Telephone: 617-439-3939  
Facsimile: 617-439-0134  
*tshapiro@shulaw.com*  
*mblauner@shulaw.com*

**ZAMANSKY & ASSOCIATES LLC**

Jacob H. Zamansky  
Edward H. Glenn, Jr.  
50 Broadway, 32<sup>nd</sup> Floor  
New York, NY 10004  
Telephone: (212) 742-1414  
Facsimile: (212) 742-1177  
*jake@zamansky.com*  
*eglenn@zamansky.com*

**SIANNI & STRAITE LLP**

David A. Straite  
Ralph N. Sianni  
1201 N. Orange St. Suite 740  
Wilmington, DE 19801  
Tel: (302) 573-3560  
Fax: (302) 358-2975  
*dstraite@siannistraite.com*  
*rsianni@siannistraite.com*

***Counsel for Plaintiffs***