

present, Epstein, in breach of his fiduciary duties and in violation of New York law, (i) transferred cash, securities and assets from the accounts of TFC for his personal use and/or for Defendant Entities, (ii) made a series of imprudent investments and loans resulting in a loss of considerable sums of money to TFC, Plaintiffs and the Class, and (iii) concealed the true nature of financial transactions of the Defendant Entities from Plaintiffs and the Class.

109. Presently, Epstein and the Defendant Entities continue to conceal the true nature of financial transactions from banks, financial institutions and current investors of a syndication of margin accounts.

110. These breaches of fiduciary duty were fraudulent, a conflict of interest with TFC, Plaintiffs and the Class, and constituted waste and mismanagement of the securities and investments of such entities and individuals.

111. As a direct and proximate result of Epstein's willful, wanton and malicious breaches of fiduciary duties, individually, and by and through the Defendant Entities, TFC, Plaintiffs and the Class were damaged.

FIFTH CAUSE OF ACTION
(Negligence)

112. Plaintiffs repeat, reiterate and re-allege each and every allegation contained in all preceding paragraphs with the same force and effect as if more fully set forth herein.

113. As a "consultant" to Hoffenberg and executive and/or investment committees formed to make decisions with respect to the investments of Plaintiffs and the Class, Epstein owed a duty to Plaintiffs and the Class to exercise reasonable business judgment in the handling of the securities and investments.

114. Beginning in or around 1987 through the present, Epstein, in breach of his duties, negligently invested the funds of TFC in securities that were inappropriate investments and caused