BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
BLAIR A. NICHOLAS (Bar No. 178428)
(blairn@blbglaw.com)
DAVID KAPLAN (Bar No. 230144)
(davidk@blbglaw.com)
PAUL M. JONNA (Bar No. 265389)
(paulj@blbglaw.com)
12481 High Bluff Drive, Suite 300
San Diego, CA 92130
Tel: (858) 793-0070
Fax: (858) 793-0323

LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
KELLY M. DERMODY (Bar No. 171716)
(kdermody@lchb.com)
ALISON M. STOCKING
(astocking@lchb.com)
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Tel: (415) 956-1000
Fax: (415) 956-1008

Additional Counsel Listed On Signature Page

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

The Government of Guam Retirement Fund; The Sacramento County Employees' Retirement System; The Board of Trustees of The National Elevator Industry Health Benefit Fund; and The Board of Trustees of the Pipefitters Local 636 Defined Benefit Pension Fund, both individually and on behalf of all others similarly situated, Plaintiffs, v. AXA Rosenberg Group LLC, AXA Rosenberg Investment Management LLC, Barr Rosenberg Research Center LLC, and Barr Rosenberg, Defendants.	Lead Case No. C 11-00536 JSW Case No. CV11-0897 **CONSOLIDATED COMPLAINT** **CLASS ACTION** DEMAND FOR JURY TRIAL

Plaintiffs the Government of Guam Retirement Fund ("Guam"), the Sacramento County Employees' Retirement System ("Sacramento"), the Board of Trustees of the National Elevator Industry Health Benefit Fund ("NEI"), and the Board of Trustees of the Pipefitters Local 636 Defined Benefit Pension Fund ("Pipefitters") (collectively, "Plaintiffs") bring this class action on behalf of themselves and all others similarly situated against Defendants AXA Rosenberg Group LLC ("ARG"), AXA Rosenberg Investment Management, LLC ("ARIM"), Barr Rosenberg Research Center LLC ("BRRC" or the "Research Center"), and Barr Rosenberg (collectively, "Defendants"). Defendants ARG, ARIM, and BRRC are collectively referred to herein as "AXA Rosenberg."

INTRODUCTION

1. AXA Rosenberg is a pioneer of quantitative investing, an investing technique that employs mathematical formulas and powerful computers to pour through vast databases of financial information and make investment decisions largely without human interaction. This action arises out of Defendants' failure to prevent, timely detect and correct a simple yet profound error in AXA Rosenberg's proprietary quantitative investment process. As a result of Defendants' recklessness, their investors incurred hundreds of millions – if not billions – of dollars in losses while Defendants reaped millions of dollars in fees.

2. For many years, AXA Rosenberg has served as an institutional money manager to a large number of public retirement funds, ERISA plans, charitable organizations, government entities, and other institutional investors. In that capacity, AXA Rosenberg placed clients into a variety of investment vehicles (or separately-managed accounts) that employed AXA Rosenberg's fundamental quantitative investment techniques, which attempt to generate profits by using computer algorithms to identify large numbers of stocks that may be underpriced. At its height, AXA Rosenberg managed over $135 billion of assets.

3. Like other "quant funds," AXA Rosenberg does not share its computer algorithms with outsiders, or even its own investors. For this reason, quantitative investing is often called the "black box" of investing. As *The New York Times* reports, when investors place assets with a quantitative investment firm, they "are trusting not only that the overall strategy is sound, but

also that its algorithms make sense and, furthermore, that they have been translated properly into computer code."

4. In January 2007, while attempting to make upgrades to AXA Rosenberg's quantitative investment model, a computer programmer introduced an obvious and significant error into the model. The computer error caused improper conversion of data received in decimals with data received in percentages, ***thus effectively eliminating one of the key components in the model for managing risk***. The error remained undetected for over ***two years*** and, even after it was ultimately detected, it continued to impact many of AXA Rosenberg's investment strategies for many months thereafter. While the error existed, AXA Rosenberg's investments largely underperformed benchmark indexes, often by a significant degree.

5. An AXA Rosenberg employee discovered the "coding error" no later than June 2009. Yet several of AXA Rosenberg's high ranking executives – including its founder and Chairman, Barr Rosenberg – covered up the error from others within the firm. For several months, these officials concealed the error from other departments and senior executives in the firm – including uppermost management – and from the Board of Directors. When the full Board finally learned of the error – years after the error was introduced and months after its discovery – it launched an internal investigation that resulted in Messrs. Rosenberg being forced out of the firm, and major ownership and organizational changes to the firm.

6. Significantly, Defendants' breach of their professional and fiduciary duties – including in failing to implement adequate internal control processes and procedures to prevent, detect and correct errors in AXA Rosenberg's computer model – was the product of a hands-off managerial style, compelled by an agreement among AXA Rosenberg's shareholders, that recklessly left full control over the model in the hands of AXA Rosenberg founder, Barr Rosenberg. Upon information and belief, for years, Mr. Rosenberg had been accorded an "untouchable status" by the firm's other owners, and he operated AXA Rosenberg's investment process with little or no supervision or organizational checks and balances.

7. In the end, Plaintiffs and a class of AXA Rosenberg investors (the "Class," as defined below) suffered significant damages when AXA Rosenberg's investment process broke

down and was allowed to remain operating, for well over two years, in a wholly defective condition, without any risk controls or mechanisms to timely detect and correct the error. While Plaintiffs and the Class were injured by Defendants' extreme lack of care and oversight, Defendants improperly benefitted by reaping millions of dollars in investment management fees and other benefits from Plaintiffs and the Class.

8. On February 3, 2011, the U.S. Securities and Exchange Commission ("SEC") announced that it had both charged and settled an administrative proceeding asserting multiple securities law violations against AXA Rosenberg arising out of the coding error. In its administrative cease-and-desist Order (the "SEC Order"), the SEC set forth detailed factual findings regarding the coding error and AXA Rosenberg's deficient or nonexistent internal controls. The SEC determined that AXA Rosenberg's inadequate internal controls and other wrongful conduct relating to the error, including a failure "to conduct any meaningful materiality analysis of the error's impact," constituted a breach of fiduciary duty. Under the terms of the SEC's settlement, AXA Rosenberg agreed to pay a $25 million fine to the U.S. government and distribute an aggregate of approximately $217 million to clients that the firm and its retained consultant determined were negatively impacted by the error. On information and belief – including extensive analysis by Plaintiffs' experts – this $217 million figure is wholly insufficient to compensate investors for the full amount of their damages and management fees paid to Defendants. Plaintiffs and the Class are entitled to be compensated for the full amount of their damages suffered as a result of Defendants' breaches of fiduciary duties, extreme want of care, and multiple statutory violations, including investment losses, lost investment earnings, and the return of all fees received or retained by Defendants during the period of their wrongful conduct.

PARTIES

Plaintiff Guam

9. Plaintiff the Government of Guam Retirement Fund (Guam) is a defined benefit pension plan, based in Maite, Guam, that provides annuities and other benefits to its members who complete a prescribed number of years in government service, their surviving spouses, and

minor children. Guam maintains over $1.6 billion in net assets held in trust for pension benefits. In or about September 2005, Guam entered into an Investment Management Agreement with ARIM to provide investment management services with respect to a portion of Guam's investment portfolio during the Class Period (defined below). The contract provided ARIM with discretionary authority over Guam's entrusted assets, and confirmed ARIM's status as a fiduciary. AXA Rosenberg was to manage Guam's portfolio in accordance with Guam's designated investment guidelines and applicable law. During the Class Period, Guam invested substantial sums of money with ARIM, paid substantial management and other fees to ARIM, and suffered significant damages as a result of Defendants' wrongful conduct as alleged herein.

Plaintiff Sacramento

10. Plaintiff the Sacramento County Employees' Retirement System (Sacramento) is a multiple-employer public employee retirement system organized and operated under California law. Since its establishment in 1941, Sacramento has provided retirement, disability, and survivors' benefits to eligible participants. As of December 31, 2010, Sacramento maintained over $5.9 billion in assets held in trust for pension benefits. On or about February 1, 2005, Sacramento entered into an Investment Management Agreement with ARIM to invest and manage certain assets administered by Sacramento during the Class Period. The contract provided ARIM with discretionary authority over Sacramento's entrusted assets, and confirmed ARIM's status as a fiduciary.[1] AXA Rosenberg was to invest and manage a portfolio of Sacramento's assets in accordance with Sacramento's designated investment guidelines and applicable law. During the Class Period, Sacramento invested substantial sums of money with ARIM, paid substantial management and other fees to ARIM, and suffered significant damages as a result of Defendants' wrongful conduct as alleged herein.

[1] The Investment Management Agreement further provided that ARIM "may utilize the services of its affiliates in the AXA Rosenberg Group in fulfilling its duties, obligations, powers and privileges under the terms of this Agreement," and that ARIM "shall cause any and all of its employees, agents and representatives providing services in connection with this Agreement" to exercise the same standard of care as ARIM.

Plaintiff NEI

11. Plaintiff the Board of Trustees of the National Elevator Industry Health Benefit Fund is the named fiduciary of the National Elevator Industry Health Benefit Fund (NEI), a Taft-Hartley plan that was established in 1962 and is located in Newtown Square, Pennsylvania. The plan currently has approximately $600 million in assets under management and more than 81,000 participants and/or beneficiaries. NEI is an Employee Benefit Plan within the meaning of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, *et seq.* ("ERISA"). On or about April 5, 2007, NEI entered into Subscription Agreements to invest in two AXA Rosenberg funds. During the Class Period, NEI invested substantial sums of money in AXA Rosenberg funds, paid substantial management and other fees to ARIM, and suffered significant losses as a result of Defendants' wrongful conduct as alleged herein. NEI made its investments in the AXA Rosenberg funds pursuant to Private Offering Memoranda that expressly appointed ARIM as a fiduciary under ERISA with respect to any investing ERISA plan.[2] The Memoranda further provided that ARIM was "registered under the Investment Advisers Act of 1940 and, therefore, is eligible to be appointed as an 'investment manager,' as such term is defined by ERISA, of an investing ERISA plan."

Plaintiff Pipefitters

12. Plaintiff the Board of Trustees of the Pipefitters Local 636 Defined Benefit Pension Fund is the named fiduciary of the Pipefitters Local 636 Defined Benefit Pension Fund (Pipefitters), a Taft-Hartley plan with administrative offices located in Troy, County of Oakland, State of Michigan. Pipefitters is an Employee Benefit Plan within the meaning of ERISA. Pipefitters was established under an Agreement and Declaration of Trust which requires the fund

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[2] The Memoranda also stated that the AXA Rosenberg funds in which NEI invested anticipated that ERISA plans were among the prospective investors, that ARIM was assuming fiduciary responsibility with respect to ERISA plans, and that the assets of the funds were "expected to be regarded as 'plan assets' for purposes of ERISA's fiduciary responsibility standards and prohibited transaction restrictions . . . . Accordingly, the Managing Member [ARIM], and the Investment Adviser [ARIM] (and any other person having or exercising discretionary authority over the Fund or its assets) will be a 'fiduciary,' as such term is defined by ERISA, with respect to any investing ERISA plan and will be subject to the obligations and liabilities imposed on fiduciaries by ERISA."

to be administered by a Board of Trustees who manage the fund for the benefit of its participating active and retired pipefitters and their beneficiaries. The fund currently has approximately $218 million in assets under management and thousands of participants, retirees, and/or beneficiaries. In or about September 2003, Pipefitters entered into an Investment Management Agreement with ARIM to provide investment management services with respect to a portion of Pipefitters' investment portfolio during the Class Period. The contract provided ARIM with discretionary authority over Pipefitters' entrusted assets, and confirmed ARIM's status as a fiduciary under ERISA with respect to Pipefitters' entrusted assets. The Investment Management Agreement further provided that ARIM was registered as an investment adviser under the Investment Advisers Act of 1940, as amended, and was an "investment manager" as that term is defined in ERISA. During the Class Period, Pipefitters invested substantial sums of money with AXA Rosenberg, paid substantial management and other fees to ARIM, and suffered significant losses as a result of Defendants' wrongful conduct as alleged herein.

Other Investors

13. Numerous other public pension funds, ERISA plans, and other public and private investors in addition to Guam, Sacramento, NEI, and Pipefitters invested with AXA Rosenberg during the Class Period. Each of the Defendants is a fiduciary under applicable law by virtue of having or exercising discretionary authority over Plaintiffs and the Class' entrusted assets, and/or assuming fiduciary responsibility in writing.

Defendants

14. Defendant AXA Rosenberg Investment Management LLC (ARIM) is an institutional money manager and registered investment adviser based in Orinda, California. ARIM specializes in quantitative investing strategies, and provides services to public pension plans, ERISA plans, government entities, endowments, foundations, hospitals, banks, insurance companies, and other institutional investors. As compensation, ARIM receives investment management fees, performance fees, expenses, and/or other benefits from investors.

15. Defendant Barr Rosenberg Research Center LLC (BRRC or the Research Center) is a registered investment adviser based in Orinda, California. The Research Center develops

and maintains the quantitative investment model (including the computer code) used by ARIM and other AXA Rosenberg-affiliated offshore investment advisors ("Affiliated Advisers") to manage client assets. ARIM and Affiliated Advisers use the quantitative model developed and maintained by BRRC as their exclusive investment decision-making tool.

16. Defendant AXA Rosenberg Group LLC (ARG) is a holding company formed in 1998. ARG owns and governs ARIM, BRRC, and Affiliated Advisers. ARG is a wholly-owned subsidiary of AXA Investment Managers, which, in turn, is a subsidiary of AXA S.A., the French insurer and financial services giant. AXA S.A. ranks as the ninth largest company in the world, based on revenue, on the 2010 Fortune Global 500 list.

17. Defendants ARIM, ARG, and BRRC are all limited liability corporations, organized under the laws of Delaware, with headquarters located at 4 Orinda Way, Orinda, California.

18. Defendant Barr Rosenberg is citizen of the State of California who resides in Sonoma County, California. Mr. Rosenberg is an AXA Rosenberg founder and former principal officer and Board member. On information and belief, during the Class Period, Mr. Rosenberg exercised full control over AXA Rosenberg's quantitative investment process and Defendant BBRC, and consented to, participated in, and/or approved of the wrongful conduct and unlawful acts alleged herein.

19. As of December 2007, AXA Rosenberg managed over $135 billion in assets, making it one of the largest and most prominent quantitative investment firms in the world. As of December 2009, AXA Rosenberg managed approximately $70 billion in assets. Currently, AXA Rosenberg manages approximately $30 billion in assets.

20. For the reasons set forth above, all Defendants are fiduciaries of Plaintiffs.

JURISDICTION AND VENUE

21. This Court has exclusive jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1), and federal question jurisdiction under 28 U.S.C. § 1331.

22. This Court also has original diversity jurisdiction under the Class Action Fairness Act, 28 U.S.C. § l332(d)(2)(A) & (B). The Class consists of more than 100 individuals or

entities, and the amount in controversy for the Class exceeds the sum of $5 million, exclusive of interest and costs. Defendants are citizens of California, and Plaintiffs Guam and other members of the Class are citizens of a State or U.S. territory other than California. In addition, at least one member of the Class is a citizen of a foreign state.

23. This Court also has jurisdiction over the state-law claims under 28 U.S.C. § 1367.

24. This Court has personal jurisdiction over each of the Defendants. Defendants maintain offices in Orinda, California, and each of the Defendants either has committed a tort or statutory violation in whole or in part in California or has otherwise done business in California.

25. Venue is proper in this district pursuant to 28 U.S.C. § l391(a)(1) & (2) and 29 U.S.C. § 1132(e)(2), ERISA § 502(e)(2). Defendants reside in this District and have principal places of business within this District. Further, substantial acts in furtherance of the alleged wrongdoing and/or its effects have occurred within this District.

SUBSTANTIVE ALLEGATIONS

26. AXA Rosenberg specializes in fundamental quantitative equity investing. AXA Rosenberg's investment strategy is to generate profits by employing a series of computer-driven algorithms, informed by fundamental economic principles, to identify large numbers of stocks that may be underpriced. To carry out this strategy, AXA Rosenberg either separately manages client accounts, or places clients in investment vehicles, such as mutual funds or private funds, that target different categories of stock (*e.g.*, large-cap, small-cap, domestic, international). Regardless of the investment vehicle or target investment category, the firm's proprietary investment process is applied to all assets under management, and all clients give AXA Rosenberg discretionary authority to trade on their behalf. For many years, AXA Rosenberg was well known as being a knowledgeable, qualified, and experienced investment advisor.

27. Like other "quant funds," AXA Rosenberg does not share its computer algorithms with outsiders, or even its own investors. This "black box" approach to investing means that investors must place ultimate confidence not only in the quant fund's overall strategy, "but also that its algorithms make sense and, furthermore, that they have been translated properly into computer code," as *The New York Times* reported in a June 19, 2010 article.

28. On or about January 2007, an AXA Rosenberg computer programmer introduced a "coding error" in the firm's quantitative model. The error was purportedly made as part of an upgrade of the model. The error was obvious and profound: it caused the "optimizer," which trades off investment ideas with risk predictions, ***to improperly process information reported in decimals with information reported in percentages***. Because the proper scaling did not occur, the optimizer did not give the intended weight to common risk factors (i.e., risks associated with particular industries, countries, and stock fundamentals). ***The error effectively eliminated information relating to over 54 common risk factors***, thereby exposing clients' assets to greater than intended risk.

29. A significant number of AXA Rosenberg's investment strategies and client portfolios were adversely impacted by the coding error.[3]

30. In June 2009, the error was discovered by a member of the Research Center, the unit responsible for developing, maintaining, and upgrading the quantitative model. This employee later discussed his finding in a meeting with senior AXA Rosenberg officials and employees who were also part of the Research Center. According to the SEC Order, a senior AXA Rosenberg official directed those present at the meeting to not inform others at the firm about the error – including, specifically, AXA Rosenberg's CEO – and directed that the error not be fixed at that time. Instead, the senior official directed that the error not be fixed until the next upgrade of the investment model was implemented several months later. Despite their knowledge of the error, the heads of the Research Center did not bring the error to the attention of the Investment Group, the team responsible for doing the actual investing, or to upper management. According to AXA Rosenberg, the error was not corrected until the firm's next investment model was implemented. Ultimately, the existence and purported fixing of the error was reported to AXA Rosenberg's Global CEO, Stephane Prunet, in November 2009, when an internal team, working on a separate project, honed in on the error and discovered that attempts

[3] According to AXA Rosenberg's own consultant, as set forth in the SEC Order, the coding error purportedly had an adverse monetary impact on 608 of 1421 client portfolios managed by AXA Rosenberg.

to fix it were being made outside of normal enhancements to the firm's investment process, and an employee in the Research Center felt compelled to inform the CEO.

31. Upon learning of the existence, purported fixing, and internal cover up of the coding error, AXA Rosenberg's senior management launched an internal investigation. Senior management soon escalated the matter to AXA Rosenberg's Board of Directors which, in turn, hired the firm of Mayer Brown as a consultant to investigate. In April 2010, before the consultant's investigation was complete, AXA Rosenberg founder and Chairman, Barr Rosenberg, agreed to take a 30-day leave of absence, and its Director of Research, Thomas Mead, agreed to resign.

32. On April 15, 2010, AXA Rosenberg finally announced to clients, consultants, and other third parties that it had discovered the coding error.

33. In May 2010, the Board was presented with Mayer Brown's findings. Mayer Brown concluded that Messrs. Rosenberg and Mead had violated AXA Rosenberg's Escalation Policy by not reporting the coding error to senior management. In addition, Mayer Brown concluded that a third executive, Global Chief Investment Officer Agustin Sevilla (who was not a member of the Research Center) also had violated the firm's Escalation Policy by not reporting the error to others in the firm in a complete and timely manner. Furthermore, Mayer Brown concluded that Rosenberg and Mead had violated AXA Rosenberg's Code of Ethics by deliberately limiting the dissemination of information about the error to others in the firm and precluding discussion about the error at proper levels in the firm.

34. AXA Rosenberg's investment strategies generally performed poorly while the coding error went uncorrected and improved after the error was purportedly fixed. According to *Morningstar Advisor*, in the three years ended June 30, 2010, more than 80% of AXA Rosenberg's separate accounts in Morningstar's database with three-year records ranked in the bottom half of their respective categories. Likewise, according to the research and investment data tracking firm eVestment Alliance, AXA Rosenberg's four largest products for institutional investors each performed below their average peers in the one- and three-year periods ended March 31, 2009. AXA Rosenberg's largest strategy, U.S. large-cap equity, returned -11.26% for

the three years ended June 30, 2009 vs. -8.6% for the median in eVestment Alliance's universe of similar strategies. "This put AXA Rosenberg in the lowest quartile of that universe," reported *Pension & Investments*, a leading newspaper of institutional money management, in an October 4, 2010 article. In contrast, the figure "rebounded in the first quarter of 2010" – *i.e.*, after the coding error was fixed – "returning 6.6% and beating 83% of competitors," reported *Bloomberg* on April 27, 2010. Indeed, according to eVestment Alliance, a number of AXA Rosenberg strategies outperformed their benchmarks for the last quarter of 2009 (after lagging those benchmarks by wide margins earlier in the year)—after the error was purportedly corrected.

35. AXA Rosenberg's recklessness in introducing the coding error into its investment model, in failing to promptly identify the obvious error, and in delaying to correct the error once it occurred was particularly egregious for a firm with AXA Rosenberg's substantial financial resources and technological sophistication. Indeed, when news of AXA Rosenberg's coding error circulated through the institutional investor community, clients, consultants, and experts alike harshly criticized the firm. Within weeks, Morningstar declared that its confidence in AXA Rosenberg had been "shaken" and Morningstar lowered its ratings of four AXA Rosenberg funds (Standard & Poors soon followed suit), and consulting firm Wurts & Associates advised clients to immediately terminate AXA Rosenberg across all strategies. Money managers and consultants – such as Marco Consulting Group, the leading consultant to Taft-Hartley union plans – widely recommended that clients redeem their investments with AXA Rosenberg. As Mercer Investment Consulting, Inc., a prominent consultant to public pension funds, bluntly reported to its clients: "There has been a failure of the processes and procedures at AXA Rosenberg. The firm has a process in place surrounding code releases, yet the recently revealed coding error had been part of the process for over two years. For a firm with the technological sophistication and resources of AXA Rosenberg, it is difficult to comprehend how this error could not have been avoided or identified in a more timely fashion." A senior *CBS MarketWatch* columnist declared in a December 15, 2010 article that, "The ineptitude was horrific."

36. Not surprisingly, AXA Rosenberg's business plummeted in the wake of the coding error. AXA Rosenberg's assets under management have plunged more than 50% as a

result of the coding error, from a Class Period high of over $70 billion to roughly $31 billion as of December 31, 2010. Investors terminating AXA Rosenberg have cited a "recent and ongoing downturn in performance" and a "fundamental question of trust." The list of clients that have terminated AXA Rosenberg is long and includes numerous public pension funds and large mutual funds, such as Vanguard Group, Charles Schwab, and Principal Financial Group. Tellingly, even a sister company, AXA Equitable (a unit of AXA Financial, AXA Group's U.S. insurance subsidiary) fired AXA Rosenberg. Explaining mutual fund giant Vanguard Group's decision to drop AXA Rosenberg as subadvisor on three of its mutual funds, a director of fund analysis at Morningstar commented, "There were too many red flags that cropped up over the course of the year to have any more confidence in them," according to an August 12, 2010 article.

37. Following Mayer Brown's investigation, AXA Rosenberg accelerated major ownership and organizational changes that had been in discussion since the coding error had come to light. In or about June 2010, AXA Rosenberg's majority shareholder, AXA Investment Managers, bought out AXA Rosenberg's minority shareholders, Mr. Rosenberg and Kenneth Reid, for an undisclosed sum. In connection with the buy-out, Mr. Rosenberg immediately resigned from the Board of Directors (instead of upon completion of the buy-out), but remained available to AXA Rosenberg as an exclusive consultant (notwithstanding Mayer Brown's conclusions that he had violated the firm's ethical code). Likewise, Mr. Mead resigned as Director of the Research Center and from the AXA Rosenberg Board. Going forward, the heads of the Research Center were required to report directly to the CEO. AXA Rosenberg also implemented a new organizational framework, which organized its investment and research teams around three core functions – Research, Investment Model and Portfolio Management – with each position reporting directly to the firm's CEO. These organizational changes (and others, such as the hiring of an experienced Chief Risk Officer to better ensure adherence to firm policies in the future) were intended to "enable greater accountability" and "increased collaboration" within the firm, and to improve "risk management, controls, and oversight across the firm."

38. On information and belief, AXA Rosenberg's failure to implement adequate internal control processes and procedures to avoid, detect, correct, and monitor errors in its investment models was caused by a culture of secrecy and jealous control over the firm's investment process by its founder, Mr. Rosenberg, and others in the Research Center, and an acquiescence and abdication of responsibility by the firm's senior management and controlling shareholder, AXA Investment Managers, and its parent, AXA Group.

39. According to a series of reports in *Pension & Investments*, including articles dated October 4, 2010 ("AXA Execs Used Error To Seal Rosenberg's Fate"), October 18, 2010 ("Revealing A Secret Code"), and December 13, 2010 ("AXA Rosenberg Faces A Difficult Road Back"), when AXA Group purchased 60% of Mr. Rosenberg's quant firm in 1999, the Paris-based insurer promised Mr. Rosenberg that his investment models "could not be tinkered with" and that Mr. Rosenberg would "retain full control of the firm's 40-person research center." Under the ownership agreement, AXA was given responsibility for marketing while the investment process was left under Mr. Rosenberg's authority, who proceeded to operate it with little oversight, *Pension & Investments* has reported. Indeed, for years Mr. Rosenberg was given an "untouchable status" by AXA, according to an October 18 article in *Pension & Investments.* However, many in AXA Rosenberg's senior management, including the firm's CEO Prunet, came to believe this arrangement "was unacceptable" and were "angered" that top AXA Rosenberg executives did not have full access to the investment model, *Pension & Investments* has reported, citing as sources current and former employees. Significantly, only an informal and undisclosed "micro group" of long-time AXA Rosenberg employees, none of whom had any compliance-related responsibilities, were left with primary responsibility for AXA Rosenberg's investment model, as the SEC found. On information and belief, this small "micro group" of employees was led by Barr Rosenberg and only its members had full access to the model and all of its underlying code. This was a dangerous situation that management, the AXA Rosenberg Board, and Barr Rosenberg knew, or should have known, was likely to result in harm to the firm's clients.

40. Apparently recognizing the risk of allowing Mr. Rosenberg and a small, unknown group of subordinates to manage billions in client assets without adequate supervision, Mr. Prunet "battled with Mr. Rosenberg" for greater access to the Firm's investment process, and brought in personnel from France, "often to replace Americans who were fired or reassigned to lesser positions," reported *Pension & Investments* in its October 4th article. After CEO Prunet learned of the coding error and internal cover up, he told others at the firm that it could be "the opportunity to take control of the investment process from Mr. Rosenberg." To seal Mr. Rosenberg's fate, Mr. Prunet and AXA Group seized on an investment control provision in the ownership agreement which allowed AXA to seize control of the investment process "if it could show there were flaws in the computer models and that investment results were in the bottom percentile for three successive years," *Pension & Investments* has reported. Significantly, the shareholder agreement appears to have undermined AXA Rosenberg's ability to discover problems in the firm's investment process by discouraging Mr. Rosenberg and others in the Research Center from reporting them to others in the firm.

41. On February 3, 2011, the SEC announced that it had charged AXA Rosenberg with multiple violations of the federal securities laws in an administrative cease-and-desist proceeding arising out of the coding error. The SEC Order included detailed findings, including that:

- "[F]rom the time the error was introduced, BRRC's compliance program and procedures were not adequately tailored to the particular risks of the firm, and to the extent there were procedures, they were not adhered to."
- "BRRC did not have reasonable procedures in place to ensure that the Model would assess [the] risk factors as intended. . . . Because BRRC's compliance program did not sufficiently identify and mitigate the risks associated with the Model's development, testing, and change control procedures, the coding error operated undetected for more than two years."
- "For the Risk Model rolled out in April 2007, ARG failed to conduct sufficient quality control over the coding process before putting that model into production."
- BRRC "failed to conduct any meaningful materiality analysis of the error's impact. BRRC knew that its clients used the Model to manage their clients' portfolios, and that the error could potentially have adverse effects on the

performance of portfolios managed using the Model. Yet, BRRC only performed rudimentary and limited analyses to estimate the error's impact."

- The coding error "could have been but was not promptly corrected."
- "BRRC and ARIM breached their fiduciary duty to their clients" by, among other things, "delaying to fix the error."

42. The SEC further announced that AXA Rosenberg had agreed to settle the charges for $216,806,864 million plus a $25 million penalty, and certain other terms related to ongoing internal oversight, recordkeeping, periodic policy reviews, and the retention of an independent compliance consultant.[4] The SEC Order provides that the $216,806,864 payment – an amount determined by Cornerstone Research Inc. ("Cornerstone"), a financial consultant retained by Defendants – will be distributed to AXA Rosenberg clients adversely affected by the coding error. AXA Rosenberg is responsible for "self administering" the distribution, and in that capacity has sent letters to numerous Class members admitting that the coding error occurred and overexposed their accounts to common risks, and setting forth Cornerstone's estimate of the purported monetary impact of the error on the Class member's account. Nothing in the SEC Settlement or otherwise provides for disclosure to clients of the methodology or calculations used by Cornerstone to estimate the impact of the coding error on their accounts. On information and belief – including extensive analysis by Plaintiffs' experts – the $216,806,864 figure estimated by AXA Rosenberg's retained consultant is wholly insufficient to compensate investors for the full amount of their damages caused by Defendants' coding error.

CLASS ACTION ALLEGATIONS

43. Plaintiffs Guam and Sacramento bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of themselves and all other persons

[4] The SEC Order specifically requires the independent compliance consultant to conduct a comprehensive review of Defendants' (including the Affiliated Advisers) "supervisory, compliance, and other policies and procedures designed to detect and prevent *breaches of fiduciary duty*" by Defendants (including the Affiliated Advisers) and their employees, and to generally adopt all recommendations contained in the report. In addition, the settlement specifically required BRRC's director to report to AXA Rosenberg's CEO.

and entities for whom Defendants or Affiliated Advisers served as an investment manager or investment advisor (or subadvisor), or otherwise were given discretionary authority over such clients' entrusted assets, from January 1, 2007 through April 15, 2010 (the "Class Period") and whose entrusted assets were placed in investment vehicles (including separately-managed accounts) managed or advised (or subadvised) by AXA Rosenberg or Affiliated Advisers during that time (the "Investor Class"). Excluded from the Investor Class are ERISA plans, Defendants and their subsidiaries, parents, affiliates, successors, predecessors, officers and directors, any entity in which any excluded person has a controlling interest, and the legal representatives, heirs, successors and assigns of any such excluded person.

44. Plaintiffs NEI and Pipefitters bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3) on behalf of all fiduciaries of ERISA-covered plans that directly or indirectly invested or had investments in financial investment vehicles (including separately-managed accounts) offered by Defendants and as to which AXA Rosenberg served as an investment manager during the Class Period (the "ERISA Class"). Excluded from the ERISA Class are Defendants and their subsidiaries, parents, affiliates, successors, predecessors, officers and directors, any entity in which any excluded person has a controlling interest, and the legal representatives, heirs, successors and assigns of any such excluded person.

45. At times throughout this Complaint, the Investor Class and the ERISA Class are collectively referred to as "the Class." Where allegations concern only the Investor Class or the ERISA Class, they will be identified as pertaining to either the "Investor Class" or the "ERISA Class."

46. This action is properly maintainable as a class action because:

(a) The members of the Class are dispersed geographically and are so numerous that joinder of all Class members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, it is ascertainable through Defendants' records. Plaintiffs believe that the Class size numbers in the hundreds;

(b) Plaintiffs' claims are typical of those of all members of the Class in that Defendants' conduct was consistent with regard to all members of the Class. Plaintiffs Guam and Sacramento, like all members of the Investor Class, invested or had investments in AXA Rosenberg investment vehicles during the Class Period, and Plaintiffs NEI and Pipefitters, like all members of the ERISA Class, are the fiduciaries of ERISA-covered plans that invested or had investments in AXA Rosenberg investment vehicles during the Class Period;

(c) Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have no interests antagonistic to, or in conflict with, the Class that Plaintiffs seek to represent. Based on their substantial experience in the management of public employee retirement plans and ERISA plans, Plaintiffs are likely to vigorously litigate the claims and have retained attorneys competent and experienced in class action litigation, ERISA litigation, and fiduciary law matters;

(d) A class action is superior to other available methods for the fair and efficient adjudication of the claims asserted herein because joinder of all members is impracticable. Plaintiffs anticipate no unusual difficulties in the management of this action as a class action. In fact, it would be vastly inefficient for each AXA Rosenberg investor, and ERISA-covered plan, through its fiduciaries, to litigate the same questions separately as most or all of the relevant issues in this case relate exclusively to Defendants' common course of conduct with respect to all Class members; and

(e) The questions of law and fact common to the members of the Class predominate over any questions affecting individual members of the Class, and the claims of the Class will be established based on common proof.

47. Among the questions of law and fact common to the Investor Class are:

(a) Whether Defendants acted in a fiduciary capacity in providing services to Plaintiffs Guam, Sacramento, and the Investor Class;

(b) Whether Defendants breached their fiduciary duties to Plaintiffs Guam, Sacramento, and the Investor Class by permitting the "coding error" to be introduced in AXA Rosenberg's investment model;

(c) Whether Defendants breached their fiduciary duties to Plaintiffs Guam, Sacramento, and the Investor Class by failing to adequately manage and monitor their investments, to implement adequate internal control processes and procedures to avoid, detect, correct, and monitor errors in AXA Rosenberg's investment process that would have prevented AXA Rosenberg's "coding error" or discovered the error and corrected it in a timely manner, and by placing themselves in situations involving a conflict of interest with Investor Class members;

(d) Whether Defendants' conduct was negligent or grossly negligent in violation of applicable law; and

(e) To what extent members of the Investor Class have sustained losses or damages and the proper measure of such losses or damages.

48. Among the questions of law and fact common to the ERISA Class are:

(a) Whether Defendants are fiduciaries within the meaning of ERISA;

(b) Whether Defendants have co-fiduciary liability;

(c) Whether Defendants breached the duty of prudence in connection with the error and the fact that the error continued unnoticed and unremedied for years;

(d) Whether Defendants breached the duty of loyalty by placing themselves in situations involving a conflict of interest with ERISA Class members and not acting in the best interests of the ERISA Class members;

(e) Whether Defendants' course of conduct was a prohibited transaction in that Defendants dealt with the assets of NEI, Pipefitters, and the ERISA Class in Defendants' own interest;

(f) Whether Defendants knowingly participated in the prohibited transaction;

(g) Whether NEI, Pipefitters, and the ERISA Class are entitled to a return of all investment management fees paid during the ERISA Class Period;

(h) Whether NEI, Pipefitters, and the ERISA Class are entitled to losses as a result of Defendants' breaches; and

(i) Whether additional injunctive relief is appropriate.

49. Class action status is also warranted and appropriate under Rule 23(b)(2) for the ERISA Class because Defendants have acted on grounds that apply generally to the ERISA Class, making final injunctive or declaratory relief appropriate to the ERISA Class as a whole.

COUNT I

BREACH OF FIDUCIARY DUTY ON BEHALF OF THE INVESTOR CLASS *(AGAINST ALL DEFENDANTS)*

50. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

51. This count is asserted by Plaintiffs Guam and Sacramento against all Defendants on behalf of the Investor Class.

52. Defendants assumed, and owed, fiduciary duties to the Investor Class, both directly as investment managers/advisers/subadvisers for the Class with discretionary control over the assets entrusted to them by Guam, Sacramento, and the Investor Class, and vicariously, as parents or units of investment managers and/or investment advisers (or subadvisers) of the Investor Class. Defendants assumed and owed fiduciary duties to Guam, Sacramento, and the Investor Class both pursuant to the terms of their contracts with Guam, Sacramento, and Investor Class members, and because of the discretionary authority given and exercised by them to trade on Guam, Sacramento, and the Investor Class members' behalf in accordance with AXA Rosenberg's investment strategies, designated guidelines, and/or applicable law(s).

53. The Defendants assumed and owed the following fiduciary duties to the Investor Class, among others:

(a) The duty to take all reasonable steps to invest, manage, and monitor the assets entrusted by the Investor Class as a prudent and professional investment manager would do;

(b) The duty to exercise reasonable care in the management and oversight of the assets entrusted by the Investor Class;

(c) The duty to invest and manage each member of the Investor Class's entrusted assets exclusively for the best interest of such Investor Class member;

(d) The duty to avoid placing themselves in situations involving a conflict of interest with the Investor Class; and

(e) The duty to act fairly, in good faith, and with loyalty towards the Investor Class.

54. Defendants breached their fiduciary duties owed to Guam, Sacramento and the Investor Class. Among other things:

(a) Defendants failed to take all reasonable steps to ensure that the investment of the assets entrusted by Guam, Sacramento, and the Investor Class were made and maintained in a prudent and professional manner;

(b) Defendants failed to take reasonable care in managing, overseeing, and safeguarding the entrusted assets of Guam, Sacramento, and the Investor Class;

(c) Defendants failed to invest and manage the entrusted assets of Guam, Sacramento, and the Investor Class exclusively for the best interest of Guam, Sacramento, and the Investor Class;

(d) Defendants failed to avoid placing themselves in situations involving a conflict of interest with Guam, Sacramento, and the Investor Class; and

(e) Defendants failed to deal fairly and in good faith with Guam, Sacramento, and the Investor Class.

55. Defendants' breaches of their fiduciary duties were a substantial factor in causing Guam, Sacramento, and the Investor Class harm.

56. As a direct and proximate result of Defendants' breaches of fiduciary duties, Guam, Sacramento, and the Investor Class suffered damages in an amount to be determined according to proof, and are entitled to such damages from Defendants, as well as a return of all fees paid to Defendants, and appropriate equitable relief, including an accounting and imposition of a constructive trust.

COUNT II

AIDING AND ABETTING BREACH OF FIDUCIARY DUTY ON BEHALF OF THE INVESTOR CLASS *(AGAINST ALL DEFENDANTS)*

57. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

58. This count is asserted by Guam and Sacramento against all Defendants on behalf of the Investor Class.

59. As alleged herein, Defendants assumed and owed Guam, Sacramento and other members of the Investor Class fiduciary duties. Defendants, including ARIM, breached those duties.

60. Each Defendant knew each other breached fiduciary duties to Guam, Sacramento and other members of the Investor Class, or was willfully blind to such breaches. For example, Defendants BRRC and Barr Rosenberg, as the entity and principal individual responsible for developing, maintaining, overseeing, and controlling the operation of AXA Rosenberg's quantitative investment model, and Defendant ARG, as ARIM and BRRC's parent company, had actual knowledge of ARIM's investment management business, including its use of the model in managing the entrusted assets of Guam, Sacramento, and the Investor Class.

61. Each Defendant provided substantial assistance to each other's breaches of fiduciary duties, and did so to further their own economic interests. For example, BRRC and

Barr Rosenberg substantially assisted the fiduciary duty breaches of ARIM, for their own interests or financial advantage, by providing ARIM with the quantitative investment model to use in managing the entrusted assets of Guam, Sacramento and the Investor Class. Similarly, ARG substantially assisted the fiduciary duty breaches of ARIM, for its own interests or financial advantage, by providing ARIM with access to its portfolio of clients to which ARIM marketed and employed AXA Rosenberg's quantitative investment model.

62. Defendants' conduct, separately considered, also constitutes a breach of duty to Guam, Sacramento, and the Investor Class.

63. Guam, Sacramento, and the Investor Class have suffered damages proximately caused by Defendants' participation in breaches of fiduciary duty by one another in an amount to be determined according to proof, and are entitled to such damages from Defendants, as well as a return of all fees paid to Defendants, and appropriate equitable relief, including an accounting and imposition of a constructive trust.

COUNT III

NEGLIGENCE/GROSS NEGLIGENCE ON BEHALF OF THE INVESTOR CLASS *(AGAINST ALL DEFENDANTS)*

64. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

65. This count is asserted by Guam and Sacramento against all Defendants on behalf of the Investor Class.

66. Defendants owed Guam, Sacramento, and the Investor Class a duty to manage and monitor the investments of Guam, Sacramento, and the Investor Class with reasonable care and in good faith. Defendants breached these duties. Among other things:

(a) Defendants failed to take all reasonable steps to ensure that the entrusted assets of Guam, Sacramento, and the Investor Class were invested, managed, and monitored in a prudent and professional manner; and

(b) Defendants failed to exercise generally the degree of care, prudence, caution, and good business practices that would be expected of a reasonable investment manager under the same or similar circumstances.

67. Defendants' failure to meet the applicable standard of care constitutes negligence.

68. Defendants' conduct was of such an extreme departure from ordinary and professional standards of conduct that it amounts to gross negligence.

69. Defendants' negligence/gross negligence was a substantial factor in causing Guam, Sacramento, and the Investor Class harm.

70. As a direct and proximate result of Defendants' negligence/gross negligence, Guam, Sacramento, and the Investor Class have suffered actual losses or damages in an amount to be determined according to proof, and are entitled to such losses or damages from Defendants.

COUNT IV

BY INVESTOR CLASS FOR AN ACCOUNTING
(AGAINST ALL DEFENDANTS)

71. Plaintiffs Guam and Sacramento repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

72. As alleged herein, at all relevant times, Defendants owed Plaintiffs Guam, Sacramento, and the Investor Class a fiduciary duty to, among other things, exercise reasonable care in managing, overseeing, and safeguarding the Class's invested assets.

73. As alleged herein, Defendants breached their fiduciary duties by, among other things, failing to prevent the error from occurring, failing to promptly correct the error once it occurred, and failing to implement adequate internal control processes and procedures to avoid, detect, correct, and monitor problems in Defendants' investment process.

74. As a result of Defendants' misconduct, Plaintiffs Guam, Sacramento, and the Investor Class have been damaged financially and are entitled to recover from Defendants as a result thereof.

75. Defendants control the information necessary to calculate the losses suffered by Plaintiffs Guam, Sacramento, and the Investor Class as a consequence of Defendants' coding

error, including Defendants' investing methodology and the application of that methodology to Plaintiffs' and the Class's portfolios. According to Defendants, determining the impact of the error on each portfolio is highly complex even with such information. Accordingly, an accounting is necessary to ascertain, or most closely ascertain, the amount of the subject losses.

76. Plaintiffs Guam, Sacramento, and the Investor Class demand an accounting be made of the impact of the "coding error" described herein on all AXA Rosenberg investment vehicles (including separately-managed accounts) affected by the error, any deviation from benchmarks attributable to the error, all losses or damages caused by the error, and any other error in Defendants' investment process that impacted the performance of AXA Rosenberg investment vehicles (or separately-managed accounts) in which AXA Rosenberg placed the assets of Plaintiffs Guam, Sacramento, and the Investor Class.

COUNT V

BREACH OF THE DUTY OF PRUDENCE ON BEHALF OF THE ERISA CLASS (*AGAINST ALL DEFENDANTS*)

77. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

78. This count is asserted by NEI and Pipefitters against all Defendants on behalf of the ERISA Class.

79. Defendants are fiduciaries within the meaning of ERISA.

80. Defendants owed the duty of prudence to NEI, Pipefitters, and the ERISA Class, pursuant to ERISA § 404(a), requiring that Defendants act "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. § 1104(a)(1)(B).

81. Defendants breached the duty of prudence in that they allowed a material computer error to go unnoticed and unremedied for years and failed to maintain proper compliance procedures in connection with trouble-shooting and internal escalation procedures when errors were caught.

82. As a result of Defendants' breach of the duty of prudence, NEI, Pipefitters, and the ERISA Class suffered losses.

83. ERISA § 409, 29 U.S.C. § 1109, provides that any fiduciary who "breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries" by ERISA "shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary."

84. Defendants are liable under ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), to make good to NEI, Pipefitters, and the ERISA Class any losses resulting from the breaches, including lost investment earnings, and to restore or return to NEI, Pipefitters, and the ERISA Class all profits from use of plan assets, including investment management fees.

85. NEI, Pipefitters, and the ERISA Class also seek whatever equitable and remedial relief as the Court may deem appropriate, including but not limited to an accounting of the impact of the computer error on ERISA plans.

COUNT VI

BREACH OF THE DUTY OF LOYALTY ON BEHALF OF THE ERISA CLASS (*AGAINST ALL DEFENDANTS*)

86. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

87. This count is asserted by NEI and Pipefitters against all Defendants on behalf of the ERISA Class.

88. Defendants are fiduciaries within the meaning of ERISA.

89. Defendants owed the duty of loyalty to NEI, Pipefitters, and the ERISA Class, pursuant to ERISA § 404(a)(1)(A), including but not limited to the duty to invest and manage each ERISA Class member's entrusted assets exclusively for the best interest of such ERISA Class member, and the duty to avoid placing themselves in situations involving a conflict of interest with the ERISA Class. 29 U.S.C. § 1104(a)(1)(A).

90. As a result of their wrongful conduct as alleged herein, Defendants breached the duty of loyalty.

91. As a result of Defendants' breaches, NEI, Pipefitters, and the ERISA Class suffered losses.

92. ERISA § 409, 29 U.S.C. § 1109, provides that any fiduciary who "breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries" by ERISA "shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary."

93. Defendants are liable under ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), to make good to NEI, Pipefitters, and the ERISA Class any losses resulting from the breaches, including lost investment earnings, and to restore or return to NEI, Pipefitters, and the ERISA Class all profits from the use of plan assets, including investment management fees.

94. NEI, Pipefitters, and the ERISA Class also seek whatever equitable and remedial relief as the Court may deem appropriate, including but not limited to an accounting of the impact of the computer error on ERISA plans.

COUNT VII

CO-FIDUCIARY LIABILITY ON BEHALF OF THE ERISA CLASS (*AGAINST ALL DEFENDANTS)*

95. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

96. This count is asserted by NEI and Pipefitters against all Defendants on behalf of the ERISA Class.

97. Each of the Defendants was also a co-fiduciary liable for the breaches committed by each other fiduciary under ERISA § 405, 29 U.S.C. § 1105, because each (a) knowingly participated in an action or omission of one or more other fiduciaries, knowing such act or omission was a breach; (b) enabled one or more fiduciaries to commit a fiduciary breach by

failing to comply with his or her own fiduciary duties in the administration of its specific responsibilities giving rise to its status as a fiduciary; and/or (c) knew of a breach by one or more of the other fiduciaries but failed to make reasonable efforts under the circumstances to remedy the breach.

98. As a result of Defendants' breach of co-fiduciary duties, NEI, Pipefitters and the ERISA Class suffered losses.

99. ERISA § 409, 29 U.S.C. § 1109, provides that any fiduciary who "breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries" by ERISA "shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary."

100. Defendants are liable under ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), to make good to NEI, Pipefitters, and the ERISA Class any losses resulting from the breaches, including lost investment earnings, and to restore or return to NEI, Pipefitters, and the ERISA Class all profits from use of plan assets, including investment management fees.

101. NEI, Pipefitters, and the ERISA Class also seek whatever equitable and remedial relief as the Court may deem appropriate, including but not limited to an accounting of the impact of the computer error on ERISA plans.

COUNT VIII

PROHIBITED TRANSACTIONS ON BEHALF OF THE ERISA CLASS (*AGAINST ALL DEFENDANTS*)

102. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

103. This count is asserted by NEI and Pipefitters against all Defendants on behalf of the ERISA Class.

104. ERISA § 406, 29 U.S.C. § 1106, provides that any fiduciary with respect to a plan shall not "deal with the assets of the plan in his own interest or for his own account." 29 U.S.C. § 1106(b)(1).

105. Defendants have dealt with the assets of the ERISA-covered plans in their own interests, causing losses.

106. ERISA § 409, 29 U.S.C. § 1109, provides that any fiduciary who "breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries" by ERISA "shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary."

107. Defendants are liable under ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), to make good to NEI, Pipefitters, and the ERISA Class any losses resulting from the breaches, including lost investment earnings, and to restore or return to NEI, Pipefitters, and the ERISA Class all profits from use of plan assets, including investment management fees.

108. NEI, Pipefitters, and the ERISA Class also seek whatever equitable and remedial relief as the Court may deem appropriate, including but not limited to an accounting of the impact of the computer error on ERISA plans.

PRAYER FOR RELIEF

109. WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray for relief and judgment as follows:

(a) A determination that this action is a proper class action maintainable under Rule 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure and declaring Plaintiffs proper Class representatives and that Plaintiffs' Counsel are Class Counsel under Rule 23(g);

(b) A declaration that Defendants have breached their fiduciary duties to Plaintiffs Guam, Sacramento, and the Investor Class;

(c) A declaration that Defendants have breached their ERISA fiduciary duties to Plaintiffs NEI, Pipefitters, and the ERISA Class;

(d) An accounting of the impact of the "coding error" described herein on all AXA Rosenberg investment vehicles (including separately-managed accounts) affected by the error, any deviation from benchmarks attributable to the error, all losses or damages caused by the error, and any other error in Defendants' investment process that impacted the performance of AXA Rosenberg investment vehicles (including separately-managed accounts) in which AXA Rosenberg placed the assets of Plaintiffs and the Class;

(e) An Order awarding Plaintiffs Guam, Sacramento, and the Investor Class an appropriate measure of compensatory damages to be determined at trial, including both pre-judgment and post-judgment interest thereon, to the extent allowed by law;

(f) An Order compelling the Defendants to make good to NEI, Pipefitters, and the ERISA Class all losses resulting from their breaches of ERISA duties, including losses as a result of the error and lost investment earnings, return of all fees paid, and both pre-judgment and post-judgment interest thereon, to the extent allowed by law;

(g) An Order awarding restitution and other appropriate equitable relief against the Defendants, including disgorgement of all fees, compensation, or other value Defendants received in connection with their breaches of duty and other wrongful conduct, in an amount to be determined according to proof;

(h) An Order as may be necessary to restore any person in interest any money that may have been acquired by means of unlawful business acts and practices;

(i) An Order awarding Plaintiffs Guam, Sacramento, and the Investor Class punitive damages for Defendants' wrongful conduct, in an amount to be determined at trial;

(j) An Order enjoining Defendants from any further violations of ERISA;

(k) An Order awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(l) An Order granting such other and further relief that the Court deems just and proper.

JURY TRIAL DEMAND

110. Plaintiffs demand a trial by jury for those claims so triable.

Dated: April 15, 2011

Respectfully submitted,

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP

/s/ Blair A. Nicholas
BLAIR A. NICHOLAS

BLAIR A. NICHOLAS
DAVID KAPLAN
PAUL M. JONNA
12481 High Bluff Drive, Suite 300
San Diego, CA 92130
Tel: (858) 793-0070
Fax: (858) 793-0323

LIEFF CABRASER HEIMANN
& BERNSTEIN, LLP

/s/ Steven E. Fineman
STEVEN E. FINEMAN

KELLY M. DERMODY
ALISON M. STOCKING
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Tel: (415) 956-1000
Fax: (415) 956-1008

STEVEN E. FINEMAN
RACHEL GEMAN
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel: (212) 355-9500
Fax: (212) 355-9592

Interim Co-Lead Counsel

O'DONOGHUE & O'DONOGHUE LLP
LOUIS P.MALONE, III
4748 Wisconsin Avenue, N.W.
Washington, DC 20016
Tel: (202) 362-0041
Fax: (202) 362-2640

SULLIVAN, WARD, ASHER & PATTON, P.C.
SHARON S.ALMONRODE
MICHAEL J. ASHER
25800 Northwestern Highway
1000 Maccabees Center
Southfield, MI 48075
Tel: (248) 746-0700
Fax: (248) 746-2760

Additional Counsel

CERTIFICATION UNDER GENERAL ORDER NO. 45

I, Blair A. Nicholas, am the ECF User and whose ID and password are being used to file this Consolidated Class Action Complaint. In compliance with General Order No. 45, X.B., I attest that Steven E. Fineman has concurred in this filing.

Dated: April 15, 2011

/s/Blair A. Nicholas

BLAIR A. NICHOLAS

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List. In additional, I am serving a copy of the foregoing on individuals not listed on the Electronic Mail Notice List as indicated on the attached Mailing Information List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 15, 2011.

/s/ Blair A. Nicholas

BLAIR A. NICHOLAS

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
12481 High Bluff Drive, Suite 300
San Diego, CA 92130
Tel: (858) 793-0070
Fax: (858) 793-0323
Email: blairn@blbglaw.com

Mailing Information for Case No. C 11-0536 JSW

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices from the Court for this case.

- Blair A. Nicholas
  blairn@blbglaw.com
- David R. Kaplan
  davidk@blbglaw.com
- Lee H. Rubin
  lrubin@mayerbrown.com

E-mail Service List

LIEFF CABRASER HEIMANN
& BERNSTEIN LLP
KELLY M. DERMODY
kdermody@lchb.com
ALISON STOCKING
astocking@lchb.com
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339

LIEFF CABRASER HEIMANN
& BERNSTEIN LLP
STEVEN E. FINEMAN
sfineman@lchb.com
RACHEL GEMAN
rgeman@lchb.com
250 Hudson Street, 8th Floor
New York, NY 10013-1413

Interim Co-Lead Counsel

SULLIVAN, WARD, ASHER & PATTON, P.C.
SHARON S.ALMONRODE
salmonrode@swappc.com
MICHAEL J. ASHER
25800 Northwestern Highway
1000 Maccabees Center
Southfield, MI 48075

Additional Counsel

COBLENTZ, PATCH, DUFFY & BASS LLP
JONATHAN BASS
jbass@coblentzlaw.com
One Ferry Building, Suite 200
San Francisco, CA 94111-4213

Attorneys for Barr Rosenberg

First Class Mail Service List

O'DONOGHUE & O'DONOGHUE LLP
LOUIS P.MALONE, III
4748 Wisconsin Avenue, N.W.
Washington, DC 20016

Additional Counsel