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LIFE INSURANCE COMPANY
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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

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11 COORDINATED PROCEEDINGS:)
12 AMERICAN INVESTORS CASES II) COORDINATED PROCEEDING
Case No.: JCCP 4441
Honorable Richard A. Kramer, D. 304
13)
14 CHALYS M. STEPHENS and JOHN P.) San Luis Obispo Superior Court
STEPHENS, on behalf of themselves and all) Case No. CV040965
15 others similarly situated;)
16 Plaintiffs,) DEFENDANT AMERICAN EQUITY
INVESTMENT LIFE INSURANCE
17 v.) COMPANY'S AMENDED ANSWER TO
PLAINTIFFS' THIRD AMENDED
18 AMERICAN EQUITY INVESTMENT LIFE) COMPLAINT
INSURANCE COMPANY; ESTATE)
19 PLANNING & INVESTMENTS, INC. and)
DOES 1 through 100, Inclusive)
20 Defendants.)
21

22 Defendant American Equity Investment Life Insurance Company ("American Equity")
23 answers the Third Amended Complaint ("TAC") of Plaintiffs as follows:

24 **GENERAL DENIAL**

25 1. Pursuant to Code of Civil Procedure section 431.30(d), American Equity denies
26 generally and specifically each and every allegation contained in each and every paragraph of the
27 TAC, and each cause of action set forth therein, and specifically denies that Plaintiffs or anyone
28 else is entitled to any remedy or relief whatsoever by reasons of the allegations thereof.

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Plaintiffs received the benefits of the contracts and because American Equity relied to its detriment on such contracts by, among other things, crediting interest on the accumulated values of such policies pursuant to the contract terms, when the fact of Plaintiffs' alleged grievances were known or should have been known to Plaintiffs but were unknown to American Equity.

SIXTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiffs and the class of persons Plaintiffs purport to represent have waived any rights to sue upon the acts complained of by knowingly and voluntarily accepting and retaining annuity contracts and agreeing to their terms.

SEVENTH AFFIRMATIVE DEFENSE

(Statutory Bar)

Plaintiffs' claims are barred by the provisions of Insurance Code section 10127.9, in that those contract holders Plaintiffs purport to represent accepted the annuity contracts with notice of the terms of the contracts and of the rights to return the contracts for cancellation within the times stated, and retained such contracts beyond the cancellation periods, and are therefore bound by the terms of such contracts.

EIGHTH AFFIRMATIVE DEFENSE

(Claims Barred by Contract Provisions)

Some or all of Plaintiffs' claims or TACs are barred by the express provisions of the annuity contracts.

NINTH AFFIRMATIVE DEFENSE

(Entire Agreement)

Some or all of Plaintiffs' causes of action are barred because the parties' respective rights are contained in the annuity contracts issued to Plaintiffs, which sets forth the entire agreement between the parties.

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1 damage or loss was proximately caused or contributed to by negligence and other improper acts
2 on the part of Plaintiffs and others, and the amount of any such injury, damage or loss must be
3 apportioned, according to the respective comparative fault, among all those persons whose
4 negligence and improper acts caused and contributed to any such alleged injuries, damages or
5 losses.

6 **FIFTEENTH AFFIRMATIVE DEFENSE**

7 (No Liability For Unfair Competition Based Upon Vicarious Liability)

8 To the extent that Plaintiffs seeks to impose vicarious liability on American Equity based
9 upon the actions of its agent, the TAC fails to state a claim for unfair competition under Business
10 and Professions Code section 17200, *et seq.*

11 **SIXTEENTH AFFIRMATIVE DEFENSE**

12 (No Liability For Punitive Damages Based Upon Vicarious Liability)

13 To the extent that Plaintiffs seeks to impose vicarious liability on American Equity based
14 upon the actions of its agent, the TAC fails to state a claim for punitive or exemplary damages.

15 **SEVENTEENTH AFFIRMATIVE DEFENSE**

16 (Failure to State a Claim for Punitive Damages)

17 The TAC and each purported cause of action therein fail to state a claim for punitive or
18 exemplary damages against American Equity.

19 **EIGHTEENTH AFFIRMATIVE DEFENSE**

20 (Invalidity of Statute)

21 California Civil Code section 3294, under which Plaintiffs' claim for punitive damages is
22 apparently made, is invalid on its face or as applied to American Equity pursuant to Article I,
23 Section 10, Article IV, Section 2, and the First, Fifth, Sixth, Eighth and Fourteenth Amendments
24 to the Constitution of the United States, and Article I, Sections 7, 9, 15 and 17, and Article IV,
25 Section 16 of the California Constitution.

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NINETEENTH AFFIRMATIVE DEFENSE

(Equal Protection)

The provisions of California law limiting the amount of punitive damages which may be awarded in specified types of cases, while allowing unlimited punitive damages for other tortious conduct, constitutes impermissible discrimination against those subject to unlimited punitive damage awards, such as American Equity, and in favor of those defendants not subject to unlimited punitive damage awards, in violation of Article IV, Section 2, and the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 7, and Article IV, Section 16 of the California Constitution.

TWENTIETH AFFIRMATIVE DEFENSE

(Due Process)

The application of California law regarding punitive or exemplary damages to American Equity in this case is impermissibly vague, imprecise and inconsistent in violation of the rights of American Equity guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 7, of the California Constitution.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Damages Are Not Permitted Under Bus. & Prof Code § 17200)

To the extent Plaintiffs allege a claim, it is for damages, which are not compensable under Business and Professions Code sections 17200 *et seq.*

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Restitution Is Not Recoverable Under Bus. & Prof. Code § 17200)

To the extent Plaintiffs allege a claim, they are entitled to damages, which would negate the need for restitution under Business and Professions Code sections 17200 *et seq.*

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Standing Requirement under Bus. & Prof. Code § 17200)

There can be no monetary recovery or injunctive relief for a Business and Professions Code section 17200 *et seq.* claim on behalf of persons other than the named Plaintiffs, unless a class is certified under California Code of Civil Procedure section 382.

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TWENTY-FOURTH AFFIRMATIVE DEFENSE

(No Entitlement to Jury Trial on Equitable Claims)

Jury trials are available for actions at law only. Therefore, Plaintiffs are not entitled to a jury trial on their equitable claims.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(No Participation in Alleged Misconduct of Other Defendants)

American Equity did not cause, authorize, permit, participate in, aid or abet, or conspire with respect to, any of the alleged misconduct alleged against other defendants.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Lawful Sale of Approved Products by Licensed Agents)

American Equity's annuity contracts, including the specific contracts purchased by Plaintiffs, were approved for sale to California citizens by the California Department of Insurance and are sold only by agents holding a valid license issued by the Department.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Disclosure of All Material Facts)

All material facts concerning the annuity products sold to Plaintiffs were fully and accurately disclosed in the Benefit Summary and Disclosure forms that were provided to and signed by the Plaintiffs before they purchased their American Equity annuities and in the annuity contracts, which contained a 30-day "free look" period.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Lack of Justifiable Reliance on Any Contrary Oral Statements)

To the extent Plaintiffs are claiming to have relied on any oral statements by their individual agents that were contradicted by the disclosures in the American Equity written sales materials and contracts, such reliance was unjustified as a matter of law.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Contributory Negligence)

To the extent that Plaintiffs ignored the complete and accurate written disclosures in the Benefit Summary and Disclosure forms that Plaintiffs were provided with and signed before

1 making their purchases and in the annuity contracts themselves, Plaintiffs are contributorily
2 negligent.

3 **THIRTIETH AFFIRMATIVE DEFENSE**

4 (Lack of Proximate Cause)

5 Any failure by Plaintiffs to read all of the facts that were accurately and truthfully
6 disclosed in the Benefit Summary and Disclosure forms and annuity contracts themselves
7 represent the sole proximate cause of any injury, damages, or other harm they claim to have
8 suffered.

9 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

10 (No Ratification)

11 American Equity has not ratified with full knowledge of all material facts any
12 unauthorized acts of its agents or employees.

13 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

14 (No Liability for Acts Exceeding Scope of Authority or Agency or Employment)

15 If Plaintiffs or the persons they purport to represent suffered or sustained any damages as
16 alleged in the TAC and those damage were proximately caused and contributed to by agents or
17 employees of American Equity acting outside of the scope of their agency or employment with
18 American Equity, those acts were not authorized by American Equity, and American Equity is
19 not responsible for those acts and any damages resulting therefrom.

20 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

21 (Lack of Deception)

22 At all times relevant to this action, the alleged deceptive practice and/or advertising at
23 issue was not "likely to mislead" anyone.

24 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

25 (Class Prerequisites Not Met)

26 Plaintiffs' class action allegations should be dismissed since Plaintiffs are unable to
27 demonstrate the requisite class interest to maintain a class action, or otherwise satisfy the
28 prerequisites for class certification.

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FORTY-FIRST AFFIRMATIVE DEFENSE

(No Private Right of Action)

Insurance Code sections 10127.10 through 10127.13 do not do not create a private right of action for recovery against an insurer.

FORTY-SECOND AFFIRMATIVE DEFENSE

(Additional Affirmative Defense)

American Equity reserves the right to allege additional affirmative defenses as it discovers facts or circumstances supporting those affirmative defenses through discovery or otherwise.

FORTY-THIRD AFFIRMATIVE DEFENSE

(Release)

American Equity alleges that on or about July 17, 2008, for good and valuable consideration, certain class members entered into a written settlement and general release in the matter *Panter v. Tackett, et al.*, Case No. 01-CI-02109, Jefferson Circuit Court Division One, Jefferson County, Kentucky ("*Panter*"), in which such class members released American Equity from all liability for any and all claims, including those set forth in the Third Amended Complaint. A true and correct copy of the release, which is included in the Stipulation of Settlement in the *Panter* matter, is attached as Exhibit A and incorporated herein by reference.

FORTY-FOURTH AFFIRMATIVE DEFENSE

(Res Judicata)

Plaintiffs' claims are barred, in whole or in part, by the doctrine of res judicata.

FORTY-FIFTH AFFIRMATIVE DEFENSE

(Collateral Estoppel)

Plaintiffs' claims are barred, in whole or in part, by the doctrine of collateral estoppel.

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FORTY-SIXTH AFFIRMATIVE DEFENSE

(Release Based on Future Settlements)

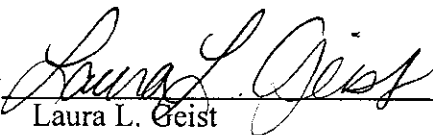
Certain plaintiffs or groups of plaintiffs may enter or have entered into releases, waivers, and/or settlement agreements, which extinguish any liability or obligations on the part of American Equity.

WHEREFORE, defendant American Equity Investment Life Insurance Company prays for judgment as follows:

1. That Plaintiffs take nothing by reason of the Third Amended Complaint;
2. For costs of suit incurred herein, including attorneys' fees; and
3. For such other and further relief as the Court may deem just and proper.

Dated: February 5, 2009

GORDON & REES LLP

By 

Laura L. Geist
Attorneys for Defendant
AMERICAN EQUITY INVESTMENT
LIFE INSURANCE COMPANY

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PROOF OF SERVICE

**AMERICAN INVESTOR CASES II
Coordinated Proceeding No. JCCP 4441
San Francisco County Superior Court**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Embarcadero Center West, 275 Battery Street, Suite 2000, San Francisco, CA 94111. On February 5, 2009, I served the within documents:

**Defendant American Equity Investment Life Insurance Company's
Amended Answer To Plaintiffs' Third Amended Complaint**

- by transmitting via electronic mail the document(s) listed above to the email addresse(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Francisco, addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by placing a true copy thereof enclosed in a sealed envelope, at a station designated for collection and processing of envelopes and packages for overnight delivery by FedEx as part of the ordinary business practices of Gordon & Rees LLP described below, addressed as follows:

*****SEE ATTACHED SERVICE LIST*****

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 5, 2009, at San Francisco, California.



Debbie McKee

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SERVICE LIST

AMERICAN INVESTOR CASES II
Coordinated Proceeding No. JCCP 4441
San Francisco County Superior Court
(Updated 8/18/08)

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