

FILED

MAR 02 2011

SAN LUIS OBISPO SUPERIOR COURT
BY: Ashley Borjas
Ashley Borjas, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN LUIS OBISPO, PASO ROBLES BRANCH

CHALYS M. STEPHENS and JOHN P. STEPHENS,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

AMERICAN EQUITY INVESTMENT LIFE
INSURANCE COMPANY, ESTATE PLANNING &
INVESTMENTS, INC., and DOES 1 through 100,
Inclusive,

Defendants.

CASE NO. CV040965 [CLASS ACTION]

Assigned to Hon. Martin J. Tangeman for
all purposes

**ORDER GRANTING PRELIMINARY
APPROVAL OF PROPOSED CLASS
ACTION SETTLEMENT AND
RELATED ORDERS**

Hearing

Date: March 1, 2011

Time: 10:30 a.m.

Dept.: P2, Paso Robles Branch

March 1, 2011

1 **WHEREAS**, plaintiffs and class representatives, CHALYS M. STEPHENS and JOHN P.
2 STEPHENS, (“plaintiffs” or “Class Representatives”), on behalf of themselves and all others
3 similarly situated and on behalf of the certified class in this action (“Class” or “Class members”)
4 and the Panter Settlement Subclass certified by this Order (“Panter Settlement Subclass”),
5 defendant, AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY (“American
6 Equity”), and defendants ROBIN G. NOE (also known as Robin I. Goltsman), ESTATE
7 PLANNING AND INVESTMENT, INC., and EPICO INSURANCE AGENCY, INC.,
8 (collectively “Noe Defendants”), have reached a proposed settlement of the action;

9
10 **WHEREAS**, the terms and conditions of said settlement is set forth in the *Settlement and*
11 *Release Agreement*, fully executed February 25, 2011, and Appendices A through E thereto,
12 (collectively, “Settlement” or “Agreement”), a true and correct copy of which has been filed as
13 **Plaintiffs’ Exhibit 6** in support of the motion for preliminary settlement approval, and;

14
15 **HAVING CONSIDERED** the proposed Settlement; the motion for preliminary settlement
16 approval filed by plaintiffs; American Equity’s and Noe Defendants’ separate requests for
17 preliminary settlement approval; the oral arguments of plaintiffs and Defendants at hearing; and
18 good cause appearing;

19
20 **THE COURT HEREBY FINDS** that the proposed Settlement, as set forth in the
21 Agreement, should be preliminarily approved as fair, reasonable and adequate, free of collusion or
22 indicia of unfairness, and within the range of possible final judicial approval. The Agreement, a
23 true and correct copy of which is submitted as **Plaintiffs’ Exhibit 6** in support of the motion for
24 preliminary settlement approval is incorporated by reference and hereby made a part of this
25 Preliminary Approval Order.

1 **THEREFORE, THE COURT HEREBY FINDS, CONCLUDES, AND ORDERS:**
2

3 **1. Definitions:** The capitalized terms used in this Preliminary Approval Order shall have the
4 meanings and/or definitions given to them in the Settlement, or if not defined therein, the
5 meanings and/or definitions given to them in this Preliminary Approval Order.
6

7 **2. Preliminary Approval of Proposed Class Settlement:** The proposed Settlement, on the
8 terms and conditions stated in the Agreement, is preliminarily approved by the Court as
9 being fair, reasonable and adequate, free of collusion or indicia of unfairness, and within
10 the range of possible final judicial approval. While Defendants have separately filed
11 requests for preliminary settlement and entry of this Preliminary Approval Order, they do
12 not join in Plaintiffs' motion, points and authorities, arguments, or supporting papers.
13 Defendants have denied, and continue to deny, any wrongdoing or liability arising out of
14 any conduct alleged in the Action. The Court specifically finds that:
15

16 A. There is no evidence of collusion. The proposed Settlement, as set forth in the
17 Agreement, resulted from extensive arms-length negotiation. The Action was extensively
18 and vigorously litigated, through the completion of Phase I of trial as against American
19 Equity (and the Court's decision thereon), prior to any settlement. The Parties engaged in
20 intensive arms-length negotiations, including a full-day mediation before Robert Kaplan, a
21 capable and well-respected mediator, and extensive negotiations among the Parties
22 thereafter. These arms-length negotiations resulted in the proposed Settlement reflected by
23 the Agreement.
24

25 B. The proposed Settlement, as set forth in the Agreement, is sufficient to warrant
26 dissemination of notice thereof to the Class members and Panter Settlement Subclass
27 members, and to conduct a fairness hearing thereon. The proposed Settlement provides for
28 substantial cash payments and/or other monetary credits for every member of the Class and

1 Panter Settlement Subclass, without requiring any Class member or Panter Settlement
2 Subclass member to affirmatively participate in a claims process. No portion of the
3 substantial Class and Panter Settlement Subclass relief would be consumed by attorneys'
4 fees, litigation expenses, notice expenses, settlement administration expenses, or the
5 requested incentive awards for Class Representatives, since such amounts are all separately
6 provided for. The Court has considered the realistic range of outcomes in this matter,
7 including the Court's decision following Phase I of trial as against American Equity, the
8 amount Plaintiffs might receive if they had prevailed at subsequent phases of trial, the
9 strength and weaknesses of the case, the novelty and number of the complex legal issues
10 involved, and the risk that Plaintiffs would receive less than the settlement or take nothing
11 following trial and potential appeals. The amount offered by the proposed Settlement falls
12 within the range of possible final approval in terms of these factors.

13
14 C. Before reaching the proposed Settlement, the Parties fully and vigorously litigated
15 their claims and defenses in extensive law and motion proceedings both in the trial and
16 appellate courts. Phase 1 of trial (as against American Equity) was completed, and the
17 Court's decision issued.

18 Law and motion proceedings included multiple demurrers, a stridently opposed
19 class certification motion, a contemporaneous summary judgment/ adjudication motion by
20 American Equity, Judge Kramer's *sua sponte* reconsideration of class certification with
21 respect to the Panter Settlement Subclass, a motion to remand this previously coordinated
22 action to its original venue in San Luis Obispo, a late-stage motion for judgment on the
23 pleadings by American Equity, a motion for trial bifurcation/management orders by
24 American Equity, and briefing (but no hearing or decision) on a summary judgment/
25 adjudication motion by Noe Defendants. All these law and motion proceedings were
26 extensively briefed and argued and hard fought. Numerous disputed discovery motions
27 were also vigorously litigated.
28

1 Several important decisions of the previously-assigned coordination judge in the
2 action, Honorable Richard Kramer, (granting class certification, denying summary
3 judgment/adjudication for American Equity, and decertifying the Panter Settlement
4 Subclass), were challenged by the Parties in the district court of appeal.

5 At the time of the Settlement, the Action had been litigated for six full years. Phase
6 I of the trial in this Action (as against American Equity) had been completed and the
7 Court's decision issued prior to the Settlement. The next phase of trial was set to
8 commence within less than two months. The Parties were fully on track to commence the
9 subsequent phases of trial as scheduled.

10
11 D. Before reaching the proposed Settlement, the Parties had completed all fact and
12 expert discovery (and completed trial) with respect to plaintiffs' Phase I unlawful surrender
13 penalty claims, and had largely completed all fact discovery for the remaining phases of
14 trial (the crediting and Noe Subclass claims). Expert disclosures for the second phase of
15 trial were due just days after the Settlement. The completed discovery was both
16 comprehensive and extensive.

17 Plaintiffs deposed eight key corporate witnesses for American Equity, several of
18 them more than once or over a multiple day session. These depositions included the
19 current and former presidents and CEO's of American Equity and designated "persons
20 most knowledgeable" in various categories pertinent to this litigation. Plaintiffs also
21 deposed a key third party actuary involved in the pricing of the subject Class annuities,
22 subpoenaed pertinent pricing records from that actuary's employer, and deposed two
23 former American Equity employees regarding various pricing issues. Plaintiffs also
24 deposed five sales agents for American Equity's Class annuities, including Class
25 Representatives' sales agents. With regard to the Noe Subclass, Plaintiffs additionally
26 deposed Ms. Goltsman, formerly Ms. Noe, the principal for the Noe Defendant companies,
27 in a multiple-day deposition, and EPICO Insurance Agency's general counsel and
28 designated "person most knowledgeable" concerning issues pertinent to this litigation.

1 American Equity deposed each Class Representative twice (including a multiple-day
2 session for Ms. Stephens so that she sat for deposition on three separate days), fifteen
3 absent class members, and one non-class member senior annuity purchaser. Nine expert
4 depositions (limited to Phase I of trial issues) were also completed by the Parties prior to
5 Settlement. Cumulatively, these depositions comprised hundreds of hours of testimony.

6 Extensive written discovery was also completed. Plaintiffs propounded six sets of
7 documents requests (comprised of 75 categories) on American Equity, and two sets of
8 document requests (comprised of 25 requests) on Noe Defendants. In response to these
9 requests, American Equity produced documents in 51 separate productions over a more
10 than four year period, cumulatively comprising tens of thousands of pages. Plaintiffs
11 further obtained and reviewed thousands of pages of records from a third party actuary,
12 Milliamn USA), involved in the pricing of certain Class annuity products. Plaintiffs also
13 conducted extensive informal discovery with respect to the Noe Subclass, interviewing
14 numerous class members and obtaining and reviewing past litigation and Department of
15 Insurance proceedings with respect to Noe Defendants. American Equity propounded on
16 plaintiffs five sets of document requests (comprising 82 requests), five sets of special
17 interrogatories (comprising 329 interrogatories), five sets of form interrogatories, and two
18 sets of supplemental discovery. American Equity additionally sought extensive banking
19 records for plaintiffs by subpoena.

20
21 E. Based upon this full litigation in law and motion of relevant legal issues affecting
22 this litigation, extensive investigation of the underlying facts in discovery, and litigation
23 and decision in Phase I of trial, the Parties were fully informed of the legal bases for the
24 claims and defenses herein, and capable of balancing the risks of continued litigation (both
25 before this Court and on appeal) and the benefits of the proposed Settlement.

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27 //
28 //

1 F. The Class is and was at all times adequately represented by Class Representatives
2 and Class Counsel. Class Counsel submit that they have fully and competently prosecuted
3 all causes of action, claims, theories of liability, and remedies reasonably available to the
4 Class members. Further, all Parties' counsel are highly experienced trial lawyers with
5 specialized knowledge in insurance and annuity litigation, and complex class action
6 litigation generally. Counsel are capable of properly assessing the risks, expenses, and
7 duration of continued litigation, including at trial and on appeal. Class Counsel submit that
8 the Settlement is fair and reasonable for the Class members and Panter Settlement Subclass
9 members. Defendants deny all allegations of wrongdoing and disclaim any liability with
10 respect to any and all claims alleged by Plaintiffs, the Class, and the Panter Settlement
11 Subclass, including regarding the propriety of class certification, but agree that the
12 Settlement will provide substantial benefits to Class and Panter Settlement Subclass
13 members. Defendants consider it desirable to resolve the Action to finally put Plaintiffs'
14 claims to rest and avoid, among other things, the risks of continued litigation, the
15 expenditure of time and resources necessary to proceed through the remaining phases of
16 trial and any subsequent appeals, and further interference with ongoing business operations.

17
18 **3. Conditional Certification of the Panter Settlement Subclass:** For purposes of the
19 proposed Settlement only, and conditioned upon the Agreement receiving final approval
20 following the fairness hearing and the occurrence of the Effective Date, the Court hereby
21 preliminarily and conditionally certifies the Panter Settlement Subclass, as defined in the
22 Agreement, and appoints plaintiffs, Chalys M. Stephens and John P. Stephens, as class
23 representatives and the law firms of Gianelli & Morris and Ernst and Mattison as co-Class
24 Counsel for the Panter Settlement Subclass. The Panter Settlement Subclass is defined as:

25 The Panter Settlement Subclass is defined the same as the Panter
26 subgroup which was previously decertified by the order of previously-
27 assigned judge in the Action, Honorable Richard Kramer, dated June
28 17, 2009, *to wit* "All persons who were California residents, and age
65 or older, at the time they purchased American Equity deferred
annuities on the following forms, and who purchased such an annuity

1 on or before October 14, 2008: FPDA-2, FPDA-3, FPDA-7, FPDA-7
2 (2.25), SUPER-7, INDEX-17, INDEX-18, INDEX-24, INDEX-28
3 and who were also members of the settlement class in the action
4 entitled, *Panter v. Tackett, et al.*, Case Number 01-c1-02109,
Jefferson County Circuit Court, Louisville, Kentucky, and did not
timely and validly exclude themselves from that settlement class.”

5 The “settlement class” referenced in the foregoing definition of the Panter Settlement
6 Subclass is defined as it was certified by the Jefferson County Circuit Court, Louisville,
7 Kentucky, in the action entitled, *Panter v. Tackett, et al.*, Case Number 01-c1-02109, in
8 relevant part:

9
10 “[A]ll persons residing in the United States who, at any time during
11 the period from January 1, 1997 through December 31, 2007,
12 purchased, had an ownership interest in, or obtained a Policy
13 (meaning any annuity, including without limitation any Equity
14 Indexed Annuity and Flexible Premium Deferred Annuity, that was
15 marketed, solicited, sold, and/or offered for sale by American Equity)
16 ... , from through, in connection with, or involving defendants
Addison Insurance Marketing, Inc., ALMS Holdings, Inc., ALMS
Ltd. LLP, Advanced Legal Systems, ALS, Michael McIntyre, Terry
Ciotti, Joel Miller, Douglas Van Meter, and/or Victor Tackett, Jr.,
and/or any predecessor, successor, affiliate, agent, assign or entity of
the aforementioned entities.”

17 Because the Panter Settlement Subclass is defined in the same manner as the
18 Panter subgroup previously decertified by Judge Kramer’s June 17, 2009 Order, but
19 said decertification order was not entered until after the mailing of the Notice of
20 Penency of Class Action to the class (including the Panter subgroup) and after
21 expiration of the deadline for exercise of the right to request exclusion therein (see
22 Paragraph 5 *below*), there shall be no additional right to request exclusion at this
23 juncture.

24 American Equity contends that Judge Kramer’s June 17, 2009 Order established
25 that the Panter Settlement Subclass is enjoined by the Kentucky court from participating in
26 this action, and that the California courts have no jurisdiction over such claims. Plaintiffs
27 contend that the California courts have the power to find that those excluded by Judge
28 Kramer’s Order can be given relief in this Action, and that Judge Kramer’s order in this
regard was not final and was still subject to challenge on appeal but for this Settlement.

1 Defendants do not contest Plaintiffs' request that the Panter Settlement Subclass be
2 conditionally certified in the Action for purposes of the Settlement only.

3 The Court finds and concludes, preliminarily, that the foregoing Panter Settlement
4 Subclass satisfies all requirements for class certification under *Code of Civil Procedure*
5 §382 and applicable law, particularly in the more limited context of the proposed
6 Settlement. Without resolving the merits of the Parties' underlying substantive disputes,
7 the Court finds that Judge Kramer's June 17, 2009 Order is not final. Further, the question
8 of whether or not the Kentucky Court's judgment and injunction bars participation in this
9 Action for the Panter Settlement Subclass raises several common questions of fact and law.
10 The underlying claims in this litigation, as certified by the order of Judge Kramer (and
11 including as litigated in Phase I of trial), are properly certified as a class action for the same
12 reasons previously articulated by the Court. Thus, the Court finds and concludes, that this
13 Action (as to the Panter Settlement Subclass) raises sufficiently common questions of fact
14 and law, and involves sufficiently numerous persons such that it is impracticable to bring
15 them all before one court, such that conditional certification of the Panter Settlement
16 Subclass is proper.

- 17
18 **4. Fairness Hearing:** The parties have requested a fairness hearing to be conducted on May
19 10, 2011, or as soon thereafter as the Court's and parties' calendars permit. A fairness
20 hearing will be held on May 9, 2011, at 10:00 a.m., (or on such continued
21 date(s) or time(s) as the Court may direct), in Department P2 of the California Superior
22 Court for the County of San Luis Obispo, Paso Robles Branch, before the Honorable
23 Martin J. Tangeman. The address for the Court, where the fairness hearing will be
24 conducted, is:

25 California Superior Court
26 County of San Luis Obispo
27 Paso Robles Branch, Department P2
28 901 Park Street
Paso Robles, California, 93446

1 The address of the Clerk of the Court is:

2 Clerk of the Court
3 California Superior Court
4 County of San Luis Obispo
5 Paso Robles Branch, Department P2
6 901 Park Street
7 Paso Robles, California, 93446

8 Plaintiffs shall promptly serve written notice on any Class or Panter Settlement Subclass
9 member who has submitted an objection to the Settlement (and/or a request to appear at the
10 fairness hearing), and shall post notice on the settlement administrator's website, of any
11 continued date and time for the fairness hearing. Otherwise, the Court may continue the
12 fairness hearing without notice to the Class or Panter Settlement Subclass.

13 At the fairness hearing, the Court will consider all matters set forth by Article VIII
14 of the Settlement, including: (a) the fairness, reasonableness and adequacy of the proposed
15 Settlement, as set forth in the Agreement; (b) whether the proposed Settlement, as set forth
16 in the Agreement, should be finally approved by the Court; (c) the sufficiency of the prior
17 notices to the Class and Panter Settlement Subclass of the Action and certification of the
18 Class (including the right at that time to request exclusion, and the sufficiency of the notice
19 approved by this Preliminary Approval Order of the proposed Settlement and the Class and
20 Panter Settlement Subclass Class members' rights to object and/or appear; (d) the adequacy
21 of Class Counsel's and Class Representatives' representation of the Class and Panter
22 Settlement Subclass; (e) an application by Class Counsel for an award of attorneys' fees
23 and reimbursement of litigation expenses, including the agreement among Class Counsel
24 with respect to the division of any attorneys' fees awarded; (f) an application for incentive
25 awards to be paid to the Class Representatives; and (g) such other matters as the Court may
26 deem proper and necessary. Further, the Court will consider approval of a release of
27 claims as set forth in the Settlement, dismissal of the Action with prejudice, and entry of
28 judgment in the Action.

Class Counsel shall file and serve their motion for final approval of the proposed
Class Settlement on or before the date fourteen (14) days prior to the fairness hearing date.

1 Class counsel shall also, by the same deadline, file and serve any motion for an award of
2 attorneys' fees and litigation expenses, for approval of the agreement among Class Counsel
3 with respect to the division of fees awarded, and for any incentives for the Class
4 Representatives.

5
6 **5. Prior Notice of Pendency of Class Action and Right to Opt Out:** The Court hereby
7 finds that the "Notice of Pendency of Class Action" in the Action was mailed to the Class
8 and the Panter Settlement Subclass on November 21, 2008, in the form approved by the
9 previously-assigned judge, Honorable Richard Kramer, in the manner required by the
10 Court's orders. The Court finds that said notice was the best notice practicable, and was
11 reasonably calculated under the circumstances, to apprise the Class and Panter Settlement
12 Subclass members of their rights, including their right to opt out at that juncture, as set
13 forth in the notice, and fully satisfied the requirements of due process and all other
14 applicable provisions of law.

15
16 **6. Notice of Settlement and Right to Object/Appeal:** The Court hereby approves the
17 proposed form of the Settlement Notice attached as Appendix A to the Agreement, to be
18 mailed in the manner set forth in the Agreement on March 15, 2011, or the date two weeks
19 after the Court's execution of the Preliminary Approval Order (whichever date is later).
20 Gilardi & Co, LLC, ("Settlement Administrator") is hereby appointed as the administrator
21 for the provision of the Settlement Notice to the Class and Panter Settlement Subclass.
22 Settlement Notice shall be provided in accordance with this Preliminary Approval Order
23 and the Agreement.

24 As further described below, and in the Agreement, the Class and Panter Settlement
25 Subclass members shall be given notice of the right to request to appear at the fairness
26 hearing (on their own behalf or through counsel of their own selection at their own expense)
27 and/or the right to object to the proposed Settlement (on their own or through counsel of
28

1 their own selection at their own expense). The deadline for the exercise of such rights shall
2 be thirty-five (35) days after the date of mailing of the Settlement Notice.

3 In order to facilitate printing and dissemination of the Settlement Notice, the
4 Settlement Administrator and Parties may change the format, but not the content, of the
5 Settlement Notice, without further Court order, so long as the 14-point font size and
6 legibility are not adversely impacted. The Settlement Administrator and Parties may also,
7 without further Court order, insert the information specified in the blank places provided in
8 the Settlement Notice.

9 The Court finds that the manner of providing notice of the proposed Settlement to
10 the Class and Panter Settlement Subclass members, as set forth in this Preliminary
11 Approval Order, the Settlement, and the Settlement Notice, is the best notice practicable,
12 and is reasonably calculated, under the circumstances, to apprise the Class and Panter
13 Settlement Subclass members of their rights regarding the proposed Settlement should it
14 become final, including their rights to object to the proposed Settlement and to request to
15 appear at the fairness hearing concerning the Settlement, all as set forth in the Agreement.
16 *Inter alia*, the Court finds that the provisions of §7.03 of the Agreement for updating the
17 notice mailing database, researching alternate mailing data and re-mailing any returned
18 notices, and responding to inquiries, constitute the best practicable methodology for
19 maximizing the efficacy of the Settlement Notice.

20 The Court further finds that the Settlement Notice, and the mailing thereof, as
21 provided in this Preliminary Approval Order and the Agreement, shall be the only notice to
22 the Class and Panter Settlement Subclass members of the proposed Settlement required,
23 and constitutes due and sufficient notice of the proposed Settlement, the fairness hearing,
24 Class and Panter Settlement Subclass members' rights with respect to the proposed
25 Settlement (including their rights to object and/or appear), Class Counsel's application for
26 attorneys' fees, litigation expenses, and incentive awards, and the other matters set forth in
27 the Agreement. The Court further finds that the Settlement Notice and the manner of
28 mailing the Settlement Notice as provided for in the Agreement and this Preliminary

1 Approval Order fully satisfy the requirements of due process and all other applicable
2 provisions of law.

3
4 **7. Proof of Mailing of Settlement Notice:** By the time of filing of the final settlement
5 approval motion, the Settlement Administrator shall provide, and Plaintiffs shall file proof,
6 by affidavit or declaration, of the mailing of the Settlement Notice in the form and manner
7 provided in the Agreement and in this Preliminary Approval Order.

8
9 **8. Class Members' Right to Object:** Any Class or Panter Settlement Subclass member (or a
10 legally authorized representative acting on his or her behalf) who wishes to object to any of
11 the terms of the proposed Settlement may do so by mailing a written objection to the Clerk
12 of the Court and mailing four copies of the objection (including any enclosures) to the
13 Settlement Administrator, at the addresses specified in the Settlement Notice. The
14 Settlement Administrator shall promptly transmit one copy of any objection (including any
15 enclosures) to counsel for each of the Parties.

16 All objections must state that the Class or Panter Settlement Subclass member is
17 objecting to the proposed Settlement in the Stephens Class Action, and contain the
18 following information: (i) the case name and number, "Stephens v. American Equity
19 Investment Life Insurance Company, et al., San Luis Obispo Superior Court Case No.
20 CV040965"; (ii) the objector's and Class or Panter Settlement Subclass members' names,
21 addresss, and telephone numbers; (iii) the factual and legal basis or bases for the objection;
22 (iv) whether the objector (or Class or Panter Settlement Subclass member) has objected to a
23 class action settlement in any other lawsuit; and (v) the terms of any agreement the objector
24 (or Class or Panter Settlement Subclass member) has made with any other person or party
25 concerning sharing any amounts, including any attorneys' fees, which may be recovered as
26 a result of the objection.

27 //

28 //

1 If the objector (or Class or Panter Settlement Subclass member) submitting the
2 objection is represented by an attorney concerning the objection, the objection must
3 additionally contain the following information: (i) the attorney's name, address, and
4 telephone number; (ii) whether the attorney has submitted an objection to a class action
5 settlement in any other lawsuit; (iii) the payment terms of the fee agreement between the
6 attorney and the objector (or the Class or Panter Settlement Subclass member); and (iv) the
7 terms of any fee-sharing or referral fee agreement the objector (or the Class or Panter
8 Settlement Subclass member) has made with any other person or party, including any other
9 lawyer or law firm, related to the objection.

10 If the objector or the objector's attorney has ever objected to another class action
11 settlement, the objection must additionally contain the following information: (i) the case
12 name, case number, case title, and name of the court, for all other class actions in which the
13 objector (or Class or Panter Settlement Subclass member) has objected to a proposed class
14 action settlement; (ii) the case name, case number, case title, and name of the court, for all
15 other class actions in which the attorney has objected to a proposed settlement; and (iii) the
16 general nature and outcome of each such objection.

17 Any objections (and copies) must be postmarked within thirty-five (35) days after
18 the date of mailing of the Settlement Notice. All timely and valid objections will be
19 considered by the Court at the fairness hearing. An objector (or Class or Panter Settlement
20 Subclass member) who submits a timely and valid objection does not need to attend the
21 fairness hearing or appear at the fairness hearing in order to have his or her objection
22 considered.

- 23
24 **9. Class Members' Right to Appear:** Any Class or Panter Settlement Subclass member may
25 request leave of Court to appear and speak at the fairness hearing on his or her own behalf,
26 or through counsel of his or her own selection at his or her own expense. To speak at the
27 fairness hearing in support of any objection to the Settlement, the objector must first have
28

1 submitted a timely and valid objection. No Class or Panter Settlement Subclass member is
2 required to attend, appear, or speak at the fairness hearing.

3 If a Class or Panter Settlement Subclass member wishes to speak at the fairness
4 hearing, he or she must send a letter to the Clerk of the Court requesting leave to do so, and
5 send four copies of the letter to the Settlement Administrator, at the addresses specified in
6 the Settlement Notice. The Settlement Administrator shall promptly transmit one copy to
7 counsel for each Party.

8 The letter must request leave to speak at the fairness hearing and contain the
9 following information: (i) the case name and number, “Stephens v. American Equity
10 Investment Life Insurance Company, et al., San Luis Obispo Superior Court Case No.
11 CV040965”; (ii) the Class or Panter Settlement Subclass member’s name, address, and
12 telephone number; and (iii) the Class or Panter Settlement Subclass member’s attorney’s
13 name, address, and telephone number (if applicable).

14 If the Class or Panter Settlement Subclass member, or his or her attorney, wishes to
15 present evidence at the fairness hearing, the letter must also identify any witnesses to be
16 presented and the foregoing letter (and copies) must enclose true and correct copies of any
17 records or documents to be presented.

18 The letter (and copies) must be postmarked within thirty-five (35) days after the
19 date of mailing of the Settlement Notice.

20
21 **10. Continuing Jurisdiction:** For the benefit of the Class and Panter Settlement Subclass and
22 to protect this Court’s jurisdiction, pursuant to *Code of Civil Procedure* §664.6, this Court
23 retains continuing jurisdiction over the Action, the Settlement, settlement approval
24 proceedings, and settlement administration, to ensure the effectuation of the Settlement and
25 this Preliminary Approval Order. Without limiting the foregoing, the Court will retain
26 continuing jurisdiction over all aspects of this Action including but not limited to the
27 fairness of the Settlement, any objections to the Settlement, the method under which
28 Settlement benefits and payments will be provided, the adequacy of representation of the

1 Class and Panter Settlement Subclass by Class Counsel and/or Class Representatives, the
2 amount of attorneys' fees and litigation expenses to be awarded Class Counsel, the amount
3 of any incentives to be paid to the Class Representatives, any claim by any party relating to
4 the representation by Class Counsel of any Plaintiff or Class or Panter Settlement Subclass
5 member in this Action, and all other issues related to this Settlement including any
6 collateral challenges made regarding any matter related to this Action or this Settlement or
7 the conduct of any party or Class Counsel relating to this Action or this Settlement.
8

9 **11. Preliminary Stay and Injunction:** All discovery (including expert discovery), motions,
10 trial dates, and other litigation activities and dates in the Action shall be stayed pending
11 hearing on final approval of the Settlement, except as is necessary to seek and obtain the
12 Court's final approval of the Settlement. Pending final approval, the Class Representatives
13 and the Class and Panter Settlement Subclass members are preliminarily barred and
14 enjoined from instituting, commencing, continuing to prosecute, participating in, or
15 receiving benefits from, directly or indirectly, as an individual or collectively,
16 representatively, derivatively, or in any other capacity, any action, lawsuit or proceeding in
17 the California State Courts, any other state court, any federal court, or any other tribunal or
18 forum of any kind, against Defendants or any party prospectively released by the
19 Settlement asserting any claims that would be released and discharged upon final approval
20 of the Settlement. This preliminary injunction shall not require any Class or Panter
21 Settlement Subclass member to take any affirmative action with regard to other pending
22 class action litigation in which they may be absent class members, and not a named
23 plaintiff and/or appointed class representative.
24

25 **12. Termination:** If the Settlement does not receive final approval, does not become effective,
26 or is terminated pursuant to the Agreement, this Preliminary Approval Order shall become
27 null and void. In such event, the Action shall revert to its status as of the date of execution
28 of the Agreement, and shall proceed as if the Settlement and all related orders and papers

1 had not been executed or otherwise agreed to. Plaintiffs, the Class, the Panter Settlement
2 Subclass, and Defendants shall be restored to their respective positions without prejudice to
3 any of their rights or positions on any issues in the Action. Further, this Preliminary
4 Approval Order, the Settlement, and all papers or information of any kind submitted or
5 provided by or on behalf of any Party in connection with the Settlement, and any discussions
6 related to the Agreement, unless independently obtained through past or future discovery,
7 shall not (1) be offered or submitted in evidence or used, referred to, cited, presented or
8 otherwise involved for any purpose in any proceeding, or (2) constitute a waiver of work
9 product, settlement, or any other privilege.

10
11 **IT IS SO ORDERED.**

12
13 MAR 02 2011

14 MARTIN J. TANGEMAN

15 Honorable Martin J. Tangeman
16 Judge of the Superior Court

1 Proposed Order Submitted by:

2 Robert S. Gianelli, #82116
3 Jully C. Pae, #233565
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