

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is entered into as of the date of signing by the last executing signatory, below. Subject to Court approval as described below, this Agreement is entered into by and among Plaintiffs and Class Representatives, Chalys M. Stephens and John P. Stevens, on behalf of themselves, and the “Class” (as defined in Section 1.05, *below*), “Noe Subclass” (as defined in Section 1.19, *below*), and the “Panter Settlement Subclass” (as defined in Section 1.21, *below*), and Defendants, American Equity Investment Life Insurance Company, Robin G. Noe, Estate Planning and Investment, Inc., and EPICO Insurance Agency, Inc.

ARTICLE I

DEFINITIONS

The following definitions are used in this Agreement:

1.01 “Action” means this class action, being pursued by the Class Representatives in the Superior Court of the State of California, County of San Luis Obispo, Paso Robles Branch, entitled *Chalys M. Stephens and John P. Stephens, on behalf of themselves and all others similarly situated, Plaintiffs, v. American Equity Investment Life Insurance Company, Estate Planning & Investments, Inc., and Does 1 through 100, Inclusive, Defendants*, Case No. CV040965.

1.02 “Agreement” means this “Settlement and Release Agreement,” including Appendices A-E hereto.

1.03 “American Equity” means American Equity Investment Life Insurance Company, defendant in the Action.

1.04 “American Equity’s Counsel” means the law firms of Berger Kahn, A Law Corporation, Jamboree Center, 2 Park Plaza, Suite 650, Irvine, California 92614, Telephone (949) 474-1880, Facsimile (949) 474-7265; Gordon & Rees LLP, Embarcadero Center West, 275 Battery Street, 20th Floor, San Francisco, California 94111, Telephone (415) 986-5900, Facsimile (415) 986-8054; and Adamski, Moroski, Madden, Cumberland & Green LLP, P.O. Box 3835, San Luis Obispo, CA 93403-3835, Telephone (805) 543-0990, Facsimile (805) 543-0980.

1.05 “Class” means the class certified in the Action by order of the Court on November 3, 2008, excluding those otherwise eligible class members who were subsequently removed from the class by the order of the Court on June 17, 2009, decertifying the Panter subgroup, and excluding those otherwise eligible class members who have previously, validly excluded themselves.

The class certified in the Action by the November 3, 2008 Court order *supra* is defined as:

“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 on or before October 14, 2008: FPDA-2, FPDA-3, FPDA-7, FPDA-7 (2.25), SUPER-7, INDEX-17, INDEX-18, INDEX-24, INDEX-28.”

The Panter subgroup decertified in the Action by the June 17, 2009 Court order *supra* is defined as:

“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 on or before October 14, 2008: FPDA-2, FPDA-3, FPDA-7, FPDA-7 (2.25), SUPER-7, INDEX-17, INDEX-18, INDEX-24, INDEX-28 and who were also members of the settlement class in the action 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.”

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

“[A]ll persons residing in the United States who, at any time during the period from January 1, 1997 through December 31, 2007, purchased, had an ownership interest in, or obtained a Policy (meaning any annuity, including without limitation any Equity Indexed Annuity and Flexible Premium Deferred Annuity, that was marketed, solicited, sold, and/or offered for sale by American Equity) ... , 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.”

In the case of joint ownership of an annuity, if either co-owner satisfied the residency and age criteria of the foregoing Class definition at the time of purchase, that co-owner is a member of the Class and the annuity is a Class Annuity, in its entirety.

In the case of a trust-owned annuity, if an annuitant (or in the case of joint annuitants, either co-annuitant), satisfied the residency and age criteria of the foregoing Class definition at the time of purchase, that trust is a member of the Class and the annuity is a Class Annuity, in its entirety.

For purposes of determining Class membership under the foregoing definition, purchasers of annuities terminated prior to issuance and/or during the

“free-look” period are not Class members and their annuities, terminated in such manner, are not Class Annuities.

Except where specifically noted, the Class shall be deemed to include the Class Representatives, as defined below.

1.06 “Class Annuity” or “Class Annuities” means the annuities falling within the definition of the Class, *supra*.

1.07 “Class Counsel” means the law firms of Gianelli & Morris, 626 Wilshire Boulevard, Suite 800, Los Angeles, California 90017, Telephone: (213) 489-1600, Facsimile: (213) 489-1611 and Ernst and Mattison, 1020 Palm Street, San Luis Obispo, California 93401, Telephone: (805) 541-0300, Facsimile: (805) 541-5168.

1.08 “Class Representatives” means Chalys M. Stephens and John P. Stephens, the named plaintiffs in the Action.

1.09 “Contract Value” has the same meaning as that term is defined in the respective Class Annuities.

1.10 “Court” means the Honorable Martin J. Tangeman, Judge of the Superior Court of California for the County of San Luis Obispo, or any subsequently assigned judge in the Action.

1.11 “Defendants” means American Equity Investment Life Insurance Company, Robin G. Noe, Estate Planning and Investment, Inc., and EPICO Insurance Agency, Inc., defendants in the Action.

1.12 “Effective Date” means the following:

a. if there are no submitted objections to the Settlement, the Effective Date is the Final Approval Date;

b. if there are submitted objections to the Settlement, but all such objections are withdrawn by the objector prior to the Final Approval Date, by written withdrawal filed with the Court, the Effective Date is the Final Approval Date;

c. if there are submitted objections to the Settlement overruled at the fairness hearing and the Final Approval Order is entered, but no motion for reconsideration, appeal, or other appellate challenge is filed and served by said objector(s), the Effective Date is the date 60 days after the date of notice pursuant to Section 8.03, below;

d. if there are objections to the Settlement overruled at the fairness hearing and the Final Approval Order is entered, and a motion for reconsideration, appeal, or other appellate challenge is filed by said objector(s), the Effective Date is the date upon which the objector(s) has (have) unsuccessfully exhausted all rights to review and the Final Approval Order becomes final.

e. if the Court disapproves the Settlement and that ruling becomes final, or if the Final Approval Order is entered but is reversed on appeal and that reversal becomes final, the Effective Date does not occur, and this Agreement shall terminate and be of no further force or effect without any further action by any Party, with the exception of Sections 9.02, 11.01, 11.16, and 11.18.

1.13 “Final Approval Date” means the date on which the Final Approval Order is entered on the Court’s docket in the Action.

1.14 “Final Approval Order” means the order finally approving this Settlement in all respects, entering final judgment in accordance with the terms of this Agreement, and dismissing the entire Action with prejudice, as fully described in Article VIII, *below*.

1.15 “MVA” means the “Market Value Adjustment (MVA)” as that term is used in the FPDA-2, FPDA-3, FPDA-7, FPDA-7 (2.25), and Super-7 Class Annuities.

1.16 “MVA Factor” means the difference between the MVA formula in the class products as per Section 1.15 above, and what the MVA would be if the description of the variable “A” in the formula deleted the words “less .5%” and ended with the close bracket.

1.17 “Noe Defendants” means, collectively, Robin G. Noe (also known as Robin I. Goltsman), Estate Planning and Investment, Inc., and EPICO Insurance Agency, Inc., defendants in the Action.

1.18 “Noe Defendants’ Counsel” means the Law Offices of C.R. Abrams, 27281 Las Ramblas, Suite 150, Mission Viejo, California 92691, Telephone (949) 639-0431, Facsimile (949) 672-0041 and the law firm of Glick & Haupt LLP, 1315 Santa Rosa Street, San Luis Obispo, California 93401, Telephone (805) 544-2450, Facsimile (805) 544-3284.

1.19 “Noe Subclass” means the subclass certified in the Action by order of the Court on November 3, 2008, excluding those otherwise eligible subclass members who have previously, validly excluded themselves.

The subclass certified in the Action by the November 3, 2008 Court order *supra* is defined as:

“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 through Robin Noe, Estate Planning & Investments, Inc., EPICO Insurance Agency, Inc. or their agents, on or before October 14, 2008: FPDA-2, FPDA-3, FPDA-7, FPDA-7 (2.25), Super-7, Index-17, Index-18, Index-24, Index-28.”

In the case of joint ownership of an annuity, if either co-owner satisfied the residency and age criteria of the foregoing Noe Subclass definition at the time of

purchase, the qualifying co-owner, and only that co-owner, is a member of the Noe Subclass and the annuity is a Noe Subclass Annuity, in its entirety.

In the case of a trust-owned annuity, if an annuitant (or in the case of joint annuitants, either co-annuitant), satisfied the residency and age criteria of the foregoing Noe Subclass definition at the time of purchase, that trust is a member of the Noe Subclass and the annuity is a Noe Subclass Annuity, in its entirety.

For purposes of determining Noe Subclass membership under the foregoing definition, purchasers of annuities terminated prior to issuance and/or during the “free-look” period are not Noe Subclass members and their annuities, terminated in such manner, are not Noe Subclass Annuities.

Except where specifically noted, the Noe Subclass shall be deemed to include the Class Representatives, as defined *supra*.

1.20 “Noe Subclass Annuity” or “Noe Subclass Annuities” means the annuities falling within the definition of the Noe Subclass, *supra*.

1.21 “Panter Settlement Subclass” American Equity contends that Judge Kramer’s Order of June 17, 2009 established that the Panter Subclass is enjoined by the Kentucky court from participating in this action, and that the California court has no jurisdiction over such claims. Plaintiffs contend that the California court has the power to find that those excluded by Judge Kramer’s Order can be given relief, and that Judge Kramer’s order in this regard was not final and was subject to challenge on appeal but for this Settlement. Defendants agree not to contest Plaintiffs’ request to the California court that the Panter Subclass be conditionally certified in the Action for purposes of the Settlement only, in accordance with Article V below, excluding those otherwise eligible subclass members who have previously, validly excluded themselves, to be defined as:

“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 on or before October 14, 2008: FPDA-2, FPDA-3, FPDA-7, FPDA-7 (2.25), SUPER-7, INDEX-17, INDEX-18, INDEX-24, INDEX-28 and who were also members of the settlement class in the action 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.”

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

“[A]ll persons residing in the United States who, at any time during the period from January 1, 1997 through December 31, 2007, purchased, had an ownership interest in, or obtained a Policy (meaning any annuity, including without limitation any Equity

Indexed Annuity and Flexible Premium Deferred Annuity, that was marketed, solicited, sold, and/or offered for sale by American Equity) ... , 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.”

In the case of joint ownership of an annuity, if either co-owner satisfied the residency and age criteria of the foregoing Panter Settlement Subclass definition at the time of purchase, that qualifying co-owner only would be a member of the Panter Settlement Subclass and the annuity would be a Panter Settlement Subclass Annuity, in its entirety.

In the case of a trust-owned annuity, if an annuitant (or in the case of joint annuitants, either co-annuitant), satisfied the residency and age criteria of the foregoing Panter Settlement Subclass definition at the time of purchase, that trust would be a member of the Panter Settlement Subclass and the annuity would be a Panter Settlement Subclass Annuity, in its entirety.

For purposes of determining Panter Settlement Subclass membership under the foregoing definition, purchasers of annuities terminated prior to issuance and/or during the “free-look” would not be Panter Settlement Subclass members and their annuities, terminated in such manner, would not be Panter Settlement Subclass Annuities.

1.22 “Panter Settlement Subclass Annuity” or “Panter Settlement Subclass Annuities” means the annuities falling within the definition of the proposed Panter Settlement Subclass, *supra*.

1.23 “Parties” means, collectively, the Class Representatives, the Class, the Noe Subclass, the Panter Settlement Subclass (if authorized by the Court as per Section 1.21 above), and Defendants.

1.24 “Party” means any Class Representative, any member of the Class, any member of the Noe Subclass, any member of the Panter Settlement Subclass (if authorized by the Court as per Section 1.21 above), or any Defendant.

1.25 “Preliminary Approval Order” means the order preliminarily approving the Settlement and directing that Settlement Notice be mailed to the Class, as fully described in Article V, *below*.

1.26 “Preliminary Approval Date” means the date on which the Preliminary Approval Order is entered on the Court’s docket in the Action.

1.27 “Released Claims” means those claims released by the Settlement, on the terms and conditions herein, if the Effective Date occurs, as further defined in Article IX, *below*.

1.28 “Released Parties” means those persons and entities against whom the Released Claims are released by the Settlement, on the terms and conditions herein, if the Effective Date occurs, as further defined in Article X, *below*.

1.29 “Settlement” means the settlement of the Action, as set forth in the Agreement.

1.30 “Settlement Administrator” means Gilardi & Company, LLC, 3301 Kerner Boulevard, San Rafael, California, telephone (415) 461-0410, facsimile (415) 461-0412, or such other administrator as the Parties shall select and the Court shall approve.

1.31 “Settlement Notice” means the notice of the Settlement to be mailed to the Class and Panter Settlement Subclass if the Settlement receives preliminary approval by the Court, in the form of Appendix A to this Agreement, and in the manner provided in Article VI, *below*.

1.32 “Surrender Penalties” means any surrender charges actually applied by American Equity upon any withdrawal from a Class Annuity, including a full surrender or penalized partial withdrawal, as adjusted by any MVA (for the FPDA-2, FPDA-3, FPDA-7, FPDA-7 (2.25), and Super-7 Class Annuities), and as adjusted based on minimum guaranteed surrender value. “Surrender Penalties” does not include any diminution in the net amount paid upon such a withdrawal which is attributable to the MVA Factor.

1.33 “Surrender Penalty Period” means the period during which Surrender Penalties are applicable, as defined by the Class Annuity, *to wit*: (a) for the FPDA-2, FPDA-3, and Super-7 Class Annuities, ten years from the date of issuance; (b) for the FPDA-7, FPDA-7 (2.25), and Index-28 Class Annuities, twelve years from the date of issuance; and (c) for the Index-17, Index-18, and Index-24 Class Annuities, sixteen years from the date of issuance. Some Index-28 Class Annuities, based on data produced by American Equity, had a shorter nine-year Surrender Penalty Period.

ARTICLE II

BACKGROUND

2.01 Summary of the Action. On November 12, 2004, the Class Representatives filed a class action lawsuit in the Superior Court of the State of California, County of San Luis Obispo, entitled *Chalys M. Stephens and John P. Stephens, on behalf of themselves and all others similarly situated, Plaintiffs, v. American Equity Investment Life Insurance Company, Estate Planning & Investments, Inc., and Does 1 through 100, Inclusive, Defendants*, Case No. CV040965. The action was assigned to the Honorable Douglas Hilton. A First Amended Complaint was filed on January 12, 2005. Thereafter, Plaintiffs named Robin G. Noe (also known as Robin I. Goltsman), EPICO Insurance Agency, Inc., and EPI – Estate Planning, Inc., as additional defendants in the Action.

On June 23, 2005, the Action was coordinated for pre-trial purposes with an action entitled, *California Advocates for Nursing Home Reform, et al. v. American Equity Investment Life Insurance Company, et al.*, San Francisco Superior Court, Case No. CGC-04-435933, by the Honorable Carolyn B. Kuhl, recommending assignment to the San Francisco Superior Court. On August 17, 2005, the Judicial Council of California confirmed assignment to the San Francisco Superior Court, as *Coordinated Proceedings: American Investors Cases II*, JCCP Case No. 4441. These coordinated proceedings were subsequently assigned to the Honorable Richard A. Kramer.

A Second Amended Complaint was filed in the Action on November 30, 2005. American Equity's demurrer to the Second Amended Complaint was sustained in part and overruled in part on April 13, 2006. A Third Amended Complaint was filed in the Action on September 12, 2007. American Equity filed an Answer to the Third Amended Complaint on October 26, 2007. The Noe Defendants had filed answers on February 23, 2005 (Estate Planning and Investments, Inc.) and June 6, 2007 (Robin Noe and EPICO Insurance Agency, Inc.), respectively, to prior iterations of the complaint.

Plaintiffs filed their motion for class certification on January 3, 2008. American Equity filed its motion for summary judgment/adjudication on May 1, 2008. On November 3, 2008, Judge Kramer entered his orders granting class certification and denying American Equity's summary judgment/adjudication motion. American Equity's writ petition was denied by the First Appellate District on December 9, 2008.

On January 20, 2009, Judge Kramer ordered that the Court would reconsider class certification *sua sponte* with respect to the Panter subgroup, based on a settlement in an overlapping class action entitled, *Panter v. Tackett, et al.*, Case Number 01-c1-02109, Jefferson County Circuit Court, Louisville, Kentucky. American Equity filed its Amended Answer to the Third Amended Complaint on February 5, 2009, asserting defenses based on said settlement. On June 17, 2009, after considering the Parties' briefs, Judge Kramer ordered that the Panter subgroup be decertified. Plaintiffs' writ petition was denied by the First Appellate District on December 24, 2009.

On June 2, 2009, the Action was remanded to the Superior Court of the State of California, County of San Luis Obispo, effective July 17, 2009. The file was ordered transferred on October 16, 2009. After peremptory challenges, the remanded Action was assigned to the Honorable Martin J. Tangeman on November 23, 2009, who has presided over the Action since that time.

On June 3, 2010, defendant Robin Noe moved for summary judgment/adjudication. That motion was not heard or determined, but remained pending at the time of settlement. On September 2, 2010, American Equity moved for judgment on the pleadings. The Court denied American Equity's motion for judgment on the pleadings on October 26, 2010.

On November 1, 2010, Phase 1 of trial (Plaintiffs' claims against American Equity relating to alleged failure to properly disclose surrender penalties)

commenced. On January 11, 2011, the Court entered its *Statement of Decision After Trial of Phase One*. Said Statement of Decision has not become final, American Equity has filed objections to it which had not yet been ruled upon at the time of Settlement, and this Settlement occurred prior to the expiration of the time for American Equity's appeal of that decision. But for this Settlement, the next phase of trial was on calendar to commence March 7, 2011.

Following a mediation conducted on January 21, 2011, and further negotiations among counsel for the Parties thereafter, the parties reached a settlement in principal and memorialized that agreement in a Memorandum of Understanding dated January 27, 2011. That Memorandum of Understanding is superseded by, and rendered null and void by, the execution of this Agreement. To the extent that any provision in the Memorandum of Understanding is inconsistent with or different from any provision in this Agreement, this Agreement shall control.

2.02 Class Representatives' Allegations. On their own behalf and on behalf of the Class, the Noe Subclass, and the Panter subgroup (until decertified by Judge Kramer), Class Representatives alleged that American Equity failed to disclose all surrender penalties (and failed to properly disclose the MVA) under the Class Annuities in the manner required by California law (including under *Insurance Code* §§10127.10 and 10127.13), rendering them unlawful and unenforceable, and that American Equity failed to disclose and/or concealed that credited rates under the Class Annuities allegedly would be manipulated to recoup promised bonuses, first year additional interest, and sales agent commissions.

On their own behalf and on behalf of the Noe Subclass, Class Representatives alleged that the Noe Defendants operated a pretextual "living trust mill" for the purpose of marketing and selling the Noe Subclass Annuities, including misrepresenting the need for estate planning services, engaging or aiding others in the unauthorized practice of law, unlawful attorneys' fee splitting, unlawful solicitation of clients for attorneys, concealing or failing to disclose the limited attorney involvement (or absence) in performance of the estate planning services sold, and misrepresenting the terms and provisions of the Noe Subclass Annuities (including the Noe Subclass Annuities' surrender penalty provisions). Class Representatives further alleged that American Equity knew that Noe Defendants were marketing and selling the Noe Subclass Annuities through such a "living trust mill."

In the Third Amended Complaint, Class Representatives asserted causes of action against American Equity and the Noe Defendants for violation of the Unfair Competition Law (California's *Business & Professions Code* §17200 *et seq.*) and fraud. (Class Representatives' had also asserted claims against American Equity for breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory relief, which were dismissed on demurrer to the Second Amended Complaint.) Class Representatives sought damages and restitution, including recovery of surrender penalties (including penalties associated with the MVA), and the amounts by which the interest credited on the Class Annuities has allegedly been lowered to recoup commissions, bonuses, and first year additional interest, plus legal interest on such amounts, punitive and treble damages, and legal

fees and costs. The lawsuit also sought an injunction limiting or precluding Defendants from continuing to engage in the above-described practices.

2.03 Defendants' Allegations. Defendants deny all of the Class Representatives' allegations and, by entering into this Agreement, are making no concession or admission of any kind as to such allegations. Defendants deny any liability to the Class Representatives and the members of the Class. Defendants have each asserted numerous legal and factual defenses to the Action.

Specifically, American Equity contends that: American Equity at all times worked with the California Department of Insurance to ensure that it properly disclosed surrender charge information as required by law; American Equity fully disclosed the manner in which interest was credited to its annuities, and at all times credited interest to those annuities in a manner specified in the contract and disclosure documents; that American Equity did not endorse, and indeed specifically prohibited, the so-called "trust mill" activity allegedly engaged in by the Noe Defendants; that class members benefitted from their annuities; that even those policyholders who surrendered during the Surrender Penalty Period received millions of dollars more than they deposited, even after incurring the contractually-specified surrender charges; that the class is not entitled to restitution, injunctive relief, damages, or other remedy; and that the class representatives lack standing to bring this action.

The Noe Defendants contend that they were not engaged in trust mill sales and properly made disclosures to all of their customers regarding their true intent and purposes and their sales practices.

Defendants contend that the Class Representatives, the Class members, the Noe Subclass, and the Panter Settlement Subclass were not injured and are not entitled to any form of damages, restitution, or injunctive relief on the theories asserted on behalf of the Class or on any other theory. Defendants also contend that none of the Class Representatives' claims are susceptible to proof on a class-wide basis due to problems of predominance, typicality and superiority, among other issues.

Defendants deny that the Class, the Noe Subclass, the Panter subgroup, or any class, was properly certified. Defendants further contend that the Court was correct in decertifying the Panter subgroup. To avoid the further expenses, hazards and uncertainties of litigation, however, Defendants agree that, if the conditions of this Settlement are fulfilled, they will forego any right to appeal the Court's certification ruling.

Class Representatives acknowledge that part of the consideration received under the Settlement is Defendants' agreement to forego their right to appeal such certification ruling. Said class certification order is not final, and Defendants may continue to assert in any other matter their several defenses against class certification. It is agreed that, by entering into this Agreement, Defendants have not admitted to the correctness of the Court's certification order, nor waived their defenses to such class certification order should the Effective Date not occur.

2.04 Settlement Results from Arms-Length Negotiations; Effect of Court's Non-Approval. On January 21, 2011, after the completion of the first phase of trial in the action and the Court's issuance of a Statement of Decision, the Class Representatives and American Equity participated in a full-day mediation, assisted by mediator Robert Kaplan. Mr. Kaplan is a respected mediator with extensive experience in resolving complex insurance and consumer class action cases, including, in particular, deferred annuity sales fraud litigation. After additional post-mediation negotiations, the parties reached a settlement in the Action. The Settlement among the parties is reflected in this Agreement. The Settlement is the product of extensive, good-faith, arms-length, adversarial negotiations, after full pretrial litigation of the Action, and completion of the first phase of trial. The Settlement is conditioned upon approval by the Court as provided for by the Agreement. Should the Court not approve this Agreement as written, the Agreement shall be null, void, of no further force or effect, and the parties shall be restored to their positions status quo ante, and as if this Agreement had never been executed.

2.05 Investigation by Class Counsel. Class Counsel represent that prior to Settlement, they have conducted a thorough investigation relating to Class Representatives' claims, the claims asserted on behalf of the Class, Noe Subclass and Panter Settlement Subclass, and the underlying events alleged in the Action, including taking numerous depositions, reviewing extensive documentation produced during the course of discovery, reviewing and analyzing class and annuity policy data produced in discovery, and fully litigating this action through the conclusion of all pretrial proceedings and completion of the first phase of trial. In addition, Class Counsel have made a thorough study of the legal principles applicable to said claims and have meaningfully evaluated the strength of those claims.

2.06 Fairness of Settlement. In consideration of: (a) the benefits Class Representatives and the Class, Noe Subclass, and Panter Settlement Subclass will receive from the Settlement; (b) the risks of continued litigation; and (c) the expense and length of time necessary to pursue the litigation through the remainder of trial and appeals that may follow, and (d) the investigation described above, Class Counsel have concluded that the terms and conditions of the Settlement are fair, reasonable, adequate, beneficial to, and in the best interests of Class Representatives and the Class, Noe Subclass, and Panter Settlement Subclass.

2.07 No Admission of Liability. While continuing to deny all allegations of wrongdoing and disclaiming any liability whatsoever with respect to any and all claims, Defendants consider it desirable to resolve the Action on the terms stated in the Agreement, in order, among other things, to avoid further burden, expense, inconvenience, and interference with ongoing business operations. The Parties agree that in no event shall this Settlement be construed as, or be deemed, an admission or concession by Defendants of the truth of any allegation or the validity of any claim asserted in the Action or any other action, or of any fault on the part of Defendants, their predecessors, assigns, agents or affiliates or any of the Released Parties as defined in Article X *below*, or of any liability or damage to any member of the Class, Noe Subclass, and Panter Settlement Subclass.

ARTICLE III

CLASS AND NOE SUBCLASS CONSIDERATION

3.01 Introduction. For each Class Annuity, the Settlement provides categories of benefits inuring directly to the Class based on the status of the Class Annuity as of October 31, 2010 (the day prior to the commencement of phase one of the trial in the Action). In addition, for each Noe Subclass member, the Settlement provides for an additional benefit. Each Class member and Noe Subclass member will receive all Settlement benefits to which he or she is entitled without having to submit any claim forms or undergo any claims process.

3.02 Past Full Surrenders. For each Class Annuity which was fully surrendered by the Class member on or before October 31, 2010, American Equity will issue a Settlement payment as follows:

a. For each FPDA-2, FPDA-3, FPDA-7, FPDA-7 (2.25), SUPER-7 Class Annuity, the Settlement payment shall equal 105.3% of the Surrender Penalties;

b. For each Index-17, Index-18, Index-24, or Index-28 Class Annuity, the Settlement payment shall equal 100% of the Surrender Penalties.

Such payments will be issued on the date fourteen days after the Effective Date, without interest.

3.03 Past Penalized Partial Surrenders. For each partial withdrawal from a Class Annuity occurring on or before October 31, 2010, which did not qualify as a penalty-free withdrawal under the provisions of the Class Annuity, American Equity will pay or credit a Settlement benefit equal to 100% of the amount of Surrender Penalties incurred by that Class member in connection with said partial withdrawal, as follows:

a. If the Class Annuity remains active and in deferral as of the date of distribution of Settlement benefits, the amount of this Settlement benefit shall be credited to the Contract Value of the Class Annuity;

b. If the Class Annuity is no longer active and in deferral as of the date of distribution of Settlement benefits, American Equity will issue a check to said class member in the proper amount.

Such credits or payments (as applicable) will be issued and posted on the date fourteen days after the Effective Date, without interest.

3.04 Active Policies Subject to Surrender Penalties. For each Class Annuity which was active and in deferral on October 31, 2010, and for which the Surrender Penalty Period had not expired as of that date, American Equity will pay or credit a Settlement benefit equal to 7.85% of the Contract Value as of October 31, 2010, as follows:

a. If the Class Annuity remains active and in deferral as of the date of distribution of Settlement benefits, the Settlement benefit shall be credited to the Contract Value of that Class Annuity;

b. If the Class Annuity is no longer active and in deferral as of the date of distribution of Settlement benefits, American Equity will issue a Settlement payment in this amount.

Such credits or payments (as applicable) will be issued and posted on the date fourteen days after the Effective Date, without interest.

3.05 Active Policies Not Subject to Surrender Penalties. For each Class Annuity which was active and in deferral on October 31, 2010, and for which the Surrender Penalty Period had expired on or before that date, American Equity will pay or credit a Settlement benefit equal to 4.85% of the Contract Value as of October 31, 2010, as follows:

a. If the Class Annuity remains active and in deferral as of the date of distribution of Settlement benefits, the Settlement benefit shall be credited to the Contract Value of that Class Annuity;

b. If the Class Annuity is no longer active and in deferral as of the date of distribution of Settlement benefits, American Equity will issue a Settlement payment in this amount.

Such credits or payments (as applicable) will be issued and posted on the date fourteen days after the Effective Date, without interest.

3.06 Terminated and Converted Policies. For each Class Annuity which was terminated on or before October 31, 2010 (whether by surrender, annuitization, payment of a death benefit, home office suspension, complaint cancellation, or otherwise), or which was converted on or before October 31, 2010, American Equity will pay or credit a Settlement benefit equal to 3.152% of the Contract Value as of the date of said termination or conversion, as follows:

a. If the Class Annuity was terminated (whether by surrender, annuitization, payment of a death benefit, home office suspension, complaint cancellation, or otherwise), or converted to another company, American Equity will issue a Settlement payment in the amount of this Settlement benefit;

b. If the Class Annuity was converted to another American Equity annuity, and the annuity to which it was converted remains active and in deferral as of the date of distribution of Settlement benefits, the Settlement benefit shall be credited to the Contract Value of the annuity to which it was converted;

c. If the Class Annuity was converted to another American Equity annuity, and the annuity to which it was converted is no longer active and in deferral as of the date of distribution of Settlement benefits, American Equity will issue a settlement payment in this amount.

Such credits or payments (as applicable) will be issued and posted on the date fourteen days after the Effective Date, without interest.

3.07 Future Enforcement of Surrender Charges; Effect and Status of Statement of Decision. For each Class member age 90 or older as of October 31, 2010, American Equity will waive all Surrender Penalties incurred after October 31, 2010. American Equity will commence application of this waiver on the Effective Date. If any such Surrender Penalties are incurred after October 31, 2010, but before the Effective Date, American Equity will issue a check to said class member in the proper amount, refunding those interim Surrender Penalties. Such payments (if applicable) will be issued on the date fourteen days after the Effective Date, without interest.

The parties stipulate that the Statement of Decision (and any injunction contemplated therein) is not final, that American Equity has filed objections to that Statement of Decision which had not been ruled upon prior to settlement, and that this Action was settled prior to the expiration of American Equity's time to appeal that decision. Class Counsel and Class Representatives hereby stipulate that they will not contact any media outlet regarding the Statement of Decision nor will they voluntarily provide a copy of the Statement of Decision to any media outlet, and will not post the Statement of Decision on the internet. However, nothing in this paragraph shall be construed as prohibiting or in any way restraining the right of Class Counsel or Class Representatives to discuss the Statement of Decision in any of the above-referenced contexts or otherwise. Pending Settlement approval, Plaintiffs and the Class will not take any action to enforce the Statement of Decision (including the injunctive relief therein), and if the Effective Date occurs, Plaintiffs and the Class will have finally released any right to enforce that decision (including the injunctive relief therein) and it shall be deemed superseded by the Final Judgment incorporating the terms of this Settlement Agreement.

3.08 Noe Subclass Settlement Benefits. In addition to any applicable benefits under Sections 3.02-3.07, *supra*, for the members of the Noe Subclass, American Equity will pay or credit a Settlement benefit in an amount cumulatively equal to \$1.4 million, divided equally among the Noe Subclass members. The individual amount of this benefit is \$612.69 per Noe Subclass member. This Settlement benefit shall be paid or credited as follows:

a. If the Noe Subclass member has a Class Annuity which remains active and in deferral as of the date of distribution of Settlement benefits, the Settlement benefit shall be credited to the Contract Value of that annuity. If the Noe Subclass member has more than one such Class Annuity, the credit shall be posted to the annuity with the highest Contract Value.

b. If the Noe Subclass member does not have a Class Annuity which remains active and in deferral as of the date of distribution of Settlement benefits, American Equity will issue a settlement payment for the amount of this Settlement benefit.

The Noe Subclass Settlement benefit under this Section is payable (or credited) once per Noe Subclass member, regardless of the number of Class Annuities

purchased. Such credits or payments (as applicable) will be issued and posted on the date fourteen days after the Effective Date, without interest.

3.09 Settlement Benefits Based Upon October 31, 2010 Class Data. The foregoing Settlement benefits under Sections 3.02-3.06 and 3.08, and under Section 5.03 below, have a cumulative value not to exceed \$36,000,000, based on the October 31, 2010 class data produced in the Action. The benefits to be paid by American Equity under Sections 3.02-3.06 and 3.08 above, and under Section 5.03 below, shall not exceed \$36,000,000, unless the October 31, 2010 class data is discovered to be inaccurate in a manner which increases the amount of any individual Settlement benefit, or omits any Class Annuities.

3.10 Multiple Annuities. With the exception of the Noe Subclass Settlement benefit (Section 3.08 *supra*) and the Panter Settlement Subclass Benefit (Section 5.03 *below*), the Settlement benefits hereunder apply separately to each Class Annuity. Any Class member with multiple Class Annuities is entitled to receive any applicable Settlement benefits under this Article III with respect to each Class Annuity.

3.11 Cumulative Benefits. The Settlement benefits hereunder are cumulative, meaning that any Class member qualifying for Settlement benefits under more than one of the foregoing Sections 3.02-3.08, is entitled to Settlement benefits under each applicable Section.

3.12 Benefits are Not “Claims-Made.” Class members are not required to submit any claim form or otherwise affirmatively claim Settlement benefits. All applicable Settlement benefits are available to each Class member if the Effective Date occurs. Notwithstanding, American Equity and the Settlement Administrator may require acceptable proof of legal authority (mutually acceptable to the Parties and/or counsel for the Parties) before issuing any Settlement payment to a person other than the Class member.

3.13 Tax Responsibility. IRS 1099 Forms shall be issued to all Class members, or if applicable, beneficiaries or other alternate payees to whom Settlement payments are made hereunder (including payments made pursuant to Section 6.03, *infra*). For purposes of issuing such tax forms, American Equity represents that in the normal course of its business, it maintains records of taxpayer identification numbers for each Class Annuity owner and annuitant, and for any designated beneficiaries under any Class Annuity to whom payment of a death benefit claim has been commenced. For any other alternate payee, whether a designated beneficiary or otherwise, Class Counsel shall obtain a taxpayer identification number prior to issuance of any settlement payment, or if unable to do so, the Settlement payment shall be subject to any withholding required under any applicable tax laws.

Class members alone shall be responsible for the payment of any taxes owed on any Settlement payments or benefits. The Parties, Class Counsel, American Equity’s Counsel, Noe Defendants’ Counsel, and the Settlement Administrator shall not give tax advice.

3.14 Non-Discrimination. American Equity agrees not to discriminate against the Class Representatives or the Class members in the administration of its annuities, including in setting renewal rates or index account parameters. The Class Representatives and the Class members will be treated the same as similarly situated policyholders on a nationwide basis.

3.15 Confirmation of Crediting. For any Settlement benefits provided under this Article III as a credit to the Contract Value of a Class Annuity, American Equity shall mail a letter to the Class member on the date of crediting, confirming the date and amount of crediting, substantially in the form of Appendix B.

ARTICLE IV

CLASS INJUNCTIVE RELIEF

4.01 California Senior Surrender Charge Disclosure Laws. American Equity will not market or issue any deferred annuity policy or certificate to a purchaser who is a resident of the State of California and age sixty-five (65) or older, without making all disclosures required under California law, including as required by *Insurance Code* §§10127.10 and 10127.13, and including with respect to form, location, and content.

American Equity does not admit that its prior disclosures for the Class Annuities were in any respect non-compliant with respect to such California disclosure requirements, including *Insurance Code* §§10127.10 and 10127.13, and continues to dispute the Class Representatives' claims and allegations in these regards. Notwithstanding, American Equity will amend its disclosures as provided herein, and will not apply any MVA of less than 1.0 for any California policyholder, as per Section 4.02, *below*.

Class Counsel and Class Representatives hereby stipulate that an amended cover page substantially in the form attached hereto as Appendix C addresses and resolves the deficiencies alleged by Class Representatives as well as those identified by the Court in its Statement of Decision. American Equity will modify Appendix C to reflect the actual word changes, page numbers, section headings, and surrender periods and percentages of each annuity product. Also, the cover pages for annuity products which do not have an MVA feature will not include the references in Appendix C to such feature. American Equity has represented that no annuity products currently issued include any surrender penalty applicable upon death. Should any future product include such a penalty upon death, the coverpage will include disclosure thereof.

The Parties will request that the Court, as part of its final judgment approving this Settlement, issue an injunction directing American Equity to use a document substantially in the form of Appendix C as its new cover page, subject to any subsequent revisions as may be consistent with or required by applicable law or regulation, and subject to minor, nonsubstantive variations based on existing or future individual policy forms such as word changes (using the words "premium values" and "accrued premium amounts" instead of "contract value"), page numbering, section titles, and/or policy features, as described above.

Promptly after the Effective Date, American Equity will file the new cover pages with the California Department of Insurance. Should the Department of Insurance request or require any modifications to the new cover pages, American Equity and Class Counsel will meet and confer in an effort to revise the new cover pages in a manner that both addresses the concerns of the Department of Insurance and the concerns identified by the Court in its Statement of Decision - and thereafter, they shall jointly submit the new cover pages thus revised to the Court and request that it be incorporated (nunc pro tunc if necessary) into the injunction requested as part of the Final Judgment approving this Settlement Agreement.

4.02 Waiver of Future Negative MVA. In calculating any future full surrender or partial withdrawal for any American Equity annuity issued to a resident of the State of California, including any Class Annuity or Panter Settlement Subclass Annuity, American Equity will not apply any MVA of less than 1.0 (which has the effect of reducing Contract Value or the net distribution amount), but will continue to apply any MVA of 1.0 (a neutral effect) or greater (which has the effect of increasing Contract Value or the net distribution amount).

4.03 Complaint Handling and Trust Marketing Reforms. American Equity will adopt reforms to its complaint handling and recording procedures to ensure complaints are timely and properly documented and addressed, and to its procedures for identifying and preventing the marketing of annuities through pretext interviews, including pretextual sales of living trusts, trust reviews or updates, or other estate planning services. These reformed procedures shall include the procedures set forth in Appendix D.

4.04 Noe Defendants' Marketing Reforms. Noe Defendants will adopt marketing reforms to ensure that they no longer market or sell any annuities or other insurance products through pretextual interviews or seminars, including pretextual sales of living trusts, trust reviews or updates, or other estate planning services. These reformed procedures are set forth in Appendix E.

4.05 Time for Compliance. American Equity shall implement the foregoing Sections 4.01- 4.03, and Noe Defendants shall implement the foregoing Section 4.04, on or before the Effective Date.

ARTICLE V

PANTER SETTLEMENT SUBCLASS

5.01 Motion for Certification of the Panter Settlement Subclass. As part of the settlement approval proceedings, as provided by Articles VII-VIII *below*, Plaintiffs shall seek certification of the Panter Settlement Subclass, conditionally, for purposes of the Settlement only. American Equity's contentions regarding the Panter Subclass are set forth in Section 1.21, *supra*, but American Equity agrees not to oppose conditional certification of the Panter Settlement Subclass for purposes of the Settlement, on the terms and conditions of this Agreement, including the release provided herein.

5.02 Settlement Not Contingent on Panter Settlement Subclass. This Settlement is not contingent upon the Court's certification of the Panter Settlement Subclass, and if the Court should decline to certify said subclass, the Settlement will remain in full force and effect, severing those provisions relating to the Panter Settlement Subclass. If the Court declines to certify the Panter Settlement Subclass, and the Effective Date occurs, the Class and Class Counsel hereby agree not to appeal from that ruling nor from Judge Kramer's previous ruling de-certifying the Panter subclass.

5.03 Panter Settlement Subclass Benefit. Should the Court certify the Panter Settlement Subclass, for the Panter Settlement Subclass, American Equity will pay or credit a Settlement benefit in an amount, cumulatively, equal to \$330,000, divided equally among the Panter Settlement Subclass members. The individual amount of this benefit is \$364.64 per Panter Settlement Subclass member. This Settlement benefit shall be paid or credited as follows:

a. If the Panter Settlement Subclass member has a Panter Settlement Subclass Annuity which remains active and in deferral as of the date of distribution of Settlement benefits, the Settlement benefit shall be credited to the Contract Value of that annuity. If the Panter Settlement Subclass member has more than one such annuity, the credit shall be posted to the annuity with the highest Contract Value.

b. If the Panter Settlement Subclass member does not have any Panter Settlement Subclass Annuity which remains active and in deferral as of the date of distribution of Settlement benefits, American Equity will issue a check to said Subclass member in the proper amount.

The Panter Settlement Subclass Settlement benefit under this Section is payable (or credited) once per Panter Settlement Subclass member, regardless of the number of Panter Settlement Subclass Annuities he or she purchased. Such credits or payments (as applicable) will be issued and posted on the date fourteen days after the Effective Date, without interest.

5.04 No Eligibility for Article III Settlement Benefits. Panter Settlement Subclass members are not Class members (as defined by Section 1.05, *supra*) and are not eligible for any Settlement benefits under Article III, *supra*.

ARTICLE VI

ATTORNEYS' FEES, INCENTIVE AWARDS, AND COSTS

6.01 Attorneys' Fees And Costs. The Parties agree that Class Counsel will make an application to the Court for an award of reasonable attorneys' fees not to exceed \$11,000,000.00 and litigation expenses not to exceed \$950,000.00, to be paid by American Equity should the Court approve them. Defendants agree not to oppose Class Counsel's application for an award of attorneys' fees and litigation expenses actually incurred, in any respect, so long as the requested amounts do not exceed the amounts specified in this Section. American Equity agrees to pay to Class Counsel, and Class Counsel agrees to accept, the lesser of the amounts specified herein or the amounts ordered by the court, without interest. Should the Court award any amounts above those specified in this agreement, Class Counsel agrees to accept only the amounts set forth in this agreement in full and complete satisfaction thereof.

American Equity shall pay the sums set forth in this Section 6.01 via wire transfer to the law firm of Gianelli & Morris, 626 Wilshire Boulevard, Suite 800, Los Angeles, California 90017. Wire transfer in the manner specified in this paragraph shall constitute full satisfaction of American Equity's obligation to pay any amounts to any person, attorney or law firm for any attorneys' fees, expenses or costs to which any of them may claim to be entitled for representation of the Class or the Class Representatives in this Action. Division of the funds among the various Class Counsel shall be the sole responsibility of Class Counsel, and Class Counsel shall hold all Released Parties harmless with respect to said division of funds.

6.02 Costs of Administration. All reasonable costs associated with administering the Settlement, including (without limitation) the Settlement Administrator's fees and costs with respect to the Settlement Notice and any distribution of Settlement benefits by the Settlement Administrator (but not including any attorney fees or litigation expenses other than those specified in paragraph 6.01 above) shall be borne and paid by American Equity. Plaintiffs, the Class, the Panter Settlement Subclass, and Class Counsel shall have no liability or responsibility for the payment of any such administration costs. American Equity's payment of said administration costs is in addition to, and does not reduce the amount of any payment of attorneys' fees or litigation expenses pursuant to Section 6.01, *supra*.

6.03 Class Representatives' Incentives. American Equity agrees not to oppose and to pay to the Class Representatives incentive awards, subject to approval by the Court, in the amount of \$25,000.00 each, without interest. American Equity agrees to pay to Class Representatives, and Class Representatives agree to accept, the lesser of the amounts specified herein or the amounts ordered by the Court, without interest. Should the Court award any amounts above those specified in this agreement, Class Representatives agree to accept only the amounts set forth in this agreement in full and complete satisfaction thereof. Said incentives shall be in addition to any other Settlement benefits to which the Class Representatives may be entitled under Article III, *supra*.

6.04 No Reduction of Class Settlement Benefits. The attorneys' fees, litigation expenses, administration costs, and/or incentives paid by American Equity under this Article VI, whether in the full amounts to be requested by Class Counsel and Class Representatives or in some lesser amounts, shall not reduce in any manner the amount of Settlement benefits for the Class or Panter Settlement Subclass.

6.05 Waiver of Claim for Additional Attorneys' Fees or Costs. The provisions in this Article VI for the payment of attorneys' fees and litigation expenses, subject to Court approval, will constitute Class Counsel's full compensation for time and expenses incurred or which may be incurred in connection with the Action. Defendants shall have no obligation to pay Class Counsel, the Class, the Panter Settlement Subclass, or the Class Representatives any additional amounts for attorneys' fees or litigation expenses incurred or which may hereafter be incurred in connection with the Action. The Class, Noe Subclass and Panter Settlement Subclass members shall have no obligation to pay Class Counsel or the Class Representatives any amounts for attorneys' fees or litigation expenses.

6.06 Timing of Payment of Fees and Expenses. Within fourteen days after the Effective Date, American Equity shall pay to Class Counsel, without interest, the amount of attorneys' fees and litigation expenses awarded by Court pursuant to Section 6.01, *supra*. American Equity shall timely pay to the Settlement Administrator its reasonable fees and costs for administration pursuant to Section 6.02, *supra*, without interest, in accordance with the reasonable periodic billing practices of the Settlement Administrator.

6.07 Timing of Payment of Incentives. Within fourteen days after the Effective Date, American Equity shall pay to Class Representatives the amount of the incentives approved by the Court pursuant to Section 6.03, *supra*.

ARTICLE VII

PRELIMINARY APPROVAL AND NOTICE

7.01 Motion for Preliminary Approval. On or before February 18, 2011, Class Representatives shall prepare and file a motion for hearing on March 1, 2011, at 10:30 a.m., before the Court, seeking entry of the Preliminary Approval Order. Defendants shall separately request preliminary approval of the Settlement, but shall not be required to join in Class Representatives' motion or the points and authorities in support thereof. The requested Preliminary Approval Order will, among other appropriate things:

a. Find preliminarily that the Settlement is fair, reasonable and adequate for the Class and Panter Settlement Subclass, free of collusion among the Parties or any other indicia of unfairness, and falling within the range of possible final judicial approval;

b. Approve the form and content of the Settlement Notice and direct the mailing of the Settlement Notice to the Class members and Panter Settlement Subclass members within two weeks of the Preliminary Approval Date;

c. Set a deadline for Class members and Panter Settlement Subclass members to submit any objections and/or notices to appear of thirty-five (35) days after the date of mailing of the Settlement Notice, as well as a deadline for the Parties to respond to any such objections, and;

d. Set a date for a fairness hearing on the Settlement, twenty-one (21) days after the expiration of the deadline for submission of objections and/or notices to appear, or as soon as possible thereafter on the Court's calendar.

7.02 Denial of Preliminary Approval. If the Court fails for any reason to enter a Preliminary Approval Order with all of the contents specified above, and if all Parties do not agree jointly to seek reconsideration or appeal such ruling, this Agreement shall terminate and be of no further force or effect without any further action by any Party, with the exception of Sections 9.02, 11.01, 11.16, and 11.18. Notwithstanding, the Settlement is not contingent upon the Court's certification of the Panter Settlement Subclass as fully set forth in Section 5.02, *supra*.

7.03 Settlement Notice. No later than two weeks following the Preliminary Approval Date, the Settlement Administrator will mail the Settlement Notice to the Class members and Panter Settlement Subclass members by first class mail, using updated mailing data, as follows.

American Equity has previously provided Class and Panter Settlement Subclass mailing data to Class Counsel and the Settlement Administrator in conjunction with the mailing of prior notices in the action. Said data was updated by the Settlement Administrator prior to the time of mailing of each such prior notice using the National Change of Address database. Said data has been further updated based on information provided to the Settlement Administrator and/or Class Counsel by Class members and/or Panter Settlement Subclass members (or their legally authorized representatives).

American Equity shall provide updated mailing data for the Class members and Panter Settlement Subclass members no later than the preliminary approval motion hearing date. For any Class member or Panter Settlement Subclass member known to American Equity to be deceased, American Equity shall identify them, and provide any known updated address information for their designated beneficiary (or beneficiaries) under the subject annuities.

The Settlement Administrator shall again update the mailing data using the National Change of Address database, after receipt of any updated data from American Equity, during the two-week period prior to the date of mailing the Settlement Notice. The Settlement Administrator shall remove from the mailing data those persons who have previously, validly excluded themselves.

Any Settlement Notices that are returned as undeliverable, with forwarding address information, shall be re-mailed to that forwarding address. Any Settlement

Notices returned as undeliverable without a forwarding address, shall be updated through an advanced address search service, utilizing social security numbers (if available from American Equity's records) and re-mailed to any forwarding address(es) obtained.

The Settlement Administrator shall provide regular mail, web, electronic mail, and toll-free telephone support services in connection with the mailing of the Settlement Notice, to address Class member or Panter Settlement Subclass member inquiries based upon the content of the Settlement Notice and such other information as shall be jointly provided by the Parties. All inquiries which cannot be addressed by the Settlement Administrator shall be referred to Class Counsel who shall respond to the inquiries as promptly as possible.

7.04 Right to Object. The Settlement Notice appries Class members and Panter Subclass Settlement members of their right to object to the Settlement, on their own behalf or through counsel of their own selection (at their own expense). To exercise this right to object, the Class member or Panter Subclass Settlement member must file his or her written objection with the clerk of the Court and send four copies to the Settlement Administrator, who shall promptly transmit one copy to Class Counsel, one copy to American Equity's Counsel, and one copy to the Noe Defendants' counsel.

All objections must be in writing, signed and dated by the objector (or his or her attorney), and must contain the following: (i) the objector's name, address, and telephone number; (ii) the name, address, and telephone number of any attorney for the objector, with respect to the objection; (iii) the factual basis and legal grounds for the objection; (iv) identification of the case name, case number, and court for any prior class action lawsuit in which the objector has objected to a proposed class action settlement, the general nature of such prior objection(s), and the outcome of said prior objection(s); (v) identification of the case name, case number, and court for any prior class action lawsuit in which the objector's attorney (if applicable) has objected to a proposed class action settlement, the general nature of such prior objection(s), and the outcome of said prior objection(s); (vi) the payment terms of any fee agreement between the objector and the objector's attorney with respect to the objection; and (vii) any attorneys' fee sharing agreement or referral fee agreement between or among the objector, the objector's attorney, and/or any third party, including any other attorney or law firm, with respect to the objection.

To be timely, objections (and any related notice of appearance or disclosure of witnesses and exhibits) must be filed and copies postmarked within thirty-five (35) days after the date of mailing of the Settlement Notice.

7.05 Right to Appear in Support of Objection. The Settlement Notice appries Class members and Panter Subclass Settlement members of their right to appear in the Action and/or at the fairness hearing in support of any validly submitted objection, on their own behalf or through counsel of their own selection (at their own expense). To exercise this right, a Class member (or his or her attorney) must file a notice of appearance with the clerk of the Court and send four copies to the Settlement Administrator, who shall promptly transmit one copy to

Class Counsel, one copy to American Equity's Counsel, and one copy to the Noe Defendants' counsel.

Class members and Panter Subclass Settlement members who wish to present evidence at the fairness hearing in support of their objection must identify in their objection any witness(es) whom they intend to call to testify and must attach true copies of any exhibit(s) they intend to offer into evidence.

To be timely, a notice of appearance must be filed and the copies postmarked within thirty-five (35) days after the date of mailing of the Settlement Notice.

7.06 Confirmation of Notice. The Settlement Administrator shall prepare a declaration confirming the mailing of the notice of pendency of this class action, in accordance with the Court's order in that regard, and identifying those persons who previously, validly excluded themselves after said notice, and confirming compliance with the notice requirements of the Settlement and Preliminary Approval Order. The Class Representatives shall file the declaration with the Court prior to the fairness hearing.

7.07 Sufficient Notice. Subject to the Court's approval, the prior notice of the pendency of this class action, including the right set forth therein to exclude oneself from the class, the Settlement Notice, and the procedures described in the Settlement and Preliminary Approval Order, shall constitute due and sufficient notice to the Class and Panter Settlement Subclass of the pendency of this class action, the proposed settlement of the Action, the fairness hearing herein, and the Class members' and Panter Settlement Subclass members' rights in such regards, and shall satisfy the requirements of California Law and Due Process. Nothing else shall be required of Class Representatives, Class Counsel, Defendants, Defendants' Counsel, or the Settlement Administrator with respect to the provision of the Settlement Notice and the fairness hearing.

ARTICLE VIII

FINAL APPROVAL OF SETTLEMENT

8.01 Motion for Final Settlement Approval. Fourteen (14) days prior to the fairness hearing, as set by the Court, Class Representatives will petition the Court for entry of the Final Approval Order, granting final approval of the Settlement and entering a final judgment in the Action. Defendants shall separately request final approval of the Settlement and entry of judgment in the Action pursuant to said Settlement, but shall not be required to join in Class Representatives' motion or the points and authorities in support thereof.

At the same time, Class Representatives will petition the Court for an award of attorneys' fees and litigation expenses (payable to Class Counsel), administrative expenses (payable to the Settlement Administrator), and incentives (payable to the Class Representatives), to be paid by American Equity. Defendants will not oppose Plaintiffs' fee motion or the requested supporting findings, so long as the total amounts requested do not exceed the maximums permitted by Article

VI, *supra*, but shall not be required to join in Plaintiff's fee motion or the supporting points and authorities or arguments in support thereof.

The requested Final Approval Order will, among other appropriate things:

a. Find that the prior notice of pendency of this class action and the Settlement Notice satisfied the requirements of California Law and Due Process;

b. Find that the Settlement is fair, reasonable and adequate, and in the best interests of the Class and Panter Settlement Subclass, and that each Class member and Panter Settlement Subclass member shall be bound by the Settlement, including the release and injunction provisions herein;

c. Find that the Settlement represents a fair and complete resolution of all claims asserted in a representative capacity on behalf of the Class and Panter Settlement Subclass and should fully and finally resolve all such claims;

d. Find that Class Counsel and Class Representatives adequately represented the Class and Panter Settlement Subclass and fully pursued their interests in the Action;

e. Conclude that the Settlement should be, and is, finally approved;

f. Dismiss, on the merits and with prejudice, all claims in the Action, declare that the Class and Panter Settlement Subclass and their members are bound by the release of claims and agreements set forth in this Agreement (which release language shall be set forth in the Final Approval Order), and permanently enjoin each and every Class member and Panter Settlement Subclass member from bringing, joining, continuing, or voluntarily participating in any claims or proceedings on any Released Claims against Defendants or the Released Parties, and enter final judgment thereon, including any Released Claims which may be asserted against any released Parties in the matters *In re American Investors Life Insurance Co. Annuity Marketing and Sales Practices Litigation*, J.P.M.L. Docket No. 1712, *In re American Equity Annuity Practices and Sales Litigation*, C.D. Cal. Master File No. CV 06-cv-06735, *McCormack v. American Equity Investment Life Insurance Co.*, C.D. Cal. Case No. 2:05-cv-6735, *Bendzak v. American Equity Investment*, C.D. Cal. Case No. 2:2005-cv-06119, and *Anagnostis v. American Equity Investment*, C.D. Cal. Case No. 2:2006-cv-00388;

g. Find that pursuant to *Code of Civil Procedure* Section 664.6, the Court retains complete and continuing jurisdiction over all matters relating to the modification, interpretation, administration, implementation, effectuation and enforcement of this Settlement, the Final Approval Order, and judgment herein, including (without limitation) the Settlement Notice, Settlement benefits (and the amount thereof), any remand after appeal or denial of any appellate challenge, any remand after appeal or denial of any appellate challenge, any collateral challenge to the Settlement, and any aspect of Class Counsel's or Class Representatives' representation of the Class or Panter Settlement Subclass;

h. Order the Parties to cooperate in the consummation of the Settlement, including the administration of Settlement benefits, in accordance with the Agreement;

i. Award attorneys' fees and litigation expenses to Class Counsel, as described in this Agreement, and order American Equity to pay such fees and costs to Class Counsel;

j. Order that Defendants shall have no obligation or liability to pay attorneys' fees and costs with respect to the Action to any other person, firm, or entity, other than as provided in this Agreement.

k. Approve incentive awards for the Class Representatives, as described in this Agreement, and order American Equity to pay such incentives to the Class Representatives, and;

l. Order American Equity to pay reasonable costs of administration of the Settlement to the Settlement Administrator, as described in this Agreement.

8.02 Disapproval. This Settlement is expressly conditioned upon Court approval. In the event that the Final Approval Order is not entered by the Court consistent with the terms of this Settlement Agreement (or if the Final Approval Order is entered, but that order is later reversed on appeal), then this Agreement and the Settlement shall become null and void and of no further force and effect, with the exception of Sections 9.02, 11.01, 11.16, and 11.18, unless all Parties agree jointly in writing to seek reconsideration and/or to appeal such ruling. Notwithstanding, the Settlement is not contingent upon the Court's certification of the Panter Settlement Subclass as fully set forth in Section 5.02, *supra*.

8.03 Service of Notice on Objectors. If there is any submitted objection to the Settlement, that objector does not withdraw his or her objection prior to the fairness hearing, and the objection is overruled at the fairness hearing, the Parties shall promptly serve notice of entry of the Final Approval Order and judgment in the Action on such objector (or his or her attorney, if applicable).

ARTICLE IX

ADMINISTRATION OF SETTLEMENT

9.01 Non-Negotiated Payments. Payments of Settlement benefits shall remain negotiable for 180 days after issuance. If any payments of Settlement benefits remain non-negotiated 150 days after issuance, the Settlement Administrator shall send written notice to the corresponding Class member(s) reminding the Class member(s) of the payment expiration date and the right to request issuance of a replacement payment.

Funds from any non-negotiated or undistributed Settlement benefit payments shall be retained in trust for a period of two (2) years from the first date of issuance of any of the payments. Upon expiration of this period, all funds remaining

undistributed or non-negotiated shall be returned to American Equity and become its sole and exclusive property.

9.02 Notice if Settlement Voided. If the Settlement Notice mails but the Effective Date does not occur because of disapproval by the Court, or any reviewing court, within fourteen (14) days after said disapproval of the Settlement becomes final, the Parties shall give written notice to the Class and Panter Settlement Subclass that the Settlement did not become final, is null and void, and no Settlement payments or benefits will be available or distributed to the Class. Class Counsel and American Equity shall share the cost of having the Settlement Administrator prepare and mail said notice, equally.

9.03 Effect of Death of Payee. If the payee for any Settlement payment provided herein is deceased prior to negotiation of the Settlement payment, upon proof of death by providing a copy of the death certificate, the Settlement payment shall be reissued to the beneficiaries designated under the Class Annuity, in the shares specified. If no beneficiary is designated, upon acceptable proof of death and legal authority, the Settlement payment shall be reissued to the payee's estate, trust, or, if none, heirs under California intestacy laws. If any such designated beneficiary is deceased, upon acceptable proof of death and legal authority, that beneficiary's share shall be reissued to the beneficiary's estate, trust, or, if none, heirs under California intestacy laws.

The foregoing shall not require the Parties, including American Equity, to independently conduct an investigation to ascertain all such deceased Settlement payees. The Parties' obligations hereunder shall be limited to instances: (a) where it is already known by American Equity, based on the records it maintains regarding the Class Annuities, that a Class member is deceased, and the designated beneficiary for said annuity or heir(s) are also shown in such records; (b) where it is already known by American Equity, based on the records it maintains regarding the Class Annuities, that a beneficiary entitled to a Settlement payment is deceased, and that beneficiary's heir(s) are also shown in such records; (c) where through inquiry by or on behalf of a Class member, it is brought to the Parties' attention that a Settlement payee is deceased and reissuance is requested by or on behalf of the beneficiaries or heirs.

ARTICLE X

RELEASE AND WAIVER

10.01 General Release. Subject to the limitations stated in this Article X, upon execution of this Agreement by Defendants and Class Representatives, issuance of the Final Approval Order by the Court, and occurrence of the Effective Date, in consideration of the benefits and other consideration set forth above, the Class Representatives and each and every member of the Class and the Panter Settlement Subclass, on behalf of themselves as well as each of their respective agents, heirs, representatives, successors, and assigns, shall automatically and without further action or notice be deemed to have irrevocably and unconditionally

released, waived, and forever discharged the Released Parties from any and all liability with respect to the Released Claims.

10.02 Released Claims. Subject only to those limitations specifically stated in this Article X, Released Claims is defined as:

a. Any and all past, present or future claims, causes of action, suits, petitions, demands in law or equity, or any allegations of liability for damages, debts, restitution, injunctive relief, trebling, punitive or exemplary damages, contracts, agreements, obligations, promises, attorneys' fees, costs, interest, or expenses whatsoever, which relate to the Class Annuities and which were actually asserted in the Action or which could have been asserted in the Action and arise from the same factual predicate, whether known or unknown, that the Class, Noe Subclass, Panter Settlement Subclass, and Class Representatives now have, had, or may hereafter claim to have, in law or equity, arising out of or in any way related to their Class Annuities, including but not limited to all matters regarding the purchase or sale of said annuities, any and all pre-sale representations or inducements in connection with said annuities, the disclosure or non-disclosure of any information in connection with such annuities, the performance or crediting of such annuities, the surrender or surrender charges associated with such annuities, the suitability or unsuitability of such annuities for their individual needs and circumstances, or as compared to other, alternative investments or insurance products, and any MVA or MVA Factor associated with such annuities, including any claims not presentable in the Action, and whether or not brought directly, indirectly, on a representative basis, or otherwise, and regardless of whether those claims are based on federal, state, or local law, statute, ordinance, regulations, contract, common law, or any other source, including without limitation claims for breach of contract, fraud, violation of California's Unfair Competition Law (*Business & Professional Code* §17200 *et seq.*), bad faith, *Insurance Code* §§785 and/or 332, declaratory or injunctive relief, punitive damages, and *Civil Code* §3345's enhanced remedies, and including without limitation any claims based on violation of *Insurance Code* §§10127.10 and 10127.13, improper disclosure of Surrender Penalties, MVA or MVA formula, any claims relating in any way to the amount of interest credited to the policies, including claims based on any reduction of credited interest to recoup, in whole or in part, the costs of premium bonuses, additional first year interest, or sales commissions, or improper disclosure or concealment thereof, any claims for consequential damages, emotional distress, pain and suffering, or personal injury, any claims for vicarious liability based on the conduct of the Class Representatives', Class members', and Panter Settlement Subclass members' selling agents, brokers, their agencies, and affiliated sales organizations, or any of the other parties or entities referenced in Section 10.04(a), *infra*, or any claims relating to the negotiation of this Agreement, although nothing in this release shall be construed to preclude the proper enforcement of this Agreement.

b. The Class Representatives, Class, and Panter Settlement Subclass expressly waive and assume the risk of any and all claims which exist as of this date, but of which the Class Representatives, Class, and Panter Settlement Subclass do not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect the decision

to enter into this Agreement. This Agreement includes all Released Claims, of every nature and kind whatsoever, which the Class, Panter Settlement Subclass, and Class Representatives may have against the Released Parties, known or unknown, suspected or unsuspected, past or present, despite the fact that California *Civil Code* §1542 may provide otherwise. The Class Representatives, Class, and Panter Settlement Subclass expressly waive any right or benefit available in any capacity under the provisions of §1542, which provides as follows:

A general release does not extend to the claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with debtor.

10.03 Released Parties. Subject only to those limitations specifically stated in this Article X, Released Parties is defined as: Defendants, Noe Defendants' sales agents, and each and all of their respective present, former and future parent, sister, subsidiary and affiliated companies, their past, present and future officers, directors, employees, servants, attorneys, insurers, legal and beneficial shareholders, partners, privies, representatives, assigns, and agents.

10.04 Limitations on Scope of the Release.

a. Notwithstanding anything in this Article X, Released Parties, as defined herein, does not include, and no claims of any nature, are released as against any selling agents or brokers, and the agents' or brokers' agencies or affiliated marketing organizations, with respect to the sale of the Annuities, including the agencies' or marketing organizations' former and future parent, sister, subsidiary and affiliated companies, and their past, present and future officers, directors, employees, servants, attorneys, legal and beneficial shareholders, partners, privies, representatives, assigns and agents (collectively, "Non-Released Entities"), other than the Noe Defendants and their sales agents. However, American Equity itself shall be fully released from all liabilities with respect to the conduct of such Non-Released Entities (whether on theories of respondeat superior, agency liability, negligent or otherwise improper hiring, selection, training, or supervision, or any other theories of direct or vicarious liability, indemnity, contribution, or otherwise), to the fullest extent that any such claims fall within the scope of paragraph 10.02(a) above.

b. Notwithstanding anything in this Article X, the Released Claims, as defined herein, are subject to the following limitations:

(1) Nothing shall preclude any action or proceeding to enforce the terms of this Agreement;

(2) No claims of any nature are released with respect to any annuity, insurance policy, or other contract or agreement between any Class member or Panter Settlement Subclass member and any Released Party, other than the Class Annuities and Panter Settlement Subclass Annuities;

(3) No claims of any nature are released with respect to any annuity or insurance policy issued by another company which was subsequently acquired by American Equity;

(4) American Equity and the Class members and Panter Settlement Subclass members shall continue to have all rights as specified by the express terms of their respective Class Annuities and Panter Settlement Subclass Annuities, except as expressly modified by the Settlement.

10.05 Permanent Injunction. The Class Representatives, Class, and Panter Settlement Subclass hereby agree and acknowledge that the provisions of this Release together constitute an essential term of the Agreement. The Class Representatives, Class, and Panter Settlement Subclass expressly agree that this Release shall be, and may be raised as, a complete defense to and will preclude any action or proceeding on any Released Claims against any Released Parties. It is the intention of the Class Representatives, on behalf of themselves and the Class and Panter Settlement Subclass members, in executing this Release to fully, finally, and forever settle and release all matters and all claims released under this Section X.

Upon final approval of the Settlement and occurrence of the Effective Date, all Class and Panter Settlement Subclass members shall be permanently barred and enjoined, from (1) filing, commencing, prosecuting, maintaining, intervening in, participating in as class members or otherwise, or receiving any benefits from, any lawsuit (including putative class action lawsuits), arbitration, administrative or regulatory proceeding or order in any jurisdiction, against any Released Parties on any Released Claims; and (2) organizing any Class or Panter Settlement Subclass members into a separate class for purposes of pursuing as a putative class action any lawsuit, arbitration, or other legal proceeding or action (including by seeking to amend a pending complaint or action to include class allegations, or seeking class certification in a pending action) against any Released Parties on any Released Claims.

Without limiting the foregoing, this injunction shall extend to and include any Released Claims which may be asserted against any Released Parties in the matters, *In re American Investors Life Insurance Co. Annuity Marketing and Sales Practices Litigation*, J.P.M.L. Docket No. 1712, *In re American Equity Annuity Practices and Sales Litigation*, C.D. Cal. Master File No. CV 06-cv-06735, *McCormack v. American Equity Investment Life Insurance Co.*, C.D. Cal. Case No. 2:05-cv-6735, *Bendzak v. American Equity Investment*, C.D. Cal. Case No. 2:2005-cv-06119, and *Anagnostis v. American Equity Investment*, C.D. Cal. Case No. 2:2006-cv-00388. Nothing in this paragraph, however, shall require any Class or Panter Settlement Subclass member to take any affirmative action with regard to other pending class action litigation in which they may be absent class members, and not a named plaintiff and/or appointed class representative.

Issuance of this permanent injunction is necessary and appropriate in aid of the Court's jurisdiction over the action and to protect and effectuate the Final Approval Order and judgment in the Action.

ARTICLE XI

MISCELLANEOUS

11.01 Termination. Upon any termination of this Agreement as provided for herein, this Agreement shall become null and void, with the exception of this Section and Sections 9.02, 11.16, and 11.18. In such event, the Action may continue, but this Agreement, and all papers or information of any kind submitted or provided by or on behalf of any party in connection with this Agreement, and any discussions related to this Agreement, unless independently obtained through past or future discovery, shall not be offered or submitted in evidence or used, referred to, cited, presented or otherwise involved for any purpose in any proceeding. The Parties' entry into this Agreement and the provision by the Parties of any documents or information, in whatever form, pursuant to this Agreement or in connection with the settlement process shall not constitute a waiver of work product, settlement, or any other privilege and is without prejudice in any way to that party's positions on any substantive, procedural or other issues in the Action.

11.02 Class Counsel Signatories. It is agreed that because the members of the Class and Panter Settlement Subclass are numerous, it is impossible or impracticable to have each of them execute this Agreement, and therefore, Class Counsel will sign on their behalf. The Settlement Notice will advise all Class members and Panter Settlement Subclass members of the binding nature of this Agreement (including, without limitation, the release and injunction provisions), which shall have the same force and effect as if this Agreement were signed by each member of the Class and Panter Settlement Subclass.

11.03 Attorneys' Fees and Costs. Neither Class Counsel nor any other attorneys acting for, or purporting to act for the Class Representatives or the Class, Panter Settlement Subclass, or any member thereof, may recover or seek to recover any amounts for fees or litigation expenses from Defendants with respect to the Action or the Settlement, except as expressly provided in this Agreement.

11.04 Stay of Litigation. All discovery (including expert discovery), motions, trial dates, and other litigation, other than that necessary to obtain the Court's preliminary and final approval of the Settlement, shall be stayed pending such settlement approval proceedings.

11.05 Counterparts. This Agreement may be executed in one or more counterparts and, if so executed, the various counterparts shall be and constitute one instrument for all purposes and shall be binding on the party that executed it, provided, however, that no Party shall be bound unless and until all Parties have executed this Agreement. For convenience, the several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

11.06 Binding Effect. Subject to court approval of this Agreement, each and every term of this Agreement shall (according to its terms) be binding upon, and inure to the benefit of the Class Representatives, members of the Class,

members of the Panter Settlement Subclass, and Defendants, as well as the Parties' successors in interest, heirs, administrators, executors, assigns, personal representatives, those acting on their behalf, and any other persons that are intended beneficiaries of this Agreement.

11.07 Modification. No modification of or amendment to this Agreement shall be valid unless it is in writing and signed by all Parties hereto.

11.08 Entire Agreement. This Agreement constitutes the full and entire agreement between the Parties with regard to the subject matter hereof, and supersedes any prior promises, representations, or warranties (oral or otherwise) made by any person. No Party shall be liable or bound to any other Party for, or has relied on any other Party with respect to, any prior or contemporaneous representation, promise or warranty (oral or otherwise) except for those expressly set forth in this Agreement.

11.09 Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the internal laws of the State of California.

11.10 Communications. All requests, demands, claims and other communications hereunder (except for the notices to Class members otherwise provided for herein) shall: (i) be in writing; (ii) be delivered personally, by confirmed courier, next-business day delivery, or by electronic mail and regular mail; (iii) be deemed to have been duly given on the date received; and (iv) be addressed to the intended recipient(s) as set forth below:

If to Class Representatives, Class, Noe Subclass, Panter Settlement Class, or Class Counsel:

Robert S. Gianelli
Gianelli & Morris, A Law Corporation
626 Wilshire Blvd., Suite 800
Los Angeles, California 90017
Email: rob.gianelli@gmlawyers.com
Tel.: (213) 489-1600; Fax: (213) 489-1611

Raymond E. Mattison
Don A. Ernst
Ernst and Mattison
1020 Palm Street
San Luis Obispo, California 93401
Email: dae@emlaw.us
Tel.: (805) 541-0300; Fax: (805) 541-5168

If to American Equity or American Equity's Counsel:

Craig S. Simon
Berger Kahn, A Law Corporation
Jamboree Center
2 Park Plaza, Suite 650
Irvine, California 92614
Email: csimon@bergerkahn.com
Tel.: (949) 474-1880; Fax: (949) 474-7265

Fletcher C. Alford
Laura Leigh Geist
Gordon & Rees
Embarcadero Center West
275 Battery Street, 20th Floor
San Francisco, California 94111
Email: FAlford@gordonrees.com; LGeist@gordonrees.com
Tel.: (415) 986-5900; Fax: (415) 986-8054

If to Noe Defendants, any Noe Defendant, or Noe Defendants Counsel:

Christopher R. Abrams
Law Offices of C.R. Abrams
27281 Las Ramblas, Suite 150
Mission Viejo, California 92691
Email: chris@crabrams.com
Tel.: (949) 639-0431; Fax: (949) 672-0041

Michael D. Haupt
Glick & Haupt LLP
1315 Santa Rosa Street
San Luis Obispo, California 93401
Email: michael@glickhaupt.com
Tel.: (805) 544-2450; Fax: (805) 544-3284

Any Party may change the address to which requests, demands, claims, or other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

11.11 No Waiver. The failure of any Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, or any other provision, nor in any way to affect the validity of this Agreement or any part hereof, or the right of any Party thereafter to enforce that provision or each and every other provision. No waiver of any breach of this Agreement shall constitute or be deemed a waiver of any other breach.

11.12 [Reserved]

11.13 Headings. The headings herein are for convenience only and shall not affect the interpretation or construction of this Agreement.

11.14 No Construction For or Against Any Party. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party for any reason, including but not limited to the extent to which any person, Party or attorney participated in drafting this Agreement.

11.15 Transmittal of Signature Pages. An electronically transmitted, executed signature page for the Agreement shall be deemed to be an original. Notwithstanding, the Parties shall forward the original executed signature pages to Defendants' Counsel via U.S. Mail.

11.16 Agreement Inadmissible. Neither this Agreement nor any of the negotiations or proceedings connected with this Agreement may be offered or received in evidence for any purpose other than for purposes of obtaining approval of this Agreement and dismissal of the Action, enforcement and implementation of the terms of this Agreement, or to support any defense of Defendants based on principles of res judicata, collateral estoppel, release, or any other defense related to release of the Released Claims.

11.17 No Collateral Attack. Class Counsel and the Class Representatives agree not to file a motion for relief from the judgment or otherwise make a collateral attack on the judgment.

11.18 Public Statements and Confidentiality. The Parties and their counsel shall keep the terms of the Agreement confidential until the terms are disclosed as part of the public record (*i.e.*, when the motion for preliminary approval is filed). The terms of the Agreement and the contents of the settlement negotiations may, however, be disclosed to Defendants' parent and affiliate corporations, regulators (including the SEC), insurers, reinsurers, auditors, tax preparers, attorneys, consultants, experts, and administrators.

The Parties agree that any public announcement regarding the Agreement or its terms will be limited to the facts contained in pleadings filed with the Court in support of Settlement approval. If any third party, including but not limited to any print or electronic media outlet, contacts any Party or its counsel seeking information or a statement regarding the Settlement, in the absence of a response agreed upon by all Parties, no information will be provided in response to such inquiries except to the extent such information appears as part of the public record. Neither Class Counsel nor the Class Representatives shall make, publish or circulate any statement that represents or implies that the Settlement constitutes an admission by Defendants of liability or wrongdoing or a finding by the Court of liability or wrongdoing.

11.19 Taxes/Indemnity. Each Class Representative, Class member, and Panther Settlement Subclass member receiving any benefits pursuant to this Agreement shall be responsible for any federal, state, or local income taxes or any

other taxes of any kind levied with respect to the benefits provided. Under no circumstances shall any Released Party be responsible for any tax liability arising from this Settlement or the provision of any benefit of this Settlement. The Parties are not providing any representation or warranty to any person with respect to the tax consequences of this Settlement or any benefit or payment to be made pursuant thereto.

11.20 Assignment. Each Class Representative represents and warrants that he or she has not assigned or otherwise transferred or attempted to assign or transfer, and will not assign or otherwise transfer, all or any part of any Released Claim. Notwithstanding the foregoing, this Agreement shall be binding upon and inure to the benefit of the Class Representatives, the Class, the Panter Settlement Subclass, Defendants, the Released Parties, and their respective successors, executors, administrators, heirs and assigns, and to any corporation, partnership, joint venture, trust or any other entity into which or with which Defendants may hereafter merge, consolidate, or reorganize.

11.21 Enforcement. This Settlement is subject to the provisions of *Code of Civil Procedure* §664.6 and the Court shall have exclusive jurisdiction to determine any issue relating to any aspect related to the Settlement and the benefits it provides.

11.22 Calendaring. For purposes of this Agreement, “days” shall mean calendar days, unless otherwise noted. If any judicial deadline set forth in this Agreement falls on a Saturday, Sunday or state or federal holiday, then such deadline shall be extended to the next later court day.

11.23 Protection of Materials Designated Confidential. The Parties agree to comply with the Court's order pursuant to stipulation, dated November 16, 2005, regarding materials designated as confidential in this Action. Materials designated as confidential, but filed in the action without being sealed by order of the Court, shall not be deemed confidential. The Parties are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence, or attorney work product, even if such materials contain material designated as confidential.

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned as of the day and year set forth:

THE PARTIES

Dated: February 24, 2011

Chalys M. Stephens
Chalys M. Stephens, Class Representative

Dated: February 24, 2011

John P. Stephens
John P. Stephens, Class Representative

Dated: February ___, 2011

American Equity Investment Life Insurance Company, Defendant

By:
Title:

Dated: February ___, 2011

Robin G. Noe, aka Robin I. Goltsman, Defendant

Dated: February ___, 2011

Estate Planning and Investment, Inc., Defendant

By: Robin G. Noe, aka Robin I. Goltsman
Title:

Dated: February ___, 2011

EPICO Insurance Agency, Inc., Defendant

By: Robin G. Noe, aka Robin I. Goltsman
Title:

11.23 Protection of Materials Designated Confidential. The Parties agree to comply with the Court's order pursuant to stipulation, dated November 16, 2005, regarding materials designated as confidential in this Action. Materials designated as confidential, but filed in the action without being sealed by order of the Court, shall not be deemed confidential. The Parties are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence, or attorney work product, even if such materials contain material designated as confidential.

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned as of the day and year set forth:

THE PARTIES

Dated: February __, 2011

Chalys M. Stephens, Class Representative

Dated: February __, 2011

John P. Stephens, Class Representative

Dated: February 18, 2011

American Equity Investment Life Insurance Company, Defendant

John M. Motruine

By: John M. Motruine
Title: Chief Financial Officer

Dated: February 25, 2011

Robin G. Noe

Robin G. Noe, aka Robin I. Goltsman, Defendant

Dated: February 25, 2011

Estate Planning and Investment, Inc., Defendant

Robin G. Noe

By: Robin G. Noe, aka Robin I. Goltsman
Title: PRESIDENT

Dated: February 25, 2011

EPICO Insurance Agency, Inc., Defendant

Robin G. Noe

By: Robin G. Noe, aka Robin I. Goltsman
Title: PRESIDENT

CLASS COUNSEL

Dated: February 22, 2011

GIANELLI & MORRIS


By: Robert S. Gianelli

Dated: February __, 2011

ERNST AND MATTISON

By: Raymond E. Mattison

Dated: February __, 2011

ERNST AND MATTISON

By: Don A. Ernst

Attorneys for Class Representatives and the Class

DEFENDANTS' COUNSEL


Dated: February __, 2011

Berger Kahn, A Law Corporation

By: Craig S. Simon
Attorneys for American Equity

Dated: February 18, 2011

Gordon & Rees


By: Fletcher C. Alford
Attorneys for American Equity

Dated: February __, 2011

Glick & Haupt

By: Michael D. Haupt
Attorneys for Noe Defendants

Dated: February __, 2011

Law Offices of C.R. Abrams

By: Christopher R. Abrams
Attorneys for Noe Defendants

CLASS COUNSEL

Dated: February ___, 2011

GIANELLI & MORRIS

By: Robert S. Gianelli

Dated: February 18, 2011

ERNST AND MATTISON

By: Raymond E. Mattison

Dated: February 22, 2011

ERNST AND MATTISON

By: Don A. Ernst

Attorneys for Class Representatives and the Class

DEFENDANTS' COUNSEL

Dated: February ___, 2011

Berger Kahn, A Law Corporation

By: Craig S. Simon
Attorneys for American Equity

Dated: February ___, 2011

Gordon & Rees

By: Fletcher C. Alford
Attorneys for American Equity

Dated: February ___, 2011

Glick & Haupt

By: Michael D. Haupt
Attorneys for Noe Defendants

Dated: February ___, 2011

Law Offices of C.R. Abrams

By: Christopher R. Abrams
Attorneys for Noe Defendants

CLASS COUNSEL

Dated: February ___, 2011

GIANELLI & MORRIS

By: Robert S. Gianelli

Dated: February ___, 2011

ERNST AND MATTISON

By: Raymond E. Mattison

Dated: February ___, 2011

ERNST AND MATTISON

By: Don A. Ernst

Attorneys for Class Representatives and the Class

DEFENDANTS' COUNSEL

Dated: February 18, 2011

Berger Kahn, A Law Corporation



By: Craig S. Simon
Attorneys for American Equity

Dated: February ___, 2011

Gordon & Rees

By: Fletcher C. Alford
Attorneys for American Equity

Dated: February ___, 2011

Glick & Haupt

By: Michael D. Haupt
Attorneys for Noe Defendants

Dated: February ___, 2011

Law Offices of C.R. Abrams

By: Christopher R. Abrams
Attorneys for Noe Defendants

CLASS COUNSEL

Dated: February ___, 2011

GIANELLI & MORRIS

By: Robert S. Gianelli

Dated: February ___, 2011

ERNST AND MATTISON

By: Raymond E. Mattison

Dated: February ___, 2011

ERNST AND MATTISON

By: Don A. Ernst

Attorneys for Class Representatives and the
Class

DEFENDANTS' COUNSEL

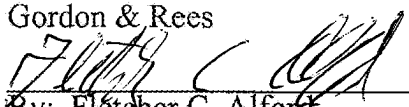
Dated: February ___, 2011

Berger Kahn, A Law Corporation

By: Craig S. Simon
Attorneys for American Equity

Dated: February 16, 2011

Gordon & Rees



By: Fletcher C. Alford
Attorneys for American Equity

Dated: February ___, 2011

Glick & Haupt

By: Michael D. Haupt
Attorneys for Noe Defendants

Dated: February ___, 2011

Law Offices of C.R. Abrams

By: Christopher R. Abrams
Attorneys for Noe Defendants

CLASS COUNSEL

Dated: February ___, 2011

GIANELLI & MORRIS

By: Robert S. Gianelli

Dated: February ___, 2011

ERNST AND MATTISON

By: Raymond E. Mattison

Dated: February ___, 2011

ERNST AND MATTISON

By: Don A. Ernst

Attorneys for Class Representatives and the Class

DEFENDANTS' COUNSEL

Dated: February ___, 2011

Berger Kahn, A Law Corporation

By: Craig S. Simon
Attorneys for American Equity

Dated: February ___, 2011

Gordon & Rees

By: Fletcher C. Alford
Attorneys for American Equity

Dated: February 25, 2011

Glick & Haupt

By: Michael D. Haupt
Attorneys for Noe Defendants

Dated: February ___, 2011

Law Offices of C.R. Abrams

By: Christopher R. Abrams
Attorneys for Noe Defendants

CLASS COUNSEL

Dated: February ___, 2011

GIANELLI & MORRIS

By: Robert S. Gianelli

Dated: February ___, 2011

~~ERNST AND MATTISON~~

By: Raymond E. Mattison

Dated: February ___, 2011

ERNST AND MATTISON

By: Don A. Ernst

Attorneys for Class Representatives and the Class

DEFENDANTS' COUNSEL

Dated: February ___, 2011

Berger Kahn, A Law Corporation

By: Craig S. Simon
Attorneys for American Equity

Dated: February ___, 2011

Gordon & Rees

By: Fletcher C. Alford
Attorneys for American Equity

Dated: February ___, 2011

Glick & Haupt

By: Michael D. Haupt
Attorneys for Noe Defendants

Dated: February 23, 2011

Law Offices of C.R. Abrams

By: Christopher R. Abrams
Attorneys for Noe Defendants

APPENDIX A

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

If you purchased any of these American Equity Investment Life Insurance Company annuities on or before October 14, 2008:

**FPDA-2, FPDA-3, FPDA-7, FPDA-7 (2.25), SUPER-7,
INDEX-17, INDEX-18, INDEX-24, INDEX-28**

please read this notice carefully as it may affect your legal rights.

The California Superior Court authorized this notice. It is not a solicitation from a lawyer.

- A proposed settlement will provide settlement benefits for the purchasers of approximately 9,300 annuities, with a value of \$36 million, to be distributed among the purchasers (or in some cases their designated beneficiaries). You do not have to take any action at this time to be eligible to receive settlement benefits.
- The proposed settlement would resolve a lawsuit over whether American Equity Investment Life Insurance Company allegedly failed to properly disclose the charges for withdrawals from the annuities and allegedly improperly reduced returns on the annuities to recoup the costs of premium bonuses or additional first year interest promised to purchasers and commissions paid to sales agents. American Equity has denied any wrongdoing. The two sides disagree about whether the plaintiffs would ultimately have prevailed in this lawsuit, and if they had, the relief, if any, that would have been paid to the class.
- The lawyers for the purchasers of these annuities, referred to as “class counsel”, will ask the Court for \$11.95 million to be paid separately by American Equity as attorneys’ fees and litigation expenses for investigating the facts, litigating the case up to trial, and negotiating the settlement. The requested fees and expenses, if awarded, will not reduce the settlement benefits to you.
- Your legal rights are affected whether or not you act. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS:

Do Nothing and Receive Settlement Benefits	You do not have to do anything at this time to be able to receive settlement benefits
Object	Write to the Court about why you do not like the settlement
Go to a Hearing	Ask to speak in Court about the fairness of the settlement
Consult With Your Own Attorney	You do not have to hire an attorney, but you have the right to do so (at your own expense) if you wish

- These rights and options – and the deadlines to exercise them – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Settlement benefits will be available only if the Court approves the settlement and that approval becomes final. Please be patient.

**PLEASE READ THIS ENTIRE NOTICE CAREFULLY.
THE PROPOSED SETTLEMENT OF THIS CLASS ACTION
LAWSUIT MAY AFFECT YOUR LEGAL RIGHTS.**

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2. What is this lawsuit about?
3. Why is this a Class Action?
4. Why is there a settlement?

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BASIC INFORMATION

1. Why did I get this notice package?

You or someone in your family may have purchased one of the following annuity products issued by American Equity Investment Life Insurance Company (“American Equity”) while the purchaser was a resident of California, age 65 or older, and on or before October 14, 2008: FPDA-2, FPDA-3, FPDA-7, FPDA-7 (2.25), SUPER-7, INDEX-17, INDEX-18, INDEX-24, and INDEX-28.

The Court has sent you this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve that settlement. If the Court approves the settlement, and approval becomes final, the payments and benefits provided for by the settlement will be distributed. You can follow the progress of the settlement and the Court approval process by periodically contacting the settlement administrator. See, “Getting More Information”, pp. 16-17.

The Court in charge of this case is the Superior Court for the State of California, County of San Luis Obispo, Paso Robles Branch, and the case is known as *Stephens, et al., v. American Equity Investment Life Insurance Company, et al.*, Case No. CV040965.

2. What is this lawsuit about?

The lawsuit claimed, among other things, that American Equity did not fully explain to senior citizen annuity purchasers the charges for taking money out of the annuities and the way in which returns on the annuities are credited. American Equity denies that it did anything wrong.

More specifically, the lawsuit claimed that American Equity failed to adequately disclose to purchasers the surrender penalties, including “Market Value Adjustment” penalties, which can apply on early surrender or withdrawal. The lawsuit also claimed that American Equity failed to adequately disclose that the commissions paid to sales agents and the cost of bonuses and additional first year interest promised to purchasers, are all part of the expenses associated with the annuities and may be borne by the consumer in the form of lower credited rates than would otherwise be possible absent these expenses.

American Equity denies that it did anything wrong and contends that it provided full and complete information with respect to surrender charges and crediting, as required by the Department of Insurance.

The lawsuit makes these claims only with respect to the following annuity policies, purchased by California residents when they were age 65 or older, and purchased on or before October 14, 2008: American Equity’s FPDA-2, FPDA-3, FPDA-7, FPDA-7 (2.25), SUPER-7, INDEX-17, INDEX-18, INDEX-24, and INDEX-28 annuities.

3. Why is this a class action?

In a class action, one or more people called the “class representatives”, (in this case, Chalys M. Stephens and John P. Stephens), bring a lawsuit on behalf of a group of other people who have similar claims. If a court determines that treating the case as a class action is appropriate by “certifying” the class, all these other people become part of the “class” as “class members”. One court resolves the issues for all class members. California Superior Court Judge Martin J. Tangeman is in charge of this class action. American Equity denies that certification of the class was appropriate in this case.

4. Why is there a settlement?

Although a first phase of the trial in the lawsuit was completed, many claims in this lawsuit did not go to trial and were never decided by the Court or a jury in favor of either side. Further, the Court’s decision concerning those claims which were tried in Phase I did not become final and is still subject to appeal. Instead, both sides have agreed to a settlement. That way the parties avoid the costs and uncertainties of trial, and the costs, uncertainties, and delays of likely appeals following trial, so that the class can obtain benefits upon final approval of the settlement.

The class representatives and the lawyers for the class think that the settlement is best for all class members. The Court has *preliminarily* determined that the settlement is fair to the class, meaning that it falls within the range of possible final approval so that it is appropriate to send this notice to the class about the settlement. The Court will only finally determine whether the settlement is fair to the class and whether to approve the settlement after the class members have had notice and a fair opportunity to make their views known about the settlement.

WHO IS IN THE SETTLEMENT

To see if you will get money or receive benefits from this settlement, you first have to determine if you are included.

5. How do I know if I am part of the settlement?

Anyone who fits the following description is a “class member” potentially affected by this settlement:

“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 on or before October 14, 2008: FPDA-2, FPDA-3, FPDA-7, FPDA-7 (2.25), SUPER-7, INDEX-17, INDEX-18, INDEX-24, INDEX-28.”

There are two exceptions, however. First, if your American Equity annuity contract was never issued or was terminated during the contract's 30-day free look period, you are not a class member. Second, if you previously validly excluded yourself from the class, you are not a class member. These exceptions are discussed in the next section of the notice.

You are receiving this notice because American Equity has preliminarily determined that the person identified in the mailing address for this notice falls within this definition, was issued an American Equity annuity contract that was not terminated during the contract's 30-day free look period, and has not validly excluded him or herself from the class, and is therefore a class member.

6. Are there exceptions to being included?

You are not part of this settlement if your American Equity annuity contract was never issued or was terminated during the contract's 30-day free look period.

You are not a part of this settlement if you previously submitted a timely and valid request to exclude yourself from the class. On November 21, 2008, a notice was mailed which advised of your right to submit a written request to exclude yourself from the class, and describing the steps to do so. The deadline for requesting exclusion was January 2, 2009. Any person who submitted a timely and valid request for exclusion is not a class member and is not affected by this lawsuit or settlement. Because you have already had an opportunity to exclude yourself from the class, there is no second opportunity to do so at this time.

7. I'm still not sure if I am included?

If you are not sure whether you purchased one of the listed annuities, you can review your personal files. Your annuity application, point-of-sale disclosure materials, annuity contract, and annual statements specify the name of the annuity you purchased. If you are not sure *when* you purchased your annuity, the "Specifications Page" of your annuity lists a "Contract Date" that is the contract issue date.

If you are still not sure whether you are part of this settlement, you can ask for free help. You can contact the settlement administrator by mail, toll-free telephone, e-mail, or via the settlement website. This contact information appears below. See, "Getting More Information", pp. 16-17.

THE SETTLEMENT BENEFITS – WHAT YOU GET

8. What does the settlement provide?

American Equity has agreed to provide settlement benefits to be divided among the purchasers (or in some cases their designated beneficiaries) of approximately 9,300 class annuities included in this settlement. The value of these settlement benefits is \$36 million. In addition, although American Equity strongly denies that it did anything wrong, American Equity has agreed to modify its future practices and procedures, to address certain alleged practices which were challenged in this lawsuit.

9. What will my individual settlement benefits be?

The full description of the settlement benefits appears in Articles III-V of the “Settlement and Release Agreement” (“settlement agreement”). You can get a copy of the Settlement Agreement from the settlement administrator, upon request, at no cost to you. You may request a copy by mail, toll-free telephone, or e-mail. You may also view and download a copy on the settlement website. See, “Getting More Information”, pp. 16-17. This section of the notice summarizes those settlement benefit provisions.

The settlement benefits available to you depend upon the status of your class annuity (or annuities) as of October 31, 2010, and also upon whether or not you are a member of the “Noe subclass” or the “Panter subclass”. The “Noe subclass” is defined as:

“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 through Robin Noe, Estate Planning & Investments, Inc., EPICO Insurance Agency, Inc. or their agents, on or before October 14, 2008: FPDA-2, FPDA-3, FPDA-7, FPDA-7 (2.25), Super-7, Index-17, Index-18, Index-24, Index-28.”

The “Panter subclass” is defined as:

“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 on or before October 14, 2008: FPDA-2, FPDA-3, FPDA-7, FPDA-7 (2.25), SUPER-7, INDEX-17, INDEX-18, INDEX-24, INDEX-28 and who were also members of the settlement class in the action 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.”

If you are a member of the Panter subclass, you should have received a prior notice in this lawsuit dated August 19, 2009 advising of the Court's decision to decertify the Panter subclass. Notwithstanding, under the proposed settlement, the Panter subclass would be included.

A. Benefits for Class Members Who Are Not Panter Subclass Members:

Category 1: Past Surrender and Withdrawal Penalties

This category applies to any class member (except Panter subclass members) who incurred surrender penalties upon a full surrender or a penalized partial withdrawal from any class annuity on or before October 31, 2010. For each class annuity in this category, American Equity will pay (or credit) a settlement benefit in the following amounts:

- a. For the FPDA-2, FPDA-3, FPDA-7, FPDA-7 (2.25), SUPER-7 class annuities, the settlement benefit is equal to 105.3% of the amount of all surrender penalties applied upon surrender or withdrawal, as adjusted by the "Market Value Adjustment";
- b. For the INDEX-17, INDEX-18, INDEX-24, INDEX-28 class annuities, the settlement benefit is equal to 100% of the amount of all surrender penalties applied upon surrender or withdrawal.

If the class annuity remains active and in deferral at the time when settlement benefits are distributed, this settlement benefit will be posted as a credit to the policy. If the class annuity has been surrendered, annuitized, a death benefit claim has been paid, or the annuity has otherwise been terminated, a cash settlement payment is issued for this benefit.

Category 2: Contract Value Credits/Payments

This category applies to every class member (except Panter subclass members). It is in addition to any benefit which might be payable under Category 1, *above*. For each class annuity in this category, American Equity will pay (or credit) a settlement benefit in an amount based on your class annuity's "Contract Value" as of October 31, 2010, as follows:

- a. For each class annuity that was active, in deferral, and still within the surrender penalty period as of October 31, 2010, the settlement benefit in this category is equal to 7.85% of Contract value on October 31, 2010;
- b. For each class annuity which was active, in deferral, but outside the surrender penalty period as of October 31, 2010, the settlement benefit in this category is equal to 4.85% of Contract value on October 31, 2010;
- c. For all other class annuities (including policies which have been surrendered, terminated by payment of a death benefit claim, annuitized, converted, or otherwise terminated as of October 31, 2010), the settlement benefit in this

category is equal to 3.152% of Contract value as of the date of termination or conversion.

If the class annuity remains active and in deferral at the time when settlement benefits are distributed, this settlement benefit will be posted as a credit to the policy. If the class annuity has been surrendered, annuitized, a death benefit claim has been paid, or the annuity has otherwise been terminated, a cash settlement payment is issued for this benefit.

Category 3: Class Members Age 90 and Over

This category applies to each class annuity which is active, in deferral, still within the surrender penalty period, and where the purchaser is 90 years of age or older as of October 31, 2010. For each class annuity in this category, American Equity will waive all surrender penalties, including “Market Value Adjustment” penalties, incurred after October 31, 2010. This waiver will commence at the time of distribution of settlement benefits, and any interim surrender penalties applied will be refunded.

B. Benefits for Noe Subclass Members Only

In addition to any benefits above, for each Noe subclass member, American Equity will pay (or credit) a settlement benefit in the amount of \$612.69. If the class annuity remains active and in deferral at the time when settlement benefits are distributed, this settlement benefit will be posted as a credit to the policy. If the class annuity has been surrendered, annuitized, a death benefit claim has been paid, or the annuity has otherwise been terminated, a cash settlement payment is issued for this benefit.

C. Benefits for Panter Subclass Members Only

Panter Subclass members are not eligible for any of the settlement benefits described above. Instead, for each Panter subclass member, American Equity will pay (or credit) a settlement benefit in the amount of \$364.64. If the class annuity remains active and in deferral at the time when settlement benefits are distributed, this settlement benefit will be posted as a credit to the policy. If the class annuity has been surrendered, annuitized, a death benefit claim has been paid, or the annuity has otherwise been terminated, a cash settlement payment is issued for this benefit.

D. Additional Injunctive Relief

In addition to the above described benefits, American Equity and Defendants, Robin G. Noe, Estate Planning & Investment, Inc., and EPICO Insurance Agency, Inc., have agreed to an “injunction” (a court order) changing certain practices and procedures, as follows:

1. Although American Equity contends it already provides comprehensive information regarding surrender penalties, nevertheless the Company has agreed to revise its surrender charge disclosures in a manner that plaintiffs feel is required by *California Insurance Code*

sections 10127.10 and 10127.13. Further, such disclosures will include information regarding any Market Value Adjustment and Market Value Adjustment Factor.

2. In calculating any future full surrender or partial withdrawal from any American Equity annuity issued to a California resident (including Panter subclass annuities), American Equity will no longer apply any Market Value Adjustment which decreases the net payment to the policyholder (or decreases policy values), but will continue to apply any Market Value Adjustment which increases the net payment to the policyholder (or increases policy values).

3. American Equity will ensure complaints are properly documented and addressed, and reform its already-existing procedures for preventing marketing of its annuities through pre-textual interviews, such as estate planning seminars, sales of living trusts, trust reviews/updates, or other estate planning services that do not strictly comply with the California Insurance Code.

4. Robin G. Noe, Estate Planning & Investment, Inc., and EPICO Insurance Agency, Inc. will reform their practices and procedures to ensure that they no longer market or sell annuities or other insurance products through pre-textual interviews, such as estate planning seminars, sales of living trusts, trust reviews/updates, or other estate planning services.

Important Notes About Individual Settlement Benefits:

1. No settlement benefits of any nature will be available unless and until the settlement receives Court approval and that approval becomes final. Please be patient during the settlement approval process.
2. Any settlement benefits are paid without interest.
3. Any tax liabilities or consequences resulting from the payment of benefits to you under this proposed settlement are solely your responsibility. You may wish to consult with your tax advisor in that regard.
4. The full description of the settlement benefits appears in Articles III-V of the settlement agreement. To the extent that this notice conflicts with or contradicts any provision of the settlement agreement, the settlement agreement governs for all purposes.

HOW YOU GET A SETTLEMENT BENEFIT

10. How can I get a settlement benefit?

Generally, you do not have to do anything to qualify to receive settlement benefits if the settlement is approved by the Court and becomes final. You do not need to submit any claim form or request for settlement benefits. You do not need to file anything with the Court. You do not need to appear at any hearing. If you are a legal representative of a class member or any

person receiving a settlement benefit, however, and you need to request that a settlement benefit be reissued in a different name, you may be required to provide sufficient proof of your authority to act on behalf of the class member. You may also be asked to supply taxpayer withholding identification information, solely for tax reporting purposes.

11. When will I receive my settlement benefits?

The Court will hold a fairness hearing on May 10, 2011, to decide whether to approve the settlement. The earliest possible date on which settlement benefits will be available is May 23, 2011, (fourteen days after the fairness hearing). If there are objections to the settlement, or if settlement approval is challenged on appeal by an objector, the dates for distribution of settlement benefits can be substantially delayed. If you wish to do so, you can follow the progress of the settlement and the Court approval process by periodically contacting the settlement administrator. See, "Getting More Information", pp. 16-17.

12. What have I given up by being a class member in the case?

If the settlement becomes final, you will give up the right to start a lawsuit, to continue with an ongoing lawsuit, or to be part of any other lawsuit against American Equity, Robin G. Noe, Estate Planning & Investment, Inc., EPICO Insurance Agency, Inc., and certain other parties, relating to the facts alleged or the claims asserted in this case.

The exact description of what you will give up and what you will not give up under the settlement is known as the "release" and is part of the written settlement agreement. You can get a copy of the settlement agreement from the settlement administrator, upon request, at no cost to you. You may request a copy by mail, toll-free telephone, or e-mail. You may also view and download a copy on the settlement website. See, "Getting More Information", pp. 16-17. Please consult Article X of the settlement agreement for the full text of the release.

Regardless of the outcome of settlement approval, being a class member means that the Court's orders, and any outcome in this lawsuit, apply to you and legally bind you.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in the case?

The Court has granted the applications of the law firms of:

Gianelli & Morris

626 Wilshire Boulevard, Suite 800, Los Angeles, CA 90017

Telephone: (213) 489-1600, Facsimile: (213) 489-1611

Ernst and Mattison
1020 Palm Street, San Luis Obispo, CA 93401
Telephone: (805) 541-0300, Facsimile: (805) 541-5168

to represent you and the other class members. These lawyers are called class counsel. You will not be charged for these lawyers' services. If you want to hire your own lawyer, however, you have the right to do so at your own expense.

The parties and their attorneys cannot give tax advice to the class members, including concerning whether any of the settlement benefits are subject to taxation. Class counsel will, however, upon request, assist by explaining any aspect of this litigation or settlement to a class member's tax professional or attorney, so that fully informed tax decisions can be made on the class member's behalf.

14. How will the lawyers be paid?

The settlement provides separately for payment of attorneys' fees and litigation expenses by American Equity. No class member will be required to pay any attorneys' fees and litigation expenses to class counsel.

At the fairness hearing, class counsel will ask the Court to approve payment by American Equity of up to \$11 million in attorneys' fees and \$950,000 in out-of-pocket litigation expenses for their work during the more than six years this lawsuit has been ongoing, and to approve class counsel's agreement for dividing these fees among themselves. The fees awarded would pay these lawyers for investigating the facts and law, fully litigating the lawsuit through the completion of the first phase of trial, and negotiating the settlement. The amount of fees and expenses to be awarded is determined by the Court, and the Court may award less than these amounts.

Class counsel will also ask the Court to approve payment by American Equity of \$25,000 for each class representative for their services on behalf of the class. Again, the amount to be awarded is determined by the Court, and the Court may award less than this amount.

American Equity has agreed not to oppose payment up to these amounts for class counsel and the class representatives, and has agreed to pay these amounts if awarded by the Court. American Equity will also pay all reasonable costs of administering the settlement.

The amount of attorneys' fees, litigation expenses, administration costs, and compensation for the class representatives that may be awarded and paid by American Equity does not in any way impact or reduce the amount of the settlement benefits for the class or any class member. The amounts awarded will be class counsel's and class representatives' sole compensation for their services. The class will not be required under any circumstances to pay any additional amounts. Please consult Article VI of the settlement agreement for further information.

OBJECTING TO THE SETTLEMENT

15. How do I tell the Court that I don't like the settlement?

If you are a class member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The parties have a right to respond to your objections. The Court will consider your views. To object, you must send a letter saying that you object to the settlement in the Stephens Class Action. Your letter must include the following information:

1. The case name and title, "Stephens, et al., v. American Equity Investment Life Insurance Company, et al., San Luis Obispo Superior Court Case No. CV040965";
2. Your name, address, and telephone number;
3. Why you object (the factual and legal reasons for your objection);
4. Whether you have ever objected to a class action settlement in any other lawsuit;
5. The terms of any agreement you have made with any other person or party concerning sharing any amounts, including any attorneys' fees, which you may recover as a result of your objection.

If you are represented by an attorney concerning your objection, your letter must also include the following information:

6. Your attorney's name, address, and telephone number;
7. Whether your attorney has ever objected to a class action settlement in any other lawsuit;
8. The payment terms of your fee agreement with your attorney;
9. The terms of any fee-sharing or referral fee agreement you and/or your attorney has made with any other person or party, including any other lawyer or law firm, related to your objection.

If you or your attorney has ever objected to another class action settlement, you must provide the following additional information:

10. The case name, case number, case title, and name of the court, for all other class actions in which you have objected to a proposed settlement;
11. The case name, case number, case title, and name of the court, for all other class actions in which your attorney has objected to a proposed settlement;
12. The general nature and outcome of each such objection.

If you want to present evidence at the fairness hearing, your letter must also identify any witness or witnesses you plan to present and you must enclose true and correct copies of any records or documents you plan to present.

Mail one copy of your objection to the Court, and three copies of your objection to the settlement administrator, at the addresses below. **TO BE CONSIDERED, YOUR OBJECTION MUST BE POSTMARKED NO LATER THAN APRIL 19, 2011.**

Court	Settlement Administrator
Clerk of the Court San Luis Obispo Superior Court 1035 Palm Street, Room 385 San Luis Obispo, CA 93408	Stephens Class Action Gilardi & Co., LLC Post Office Box 8060 San Rafael, CA 94912-8060

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing, called a "fairness hearing", to decide whether to approve the settlement. You may attend and speak at this hearing, but you are not required to do so.

16. When and where will the Court decide whether to approve the settlement?

The Court will hold a fairness hearing at [time] on May 10, 2011, in Department P2 of the Superior Court of California for the County of San Luis Obispo, Paso Robles Branch Courthouse. The Court is located at 901 Park Street, Paso Robles, California.

Sometimes, a Court will change the scheduled date for a fairness hearing to a later date. If this occurs, the changed hearing date will be posted on the settlement website. You can also contact the settlement administrator by toll-free telephone or e-mail to confirm the fairness hearing date if you plan to attend. If you have submitted a request to speak at the hearing, you will be sent written notice of any changed hearing date.

At this fairness hearing, the Court will consider whether the settlement is fair, reasonable, and adequate for the class. If there are objections, the Court will consider them at this hearing. The Court will listen to people who have asked to speak at the hearing. The Court will also decide how much to pay to class counsel and whether to approve class counsel's agreement for the division of any fees awarded among themselves. After the hearing, the Court will decide whether to finally approve the settlement. We do not know how long these decisions will take.

17. Do I have to come to the fairness hearing?

No. Class counsel and counsel for the defendants will answer any questions the Court may have. But, you are welcome to come to the hearing if you wish, at your own expense. If you submit an objection to the settlement, you do not have to come to the fairness hearing to talk about it. As long as you submitted your objection on time and in the manner described in this

notice, the Court will consider your objection at the fairness hearing. You may also pay your own lawyer to attend the fairness hearing, but it is not necessary to do so.

18. May I speak at the hearing?

You may ask the Court for permission to speak at the fairness hearing, or to present evidence at the fairness hearing, by following the instructions in this section. You are not required, however, to attend or speak at the fairness hearing.

If you have submitted an objection on time and in the manner described in this notice, you may ask the Court for permission to speak in support of that objection. You must first submit a timely written objection in the manner described in this notice. You will not be permitted to speak in support of an objection to the settlement if you have not first submitted a written objection. You may also ask the Court for permission to speak at the fairness hearing in support of the settlement, although it is not necessary to do so.

If you wish to speak at the fairness hearing, you must send a letter requesting to appear at the fairness hearing in the Stephens Class Action. Your letter must include the following:

1. The case name and title, “Stephens, et al., v. American Equity Investment Life Insurance Company, et al., San Luis Obispo Superior Court Case No. CV040965”;
2. Your name, address, and telephone number;
3. Your attorney’s name, address, and telephone number (if applicable);

If you want to present evidence at the fairness hearing, your letter must also identify any witness or witnesses you plan to present and you must enclose true and correct copies of any records or documents you plan to present.

Mail one copy of your letter (and enclosures, if applicable) to the Court, and three copies to the settlement administrator, at the addresses below. **TO BE CONSIDERED, A REQUEST FOR PERMISSION TO SPEAK AND/OR PRESENT EVIDENCE AT THE FAIRNESS HEARING MUST BE POSTMARKED NO LATER THAN APRIL 19, 2011.**

Court	Settlement Administrator
Clerk of the Court San Luis Obispo Superior Court 1035 Palm Street, Room 385 San Luis Obispo, CA 93408	Stephens Class Action Gilardi & Co., LLC Post Office Box 8060 San Rafael, CA 94912-8060

IF YOU DO NOTHING

19. What happens if I do nothing at all?

If you do nothing, you will be eligible to receive any settlement benefits to which you are entitled. If the settlement is approved and becomes final, you will receive those settlement benefits. You will not be able to start a lawsuit, continue a lawsuit, or be part of any other lawsuit against American Equity, Robin G. Noe, Estate Planning & Investment, Inc., EPICO Insurance Agency, Inc., and certain other parties, relating to the facts alleged or the claims asserted in this case. The full text of the “release”, describing the claims you will give up if the settlement becomes final, appears in Article X of the settlement agreement.

If the settlement is not approved, the settlement will become null and void, you will receive no settlement benefits, and the lawsuit will proceed.

Regardless of the outcome of settlement approval, being a class member means that the Court’s orders, and any outcome in this lawsuit, apply to you and legally bind you.

GETTING MORE INFORMATION

20. Are there more details about the settlement?

This notice summarizes key provisions of the proposed settlement. As noted above, complete information can be found in the settlement agreement. You can get a copy of the settlement agreement from the settlement administrator, upon request, without any cost to you. You may request a copy by toll free telephone, e-mail, or regular mail. You may also view and download the settlement agreement on the settlement website.

Here is the settlement administrator’s contact information for requesting a copy of or viewing and downloading the settlement agreement:

SETTLEMENT ADMINISTRATOR CONTACT INFORMATION	
By Mail	Stephens Class Action Gilardi & Co, LLC Post Office Box 8060 San Rafael, CA 94912-8060
By Toll-Free Telephone	1-866-780-8830
By E-Mail	stephensclassact@gilardi.com
Website	www.Gilardi.com/AmericanEquity

21. How do I get more information?

You can write, toll-free telephone, or e-mail the settlement administrator about any questions you may have, using the contact information above. The settlement administrator can answer many questions and can provide certain key documents from the Court's file in this lawsuit, upon request, at no cost to you, including the settlement agreement and the Court's order preliminarily approving the settlement. The settlement administrator's hours of operation are 8:00 a.m. to 5:00 p.m., Monday through Friday, Pacific Standard Time. After hours, you can leave a message and you will receive a prompt response.

The settlement administrator will also maintain the settlement website, www.Gilardi.com/AmericanEquity, which will provide information about the lawsuit, settlement, and settlement approval process, and will make certain key documents from the Court's file in this lawsuit available for viewing and downloading.

If the settlement administrator cannot answer your inquiry to your satisfaction, it will be forwarded to class counsel, who will personally respond to these inquiries in the order they are received, at no cost to you.

You can also view the contents of the entire public file for the lawsuit, and obtain copies (at your own expense) of documents in that file, at the Superior Court of California, County of San Luis Obispo, Paso Robles Branch, located at 901 Park Street, Paso Robles, California, 8:30 a.m. to 4:30 p.m., Monday through Friday, except holidays.

Dated: March 15, 2011

Honorable Martin J. Tangeman
JUDGE OF THE SUPERIOR COURT

APPENDIX B

APPENDIX B:

[To appear in 14-point type]

[Letterhead]

[Date 14 days after Effective Date]

[Address]

Re: *Stephens v. American Equity Investment Life Insurance Co.*
San Luis Obispo Superior Court Case No. CV040965

Dear [Name]:

The settlement in the above-referenced class action lawsuit has been approved by the Court and has become final.

Pursuant to the terms of the settlement, on [14 days after Effective Date], 2011, settlement benefits were credited to your active-status class annuity [annuities], as follows:

<u>Amount</u>	<u>Annuity Pol. No.</u>	<u>Credit Type</u>
\$100.00	123456789	Past Surr. Penalties (100%)
\$200.00	123456789	Contract Value Credit (4.85%)
\$300.00	987654321	Contract Value Credit (3.152%)
\$697.75	987654321	Noe Subclass Benefit

This [these] credit[s] have been posted to your account as interest earnings, subject to the terms of your annuity contract.

[90+ Only: Because you were age 90 or older as of October 31, 2010, you have a right under the settlement to surrender your annuity or to take unlimited partial withdrawals from your annuity, without incurring any surrender penalties, (including penalties resulting from any Market Value Adjustment provision). If you have incurred such penalties after October 31, 2010 and prior to the date of this letter, you will soon receive a refund of those penalties.]

[U-90 Only: Under the terms of the settlement, for any future surrender or penalized partial withdrawal you may request, American Equity will no longer apply any Market Value Adjustment which decreases the net payment to you (or decreases your policy values), but will continue to apply any Market Value Adjustment which increases the net payment to you (or increases your policy values).]

If you are entitled to any cash settlement payment (in addition to the credits described in this letter), it will be mailed separately and should be received soon.

If you have any questions concerning the settlement or your settlement benefits, please contact the Settlement Administrator, at no cost to you, at [contact: mail, phone, email, website].

APPENDIX C

AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY

[6000 Westown Parkway], [West Des Moines, Iowa 50266]

[(888) 221-1234]

[<http://www.american-equity.com>]

A STOCK LIFE INSURANCE COMPANY

We pay the benefits of this Contract, subject to all of its provisions, terms and conditions. We issue this Contract based on the attached Application and payment of the Premium on or before the Contract Date.

IMPORTANT

YOU HAVE PURCHASED AN ANNUITY CONTRACT. CAREFULLY REVIEW IT FOR LIMITATIONS.

THIS CONTRACT MAY BE RETURNED WITHIN 30 DAYS FROM THE DATE YOU RECEIVED IT FOR A FULL REFUND BY RETURNING IT TO EITHER THE INSURANCE COMPANY OR AGENT WHO SOLD YOU THIS CONTRACT. AFTER 30 DAYS, CANCELLATION MAY RESULT IN A SUBSTANTIAL PENALTY, KNOWN AS A SURRENDER CHARGE.


IF YOU TAKE FUNDS IN EXCESS OF THE ALLOWED PENALTY FREE WITHDRAWALS DURING THE FIRST 12 CONTRACT YEARS, SURRENDER CHARGES WILL BE DEDUCTED FROM AND A MARKET VALUE ADJUSTMENT (MVA) WILL BE APPLIED TO ALL OR PART OF YOUR CONTRACT VALUE. THE SURRENDER CHARGES ARE 14% DURING THE FIRST CONTRACT YEAR, AND DECREASE EACH YEAR AS SHOWN IN THE TABLE ON PAGE 3. SURRENDER CHARGES AND MVAs ARE CALCULATED AS DESCRIBED IN THE "SURRENDER CHARGE" AND "MARKET VALUE ADJUSTMENT (MVA)" SECTIONS ON PAGE 7. FOR SURRENDER CHARGE AND MVA INFORMATION, SEE THE FOLLOWING: PAGE 3 ("SURRENDER CHARGE PERCENTAGE"), PAGE 6 ("CASH SURRENDER VALUE"), PAGE 7 ("SURRENDER CHARGE", "MARKET VALUE ADJUSTMENT (MVA)"), AND PAGE 9 ("WITHDRAWALS", "SURRENDER", "LIMITATIONS").

Signed for the Company at West Des Moines, Iowa, on the Contract Date.



Debra J. Richardson

Secretary



Ronald J. Grensteiner

President

Flexible Premium Deferred Annuity Contract With Market Value Adjustment Provision

Which May Increase or Decrease Cash Surrender Values

Death Benefit Prior to Maturity And Monthly Income at Maturity And No Dividends

This is a legal Contract between You and Us.

READ YOUR CONTRACT CAREFULLY

APPENDIX D

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GENERAL COMPLAINT HANDLING PROCEDURES

1. The following procedures for complaints by or on behalf of California policyholders shall be in addition to any requirements of the laws and regulations of the State of California or of the California Department of Insurance.
2. American Equity shall maintain a written log of all California policyholders (or authorized representatives of such policyholders) who complain (1) that the policyholder was unaware of surrender charges, (2) that the policyholder was unaware of the Market Value Adjustment, (3) that the crediting to the policy by American Equity was not in accordance with agent representations, or (4) that the American Equity agent engaged in misleading sales practices that were in violation of California law (hereinafter collectively "Complaint"). The written log shall give the policyholder's name, the agent's name, the National Marketing Organization's name, type of coverage, reason code for complaint, disposition code, date Complaint received, investigator assigned, date of initial acknowledgment letter to policyholder, and final disposition date. For each Complaint an electronic case file will be kept which will contain all correspondence and findings of the investigation.
3. If any policyholder Complaint (or Complaint on behalf of a policyholder) is initiated in writing (or subsequently confirmed in writing by the complaining party), American Equity's response(s) thereto shall also be in writing. Electronic mail is permissible in this regard, (if the Complaint was submitted or confirmed by electronic mail). Copies of such letters or e-mail messages will be maintained. American Equity will document any non-written communications with a policyholder or their authorized representatives in the course of investigation of the Complaint.
4. For any Complaint where a response is requested from the sales agent or marketing organization, that request shall be documented. If no response is received, a follow up call will be made to the agent for a response. If the agent fails to respond to an investigation, the agent will be subject to termination for failure to cooperate.

5. American Equity will conduct a thorough investigation of each Complaint before determining whether it is justified or not. Where the Complaint includes allegations of misconduct by the sales agent or marketing organization, American Equity shall request a response from that sales agent or marketing organization as described *supra*. In determining whether a Complaint is justified based on an agent's denial of misconduct, American Equity will take into account the record of any prior Complaints regarding the sales agent or marketing organization and will consider whether the sales agent or marketing organization has provided a substantive and believable explanation.

6. American Equity will promptly investigate all Complaints, and will respond within the time permitted by the California Department of Insurance at the time the complaint is made. If additional time is needed to respond, a request for additional time will be made to the Department.

7. American Equity will take reasonable steps to maintain the written complaint log for at least five years from the date of the Complaint, or until the underlying annuity is terminated by surrender, death, or conclusion of any annuitized payout.

PREVENTING PRETEXTUAL SALES PRACTICES

1. American Equity will not knowingly permit sales agents or marketing organizations to engage in pretextual sales practices for the purpose of marketing and selling American Equity annuities. Prohibited “pretextual sales practices” shall include, but are not limited to, employing estate planning seminars, Medicare seminars, long-term nursing care seminars, living trust marketing/sales, living trust updates or reviews, or marketing/sales of other estate planning services, unless there is strict compliance with California Insurance Code § 787 and the California Department of Insurance Bulletins issued by Harry Low regarding living trust mill and pretext marketing practices.
2. American Equity shall thoroughly and promptly investigate any complaint or information that any sales agent or marketing organization is engaging or has engaged in pretextual sales practices, in accordance with the general complaint handling procedures *supra*. Upon learning of any such complaint or information, American Equity shall provide written notice to the sales agent and his or her marketing organization that the company has a zero-tolerance prohibition on pretextual sales practices, and advise of the sanctions below.
3. If American Equity determines that any appointed sales agent (individually or through staff) has engaged in pretextual sales practices with respect to the sale of American Equity products, American Equity shall inform the sales agent to cease and desist engaging in pretextual sales practices. If, following such notice to cease and desist, American Equity determines that the sales agent has again engaged in pretextual sales practices with respect to the sale of American Equity products, American Equity may institute other penalties against that agent, up to and including termination of the agent’s contract.
4. If American Equity determines that the sales agents affiliated with any marketing organization have engaged in pretextual sales practices with respect to the sale of American Equity products, and that said pretextual sales practices are systemic as to the marketing organization and not limited to a small proportion of the organization’s sales agents, American Equity shall inform that marketing organization to cease and desist in engaging in or promoting pretextual sales practices as a marketing method. If, following such notice to cease and desist, American Equity determines that the

marketing organization has again engaged in pretextual sales practices with respect to the sale of American Equity products, American Equity may institute other penalties against that marketing organization, up to and including termination of its contract.

5. American Equity may report to the California Department of Insurance any complaints it determines are justified, or any information it confirms to be substantiated, that any sales agent or marketing organization for American Equity products has engaged in pretextual sales practices. Any such reporting will be made in accordance with the California Department of Insurance requirements on reporting of insurance fraud.

6. At the time of any future issuance (or re-issuance) of any sales agent's contract or marketing organization's contract with American Equity, the company may include specific pretextual sales practices prohibitions and sanctions expressly therein, and the contract may further provide for the forfeiture of any sales or marketing organization commissions in connection with any sale determined by American Equity to be pretextual.

APPENDIX E

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1. Noe Defendants will not themselves, and will not knowingly permit their sales agents, to engage in pretextual sales practices for the purpose of marketing and selling insurance or annuities. Prohibited “pretextual sales practices” shall include, but are not limited to, employing estate planning seminars, Medicare seminars, long-term nursing care seminars, living trust marketing/sales, living trust updates or reviews, or marketing/sales of other estate planning services, where the purpose, in whole or in part, is to sell insurance or annuities.
2. Noe Defendants shall thoroughly and promptly investigate any complaint or information that any of their sales agents are or have engaged in pretextual sales practices. Upon learning of any such complaint or information, Noe Defendants shall provide written notice to that sales agent that Noe Defendants have a zero-tolerance prohibition on pretextual sales practices, and advise of the sanctions below.
3. If Noe Defendants determine that any sales agent (individually or through staff) has engaged in pretextual sales practices, that sales agent shall be suspended from writing insurance or annuity business for a period of not less than one year. If, following such a suspension, Noe Defendants determine that the sales agent has again engaged in pretextual sales practices, that sales agent shall be terminated.
4. Noe Defendants shall report any complaints they determine are justified, or any information they confirm to be substantiated, that any of their sales agents have engaged in pretextual sales practices to the California Department of Insurance.
5. All marketing and sales of insurance or annuities shall be conducted only by sales agents appointed by the insurance/annuity company and licensed by the California Department of Insurance. Under no circumstances shall Noe Defendants or any of their sales agents permit any unappointed or unlicensed individual to sell insurance or annuities or to receive any commission for the sale of insurance or annuities. Without limiting the foregoing, Noe Defendants, and their sales agents, shall not engage in the sale of insurance or annuities by proxy through any unappointed or unlicensed individuals.

6. If Noe Defendants, or their agents or employees, conduct any estate planning seminars, Medicare seminars, long-term nursing care seminars, living trust marketing/sales, living trust updates or reviews, or marketing/sales of other estate planning services, any information regarding consumers gained thereby (including contact information) shall never be used in any way in connection with any subsequent attempt to market or sell insurance or annuities. Participants in any such seminars and/or purchasers of any such services or products, shall not be solicited to market or sell insurance or annuities.

7. Noe Defendants, and their agents or employees, shall not engage in the unauthorized practice of law (including the selection, recommendation, or sale of any estate planning services to any consumer); shall not share or split any amounts collected from a consumer for the purchase of a living trust, trust update or review, or other estate planning services; and shall not operate any business which refers consumers to attorneys for the purchase of a living trust, trust update or review, or other estate planning services (unless such referral service is registered with the California State Bar and meets all applicable requirements for a lawyer referral service).