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ENDORSED
FILED
San Francisco County Superior Court

SEP 12 2007

GORDON PARK-LI, Clerk
BY: FELICIA M. GREEN
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12
13 COUNTY OF SAN FRANCISCO

14 COORDINATED PROCEEDINGS:) Coordinated Proceeding
15) Case No.: JCCP 4441
16 AMERICAN INVESTORS CASES II) Honorable Richard A. Kramer, D. 304
17)
18) **PLAINTIFFS STEPHENS'**
19) **[PROPOSED] THIRD AMENDED**
20) **COMPLAINT FOR:**
21)
22) **1) VIOLATION OF THE UNFAIR**
23) **COMPETITION LAW;**
24)
25) **2) FRAUD**
26)
27) San Luis Obispo Superior Court
28) Case No. CV040965

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

Plaintiffs,)

vs.)

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

Defendants.)

1
2 Plaintiffs allege:

3 Plaintiffs bring this action on behalf of themselves and all others similarly situated, and on
4 behalf of the general public, against American Equity Investment Life Insurance Company, Estate
5 Planning & Investments, Inc. and Does 1 through 100 as follows:

6 **NATURE OF ACTION**

7 1. This is a class action lawsuit brought by and on behalf of senior citizens, or their
8 beneficiaries, who were or will be assessed penalties, and have received and will receive reduced
9 yields, under American Equity Investment Life Insurance Company annuities.
10

11 **PARTIES**

12 2. Plaintiffs are residents of the County of San Luis Obispo.

13 3. Defendant American Equity Investment Life Insurance Company, Inc. ("American
14 Equity") is an insurance company licensed to do business in the State of California. Defendant
15 Estate Planning & Investments, Inc. ("EPICO") is a corporation domiciled in the State of
16 California. EPICO at all times was owned and controlled by Robin Noe, an insurance agent. Robin
17 Noe also owned and controlled EPICO Insurance Agency, Inc. ("EPICO Insurance").
18

19 4. The true names and capacities, whether individual, corporate, associate or
20 otherwise, of Defendant Does 1 through 100, inclusive, are unknown to Plaintiffs at this time, who
21 therefore sue said Defendants by such fictitious names. Each of the fictitiously named Defendants
22 is responsible in some manner for the conduct alleged herein and for the injuries suffered by the
23 Plaintiffs and the members of the Class and the general public.
24

25 **GENERAL ALLEGATIONS**

26 5. American Equity has been actively engaged in selling deferred annuities to senior
27 citizens. Deferred annuities are annuities, which defer payments until the annuity "annuitizes,"
28

1 that is, results in a stream of payments at the end of the contract period. Deferred annuities
2 typically contain surrender penalties, which are imposed if money is withdrawn prior to the end of
3 a pre-determined surrender period. During the deferral period of these annuities, an insurer credits
4 monies to the purchaser's "accumulation value" (yields). American Equity has used surrender
5 penalties and the payment of lower yields to offset the high commissions that are paid to selling
6 agents.
7

8 6. American Equity has known that its selling agents often use unscrupulous sales
9 tactics to sell its deferred annuities to senior citizens. American Equity has known that certain of
10 its agents sell annuities through "trust mills" they operate.¹ American Equity has known that its
11 agents engage in tactics designed to deceive senior citizens about what they are buying and often
12 conceal and/or misrepresent the existence or extent of surrender penalties in the American Equity
13 annuities they are selling.
14

15 7. American Equity entered into an agency agreement with Robin Noe and EPICO
16 Insurance to allow Robin Noe to sell its annuities to the public. Further American Equity
17 authorized Robin Noe to solicit other insurance agents to sell its annuities through her and EPICO
18 Insurance.
19

20 8. Abuses in the sale of life and annuity products to senior citizens have become an
21 issue of public concern. The Legislature has enacted certain laws to protect seniors from
22 unscrupulous sales practices. One such statute is Insurance Code section 10127.13, which
23 requires insurers selling annuities to senior citizens to "... either disclose the surrender period and
24 all associated penalties in bold 12-point print on the cover sheet of the policy or disclose the
25
26

27 ¹ A trust mill is an organization that sells living trusts to senior citizens through "representatives" who are actually
28 insurance agents. The agent gains access to a senior's confidential financial information when selling a trust and later
uses that information to sell the senior an annuity.

1 location of the surrender information in bold 12-point print on the cover page of the policy, or
2 printed on a sticker that is affixed to the cover page or policy jacket.”

3 9. EPICO is a trust mill through which American Equity has sold annuities. As known
4 by American Equity, Robin Noe, EPICO, EPICO Insurance and their agents would send agents to
5 the homes of senior citizens for the purported purpose of selling seniors living trusts. The agents
6 would misrepresent their real objective – to gain the trust and confidence of a senior citizen and to
7 obtain the senior’s confidential financial information in order to sell an annuity. The agents would
8 misrepresent the need for a living trust, engage in or aid others in the unauthorized practice of law,
9 unlawfully split legal fees, engage in or aid in the unlawful solicitation of clients for attorneys,
10 conceal and fail to disclose EPICO’s role in providing legal services and that little or no work
11 would be performed by an attorney, and misrepresent the need for, and the provisions of,
12 annuities. American Equity knowingly did business with EPICO and other trust mills operating in
13 California.

14 10. American Equity knew that Robin Noe, EPICO, EPICO Insurance and their agents,
15 as well as other trust mills and other sales agents, would deceive senior purchasers about the nature
16 and extent of surrender penalties in its annuities. Despite this knowledge, American Equity
17 purposefully failed to disclose the surrender information on the cover of the policy or disclose on
18 the cover the location of the surrender information within the policy in violation of Insurance Code
19 section 10127.13.

20 11. American Equity also failed to disclose the manner in which its deferred annuities
21 would accumulate monies. American Equity sold annuities, which offered a first year “bonus” or
22 first year “additional interest.” These are monies American Equity represented it would add on to
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1 the annuity premium in the first year. American Equity failed to disclose, however, that it would
2 recover these amounts by crediting lower yields over the term of the annuity.

3 12. American Equity also failed to disclose that it was paying the selling agents very
4 high commissions and that it would seek to recover the cost of the commissions by crediting lower
5 yields over the term of the annuity.

6
7 13. In approximately April of 2000, Plaintiffs were solicited by an agent of Robin Noe,
8 EPICO, and EPICO Insurance to purchase a living trust. Plaintiffs purchased a trust and gave the
9 agent confidential financial information which was used by Robin Noe, EPICO, EPICO Insurance
10 and their agents to sell Plaintiffs two annuities with American Equity, Policy Nos. 054125² and
11 054126. The agent represented to Plaintiffs they would pay no “fees” in connection with the
12 annuities and failed to disclose and concealed that the annuities carried high surrender penalties and
13 would apply over a long period. At the time of the sale, Chalys M. Stephens was 70 years old and
14 John P. Stephens was 71 years old.

15
16 14. Policy No. 054126 was issued under form FPDA-2. It states that it pays additional
17 first year interest. It does not disclose that lower yields will be paid due to the additional interest
18 or the high commission paid the selling agent.

19
20 15. The Policy also did not disclose the surrender information or the location of the
21 surrender information on the cover of the annuity in violation of Insurance Code section 10127.13.

22 16. In approximately June of 2003, Plaintiffs were solicited by an agent of Robin Noe,
23 EPICO, and EPIC Insurance and their agents to purchase another American Equity annuity.
24 Plaintiffs purchased that annuity, Policy No. 255887. The agent represented to Plaintiffs they
25 would pay no “fees” in connection with the annuity and failed to disclose and concealed that the
26

27
28 ² Policy No. 54125 is not a subject of this action because it was included in a class action settlement in *Strube v. American Equity*.

1 annuity carried high surrender penalties and would apply over a long period. This Policy, form
2 FPDA-7, also states that it pays additional first year interest, does not disclose that lower yields
3 will be paid due to the additional interest or the high commission paid the selling agent. This
4 Policy also did not disclose the surrender information or the location of the surrender information
5 on its cover in violation of Insurance Code section 10127.13.
6

7 17. Plaintiffs have been assessed surrender penalties under their American Equity
8 annuities and received lower yields than they were entitled to.

9 **CLASS ALLEGATIONS**

10 18. Pursuant to California Code of Civil Procedure section 382 and Rule 1854 of the
11 California Rules of Court, Plaintiffs seek class certification of the action.
12

13 19. The Class is defined as:

14 (a) All California residents who purchased the following American
15 Equity annuity forms when they were age 65 or older regardless of
16 whether the annuity was sold by Robin Noe, EPICO, EPICO
17 Insurance or their agents: FPDA-2, FPDA-3, FPDA-7, FPDA-
18 7(2.25), Super-7, Index-17, Index-18, Index-24, Index-28;

19 (b) All California residents who were sold any American Equity
20 deferred annuities by Robin Noe, EPICO, EPICO Insurance or their
21 agents.
22

23 Excluded from the Class are:

24 (c) Any policies or sales subject to the class settlement in *Strube v.*
25 *American Equity*;
26
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1 (d) The Defendants, any entity in which Defendants have a controlling
2 interest, and their legal representatives, officers, directors, assigns,
3 and successors; and

4 (e) The judge to whom this case is assigned, together with the judge's
5 spouse and any person within the third degree of relationship to
6 either of them.
7

8 20. There is a well-defined community of interest among the members of the Class.
9 The claims of the representative Plaintiffs are typical of the claims of the Class they seek to
10 represent, in that the representative Plaintiffs, like the Class members, are owners or beneficiaries,
11 or the successors of beneficiaries, of an American Equity annuity sold in California where penalties
12 were or will be imposed and/or lower yields have been or will be paid.
13

14 21. There are numerous questions of law and fact common to Plaintiffs and the
15 members of the Class they seek to represent. Those questions predominate over any
16 questions that may affect individual Class members. The questions of law and fact
17 common to the members of the Class predominate over any questions affecting only
18 individual members. A class action is superior to other available methods for the fair and
19 efficient adjudication of this controversy.
20

21 FIRST CAUSE OF ACTION

22 **(Violation of the Unfair Competition Law Against American Equity, EPICO and Doe**
23 **Defendants)**

24 22. Plaintiffs and the Class hereby repeat and reallege paragraphs 1 through 21 and
25 incorporate same as though fully set forth herein.

26 23. Business and Professions Code section 17200 et seq., the Unfair Competition Law
27 (“UCL”), prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent
28

1 business act or practice" and "unfair, deceptive, untrue or misleading advertising." The acts of
2 Defendants, as alleged herein, constitute unlawful, unfair and/or fraudulent business practices and
3 unfair, deceptive, untrue or misleading advertising within the meaning of the UCL.

4 24. Robin Noe, EPICO, EPICO Insurance and their agents, violated the UCL by
5 misrepresenting that they were experts in estate planning, misrepresenting their purpose in
6 soliciting and selling living trusts and other legal services, and misrepresenting the need for, and the
7 provisions of, annuities.

9 25. American Equity has violated the UCL by violating statutory notice requirements
10 for annuities sold to persons age 65 and older, as described herein, and by authorizing, ratifying,
11 aiding and benefiting from the acts of Robin Noe, EPICO, EPICO Insurance and their agents as
12 alleged herein.

14 26. American Equity also failed to disclose that it would pay lower yields to recover
15 the costs of any bonus/additional interest and the high sales commissions paid the selling agents.

16 27. Plaintiffs have suffered an injury in fact and have lost money as a result of
17 defendants' unfair competition, as alleged herein.

18 28. On behalf of themselves and on behalf of the general public, Plaintiffs and the Class
19 request that the Court order Defendants to make restitution of the amount of the surrender
20 penalties assessed and that will be assessed, the amount of the yields lost and that will be lost, and
21 interest thereon, and enjoin Defendants from committing the acts alleged herein in the future.

23 29. Defendants knew their conduct was directed to one or more senior citizens, that
24 those senior citizens were more vulnerable to said conduct than other members of the general
25 public, or that their actions would cause emotional and economic damage to the senior citizens,
26 thereby entitling Plaintiffs and the Class to treble damages under Civil Code section 3345.
27

28

1 Rather, American Equity encouraged the activities by paying higher
2 commissions and bonuses to the agents.

3 (b) Robin Noe, EPICO, EPICO Insurance, and their agents,
4 used deceptive sales presentations and sales materials designed to
5 mislead senior citizens regarding the need for and/or benefits of
6 annuities. Said entities or persons were insurance agents "appointed"
7 by American Equity pursuant to Insurance Code section 1704 et
8 seq., or were entities or persons acting at the behest of said
9 appointed agents. American Equity authorized, ratified, aided and
10 benefited from these acts by knowing that the presentations and
11 sales materials were presented by said appointed agents and that the
12 presentations facilitated the sale of American Equity annuities, as
13 alleged herein. Despite this knowledge, American Equity did nothing
14 to discourage the appointed agents from engaging in these activities.
15 Rather, American Equity encouraged the activities by paying higher
16 commissions and bonuses to the agents.

17 (c) American Equity also failed to disclose the manner in
18 which its deferred annuities would accumulate monies. American
19 Equity sold annuities, which offered a first year "bonus" or first
20 year "additional interest." These are monies American Equity
21 represented it would add on to the annuity premium in the first year.
22 American Equity failed to disclose, however, that it would recover
23 these amount by crediting lower yields over the term of the annuity.
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(d) American Equity also failed to disclose that it was paying the selling agents very high commissions and that it would seek to recover the cost of the commissions by crediting lower yields over the term of the annuity.

(e) American Equity drafted and used form annuity contracts designed to obscure and hide the fact American Equity would apply surrender penalties, as alleged herein.

(f) Other acts of which Plaintiffs are presently unaware.

33. Plaintiffs and Class members relied upon said representations and omissions by purchasing the annuities.

34. As a proximate result of the representations and omissions of said Defendants, Plaintiffs and the Class members have suffered loss of monies in a sum to be proven at the time of trial.

35. The aforementioned acts were performed by Defendants maliciously, fraudulently and oppressively entitling Plaintiffs and the Class members to punitive damages in an amount appropriate to punish Defendants.

36. Defendants knew their conduct was directed to one or more senior citizens, that those senior citizens were more vulnerable to said conduct than other members of the general public, or that their actions would cause harm and injury to the senior citizens and/or their heirs and beneficiaries, thereby entitling Plaintiffs and the Class to trebling of any punitive damages awarded, under Civil Code section 3345.

///

1 **WHEREFORE, Plaintiffs and the Class pray for judgment against Defendants as**
2 **follows:**

3
4 1. Restitution of the surrender penalties collected by American Equity and interest
5 thereon;

6 2. Restitution of the fees collected by Robin Noe, EPICO, EPICO Insurance and their
7 agents and interest thereon;

8 3. A preliminary and permanent injunction restraining American Equity from imposing
9 further surrender penalties and diminishing yields under the annuities, as alleged herein, and from
10 authorizing, ratifying, aiding and benefiting from the acts of Robin Noe, EPICO, EPICO Insurance
11 and their agents, as alleged herein;

12 4. A preliminary and permanent injunction restraining Robin Noe, EPICO, EPICO
13 Insurance and their agents from performing the acts alleged herein;

14 5. Damages in amount to be proven at the time of trial;

15 6. Reasonable attorneys' fees;

16 7. Treble damages;

17 8. Costs of suit incurred herein; and

18 9. For such other and further relief as the Court deems just and proper.

19
20
21 DATED: September 10, 2007

ERNST & MATTISON
GIANELLI & MORRIS

22
23
24 By: 

ROBERT S. GIANELLI

25 ATTORNEYS FOR CHALYS M. STEPHENS AND
26 JOHN P. STEPHENS, ON BEHALF OF
27 THEMSELVES AND ALL OTHERS SIMILARLY
28 SITUATED

PROOF OF SERVICE

*Stephens, et al. v. American Equity Investment Life Insurance Company, et al.,
San Luis Obispo Superior Court Case No. CV040965*


**STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 626 Wilshire Blvd., Suite 800, Los Angeles, CA 90017.

On September 21, 2007, I served the foregoing document described as STIPULATION RE: FILING THIRD AMENDED COMPLANT on the interested parties in this action by placing a true copy (*the original) thereof enclosed in a sealed envelope addressed as follows:

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

X (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 21, 2007 at Los Angeles, California.



Leticia Mejia

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SERVICE LIST

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San Luis Obispo Superior Court Case No. CV040965*

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*Stephens, et al. v. American Equity Investment Life Insurance Company, et al.,
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