

8002 0 100  
OCT 30 2008

1 RAYMOND E. MATTISON, #71850  
2 DON A. ERNST, #065726-3  
3 ERNST & MATTISON, A Law Corporation  
4 1020 Palm Street, P.O. Box 1327  
5 San Luis Obispo, California 93406-1327  
6 Phone: 805.541.0300; Fax: 805.541.5168  
7 Email: [rem@emlaw.us](mailto:rem@emlaw.us)

8 ROBERT S. GIANELLI, #82116  
9 JULLY C. PAE, #233565  
10 GIANELLI & MORRIS, A Law Corporation  
11 626 Wilshire Boulevard, Suite 800  
12 Los Angeles, California 90017  
13 Phone: 213.489.1600; Fax: 213.489.1611  
14 Email: [rob.gianelli@gmlawyers.com](mailto:rob.gianelli@gmlawyers.com)  
15 [Jully.pae@gmlawyers.com](mailto:Jully.pae@gmlawyers.com)

16 Attorneys for Plaintiffs

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 COUNTY OF SAN FRANCISCO

19 COORDINATED PROCEEDINGS:  
20 AMERICAN INVESTORS CASES II

Coordinated Proceeding  
Case No.: JCCP 4441  
Coordination Action Judge:  
Honorable Richard A. Kramer, Dept. 304

~~PROPOSED~~ AMENDED ORDER  
GRANTING PLAINTIFFS' MOTION  
FOR CLASS CERTIFICATION IN THE  
STEPHENS ACTION

21  
22  
23  
24  
25  
26 [Caption continued on following page]  
27  
28

1 JOHN EVANSON, JUANITA EZELL,  
2 DONALD and SHIRLEY MCKIBBEN,  
3 WILMA SIMONDS, CAROLYN SIMPKINS,  
4 JAMES THOMPSON, and THE ESTATE OF  
5 LEO TRAVIS, by and through EXECUTRIX  
Charlotte Cook, on Behalf of Themselves and  
All Others Similarly Situated,

6 Plaintiffs,

7 vs.

8 AMERICAN EQUITY INVESTMENT LIFE  
9 INSURANCE COMPANY, AMERISTATE,  
10 INC., AMERICAN INVESTORS LIFE  
11 INSURANCE COMPANY, ESTATE  
12 PRESERVATION, INC., ADDISON  
13 INSURANCE MARKETING, INC. (a.k.a. by  
14 the trade name as GENTRY GROUP, INC.),  
FAMILY FIRST ADVANCED ESTATE  
PLANNING, GROUP LEGAL SERVICES,  
INC., and Does 1- 100, Inclusive,

15 Defendants.

San Francisco Superior Court  
Case No. CGC-04-435933

16  
17 CHALYS M. STEPHENS and JOHN P.  
18 STEPHENS, on behalf of themselves and all  
others similarly situated,

19 Plaintiffs,

20 vs.  
21

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

25 Defendants.  
26

San Luis Obispo Superior Court  
Case No. CV040965

1 After numerous hearings and the consideration of the Briefs and arguments of the parties  
2 in the matter *Stephens, v. American Equity Investment Life Insurance Company, et al.*, the Court  
3 grants *Stephens* Plaintiffs' Motion to Certify the action as a class action. (CCP section 382)  
4

5  
6 The Court certifies a Class and Subclass, as defined herein. The Court finds that the  
7 Class and Subclass are ascertainable, and there is a well defined community of interest among  
8 the Class members and among the Subclass members. (*Sav-on Drug Stores Inc. v Superior*  
9 *Court* (2004) 34 Cal.4<sup>th</sup> 319, 326) Common questions of law and fact predominate, the class  
10 representatives have claims and defenses typical of the Class and Subclass and the class  
11 representatives and their counsel can adequately represent the interests of the Class and Subclass.  
12

13  
14 The Class is defined as:

15  
16 All persons who were California residents at the time they  
17 ~~deferred annuities issued by~~ <sup>Investment Life Insurance</sup> purchased American Equity <sup>Company</sup> deferred annuities on the following  
18 forms when they were age 65 or older, and who purchased such an RM  
19 annuity on or before October 14, 2008: FPDA-2, FPDA-3, FPDA-  
20 7, FPDA-7 (2.25), Super-7, Index-17, Index-18, Index-24, Index-  
21 28.  
22

23  
24 The Subclass is defined as:

25 All persons who were California residents at the time they  
26 purchased American Equity deferred annuities on the following  
27 forms when they were age 65 or older and who purchased such an  
28

1 annuity through Robin Noe, Estate Planning & Investments, Inc.,  
2 EPICO Insurance Agency, Inc. or their agents on or before October  
3 14, 2008: FPDA-2, FPDA-3, FPDA-7, FPDA-7 (2.25), Super-7,  
4 Index-17, Index-18, Index-24, Index-28.  
5

6  
7 Excluded from the Class and Subclass are the Defendants and their officers and  
8 employees. No claims will be pursued by Plaintiffs or on behalf of any Class or Subclass  
9 members in this action with respect to any annuity purchased after October 14, 2008.  
10

11  
12 This shall be an opt-out class and each Class and Subclass member shall be given a  
13 reasonable opportunity, as shall be provided in the class notice, to exclude themselves from the  
14 Class and Subclass.  
15

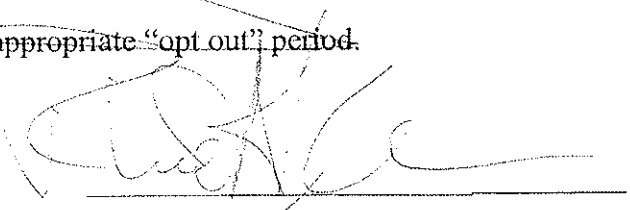
16  
17 CHALYS M. STEPHENS and JOHN P. STEPHENS are appointed as Class  
18 Representatives. The firms of Ernst and Mattison and Gianelli & Morris are appointed as  
19 Class Counsel.  
20

21  
22 Plaintiffs are to bear the cost of notice. Notice shall be made by first class mail to the  
23 last known address of each class member. Gilardi & Company shall serve as class  
24 administrators for the giving of notice. Defendants shall provide a complete list of class  
25 members and mailing data to the Plaintiffs in an electronic form suitable for a mass mailing no  
26 later than ~~October 29~~ <sup>November 5</sup>, 2008.  
27  
28

1 Plaintiffs shall provide a proposed form of notice to the Defendants. Defendants are to  
2 meet and confer with Plaintiffs in an attempt to narrow or eliminate any disagreements  
3 regarding the contents of the notice. If any disagreements regarding the notice remain  
4 unresolved, in connection with the scheduled Case Management Conference Statement due  
5 before the next Status Conference, each party shall provide the Court with their proposed form  
6 of notice and define those differences which require resolution by the Court.  
7

8  
9  
10 ~~A further Case Management Conference shall be held on November 3, 2008, at 1:30~~  
11 p.m. in this Court, at which time the Court will approve the form of notice and establish a  
12 schedule for the giving of notice and an appropriate "opt out" period.  
13

14 Dated: 11-3-08



Honorable Richard A. Kramer  
Judge of the Superior Court

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 JCCP 4441, AMERICAN INVESTORS CASES II  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Proposed order prepared and submitted by:

RAYMOND E. MATTISON, #71850  
DON A. ERNST, #065726-3  
ERNST & MATTISON, A Law Corporation  
1020 Palm Street, P.O. Box 1327  
San Luis Obispo, California 93406-1327  
Phone: 805.541.0300; Fax: 805.541.5168  
Email: rem@emlaw.us

ROBERT S. GIANELLI, #82116  
JULY C. PAE, #233565  
GIANELLI & MORRIS, A Law Corporation  
626 Wilshire Boulevard, Suite 800  
Los Angeles, California 90017  
Phone: 213.489.1600; Fax: 213.489.1611  
Email: rob.gianelli@gmlawyers.com  
jully.pae@gmlawyers.com

Attorneys for Plaintiffs, Chalys Stephens & John Stephens,  
and the Certified Class and Subclass