

BILL LOCKYER, Attorney General
of the State of California
HERSCHEL T. ELKINS, (SBN 27279)
Senior Assistant Attorney General
CHRISTINA V. TUSAN, (SBN 192203)
Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, California 90013

RONALD A. REITER, (SBN 62497)
Supervising Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, California 94102

Attorneys for the People of the State of California
(Additional counsel for the Plaintiffs on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

THE PEOPLE OF THE STATE OF CALIFORNIA
AND KATHLEEN CONNELL, CONTROLLER OF
THE STATE OF CALIFORNIA,

Plaintiffs,

v.

FIDELITY NATIONAL TITLE INSURANCE
COMPANY; FIDELITY NATIONAL TITLE
COMPANY; FIDELITY NATIONAL TITLE
INSURANCE COMPANY OF CALIFORNIA,
INC.; FIDELITY NATIONAL FINANCIAL, INC.;
ROCKY MOUNTAIN SUPPORT SERVICES, INC.;
FIDELITY NATIONAL LOAN PORTFOLIO
SERVICES; CALIFORNIA TRACKING SERVICE,
INC.; TICOR TITLE INSURANCE COMPANY;
SECURITY UNION TITLE INSURANCE
COMPANY; CHICAGO TITLE COMPANY;
CHICAGO TITLE INSURANCE COMPANY;
CHICAGO TITLE AND TRUST COMPANY; and
TITLE ACCOUNTING SERVICES
CORPORATION;

Defendants.

CASE NO.: 99AS02793
FINAL JUDGMENT

1 TERENCE HALLINAN,
 District Attorney for the City and County of San Francisco
2 DAVID A. PFEIFER, (SBN 127785)
 JUNE D. CRAVETT, (SBN 105094)
3 Assistant District Attorneys
 732 Brannan Street
4 San Francisco, California 94103

5
6 Attorneys for the People of the State of California

7 DENNIS HERRERA,
 City Attorney for the City and County of San Francisco
8 JOANNE HOEPER, (SBN 114961)
 Chief Trial Attorney
9 DONALD P. MARGOLIS, (SBN 116588)
 Deputy City Attorney
10 1390 Market Street, 6th Floor
 San Francisco, California 94102-5408

11
12 Attorneys for the People of the State of California

13
14 KATHLEEN CONNELL, Controller
 for the State of California
15 RICHARD J. CHIVARO, (SBN 124391)
 Chief Counsel
16 300 Capitol Mall, Suite 1850
 Sacramento, California 95814

17
18 Attorneys for the California State Controller
19
20
21
22
23
24
25
26
27
28

1 Plaintiff, the People of the State of California (“the People”), appeared through the
2 Attorney General, Bill Lockyer, by Deputy Attorneys General Ronald A. Reiter and Christina
3 V. Tusan; through the District Attorney of San Francisco, Terence Hallinan, by Assistant
4 District Attorney June Cravett, and through the City Attorney of San Francisco, Dennis
5 Herrera, by Deputy City Attorney Donald Margolis. Plaintiff Kathleen Connell, Controller
6 of the State of California appeared through Chief Counsel, Richard J. Chivaro. Defendants
7 Fidelity National Title Insurance Company, Fidelity National Title Company, Fidelity
8 National Title Insurance Company of California, Inc., Fidelity National Financial, Inc.,
9 Rocky Mountain Support Services, Inc., Fidelity National Loan Portfolio Services, California
10 Tracking Service, Inc. (hereafter collectively “Fidelity Title”), Ticor Title Insurance
11 Company, Security Union Title Insurance Company, Chicago Title Company, Chicago Title
12 Insurance Company, Chicago Title and Trust Company, Title Accounting Services
13 Corporation (hereafter collectively “Chicago”) (hereafter Chicago and Fidelity Title are
14 collectively referred to as “Fidelity”) appeared through their attorneys Latham & Watkins,
15 by Stephen Stublarec.

16 The Court having considered the Stipulation For Entry of Final Judgment executed
17 by the parties and filed herewith , and good cause appearing,

18 IT IS HEREBY AGREED, ORDERED, ADJUDGED AND DECREED THAT:

19 JURISDICTION

20 1. This Court has jurisdiction of the subject matter of this action and of the
21 parties. Venue as to all matters between the parties relating hereto lies in this Court.

22 INJUNCTION

23 2. The injunctive provisions of this judgment apply to Fidelity; its directors,
24 officers, and shareholders; to the employees, representatives, agents, subsidiary and affiliated
25 companies (regardless of the form of business organization), successors-in-interest, and
26 assigns of Fidelity; and any person or entity acting by, through, under, on behalf of, or in
27 concert with Fidelity or any other person or entity described in this paragraph, whether acting
28 as a principal or agent, all of whom are referred to as “defendants.” Non-subsiary

1 companies or entities in which Fidelity does not have an ownership interest that are: 1)
2 separately licensed to perform escrow services; and 2) not performing escrow services on
3 Fidelity's behalf or for the benefit of Fidelity are not considered "agents" for purposes of the
4 injunctive provisions of this judgment.

5 3. For the purpose of this judgment, the term "financial benefit" means any
6 consideration, other than consideration denominated as interest, that defendants obtain from
7 a financial institution in connection with the defendants' deposit of escrow funds with that
8 financial institution. "Financial benefit" includes a financial institution's absorption of
9 expenses incident to providing normal banking functions or its forbearance from charging
10 a fee in connection with providing normal banking functions or services, including those
11 normal banking functions and services that the Federal Reserve Board determines may be
12 provided without full charge consistent with 12 C.F.R. part 217. Examples of "financial
13 benefits" that may be provided by a financial institution include, but are not limited to,
14 escrow accounting services and bank reconciliation, wire transfers, and loans at preferential
15 interest rates.

16 4. Defendants, and each of them, are permanently enjoined and restrained from
17 engaging in any of the following:

18 A. Billing or collecting from title insurance or escrow customers an amount
19 that exceeds the actual cost to defendants of services provided by third parties in connection
20 with defendants' performance of escrow and title services, such as overnight mail, courier,
21 and notary services, unless (1) such practice is permitted by state and federal law and (2)
22 defendants clearly and conspicuously disclose that the defendants have marked-up the third
23 party charge.

24 B. Obtaining any financial benefit in connection with the deposit of escrow
25 funds unless the full value of all financial benefits is (1) exclusively used to underwrite the
26 cost of escrow services and (2) fully allocated to Fidelity's escrow operations. Fidelity shall
27 continually maintain, with a retention period of a minimum of three fiscal years, accounting

28 ///

1 information that clearly, accurately, and in sufficient detail demonstrates its compliance with
2 this provision.

3 C. Assessing a separate charge to escrow or title customers for any service
4 such as wire transfers, if the service is provided as a financial benefit or the cost of the
5 service is otherwise waived, credited, paid, or assumed by the provider of the service.

6 D. Depositing escrow funds in any financial institution in which defendants
7 have any ownership interest, management, or control if (1) the deposit of funds in that
8 financial institution would breach Fidelity's fiduciary duties as escrow agent or (2) that
9 financial institution failed to provide financial benefits in connection with the deposit of
10 escrow funds that were comparable to the best arrangement for the provision of financial
11 benefits offered by California financial institutions in connection with the deposit of escrow
12 funds.

13 E. Demanding, charging, or collecting a separate fee from escrow or title
14 insurance customers in connection with investigating or tracking whether a beneficiary under
15 a deed of trust causes a deed of reconveyance to be recorded after the obligation owed to the
16 beneficiary has been satisfied, except to the extent that a separate fee is affirmatively and
17 explicitly authorized by a subsequent statute.

18 F. Demanding, charging, or collecting a separate fee from escrow or title
19 insurance customers in connection with preparing, issuing, or recording a release of
20 obligation or providing notice of intention to do so, except to the extent that a separate fee
21 is affirmatively and explicitly authorized by a subsequent statute.

22 G. Collecting a separate fee for a deed of reconveyance (including any
23 recording fee therefore) from an escrow or title insurance customer without separately
24 accounting for this fee in a suspense account or otherwise segregating this fee from
25 defendants' funds in accordance with generally acceptable accounting principles until the fee
26 is transmitted to the trustee or beneficiary under the deed of trust, is returned to the customer,
27 or is paid as required by law.

28 ///

1 H. Raising any fees charged in connection with escrow services or the
2 provision of title insurance to circumvent or offset any discounts offered pursuant to
3 paragraphs 15 through 21. Defendants shall have the burden of establishing to plaintiffs
4 and/or the Department of Insurance that the basis for any rate or fee increase is unrelated to
5 the discounts offered pursuant to paragraphs 15 through 21.

6 I. Using the term “discount” or otherwise advertising or promoting
7 Fidelity’s escrow services on the basis of the discounts offered pursuant to paragraphs 15
8 through 21. Nothing herein prevents defendants from informing the public of Fidelity’s
9 charges for escrow services.

10 J. Disbursing monies to financial institutions that are beneficiaries under
11 deeds of trust at the close of escrow unless disbursed in the following manner:

12 (1) By wire or electronic fund transfer upon close of escrow; by
13 check sent upon close of escrow via a next day delivery service, such as Federal Express, for
14 delivery on the next business day following the close of escrow; or by hand delivery for
15 delivery on the same day as, or on the next business day following, the close of escrow.

16 (2) In the event that the close of escrow occurs so late in the day that
17 it would be impracticable for the funds to be disbursed in the manner described in
18 subparagraph J(1), the funds shall be disbursed on the next business day following the close
19 of escrow by the most expeditious means available.

20 (3) Notwithstanding subparagraphs J(1) and J(2), any means directed
21 by the seller or refinancing owner in an escrow instruction signed or initialed by the seller
22 or refinancing owner.

23 (4) If the defendant acts as the escrow, any instruction described in
24 subparagraph J(3) shall appear on a separate page with no other writing except that
25 necessary to identify the escrow, the parties, the property, the date, the signature of the party
26 giving the instruction, and the following notice which shall clearly and conspicuously appear
27 immediately above or adjacent to the place reserved for the escrow customer's signature.
28 ""Any delay in sending funds to a beneficiary under a deed of trust could result in additional

1 interest charges or other expense. You should compare the amount of interest charges or
2 other expenses resulting from a delay in sending funds with the amount you will be charged
3 for wire, electronic fund transfer, or overnight delivery before you sign or initial this escrow
4 instruction."

5 (5) When disbursing funds by wire or electronic transfer, Defendant
6 shall utilize to the fullest extent practicable wire transfers (or similar electronic transfers)
7 where such transfers are included in earned credits furnished by the depositing institution.

8 RESTITUTION

9 5. Fidelity shall pay restitution up to a maximum amount of twenty-six million
10 dollars (\$26,000,000) ("Maximum Discount Restitution Obligation" or "MDRO") paid in the
11 form of discounts, as provided in paragraphs 15 through 21. This amount shall be in addition
12 to any amounts paid out through the cash claims process described in paragraphs 6 through
13 14. The discount restitution payments will begin within five business days after the
14 completion of the cash claims process described in paragraphs 6 through 14.

15 Payments to Claimants

16 6. A. Fidelity shall pay, or cause to be paid, sixty-five dollars (\$65) to each
17 of Fidelity's former escrow customers who meet all of the following conditions:

18 (1) The customer closed an escrow transaction in which Fidelity
19 Title or Chicago acted as escrow agent between May 19, 1995 and the date of the entry of
20 judgment.

21 (2) The customer was charged and paid a fee for any services
22 involved in the preparation, execution and recordation of a deed of reconveyance
23 including but not limited to document preparation or forwarding services.

24 (3) The customer received a release of obligation, or did not receive
25 a release of obligation or a reconveyance.

26 (4) The customer files a timely claim as provided in paragraph 8.

27 (5) The customer is a natural person or a trust.

28 ///

1 (6) Fidelity Title or Chicago (a) recorded a release of obligation for
2 the claimant and Fidelity Title's records or Chicago's records do not clearly refute that the
3 claimant paid a fee for a reconveyance or release of obligation or (b) Fidelity Title or
4 Chicago did not record a release of obligation or a reconveyance in the capacity of trustee
5 under a deed of trust for the claimant, Fidelity Title or Chicago's records indicate that the
6 claimant paid a fee for a reconveyance or release of obligation, and Fidelity Title or
7 Chicago's records do not establish that Fidelity Title or Chicago either transmitted the fee
8 paid by the claimant to the beneficiary or trustee under the deed of trust or escheated the fee
9 to the state.

10 B. Fidelity may treat multiple buyers, sellers, and borrowers in an escrow
11 transaction (e.g., tenants in common, a husband and wife in a community property
12 transaction) as a single customer or claimant for the purpose of paying claims.

13 7. Fidelity shall have no obligation to make payment under paragraph 6 if Fidelity
14 establishes that any of the defendants did any of the following:

15 A. Transmitted the customer's reconveyance fee to the trustee or
16 beneficiary under the deed of trust that encumbered the customer's property.

17 B. Prepared and recorded a deed of reconveyance while acting in the
18 capacity of trustee under the deed of trust.

19 C. Escheated to the state the fee charged the customer.

20 8. Within five business days after the Attorney General has given Fidelity notice
21 that the verification process has been completed and that the Attorney General has
22 determined that the information provided was substantially complete and accurate, as more
23 fully described in paragraphs 23 through 25 of this Judgment and paragraph 1F of the
24 Stipulation, Fidelity, at its sole expense, shall cause to be published a notice, whose form and
25 contents are satisfactory to the People, at least once per week for three consecutive weeks.
26 The published notices will appear in the Los Angeles Times, the San Francisco Chronicle and
27 Examiner, the Sacramento Bee, the Modesto Bee, the Fresno Bee, the San Diego Union
28 Tribune, the Bakersfield Californian, the Orange County Register, the San Jose Mercury

1 News, and the Oakland Tribune. The notice shall state that former escrow customers who
2 meet the criteria set forth in paragraph 6(a)1 through 6(a)5 are eligible to file a claim to
3 recover sixty-five dollars (\$65) if the claim is returned by a date specified in the notice that
4 is at least 90 days after the date on which the first notice is published (“the Claim Deadline”).

5 The notice shall indicate that the claim must indicate the claimant’s name and the address
6 of the property involved in the escrow. The notice may request additional documentation if
7 available to the customer but shall clearly indicate that the customer is not obliged to provide
8 any further information to be eligible. The published notice shall state that no specific claim
9 form is required as long as the claimant’s name and property address is set forth, but the
10 notice shall set forth a sample form that may be completed and returned. The notice shall
11 also set forth the address to which the claim form is to be sent and a toll-free telephone
12 number to which inquiries may be directed.

13 9. The claims shall be returned to a Settlement Administrator, as more
14 particularly described in paragraph 23. The Settlement Administrator shall log the claims
15 and transmit them to Fidelity.

16 10. Within 60 days after the Claim Deadline, the Settlement Administrator will
17 transmit all claims to Fidelity. After the completion of the verification process and a
18 determination that the information provided by Fidelity was substantially complete and
19 accurate, as more fully described in paragraphs 23 through 25 of this Judgment and
20 paragraph 1F of the Stipulation, Fidelity shall (A) pay the claim without further review or (B)
21 review the claim, conduct a diligent search of all relevant business records and public
22 records, and determine the claimant’s eligibility for payment. If Fidelity determines that the
23 claimant is eligible, or if Fidelity cannot determine that the claimant is ineligible, Fidelity
24 shall pay the claim within 15 days. If Fidelity determines that the claimant is not eligible,
25 Fidelity shall provide the Settlement Administrator, within 15 days, with the name and
26 address of each person who submitted the claim that Fidelity determined was ineligible and
27 a complete statement of reasons for the denial of that claimant’s claim including all of the
28 documentation on which Fidelity relies to establish Fidelity’s determination that the claimant

1 is not eligible for payment. The Settlement Administrator shall review the rejected claims,
2 any written objections submitted as described under paragraph 11, and the records, including
3 the escrow file, that may be relevant for determining the claimant's eligibility. The
4 Settlement Administrator shall report its evaluation of the merits of each rejected claim to
5 the People. If the People dispute Fidelity's rejection of a claim and the parties are unable to
6 resolve the dispute, all disputed claims shall be submitted, at Fidelity's sole expense, to an
7 arbitrator selected by the parties or, in the event the parties do not agree on an arbitrator, to
8 an arbitrator selected by the court.

9 11. Fidelity shall notify each person who submitted a claim that was rejected and
10 briefly describe the reason for rejecting the claim. The notice shall indicate that if the
11 claimant disputes the rejection of the claim, the claimant may provide the Settlement
12 Administrator with a written objection stating all of the claimant's grounds for disputing the
13 rejection of the claim. The notice shall indicate that the written objection must be mailed to
14 the Settlement Administrator at an address set forth in the notice and must be submitted
15 by a specified date, which shall not be less than 15 days following the date of the mailing of
16 the notice.

17 12. The Settlement Administrator shall respond to any questions by the public
18 about the claims procedure and, in connection therewith, shall establish a toll free number.

19 13. The envelopes containing the checks sent by Fidelity to claimants shall be
20 marked with the Settlement Administrator's return address. If any check sent to a claimant
21 is returned undeliverable, the Settlement Administrator shall take or cause to be taken
22 reasonable steps, including skip-tracing if reasonable, to attempt to locate the claimant. If
23 thereafter the claimant is still not located or if the claimant's check is not cashed within six
24 months of the date of issuance, any funds payable under the judgment shall be promptly paid
25 as cy pres restitution as provided in paragraph 22.

26 14. Within 90 days following the Claim Deadline, Fidelity shall provide the People
27 and the Settlement Administrator with a report indicating the name and address of each
28 claimant paid, the date of payment, and the amount of the claim. If any claims are thereafter

1 paid, Fidelity shall supplement the report with additional quarterly reports indicating the
2 name and address of each claimant paid, the date of payment, and the amount paid. Within
3 seven months of the date of issuing checks in payment of claims, Fidelity shall provide the
4 People and the Settlement Administrator with a report of the names and addresses of
5 claimants whose checks are not cashed within six months of issuance. The reports required
6 herein shall be subscribed under oath by an officer of Fidelity indicating his or her firsthand
7 personal knowledge of the facts set forth in the report.

8 Discounts for Eligible Customers

9 15. Within five business days after the completion of the cash claims process
10 described in paragraphs 6 through 14, Fidelity shall reduce its charge to customers by twenty
11 dollars (\$20) for escrow services, or by twenty dollars (\$20) for title insurance when escrow
12 services are not directly provided, if the customer satisfies the following conditions:

13 A. The customer closes a transaction for the purchase, sale, or refinancing
14 of residential real property containing one- to four-dwelling units on and after the date of the
15 entry of this judgment.

16 B. That customer previously purchased escrow services (or title insurance
17 without escrow services) between May 19, 1995 and the date of entry of judgment from
18 Fidelity Title, Chicago or from other settling defendants identified by the People in a
19 declaration filed with the court following entry of judgment.

20 C. That customer did not receive cash payment of a claim, as provided in
21 paragraphs 6 through 14 of this judgment.

22 D. The customer is a natural person or a trust.

23 16. Customers who had multiple transactions involving the purchase of escrow
24 services or title insurance without escrow services from Fidelity Title, Chicago or other
25 settling defendants between May 19, 1995 and the date of entry of judgment shall be entitled
26 to a twenty dollar (\$20) discount for each transaction.

27 17. Fidelity shall determine whether a customer is eligible for a discount based on
28 an examination of Fidelity's business records and public records. For the purpose of this

1 judgment, it shall be presumed that Fidelity Title, Chicago or another settling defendant
2 provided escrow services or title insurance without escrow services between May 19, 1995
3 and the date of entry of judgment if a deed or deed of trust recorded during that time period
4 indicates that recording was requested by Fidelity Title, Chicago or another settling
5 defendant. In determining eligibility for a discount, Fidelity may ask a customer if the
6 customer has already received a cash payment or a discount from another settling defendant.
7 Unless the customer positively states in writing that the customer has already received a cash
8 payment or a discount from another settling defendant, Fidelity may presume without any
9 investigation that the customer, if otherwise qualified, is entitled to a discount.

10 18. A. Fidelity shall prominently disclose in the preliminary report provided
11 to customers that any customer who purchased, sold or refinanced
12 residential property between May, 1995 and the date of entry of
13 judgment may be entitled to a \$20 discount on escrow services for each
14 such transaction. The disclosure shall state that if the previous
15 transaction involved property that is different from the property that is
16 the subject of the current transaction, the customer must inform Fidelity
17 of the earlier transaction, provide the address of the property involved
18 in the previous transaction, and the date or approximate date, that the
19 escrow closed to be eligible for a discount. The disclosure shall be in
20 substantially the same form as the following:

21 “You may be entitled to receive a \$20 discount on escrow
22 services if you purchased, sold or refinanced residential
23 property in California between May, 1995 and [the date of entry
24 of judgment]. If you had more than one qualifying transaction,
25 you may be entitled to multiple discounts.

26 If your previous transaction involved the same property that is
27 the subject of this preliminary report, you do not have to do
28 anything, Fidelity will provide the discount.

1 If your previous transaction involved property different from the
2 property that is subject of your current transaction, you must
3 inform Fidelity of the earlier transaction, provide the address of
4 the property involved in the previous transaction, and the date or
5 approximate date that the escrow closed to be eligible for the
6 discount.

7 Unless you inform Fidelity of the prior transaction on a property
8 that is not the subject of this transaction, Fidelity has no
9 obligation to conduct an investigation to determine if you
10 qualify for a discount. If you provide Fidelity information
11 concerning a prior transaction, Fidelity is required to determine
12 if you qualify for a discount.

13 B. Customers shall not be required to provide any documentation or
14 verification of eligibility or to request a discount in order to qualify for
15 a discount if their prior qualifying transaction involved the same
16 property that is the subject of the current transaction. Fidelity,
17 however, shall consider any documentation voluntarily provided by
18 customers in determining eligibility for a discount.

19 C. If the previous transaction involved property different from the
20 property that is the subject of the current transaction, the customer
21 must, in response to the notice provided by Fidelity described in
22 paragraph 18(A) of this Judgment, inform Fidelity of the earlier
23 transaction, provide the address of the property involved in the previous
24 transaction, and the date, or approximate date, that the escrow closed
25 to be eligible for a discount. Unless the customer provides this
26 information, Fidelity shall have no obligation to conduct an
27 investigation to determine whether the customer qualifies.

28 ///

19. Fidelity shall provide discounts under this judgment until the earlier of (a) the date on which Fidelity has paid out discounts totaling the MDRO or (b) 10 years after the date of the commencement of the discount program.

20. If at any time prior to payment of the MDRO, Fidelity completes less than 100,000 escrows in a fiscal year, one-half of the difference between what has been paid in discounts and the MDRO shall become immediately due and payable in cash to the Attorney General. These funds shall be distributed as cy pres restitution to the Consumer Protection Prosecution Trust Fund described in paragraph 22 of this Judgment. In such event, the remaining one-half of the difference between what has been paid and the MDRO shall continue to be paid in the form of discounts.

21. Fidelity shall provide counsel for the People with a report, quarterly during the first year following the date of entry of this judgment and semiannually thereafter, indicating that Fidelity is acting in compliance with the obligation to provide discounts as set forth in this judgment and stating the names and addresses of each person receiving a discount, as required under this judgment, and the amount of the discount. The reports required herein shall be subscribed under oath by an officer of Fidelity indicating his or her firsthand personal knowledge of the facts set forth in the report.

CASH PAYMENT

22. Fidelity is ordered to pay the People the sum of five million one hundred forty-eight thousand three hundred twenty dollars (\$5,148,320) in two equal installments, the first upon execution of the stipulation for entry of judgment and the second installment on the date that is 12 months following the date on which the first installment is required to be paid. Each installment shall be paid in the form of a wire transfer to the Office of the Attorney General and distributed as set forth below. The Attorney General shall hold the first installment until the completion of the verification procedure described in paragraphs 23 through 25 of the Judgment and a determination that the information provided by Fidelity was substantially complete and accurate as more fully described in paragraph 1F of the Stipulation. Thereafter, the Attorney General shall distribute the first installment and, upon

1 its receipt, the second installment as follows: the Attorney General shall distribute one
2 million three hundred thousand dollars (\$1,300,000) as provided under Business and
3 Professions Code section 17206 and Government Code section 26506 with one-half of those
4 funds distributed to the Attorney General, one-fourth of those funds distributed to the District
5 Attorney of the City and County of San Francisco, and one-fourth of the funds distributed
6 to the City Attorney of the City and County of San Francisco; four hundred twenty-four
7 thousand one hundred sixty dollars (\$424,160) among counsel for the People as
8 reimbursement of attorney's fees and costs, including attorney's fees and costs for the
9 monitoring of Fidelity's compliance with the judgment; and eight hundred fifty thousand
10 dollars (\$850,000) as cy pres restitution to be paid to the Consumer Protection Prosecution
11 Trust Fund, established in People v. ITT Consumer Financial Corporation, et al., Alameda
12 Superior Court Case No. 656038-0, for the investigation and prosecution of cases involving
13 consumer real estate, home mortgage, and consumer finance transactions, civil law
14 enforcement or other consumer protection matters as the trustees of that trust fund in their
15 discretion may direct.

16 VERIFICATION

17 23. Fidelity and counsel for the People jointly shall select, and Fidelity shall retain
18 at its sole expense, a third party settlement administrator ("Settlement Administrator") and
19 a third party verifier ("Verifier"). The Settlement Administrator shall be an independent firm
20 that is substantially experienced in the administration of consumer payment programs. The
21 Verifier shall be an independent firm containing one or more certified public accountants
22 experienced in verification and examination procedures. The total cost of verification
23 performed by the Verifier shall not exceed \$328,000. To the extent, if any, the costs of
24 verification exceed \$280,000, Fidelity shall receive a dollar for dollar credit on attorneys'
25 fees set forth in paragraph 22 for any amount paid to the Verifier between \$280,000 and
26 \$328,000. The Verifier shall have responsibility for the following:

27 A. The Verifier shall verify that information provided to the People by
28 Fidelity was substantially complete and accurate at the time the information was presented.

1 The verification procedure may include a reasonable examination and testing of Fidelity's
2 records and interviews of Fidelity's personnel.

3 B. The procedures to be employed by the Verifier to determine compliance
4 and payment shall be developed by the Verifier consistent with applicable standards
5 established by the American Institute of Certified Public Accountants and shall include
6 testing and such other procedures sufficient to enable the Verifier to render an opinion
7 concerning the defendants' assertion of compliance relied on by the People as a basis for
8 settlement.

9 C. The Verifier shall provide Fidelity and counsel for the People with a
10 final report no later than January 1, 2003, unless Fidelity and counsel for the People agree
11 to a later date, which agreement shall not be unreasonably withheld if additional time is
12 needed to prepare an appropriate report. The final report shall be issued promptly upon
13 completion of all action required hereunder. The final report shall (1) summarize all tasks
14 undertaken by the Verifier, (2) set forth the Verifier's opinion that defendants have furnished
15 substantially accurate and complete information to counsel for the People, and (3) set forth
16 the Verifier's certification of its compliance with the procedures set forth in this Judgment
17 except to the extent of any specifically described deficiencies in compliance. The final report
18 shall be provided to the Attorney General of California, Consumer Law Section, 300 S.
19 Spring Street, Los Angeles, CA 90013, Attention: Deputy Attorney General Christina Tusan;
20 to the San Francisco District Attorney, Consumer and Environmental Protection Unit, 732
21 Brannan Street, San Francisco, California, Attention: June Cravett; and to the City Attorney
22 of San Francisco, 1390 Market Street, 6th Floor, San Francisco, California 94102-5408,
23 Attention: Donald Margolis (and/or to such other address or to the attention of such other
24 person as the offices of the Attorney General, District Attorney of San Francisco, or City
25 Attorney of San Francisco shall specify in writing to Fidelity and the Verifier).

26 D. The letter of engagement entered into between Fidelity and the Verifier
27 shall provide the following: (1) a description of the Verifier's duties as provided in this
28 Judgment, (2) a requirement that the Verifier shall make available to Fidelity and counsel for

1 the People, within 30 days of written request, copies of all records, documents, reports and
2 work papers obtained or prepared in connection with the duties set forth herein, and (3) a
3 requirement that the Verifier make available to Fidelity and counsel for the People a person
4 or persons familiar with the procedures to be performed as required by this Judgment or
5 provided in the letter of engagement. If Fidelity has already produced documents responsive
6 to the request, the Verifier may identify those documents in lieu of providing duplicates. The
7 letter of engagement shall acknowledge that the Attorney General, the District Attorney of
8 San Francisco, and the City Attorney of San Francisco are each an intended user or
9 beneficiary of the report.

10 24. To facilitate the Verifier's responsibilities, Fidelity shall make available, at
11 Fidelity's expense, to the Verifier sufficient documents, persons, and other information,
12 including data bases, to enable the Verifier to fulfill its functions under this Judgment,
13 including documents, access to persons, and information reasonably related to the
14 determination of whether Fidelity furnished substantially accurate and complete information
15 to counsel for the People.

16 25. Fidelity and the Verifier shall provide for review by the Attorney General, the
17 District Attorney of San Francisco, and/or the City Attorney of San Francisco, within 30 days
18 of a written request, all records, documents and personnel reasonably necessary to ascertain
19 Fidelity's and the Verifier's compliance with this Judgment. Nothing herein limits the right
20 of the Attorney General, the District Attorney of San Francisco, or the City Attorney of San
21 Francisco to request or obtain information from defendants as otherwise provided in this
22 Judgment or as provided by law.

23 SETTLEMENT ADMINISTRATION

24 26. The Settlement Administrator shall carry out its duties as described in the
25 "Payments to Claimants" portion of this judgment, as set forth in paragraphs 6 through 14,
26 and shall verify that Fidelity has processed claims, properly rejected those claims Fidelity
27 determined to be ineligible, and actually paid claimants with eligible claims as
28 provided under paragraphs 6 through 14.

1 27. The Settlement Administrator shall provide Fidelity and counsel for
2 the People with a final report no later than May 1, 2003, unless Fidelity and counsel for the
3 People agree to a later date, which agreement shall not be unreasonably withheld if additional
4 time is needed to prepare an appropriate report. The final report shall be issued promptly
5 upon completion of all action required hereunder. The final report shall (1) set forth the
6 Settlement Administrator's opinion that Fidelity has paid cash claims to claimants as
7 provided under paragraphs 6 through 14 of this Judgment, and (2) set forth the Settlement
8 Administrator's certification of its compliance with the procedures set forth in this Judgment
9 except to the extent of any specifically described deficiencies in compliance.

10 28. The letter of engagement entered into between Fidelity and the Settlement
11 Administrator shall provide the following: (1) a description of the Settlement Administrator's
12 duties as provided in this Judgment, (2) a requirement that the Settlement Administrator shall
13 make available to Fidelity and counsel for the People, within 30 days of written request,
14 copies of all records, documents, reports and work papers obtained or prepared in connection
15 with the duties set forth herein, and (3) a requirement that the Settlement Administrator make
16 available to Fidelity and counsel for the People a person or persons familiar with the
17 procedures to be performed as required by this Judgment or provided in the letter of
18 engagement. If Fidelity has already produced documents responsive to the request, the
19 Settlement Administrator may identify those documents in lieu of providing duplicates. The
20 letter of engagement shall acknowledge that the Attorney General, the District Attorney of
21 San Francisco, and the City Attorney of San Francisco are each an intended user or
22 beneficiary of the report.

23 29. To facilitate the Settlement Administrator's responsibilities, Fidelity
24 shall make available, at Fidelity's expense, to the Settlement Administrator sufficient
25 documents, persons, and other information, including data bases, to enable the Settlement
26 Administrator to fulfill its functions under this Judgment, including documents, access to
27 persons, and information reasonably related to the determination of whether Fidelity
28 furnished (A) substantially accurate and complete information to counsel for the People

1 regarding payment of claims, (B) properly determined claimants' eligibility for payment
2 under paragraphs 6 through 14 of this Judgment, and (C) timely paid eligible cash claimants.

3 30. A. On or before May 1, 2003, Fidelity and the Settlement Administrator
4 shall provide, to the extent applicable to each, to the Attorney General of California,
5 Consumer Law Section, 300 S. Spring Street, Los Angeles, CA 90013, Attention: Deputy
6 Attorney General Christina Tusan; to the San Francisco District Attorney, Consumer and
7 Environmental Protection Unit, 732 Brannan Street, San Francisco, California, Attention:
8 June Cravett; and to the City Attorney of San Francisco, 1390 Market Street, 6th Floor, San
9 Francisco, California 94102-5408, Attention: Donald Margolis (and/or to such other address
10 or to the attention of such other person as the offices of the Attorney General, District
11 Attorney of San Francisco, or City Attorney of San Francisco shall specify in writing to
12 Fidelity and the Settlement Administrator), a Final Certification Report containing the
13 following information:

14 (1) A certification by Fidelity that all monetary relief provided for
15 herein due to all eligible claimants has been paid. The report shall also certify compliance
16 by Fidelity and the Settlement Administrator with each provision of this Judgment related
17 to such monetary relief to the extent applicable to each.

18 (2) An alphabetical list of the name, address, and telephone number
19 of every eligible cash claimant to whom payment was made and a list of the name, address,
20 and telephone number of every person who filed a claim that was determined to be ineligible
21 for payment together with a brief description of the basis for concluding that the claimant
22 was ineligible.

23 B. Fidelity and the Settlement Administrator shall provide for review by
24 the Attorney General, the District Attorney of San Francisco, and/or the City Attorney of San
25 Francisco, within 30 days of a written request, all records, documents and personnel
26 reasonably necessary to ascertain Fidelity's and the Settlement Administrator's compliance
27 with this Judgment as to claimants (for example, in response to inquiries concerning specific
28 claimants). Nothing herein limits the right of the Attorney General, the District Attorney of

1 San Francisco, or the City Attorney of San Francisco to request or obtain information from
2 defendants as otherwise provided in this Judgment or as provided by law.

3 RETENTION OF JURISDICTION

4 31. This Court shall retain jurisdiction over this matter for the purpose of enabling
5 any of the parties to apply to the Court at any time for such further orders or directives as
6 may be necessary or appropriate for the modification of the injunctive provisions herein or
7 for the interpretation or enforcement of any of the provisions of this Judgment.

8 BUSINESS AND PROFESSIONS CODE SECTION 17203

9 32. All injunctive and other equitable relief under this Judgment, including all
10 relief described in paragraphs 5 through 22 inclusive, is ordered pursuant to the court's
11 equitable powers, including those remedial powers authorized by Business and Professions
12 Code section 17203.

13 PAYMENT OF COURT COSTS

14 33. Fidelity shall pay all court costs associated with its appearance in this
15 action, including any fee for the filing of the stipulation for entry of judgment. Except as
16 otherwise provided herein, each party shall bear its own costs, including attorneys' fees.

17 EFFECTIVE DATE AND SCOPE OF JUDGMENT

18 34. This Judgment shall be binding and effective when entered by the Court.

19 35. As the parties have stipulated, plaintiffs have determined that this Judgment,
20 including the payment provisions, is a fair, equitable, and final resolution and disposition of
21 all and only those matters pleaded in the Complaint to constitute violations of Business and
22 Professions Code sections 17200 et seq. and 17500 during the period from May 19, 1995
23 until the date of entry of this judgment and those matters pleaded to constitute violations of
24 Code of Civil Procedure section 1500 et seq. for unclaimed property accruing beginning May
25 19, 1995 until the date of entry of this judgment (other than claims for interest pursuant to
26 Code of Civil Procedure section 1577). As the parties have further stipulated and the court
27 adjudges, the Stipulation for Entry of Final Judgment and this Judgment do not settle,
28 compromise, bar, or otherwise in any manner affect either (1) any claims that the State

1 Controller may have against Fidelity for the time period prior to May 19, 1995 concerning
2 property prior to May 19, 1992, and (2) any and all claims for interest pursuant to Code of
3 Civil Procedure section 1577 for monies escheated to the State Controller's Office without
4 limitation on time period, which claims, if any, the State Controller may pursue or which
5 defenses, if any, Fidelity may assert, notwithstanding the Stipulation for Entry of Final
6 Judgment or the entry of this Judgment.

7
8
9 DATED: _____

JUDGE OF THE SUPERIOR COURT

BILL LOCKYER, Attorney General
of the State of California
HERSCHEL T. ELKINS, (SBN 27279)
Senior Assistant Attorney General
CHRISTINA V. TUSAN, (SBN 192203)
Deputy Attorney General
300 South Spring Street, Suite 5000
Los Angeles, California 90013

RONALD A. REITER, (SBN 62497)
Supervising Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, California 94102

Attorneys for the People of the State of California
(Additional counsel for the Plaintiffs on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

PEOPLE OF THE STATE OF CALIFORNIA
AND KATHLEEN CONNELL,
CONTROLLER OF THE STATE OF
CALIFORNIA,

Plaintiffs,

v.

STEWART TITLE COMPANY OF
CALIFORNIA, INC.; STEWART TITLE
GUARANTY COMPANY; AND STEWART
INFORMATION SERVICES CORPORATION

Defendants.

FINAL JUDGMENT

FINAL JUDGMENT

TERENCE HALLINAN
District Attorney for the City and County of San Francisco
DAVID A. PFEIFER (SBN 127785)
JUNE D. CRAVETT (SBN 105094)
Assistant District Attorneys
732 Brannan Street
San Francisco, California 94103

Attorneys for the People of the State of California

DENNIS HERRERA,
City Attorney for the City and County of San Francisco
JOANNE HOEPER (SBN 114961)
Chief Trial Attorney
DONALD P. MARGOLIS (SBN 116588)
Deputy City Attorneys
1390 Market Street, 6th Floor
San Francisco, California 94102-5408

Attorneys for the People of the State of California

KATHLEEN CONNELL, Controller
for the State of California
RICHARD J. CHIVARO (SBN 124391)
Chief Counsel
300 Capitol Mall, Suite 1850
Sacramento, California 95814

Attorneys for the California State Controller

1 Plaintiff, the People of the State of California (“the People”), appeared through the
2 Attorney General, Bill Lockyer, by Deputy Attorneys General Ronald A. Reiter and Christina
3 V. Tusan, through the District Attorney of San Francisco, Terence Hallinan, by Assistant
4 District Attorney June Cravett, and through the City Attorney of San Francisco, Dennis
5 Herrera, by Deputy City Attorney Donald P. Margolis. Plaintiff Kathleen Connell, Controller
6 of the State of California appeared through Richard J. Chivaro, Chief Counsel. Defendants
7 Stewart Title Company of California, Inc., Stewart Title Guaranty Company, and Stewart
8 Information Services Corporation (collectively “Stewart”) appeared through their attorneys
9 Alborg, Veiluva and Cannata, by Thomas E. Alborg.

10 The Court having considered the Stipulation For Entry of Final Judgment executed
11 by the parties and filed herewith, and good cause appearing,

12 IT IS HEREBY AGREED, ORDERED, ADJUDGED AND DECREED THAT:

13 JURISDICTION

14 1. This Court has jurisdiction of the subject matter of this action and of the
15 parties. Venue as to all matters between the parties relating hereto lies in this Court.

16 INJUNCTION

17 2. The injunctive provisions of this judgment apply to Stewart; its directors,
18 officers, and shareholders; to the employees, representatives, agents, subsidiary and affiliated
19 companies (regardless of the form of business organization), successors-in-interest, and
20 assigns of Stewart; and any person or entity acting by, through, under, on behalf of, or in
21 concert with Stewart or any other person or entity described in this paragraph, whether acting
22 as a principal or agent, all of whom are referred to as “defendants.” For the purpose of the
23 injunctive provisions of this judgment, the term “agent” does not apply to non-subsiary
24 companies or entities in which Stewart does not have an ownership interest under the
25 following circumstances: 1) those entities are performing escrows services on their own
26 behalf and 2) those entities are acting as Stewart’s agent solely through their involvement in
27 facilitating the provision of title insurance on behalf of Stewart.

1 3. For the purpose of this judgment, the term “financial benefit” means any
2 consideration, other than consideration denominated as interest, that defendants obtain from
3 a financial institution in connection with the defendants’ deposit of escrow funds with that
4 financial institution. “Financial benefit” includes a financial institution’s absorption of
5 expenses incident to providing normal banking functions or its forbearance from charging
6 a fee in connection with providing normal banking functions or services, including those
7 normal banking functions and services that the Federal Reserve Board determines may be
8 provided without full charge consistent with 12 C.F.R. Part 217. Examples of “financial
9 benefits” that may be provided by a financial institution include, but are not limited to,
10 escrow accounting services and bank reconciliation, wire transfers, and loans at preferential
11 interest rates.

12 4. Defendants, and each of them, are permanently enjoined and restrained from
13 engaging in any of the following:

14 A. Billing or collecting from title insurance or escrow customers an amount
15 that exceeds the actual cost to defendants of services provided by third parties in connection
16 with defendants’ performance of escrow and title services, such as overnight mail, courier,
17 and notary services, unless (1) such practice is permitted by state and federal law and (2)
18 defendants clearly and conspicuously disclose that the defendants have marked-up the third
19 party charge.

20 B. Obtaining any financial benefit in connection with the deposit of escrow
21 funds unless the full value of all financial benefits is (1) exclusively used to underwrite the
22 cost of escrow services and (2) fully allocated to Stewart’s escrow division. Stewart shall
23 continually maintain, with a retention period of a minimum of three fiscal years, accounting
24 information that clearly, accurately, and in sufficient detail demonstrates its compliance with
25 this provision.

26 C. Assessing a separate charge to escrow or title customers for any service
27 such as wire transfers, if the service is provided as a financial benefit or the cost of the

1 service is otherwise waived, credited, paid, or assumed by the provider of the service.

2 D. Depositing escrow funds in any financial institution in which defendants
3 have any ownership interest, management, or control if (1) the deposit of funds in that
4 financial institution would breach Stewart's fiduciary duties as escrow agent or (2) that
5 financial institution failed to provide financial benefits in connection with the deposit of
6 escrow funds that were comparable to the best arrangement for the provision of financial
7 benefits offered by California financial institutions in connection with the deposit of escrow
8 funds.

9 E. Demanding, charging, or collecting a separate fee from escrow or title
10 insurance customers in connection with investigating or tracking whether a beneficiary under
11 a deed of trust causes a deed of reconveyance to be recorded after the obligation owed to the
12 beneficiary has been satisfied, except to the extent that a separate fee is affirmatively and
13 explicitly authorized by a subsequent statute.

14 F. Demanding, charging, or collecting a separate fee from escrow or title
15 insurance customers in connection with preparing, issuing, or recording a release of
16 obligation or providing notice of intention to do so, except to the extent that a separate fee
17 is affirmatively and explicitly authorized by a subsequent statute.

18 G. Collecting a separate fee for a deed of reconveyance (including any
19 recording fee therefore) from an escrow or title insurance customer without separately
20 accounting for this fee in a suspense account or otherwise segregating this fee from
21 defendants' funds in accordance with generally acceptable accounting principles until the fee
22 is transmitted to the trustee or beneficiary under the deed of trust, is returned to the customer,
23 or is paid as required by law.

24 H. Disbursing monies to financial institutions that are beneficiaries under
25 deeds of trust at the close of escrow unless disbursed in the following manner:

26 (1) By wire or electronic fund transfer upon close of escrow; by
27 check sent upon close of escrow via a next day delivery service, such as Federal Express, for

1 delivery on the next business day following the close of escrow; or by hand delivery for
2 delivery on the same day as, or on the next business day following, the close of escrow.

3 (2) In the event that the close of escrow occurs so late in the day that
4 it would be impracticable for the funds to be disbursed in the manner described in
5 subparagraph H(1), the funds shall be disbursed on the next business day following the close
6 of escrow by the most expeditious means available.

7 (3) Notwithstanding subparagraphs H(1) and H(2), any means
8 directed by the seller or refinancing owner in an escrow instruction signed or initialed by the
9 seller or refinancing owner.

10 (4) If the defendant acts as the escrow, any instruction described in
11 subparagraph H(3) shall appear on a separate page with no other writing except that
12 necessary to identify the escrow, the parties, the property, the date, the signature of the party
13 giving the instruction, and the following notice which shall clearly and conspicuously appear
14 immediately above or adjacent to the place reserved for the escrow customer's signature.
15 "Any delay in sending funds to a beneficiary under a deed of trust could result in additional
16 interest charges or other expense. You should compare the amount of interest charges or
17 other expenses resulting from a delay in sending funds with the amount you will be charged
18 for wire, electronic fund transfer, or overnight delivery before you sign or initial this escrow
19 instruction."

20 (5) When disbursing funds by wire or electronic transfer, Defendant
21 shall utilize to the fullest extent practicable wire transfers (or similar electronic transfers)
22 where such transfers are included in earned credits furnished by the depositing institution.

23 RESTITUTION

24 5. Stewart shall pay restitution in the total amount of two million two hundred
25 fifty thousand dollars (\$2,250,000) ("Restitution") in the form of cash payments, as provided
26 in paragraphs 6 through 17, with the balance of the restitution remaining after cash payments
27 paid as cy pres restitution to the Consumer Protection Prosecution Trust Fund, established

1 in People v. ITT Consumer Financial Corporation, et al., Alameda Superior Court Case No.
2 656038-0, for the investigation and prosecution of cases involving consumer real estate,
3 home mortgage, and consumer finance transactions, civil law enforcement or other consumer
4 protection matters as the trustees of that trust fund in their discretion may direct. All
5 administrative expenses associated with the payment of these funds shall be borne by Stewart
6 and are in addition to Stewart's restitution obligation described in this paragraph.

7 **Payments to Claimants**

8 6. A. Within five days after the Attorney General has given Stewart notice
9 that the verification process has been completed and the Attorney General has determined
10 that the information provided was substantially complete and accurate, as more fully
11 described in paragraphs 19-21 of this Judgment and paragraph 1F of the Stipulation,
12 Stewart shall directly mail a check in the amount of sixty five dollars (\$65) to each of its
13 former escrow customers who meet all of the following conditions:

14 (1) Customer closed an escrow transaction for the purchase, sale or
15 refinancing of residential property containing one- to four-dwelling units where
16 Stewart acted as escrow agent or title insurer between May 19, 1995 and the date of the
17 entry of judgment (hereafter referred to as "Customer").

18 (2) (a) Customer was charged and paid a fee for the preparation or
19 recording of a deed of reconveyance where Stewart did not perform the services charged
20 for; or (b) Customer was charged and paid a fee for a release of obligation and Stewart
21 did not prepare a release of obligation or (c) Stewart charged, and Customer paid, for
22 preparing a release of obligation or recording a reconveyance where the performance of
23 the service was unnecessary.

24 (3) Where Stewart has charged a fee as described in paragraph
25 6(A)(2), there is a presumption that such fees were paid by Customer.

26 7. Stewart shall have no obligation to make payment under paragraph 6 of this
27 Judgment if Stewart establishes that it transmitted the Customer's reconveyance fee to the

1 trustee or beneficiary under the deed of trust that encumbered the customer's property or
2 escheated the fee charged the customer to the state.

3 8. Any payments not disbursed under paragraph 6 of this Judgment shall be
4 subject to payment to each eligible Customer who submits a timely claim ("Claimant") as
5 more fully discussed in paragraph 10 of this Judgment. For the purpose of this judgment, a
6 claim shall be deemed eligible and the Claimant shall be entitled to payment under the
7 following circumstances:

8 A. Claimant closed an escrow transaction for the purchase, sale or
9 refinancing of residential property containing one- to four-dwelling units where Stewart
10 acted as escrow agent or title insurer between May 19, 1995 and the date of the entry of
11 judgment.

12 B. (1) Claimant deposited funds during his or her escrow transaction that
13 may have been used by Stewart to obtain financial benefits from a lending institution; (2) the
14 Claimant was charged for various miscellaneous services including messenger services,
15 recording services, overnight delivery services, or wire transfer services or (3) Claimant paid
16 for tracking service or paid a fee in connection with preparing, issuing, or recording a release
17 of obligation or providing a notice of intent to do so.

18 C. Claimants in the category described in paragraphs 8(B)(1) or 8(B)(2)
19 of this Judgment who present a single claim under one of those categories shall be entitled
20 to a minimum payment of twenty five (\$25) in cash, and a maximum cash payment of fifty
21 dollars (\$50), depending on the number of claims and available settlement funds.

22 D. Claimants with claims under both paragraphs 8(B)(1) and 8(B)(2) of this
23 Judgment shall be entitled to a minimum payment of fifty dollars (\$50) in cash, and a
24 maximum payment of one hundred dollars (\$100) depending on the number of claims and
25 available settlement funds.

26 E. Claimants with claims under 8(B)(3) shall be entitled to a payment of
27 sixty-five dollars (\$65) in cash. This payment shall be in addition to any amounts available

1 under paragraphs 8(C) or 8(D) of this Judgment.

2 9. Stewart shall have no obligation to make payment under paragraph 8(B)(3) of
3 this Judgment if Stewart establishes that it did any of the following:

4 A. Transmitted the Claimant's reconveyance fee to the trustee or
5 beneficiary under the deed of trust that encumbered the Customer's property.

6 B. Prepared and recorded a deed of reconveyance while acting in the
7 capacity of trustee under the deed of trust.

8 C. Escheated to the state the fee charged the Customer.

9 10. Within five days after the Attorney General has given Stewart notice that the
10 verification process has been completed and that the Attorney General has determined that
11 the information provided was substantially complete and accurate, as more fully described
12 in paragraphs 19-21 of this Judgement and paragraph 1F of the Stipulation, Stewart, at its
13 sole expense, shall cause to be published a notice, whose form and contents are satisfactory
14 to the People, at least once per week for three consecutive weeks. The published notices will
15 appear in the Los Angeles Times, the San Francisco Chronicle and Examiner, the Sacramento
16 Bee, the Modesto Bee, the Fresno Bee, the San Diego Union Tribune, the Bakersfield
17 Californian, the Orange County Register, the San Jose Mercury News, and the Oakland
18 Tribune. The notice shall state that former escrow Customers who meet the criteria set forth
19 in paragraph 8 are eligible to file a claim to recover a minimum of twenty-five dollars (\$25)
20 and a maximum of one hundred sixty-five dollars (\$165) if the claim is returned by a date
21 specified in the notice that is at least 90 days after the date on which the first notice is
22 published. The notice shall indicate that the claim must indicate the Claimant's name and
23 the address of the property involved in the escrow. The notice may request additional
24 documentation if available to the Customer but shall clearly indicate that the Customer is not
25 obliged to provide any further information to be eligible. The published notice shall state
26 that no specific claim form is required as long as the Claimant's name and property address
27 is set forth, but the notice shall set forth a sample form that may be completed and returned.

1 The notice shall also set forth the address to which the claim form is to be sent and a toll-free
2 telephone number to which inquiries may be directed.

3 11. The claims shall be returned to a Settlement Administrator, as more
4 particularly described in paragraph 19. The Settlement Administrator shall log the claims
5 and transmit them to Stewart.

6 12. After the close of the claims settlement period, the Settlement Administrator
7 will transmit all claims to Stewart. After the completion of the verification process and a
8 determination that the information provided by Stewart was substantially complete and
9 accurate, as more fully described in paragraphs 19 through 21 of this Judgment and
10 paragraph 1F of the Stipulation, Stewart shall (A) pay the claim without further review or (B)
11 review the claim, conduct a diligent search of all relevant business records and public
12 records, and determine the Claimant's eligibility for payment. If Stewart determines that the
13 Claimant is eligible, Stewart shall pay the claim within 15 days. If Stewart determines that
14 the Claimant is not eligible, Stewart shall provide the Settlement Administrator, within 15
15 days, with the name and address of each person who submitted the claim that Stewart
16 determined was ineligible and a complete statement of reasons for the denial of that
17 Claimant's claim including all of the documentation on which Stewart relies to establish
18 Stewart's determination that the Claimant is not eligible for payment. The Settlement
19 Administrator shall review the rejected claims, any written objections submitted as described
20 under paragraph 13, and the records, including the escrow file, that may be relevant for
21 determining the Claimant's eligibility. The Settlement Administrator shall report its
22 evaluation of the merits of each rejected claim to the People. If the People dispute Stewart's
23 rejection of a claim and the parties are unable to resolve the dispute, all disputed claims shall
24 be submitted, at Stewart's sole expense, to an arbitrator selected by the parties or, in the event
25 the parties do not agree on an arbitrator, to an arbitrator selected by the court.

26 13. Stewart shall also notify each person who submitted a claim that was rejected
27 and briefly describe the reason for rejecting the claim. The notice shall indicate that if the

1 Claimant disputes the rejection of the claim, the Claimant may provide the Settlement
2 Administrator with a written objection stating all of the Claimant's grounds for disputing the
3 rejection of the claim. The notice shall indicate that the written objection must be mailed to
4 the Settlement Administrator at an address set forth in the notice and must be submitted by
5 a specified date, which shall not be less than 15 days following the date of the mailing of the
6 notice.

7 14. Stewart shall pay the sums set forth in paragraph 6 for all undisputed claims
8 and all disputed claims that an arbitrator determines are owed as discussed in paragraph 12.
9 The amount of payments under paragraph 8 shall be prorated based on remaining available
10 settlement funds, but shall in no event exceed the maximum amounts payable under
11 paragraph 8 or fall below the minimum amounts payable under paragraph 8. Under no
12 circumstances shall Stewart be obligated to make restitution to Claimants of a sum in excess
13 of the total Restitution amount set forth in paragraph 5.

14 15. The Settlement Administrator shall respond to any questions by the public
15 about the claims procedure and, in connection therewith, shall establish a toll free number.

16 16. The envelopes containing the checks sent by Stewart to Claimants shall be
17 marked with the Settlement Administrator's return address. If any check sent to a Claimant
18 is returned undeliverable, the Settlement Administrator shall take or cause to be taken
19 reasonable steps, including skip-tracing if reasonable, to attempt to locate the Claimant. If
20 thereafter the Claimant is still not located or if the Claimant's check is not cashed within six
21 months, any funds payable under the judgment shall be promptly, but in no event later than
22 October 1, 2002, paid as cy pres restitution as provided in paragraph 5.

23 17. Within 90 days following the closure of the cash claims period, Stewart shall
24 provide the People and the Settlement Administrator with a report indicating the name and
25 address of each Claimant paid, the date of payment, and the amount of the claim. If any
26 claims are thereafter paid, Stewart shall supplement the report with additional quarterly
27 reports indicating the name and address of each Claimant paid, the date of payment, and the

1 amount paid. Within seven months of the date of issuing checks in payment of claims,
2 Stewart shall provide the People and the Settlement Administrator with a report of the names
3 and addresses of Claimants whose checks are not cashed within six months of issuance. The
4 reports required herein shall be subscribed under oath by an officer of Stewart indicating his
5 or her firsthand personal knowledge of the facts set forth in the report.

6 CASH PAYMENT

7 18. In addition to the Restitution amount provided in paragraph 5, Stewart is
8 ordered to pay the People the sum of two hundred fifty thousand dollars (\$250,000) in the
9 form of a wire transfer to the Office of the Attorney General. Upon the completion of the
10 verification procedure described in paragraphs 19 through 21 of the Judgment and a
11 determination that the information provided by Stewart was substantially complete and
12 accurate as more fully described in paragraph 1F of the Stipulation, the Attorney General
13 shall distribute one hundred fifty thousand dollars (\$150,000) as provided under Business and
14 Professions Code section 17206, 17536 and Government Code section 26506 with one-half
15 of those funds distributed to the Attorney General, one-fourth of those funds distributed to
16 the District Attorney of the City and County of San Francisco, and one-fourth of the funds
17 distributed to the City Attorney of the City and County of San Francisco; one hundred
18 thousand dollars (\$100,000) among counsel for the People as reimbursement of attorney's
19 fees and costs, including attorney's fees and costs for the monitoring of Stewart's compliance
20 with the judgment.

21 VERIFICATION

22 19. Stewart and counsel for the People jointly shall select, and Stewart shall
23 retain at its sole expense, a third party settlement administrator ("Settlement
24 Administrator") and a third party verifier ("Verifier"). The Settlement Administrator
25 shall be an independent firm that is substantially experienced in the administration of
26 consumer payment programs. The Verifier shall be an independent firm containing one
27 or more certified public accountants experienced in verification and examination

1 procedures. The Verifier shall have responsibility for the following:

2 A. The Verifier shall verify that information provided to the People by
3 Stewart was substantially complete and accurate at the time the information was
4 presented. The verification procedure may include a reasonable examination and testing
5 of Stewart's records and interviews of Stewart's personnel.

6 B. The procedures to be employed by the Verifier to determine
7 compliance and payment shall be developed by the Verifier consistent with applicable
8 standards established by the American Institute of Certified Public Accountants and shall
9 include testing and such other procedures sufficient to enable the Verifier to render an
10 opinion concerning the defendants' assertion of compliance relied on by the People as a
11 basis for settlement.

12 C. The Verifier shall provide Stewart and counsel for the People with a
13 final report no later than March 1, 2002, unless Stewart and counsel for the People agree
14 to a later date, which agreement shall not be unreasonably withheld if additional time is
15 needed to prepare an appropriate report. The final report shall be issued promptly upon
16 completion of all action required hereunder. The final report shall (1) summarize all tasks
17 undertaken by the Verifier, (2) set forth the Verifier's opinion that defendants have
18 furnished substantially accurate and complete information to counsel for the People, and
19 (3) set forth the Verifier's certification of its compliance with the procedures set forth in
20 this Judgment except to the extent of any specifically described deficiencies in
21 compliance. The final report shall be provided to the Attorney General of California,
22 Consumer Law Section, 300 S. Spring Street, Los Angeles, CA 90013, Attention: Deputy
23 Attorney General Christina Tusan; to the San Francisco District Attorney, Consumer and
24 Environmental Protection Unit, 732 Brannan Street, San Francisco, California, Attention:
25 June Cravett; and to the City Attorney of San Francisco, 1390 Market Street, 6th Floor,
26 San Francisco, California 94102-5408, Attention: Donald P. Margolis (and/or to such
27 other address or to the attention of such other person as the offices of the Attorney

1 General, District Attorney of San Francisco, or City Attorney of San Francisco shall
2 specify in writing to Stewart and the Verifier).

3 D. The letter of engagement entered into between Stewart and the
4 Verifier shall provide the following: (1) a description of the Verifier's duties as provided
5 in this Judgment, (2) a requirement that the Verifier shall make available to Stewart and
6 counsel for the People, within 30 days of written request, copies of all records,
7 documents, reports and work papers obtained or prepared in connection with the duties
8 set forth herein, and (3) a requirement that the Verifier make available to Stewart and
9 counsel for the People a person or persons familiar with the procedures to be performed
10 as required by this Judgment or provided in the letter of engagement. If Stewart has
11 already produced documents responsive to the request, the Verifier may identify those
12 documents in lieu of providing duplicates. The letter of engagement shall acknowledge
13 that the Attorney General, the District Attorney of San Francisco, and the City Attorney
14 of San Francisco are each an intended user or beneficiary of the report.

15 20. To facilitate the Verifier's responsibilities, Stewart shall make available, at
16 Stewart's expense, to the Verifier sufficient documents, persons, and other information,
17 including data bases, to enable the Verifier to fulfill its functions under this Judgment,
18 including documents, access to persons, and information reasonably related to the
19 determination of whether Stewart furnished substantially accurate and complete
20 information to counsel for the People.

21 21. Stewart and the Verifier shall provide for review by the Attorney
22 General, the District Attorney of San Francisco, and/or the City Attorney of San
23 Francisco, within 30 days of a written request, all records, documents and personnel
24 reasonably necessary to ascertain Stewart's and the Verifier's compliance with this
25 Judgment. Nothing herein limits the right of the Attorney General, the District Attorney
26 of San Francisco, or the City Attorney of San Francisco to request or obtain information
27 from defendants as otherwise provided in this Judgment or as provided by law.

SETTLEMENT ADMINISTRATION

22. The Settlement Administrator shall carry out its duties as described in the “Payments to Claimants” portion of this judgment, as set forth in paragraphs 6 through 16, and shall verify that Stewart has processed claims, properly rejected those claims Stewart determined to be ineligible, and actually paid Claimants with eligible claims as provided under paragraphs 6 through 17.

23. The Settlement Administrator shall provide Stewart and counsel for the People with a final report no later than July 1, 2002, unless Stewart and counsel for the People agree to a later date, which agreement shall not be unreasonably withheld if additional time is needed to prepare an appropriate report. The final report shall be issued promptly upon completion of all action required hereunder. The final report shall (1) set forth the Settlement Administrator’s opinion that Stewart has paid cash claims to Claimants as provided under paragraphs 6 through 17 of this Judgment, and (2) set forth the Settlement Administrator’s certification of its compliance with the procedures set forth in this Judgment except to the extent of any specifically described deficiencies in compliance.

24. The letter of engagement entered into between Stewart and the Settlement Administrator shall provide the following: (1) a description of the Settlement Administrator’s duties as provided in this Judgment, (2) a requirement that the Settlement Administrator shall make available to Stewart and counsel for the People, within 30 days of written request, copies of all records, documents, reports and work papers obtained or prepared in connection with the duties set forth herein, and (3) a requirement that the Settlement Administrator make available to Stewart and counsel for the People a person or persons familiar with the procedures to be performed as required by this Judgment or provided in the letter of engagement. If Stewart has already produced documents responsive to the request, the Settlement Administrator may identify those documents in lieu of providing duplicates. The letter of engagement shall acknowledge that the

1 Attorney General, the District Attorney of San Francisco, and the City Attorney of San
2 Francisco are each an intended user or beneficiary of the report.

3 25. To facilitate the Settlement Administrator's responsibilities, Stewart
4 shall make available, at Stewart's expense, to the Settlement Administrator, sufficient
5 documents, persons, and other information, including data bases, to enable the Settlement
6 Administrator to fulfill its functions under this Judgment, including documents, access to
7 persons, and information reasonably related to the determination of whether Stewart
8 furnished (A) substantially accurate and complete information to counsel for the People
9 regarding payment of claims, (B) properly determined Claimants' eligibility for payment
10 under paragraphs 6 through 17 of this Judgment, and (C) timely paid eligible cash
11 Claimants.

12 26. A. On or before July 1, 2002, Stewart and the Settlement Administrator
13 shall provide, to the extent applicable to each, to the Attorney General of California,
14 Consumer Law Section, 300 S. Spring Street, Los Angeles, CA 90013, Attention: Deputy
15 Attorney General Christina Tusan; to the San Francisco District Attorney, Consumer and
16 Environmental Protection Unit, 732 Brannan Street, San Francisco, California, Attention:
17 June Cravett; and to the City Attorney of San Francisco, 1390 Market Street, 6th Floor,
18 San Francisco, California 94102-5408, Attention: Donald P. Margolis (and/or to such
19 other address or to the attention of such other person as the offices of the Attorney
20 General, District Attorney of San Francisco, or City Attorney of San Francisco shall
21 specify in writing to Stewart and the Settlement Administrator), a Final Certification
22 Report containing the following information:

23 (1) A certification by Stewart that all monetary relief provided for
24 herein due to all eligible Claimants has been paid. The report shall also certify
25 compliance by Stewart and the Settlement Administrator with each provision of this
26 Judgment related to such monetary relief to the extent applicable to each.

27 (2) An alphabetical list of the name and address of every eligible
28

1 cash Claimant to whom payment was made and a list of the name and address of every
2 person who filed a claim that was determined to be ineligible for payment together with a
3 brief description of the basis for concluding that the Claimant was ineligible.

4 B. Stewart and the Settlement Administrator shall provide for review by
5 the Attorney General, the District Attorney of San Francisco, and/or the City Attorney of
6 San Francisco, within 30 days of a written request, all records, documents and personnel
7 reasonably necessary to ascertain Stewart's and the Settlement Administrator's
8 compliance with this Judgment as to Claimants (for example, in response to inquiries
9 concerning specific Claimants). Nothing herein limits the right of the Attorney General,
10 the District Attorney of San Francisco, or the City Attorney of San Francisco to request or
11 obtain information from defendants as otherwise provided in this Judgment or as provided
12 by law.

13 RETENTION OF JURISDICTION

14 27. This Court shall retain jurisdiction over this matter for the purpose of
15 enabling any of the parties to apply to the Court at any time for such further orders or
16 directives as may be necessary or appropriate for the modification of the injunctive
17 provisions herein or for the interpretation or enforcement of any of the provisions of this
18 Judgment.

19 BUSINESS AND PROFESSIONS CODE SECTION 17203

20 28. All injunctive and other equitable relief under this Judgment, including all
21 relief described in paragraphs 5 through 17 inclusive, is ordered pursuant to the court's
22 equitable powers, including those remedial powers authorized by Business and
23 Professions Code section 17203.

24 PAYMENT OF COURT COSTS

25 29. Stewart shall pay all court costs associated with its appearance in this
26 action, including any fee for the filing of the stipulation for entry of judgment. Except as
27 otherwise provided herein, each party shall bear its own costs, including attorneys' fees.

1 EFFECTIVE DATE AND SCOPE OF JUDGMENT

2 30. This Judgment shall be binding and effective when entered by the Court.

3 31. As the parties have stipulated, plaintiffs have determined that this
4 Judgment, including the payment provisions, is a fair, equitable, and final resolution and
5 disposition of all and only those matters pleaded in the Complaint to constitute violations
6 of Business and Professions Code sections 17200 et seq. and 17500 during the period
7 from May 19, 1995 until the date of entry of this judgment, and those matters pleaded to
8 constitute violations of Code of Civil Procedure section 1500 et seq. for unclaimed
9 property up through December 31, 1998 (other than claims for interest pursuant to Code
10 of Civil Procedure section 1577). As the parties have further stipulated and the court
11 adjudges, the Stipulation for Entry of Final Judgment and this Judgment do not settle,
12 compromise, bar, or otherwise in any manner affect any and all claims for interest
13 pursuant to Code of Civil Procedure section 1577 for monies escheated to the State
14 Controller's Office without limitation on time period, which the State Controller may
15 pursue notwithstanding the Stipulation for Entry of Final Judgment or the entry of this
16 Judgment.

17
18
19
20
21 DATED: _____

JUDGE OF THE SUPERIOR COURT

1 BILL LOCKYER, Attorney General
of the State of California
2 HERSCHEL T. ELKINS, (SBN 27279)
Senior Assistant Attorney General
3 CHRISTINA V. TUSAN, (SBN 192203)
Deputy Attorney General
4 300 South Spring Street, Suite 1702
Los Angeles, California 90013
5

6 RONALD A. REITER, (SBN 62497)
Supervising Deputy Attorney General
7 455 Golden Gate Avenue, Suite 11000
San Francisco, California 94102
8

9
10 Attorneys for Plaintiff the People of the State of California
(Additional co-counsel on following page)
11
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SACRAMENTO
15

16 THE PEOPLE OF THE STATE OF
CALIFORNIA,
17

18 Plaintiff,
19

20 v.

21 FIRST AMERICAN TITLE INSURANCE
COMPANY AND FIRST AMERICAN
CORPORATION
22

23 Defendants.
24
25
26
27
28

FINAL JUDGMENT

1 TERENCE HALLINAN (SBN 39953)
District Attorney for the City and County of San Francisco
2 DAVID A. PFEIFER (SBN 127785)
JUNE D. CRAVETT (SBN 105094)
3 Assistant District Attorneys
732 Brannan Street
4 San Francisco, California 94103

5
6 DENNIS HERRERA,
City Attorney for the City and County of San Francisco
7 JOANNE HOEPER, (SBN 114961)
Chief Trial Attorney
8 DONALD P. MARGOLIS, (SBN 116588)
Deputy City Attorney
9 1390 Market Street, 6th Floor
San Francisco, California 94102-5408

10
11 Attorneys for Plaintiffs the People of the State of California
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Plaintiff, the People of the State of California, appeared through the Attorney General,
2 Bill Lockyer, by Deputy Attorneys General Ronald A. Reiter and Christina V. Tusan, through
3 the District Attorney of San Francisco, Terrence Hallinan, by Assistant District Attorney June
4 Cravett, and through the City Attorney of San Francisco, Dennis Herrera, by Deputy City
5 Attorney Donald P. Margolis. Defendants First American Title Insurance Company and First
6 American Corporation (collectively "First American") appeared through their attorneys
7 Rutan & Tucker by Robert Braun.

8 The Court having considered the Stipulation For Entry of Final Judgment executed
9 by the parties and filed herewith , and good cause appearing,

10 IT IS HEREBY AGREED, ORDERED, ADJUDGED AND DECREED THAT:

11 JURISDICTION

12 1. This Court has jurisdiction of the subject matter of this action and of the
13 parties. Venue as to all matters between the parties relating hereto lies in this Court.

14 INJUNCTION

15 2. The injunctive provisions of this judgment apply to First American; its
16 directors, officers, and shareholders; to the employees, representatives, agents, subsidiary and
17 affiliated companies (regardless of the form of business organization), successors-in-interest,
18 and assigns of First American; and any person or entity acting by, through, under, on behalf
19 of, or in concert with First American or any other person or entity described in this
20 paragraph, whether acting as a principal or agent, all of whom are referred to as
21 "defendants." For the purpose of the injunctive provisions of this judgment, the term "agent"
22 does not apply to non-subsiary companies or entities in which First American does not have
23 an ownership interest under the following circumstances: 1) those entities are performing
24 escrows services on their own behalf and 2) those entities are acting as First American's
25 agent solely through their involvement in facilitating the provision of title insurance on
26 behalf of First American.

27 ///

28 ///

1 3. For the purpose of this judgment the following definitions shall apply:

2 A. The term “financial benefit” means any consideration, other than
3 consideration denominated as interest, that defendants obtain from a financial institution in
4 connection with the defendants’ deposit of escrow funds with that financial institution.
5 “Financial benefit” includes a financial institution’s absorption of expenses incident to
6 providing normal banking functions or its forbearance from charging a fee in connection with
7 providing normal banking functions or services, including those normal banking functions
8 and services that the Federal Reserve Board determines may be provided without full charge
9 consistent with 12 C.F.R. part 217. Examples of “financial benefits” that may be provided
10 by a financial institution include, but are not limited to, escrow accounting services and bank
11 reconciliation, wire transfers, and loans at preferential interest rates.

12 B. The term “escrow,” whether used as a noun or an adjective, refers only
13 to escrows conducted at or through an office located within the State of California. “Escrow
14 funds” refers only to funds generated by escrows conducted at or through an office located
15 within the State of California. The terms “customer,” “escrow customer,” and “claimant”
16 are limited to those persons using and/or purchasing escrow services from an office located
17 within the State of California.

18 4. Defendants, and each of them, are permanently enjoined and restrained from
19 engaging in any of the following:

20 A. Billing or collecting from title insurance or escrow customers an amount
21 that exceeds the actual cost to defendants of services provided by third parties in connection
22 with defendants’ performance of escrow and title services, such as overnight mail, courier,
23 and notary services, unless (1) such practice is permitted by state and federal law and (2)
24 defendants clearly and conspicuously disclose that the defendants have marked-up the third
25 party charge.

26 B. Obtaining any financial benefit in connection with the deposit of escrow
27 funds unless the full value of all financial benefits is (1) exclusively used to underwrite the
28 cost of escrow services and (2) fully allocated to First American’s escrow division. First

1 American shall continually maintain, with a retention period of a minimum of three fiscal
2 years, accounting information that clearly, accurately, and in sufficient detail demonstrates
3 its compliance with this provision.

4 C. Assessing a separate charge to escrow or title customers for any service
5 such as wire transfers, if the service is provided as a financial benefit or the cost of the
6 service is otherwise waived, credited, paid, or assumed by the provider of the service.

7 D. Depositing escrow funds in any financial institution in which defendants
8 have any ownership interest, management, or control if (1) the deposit of funds in that
9 financial institution would breach First American's fiduciary duties as escrow agent or (2)
10 that financial institution failed to provide financial benefits in connection with the deposit
11 of escrow funds that were comparable to the best arrangement for the provision of financial
12 benefits offered by California financial institutions in connection with the deposit of escrow
13 funds.

14 E. Demanding, charging, or collecting a separate fee from escrow or title
15 insurance customers in connection with investigating or tracking whether a beneficiary under
16 a deed of trust causes a deed of reconveyance to be recorded after the obligation owed to the
17 beneficiary has been satisfied, except to the extent that a separate fee is affirmatively and
18 explicitly authorized by a subsequent statute.

19 F. Demanding, charging, or collecting a separate fee from escrow or title
20 insurance customers in connection with preparing, issuing, or recording a release of
21 obligation or providing notice of intention to do so, except to the extent that a separate fee
22 is affirmatively and explicitly authorized by a subsequent statute.

23 G. Collecting a separate fee for a deed of reconveyance (including any
24 recording fee therefore) from an escrow or title insurance customer without separately
25 accounting for this fee in a suspense account or otherwise segregating this fee from
26 defendants' funds in accordance with generally acceptable accounting principles until the fee
27 is transmitted to the trustee or beneficiary under the deed of trust, is returned to the customer,
28 or is paid as required by law.

1 H. Raising any fees charged in connection with escrow services or the
2 provision of title insurance to circumvent or offset any discounts offered pursuant to
3 paragraphs 16 through 22. Defendants shall have the burden of establishing to plaintiffs
4 and/or the Department of Insurance that the basis for any rate or fee increase is unrelated to
5 the discounts offered pursuant to paragraphs 16 through 22.

6 I. Using the term “discount” or otherwise advertising or promoting First
7 American’s escrow services on the basis of the discounts offered pursuant to paragraphs 16
8 through 22. Nothing herein prevents defendants from informing the public of First
9 American’s charges for escrow services.

10 J. Disbursing monies to financial institutions that are beneficiaries under
11 deeds of trust at the close of escrow unless disbursed in the following manner:

12 (1) By wire or electronic fund transfer upon close of escrow; by
13 check sent upon close of escrow via a next day delivery service, such as Federal Express, for
14 delivery on the next business day following the close of escrow; or by hand delivery for
15 delivery on the same day as, or on the next business day following, the close of escrow.

16 (2) In the event that the close of escrow occurs so late in the day that
17 it would be impracticable for the funds to be disbursed in the manner described in
18 subparagraph J(1), the funds shall be disbursed on the next business day following the close
19 of escrow by the most expeditious means available.

20 (3) Notwithstanding subparagraphs J(1) and J(2), any means directed
21 by the seller or refinancing owner in an escrow instruction signed or initialed by the seller
22 or refinancing owner.

23 (4) If the defendant acts as the escrow, any instruction described in
24 subparagraph J(3) shall appear on a separate page with no other writing except that
25 necessary to identify the escrow, the parties, the property, the date, the signature of the party
26 giving the instruction, and the following notice which shall clearly and conspicuously appear
27 immediately above or adjacent to the place reserved for the escrow customer's signature.
28 “Any delay in sending funds to a beneficiary under a deed of trust could result in additional

1 interest charges or other expense. You should compare the amount of interest charges or
2 other expenses resulting from a delay in sending funds with the amount you will be charged
3 for wire, electronic fund transfer, or overnight delivery before you sign or initial this escrow
4 instruction.”

5 (5) When disbursing funds by wire or electronic transfer, Defendant
6 shall utilize to the fullest extent practicable wire transfers (or similar electronic transfers)
7 where such transfers are included in earned credits furnished by the depositing institution.

8 RESTITUTION

9 5. First American shall pay restitution in the total amount of five million five
10 hundred thousand dollars (\$5,500,000) in the form of cash payments, as provided in
11 paragraphs 6 through 15, with the balance of the restitution remaining after deducting the
12 amount of cash payments to be paid in the form of discounts, as provided in paragraphs 16
13 through 22. The discount restitution payments will begin within five business days after the
14 completion of the cash claims process described in paragraphs 6 through 15 of this Judgment.

15 Payments to Claimants

16 6. A. First American shall pay sixty-five dollars (\$65) to each of its former
17 escrow customers who meet all of the following conditions:

18 (1) Except as provided in paragraph 6(A)(3)(b) the customer
19 closed an escrow transaction in which First American acted as escrow agent between May
20 19, 1995 and the date of the entry of judgment.

21 (2) The customer was charged and paid a fee for any services
22 involved in the preparation, execution and recordation of a deed of reconveyance
23 including but not limited to document preparation or forwarding services.

24 (3)(a) The customer received a release of obligation, or (b) the
25 customer neither received a release of obligation nor a reconveyance, and closed an escrow
26 transaction between July 1, 1997 and the date of the entry of judgment.

27 (4) The customer files a timely claim as provided in paragraph 8.

28 (5) Claimant is a natural person or a trust.

1 B. First American in addition shall pay twenty-five dollars (\$25) to each
2 of its former escrow customers who meet the conditions set forth in
3 paragraph 6A(1), without regard to 6(A)(3)(b); 6A(4) and 6A(5).

4 C. First American may treat multiple buyers, sellers, and borrowers in an
5 escrow transaction (e.g., tenants in common, a husband and wife in a community property
6 transaction) as a single customer or claimant for the purpose of paying claims.

7 7. First American shall have no obligation to make payment under paragraph 6
8 if First American establishes that it did any of the following:

9 A. Transmitted the customer's reconveyance fee to the trustee or
10 beneficiary under the deed of trust that encumbered the customer's property.

11 B. Prepared and recorded a deed of reconveyance while acting in the
12 capacity of trustee under the deed of trust.

13 C. Escheated to the state the fee charged the customer.

14 8. Within five business days after the Attorney General has given First American
15 notice that the verification process has been completed and that the Attorney General has
16 determined that the information provided was substantially complete and accurate, as more
17 fully described in paragraphs 24 through 26 of this Judgment and paragraph 1F of the
18 Stipulation, First American, at its sole expense, shall cause to be published a notice, whose
19 form and contents are satisfactory to plaintiff, at least once per week for three consecutive
20 weeks. The published notices will appear in the Los Angeles Times, the San Francisco
21 Chronicle and Examiner, the Sacramento Bee, the Modesto Bee, the Fresno Bee, the San
22 Diego Union Tribune, the Bakersfield Californian, the Orange County Register, the San Jose
23 Mercury News, and the Oakland Tribune. The notice shall state that natural persons or trusts
24 who closed an escrow transaction in which First American acted as escrow agent between
25 May 19, 1995 and the date of the entry of judgment are eligible to file a claim to recover
26 between twenty-five dollars (\$25) and ninety dollars (\$90) if the claim is returned by a date
27 specified in the notice that is at least 90 days after the date on which the first notice is
28 published. The notice shall indicate that the claim must indicate the claimant's name and

1 the address of the property involved in the escrow. The notice may request additional
2 documentation if available to the customer but shall clearly indicate that the customer is not
3 obliged to provide any further information to be eligible. The published notice shall state
4 that no specific claim form is required as long as the claimant's name and property address
5 is set forth, but the notice shall set forth a sample form that may be completed and returned.
6 The notice shall also set forth the address to which the claim form is to be sent and a toll-free
7 telephone number to which inquiries may be directed.

8 9. The claims shall be returned to a Settlement Administrator, as more
9 particularly described in paragraph 24. The Settlement Administrator shall log the claims
10 and transmit them to First American.

11 10. Within 60 days after the close of the claims settlement period described in
12 paragraph 8 of this Judgment, the Settlement Administrator will transmit all claims to First
13 American. First American shall (A) pay the claim without further review or (B) review the
14 claim, conduct a diligent search of all relevant business records and public records, and
15 determine the claimant's eligibility for payment. If First American determines that the
16 claimant is eligible, or if First American cannot determine that the claimant is ineligible, First
17 American shall pay the claim within 15 days. If First American determines that the claimant
18 is not eligible, First American shall provide the Settlement Administrator, within 15 days,
19 with the name and address of each person who submitted the claim that First American
20 determined was ineligible and a complete statement of reasons for the denial of that
21 claimant's claim including all of the documentation on which First American relies to
22 establish First American's determination that the claimant is not eligible for payment. The
23 Settlement Administrator shall review the rejected claims, any written objections submitted
24 as described under paragraph 12, and the records, including the escrow file, that may be
25 relevant for determining the claimant's eligibility. The Settlement Administrator shall report
26 its evaluation of the merits of each rejected claim to plaintiff. If plaintiff disputes First
27 American's rejection of a claim and the parties are unable to resolve the dispute, all disputed
28 claims shall be submitted, at First American's sole expense, to an arbitrator selected by the

1 parties or, in the event the parties do not agree on an arbitrator, to an arbitrator selected by
2 the court.

3 11. For the purpose of this judgment, a claim shall be deemed eligible and the
4 claimant shall be entitled to payment under either of the following circumstances:

5 A. First American recorded a release of obligation for the claimant and
6 First American's records do not clearly refute that the claimant paid a fee for a reconveyance
7 or release of obligation.

8 B. First American did not record a release of obligation or a reconveyance
9 in the capacity of trustee under a deed of trust for the claimant, First American's records
10 indicate that the claimant paid a fee for a reconveyance or release of obligation, and First
11 American's records do not establish that First American either transmitted the fee paid by the
12 claimant to the beneficiary or trustee under the deed of trust or escheated the fee to the state.

13 12. First American shall notify each person who submitted a claim that was
14 rejected and briefly describe the reason for rejecting the claim. The notice shall indicate that
15 if the claimant disputes the rejection of the claim, the claimant may provide the Settlement
16 Administrator with a written objection stating all of the claimant's grounds for disputing the
17 rejection of the claim. The notice shall indicate that the written objection must be mailed to
18 the Settlement Administrator at an address set forth in the notice and must be submitted by
19 a specified date, which shall not be less than 15 days following the date of the mailing of the
20 notice.

21 13. The Settlement Administrator shall respond to any questions by the public
22 about the claims procedure and, in connection therewith, shall establish a toll free number.

23 14. The envelopes containing the checks sent by First American to claimants shall
24 be marked with the Settlement Administrator's return address. If any check sent to a
25 claimant is returned undeliverable, the Settlement Administrator shall take or cause to be
26 taken reasonable steps, including skip-tracing if reasonable, to attempt to locate the claimant.
27 If thereafter the claimant is still not located or if the claimant's check is not cashed within
28 six months, any funds payable under the judgment shall be promptly, but in no event later

1 than April 1, 2004, paid as cy pres restitution as provided in paragraph 23.

2 15. Within 90 days following the closure of the cash claims period, First American
3 shall provide plaintiff and the Settlement Administrator with a report indicating the name and
4 address of each claimant paid, the date of payment, and the amount of the claim. If any
5 claims are thereafter paid, First American shall supplement the report with additional
6 quarterly reports indicating the name and address of each claimant paid, the date of payment,
7 and the amount paid. Within seven months of the date of issuing checks in payment of
8 claims, First American shall provide plaintiff and the Settlement Administrator with a report
9 of the names and addresses of claimants whose checks are not cashed within six months of
10 issuance. The reports required herein shall be subscribed under oath by an officer of First
11 American indicating his or her firsthand personal knowledge of the facts set forth in the
12 report.

13 Discounts for Eligible Customers

14 16. First American shall reduce its charge to customers by twenty dollars (\$20) for
15 escrow services, or by twenty dollars (\$20) for title insurance when escrow services are not
16 directly provided, if the customer satisfies the following conditions:

17 A. The customer closes a transaction for the purchase, sale, or refinancing
18 of residential real property containing one- to four-dwelling units on and after the date of the
19 entry of this judgment.

20 B. That customer previously purchased escrow services (or title insurance
21 without escrow services) between May 19, 1995 and the date of entry of judgment from First
22 American or from other settling defendants identified by plaintiff in a declaration filed with
23 the court following entry of judgment.

24 C. That customer did not receive cash payment of a claim, as provided in
25 paragraphs 6 through 15 of this judgment.

26 D. Customer is a natural person or trust.

27 17. Customers who had multiple transactions involving the purchase of escrow
28 services or title insurance without escrow services from First American or other settling

1 defendants between May 19, 1995 and the date of entry of judgment shall be entitled to a
2 twenty dollar (\$20) discount for each transaction.

3 18. First American shall determine whether a customer is eligible for a discount
4 based on an examination of its business records and public records. For the purpose of this
5 judgment, it shall be presumed that First American or another settling defendant provided
6 escrow services or title insurance without escrow services between May 19, 1995 and the
7 date of entry of judgment if a deed or deed of trust recorded during that time period indicates
8 that recording was requested by First American or another settling defendant. In determining
9 eligibility for a discount, First American may ask a customer if the customer has already
10 received a cash payment or a discount from another settling defendant. Unless the customer
11 positively states in writing that the customer has already received a cash payment or a
12 discount from another settling defendant, or First American has written verification that the
13 customer has already received a cash payment or discount from another settling defendant,
14 First American may presume without any investigation that the customer, if otherwise
15 qualified, is entitled to a discount.

16 19. A. First American shall prominently disclose in the preliminary title report
17 provided to customers that any customer who purchased, sold or
18 refinanced residential property between May, 1995 and the date of entry
19 of judgment may be entitled to a \$20 discount on escrow services for
20 each such transaction. The disclosure shall state that if the previous
21 transaction involved property that is different from the property that is
22 the subject of the current transaction, the customer must inform First
23 American of the earlier transaction, provide the address of the property
24 involved in the previous transaction, and the date or approximate date,
25 that the escrow closed to be eligible for a discount. The disclosure shall
26 be in substantially the same form as the following:

27 “You may be entitled to receive a \$20 discount on escrow
28 services if you purchased, sold or refinanced residential

1 property in California between May, 1995 and [the date of entry
2 of judgment]. If you had more than one qualifying transaction,
3 you may be entitled to multiple discounts.

4 If your previous transaction involved the same property that is
5 the subject of this preliminary title report, you do not have to do
6 anything, First American will provide the discount.

7 If your previous transaction involved property different from the
8 property that is subject of your current transaction, you must
9 inform First American of the earlier transaction, provide the
10 address of the property involved in the previous transaction, and
11 the date or approximate date that the escrow closed to be eligible
12 for the discount.

13 Unless you inform First American of the prior transaction on a
14 property that is not the subject of this transaction, First
15 American has no obligation to conduct an investigation to
16 determine if you qualify for a discount. If you provide First
17 American information concerning a prior transaction, First
18 American is required to determine if you qualify for a discount.”

19 B. Customers shall not be required to provide any documentation or
20 verification of eligibility or to request a discount in order to qualify for
21 a discount if the prior transaction involved the same property that is the
22 subject of the current transaction. First American, however, shall
23 consider any documentation voluntarily provided by customers in
24 determining eligibility for a discount.

25 C. If the previous transaction involved property different from the
26 property that is the subject of the current transaction, the customer
27 must, in response to the notice provided by First American described
28

1 in paragraph 19(A) of this Judgment, inform First American of the
2 earlier transaction, provide the address of the property involved in the
3 previous transaction, and the date, or approximate date, that the escrow
4 closed to be eligible for a discount. Unless the customer provides this
5 information, First American shall have no obligation to conduct an
6 investigation to determine whether the customer qualifies.

7 D. Where First American is obligated to conduct an investigation of
8 whether a customer qualifies for a discount, it shall do so based on an
9 examination of First American's business records and public records.

10 20. First American shall provide discounts under this judgment until the earlier of
11 (a) the date on which First American has paid out all discounts owed under this judgment as
12 described in paragraph 5 or (b) 10 years after the date of entry of this judgment.

13 21. If First American has not fully discharged its obligation to pay discounts within
14 7 years following the date of entry of judgment, the following shall apply:

15 A. Plaintiff and First American shall review the amount of discounts
16 remaining to be paid and the anticipated number of transactions during the next 3-year period
17 in which First American is likely to provide escrow services or title insurance without escrow
18 services.

19 B. There is a rebuttable presumption affecting the burden of proof that the
20 number of anticipated transactions in which First American will provide escrow services or
21 title insurance without escrow services during the next 3-year period is the same as the
22 number of transactions during the previous 3-year period in which First American provided
23 escrow services or title insurance without escrow services.

24 C. If the parties agree that it is likely that First American will provide the
25 amount of remaining discounts during the next 3-year period at the rate of twenty dollars
26 (\$20) per discount, First American shall continue to provide twenty dollar (\$20) discounts
27 until all discounts owing under this judgment have been paid or until the date that is 10 years
28

1 after the date of the entry of this judgment.

2 ///

3 D. If the parties agree that it is unlikely that First American will pay out the
4 amount of remaining discounts during the next 3-year period at the rate of twenty dollars
5 (\$20) per discount, the amount of each discount shall be increased in five dollar (\$5)
6 increments to an amount that the parties agree will likely be sufficient to ensure that First
7 American provides the remaining amount of discounts owed under this judgment during the
8 next 3-year period. First American shall provide the increased discount until all discounts
9 owing under this judgment have been paid or until the date that is 10 years after the date of
10 the entry of this judgment.

11 E. If the parties are unable to reach agreement as described in subparagraph
12 C or D, the court shall set the amount of the discount at a sufficient level to ensure that First
13 American will likely provide all discounts owed under this judgment within 10 years after
14 the date of the entry of this judgment.

15 22. First American shall provide counsel for plaintiff with a report, quarterly
16 during the first year following the date of entry of this judgment and semiannually thereafter,
17 indicating that First American is acting in compliance with the obligation to provide
18 discounts as set forth in this judgment and stating the names, addresses, and telephone
19 numbers of each person receiving a discount, as required under this judgment, and the
20 amount of the discount. The reports required herein shall be subscribed under oath by an
21 officer of First American indicating his or her firsthand personal knowledge of the facts set
22 forth in the report.

23 CASH PAYMENT

24 23. First American is ordered to pay plaintiff the sum of one million five hundred
25 thousand dollars (\$1,500,000) in two equal installments, the first upon execution of the
26 stipulation for entry of judgment and the second installment on the date that is 18 months
27 following the date on which the first installment is required to be paid. Each installment
28

1 shall be paid in the form of a wire transfer to the Office of the Attorney General and
2 distributed as set forth below. The Attorney General shall hold the first installment until the
3 completion of the verification procedure described in paragraphs 24 through 26 of the
4 Judgment and a determination that the information provided by First American was
5 substantially complete and accurate as more fully described in paragraph 1F of the
6 Stipulation. Thereafter, the Attorney General shall distribute the first installment and, upon
7 its receipt, the second installment as follows: five hundred thousand dollars (\$500,000) as
8 provided under Business and Professions Code sections 17206 and 17536 and Government
9 Code section 26506 with one-half of those funds distributed to the Attorney General, one-
10 fourth of those funds distributed to the District Attorney of the City and County of San
11 Francisco, and one-fourth of the funds distributed to the City Attorney of the City and County
12 of San Francisco; one hundred fifty thousand dollars (\$150,000) among counsel for plaintiff
13 as reimbursement of attorney's fees and costs, including attorney's fees and costs for the
14 monitoring of First American's compliance with the judgment; and one hundred thousand
15 dollars (\$100,000) as cy pres restitution to be paid to the Consumer Protection Prosecution
16 Trust Fund, established in People v. ITT Consumer Financial Corporation, et al., Alameda
17 Superior Court Case No. 656038-0, for the investigation and prosecution of cases involving
18 consumer real estate, home mortgage, and consumer finance transactions, civil law
19 enforcement or other consumer protection matters as the trustees of that trust fund in their
20 discretion may direct.

21 VERIFICATION

22 24. First American and counsel for plaintiff jointly shall select, and First
23 American shall retain at its sole expense, a third party settlement administrator ("Settlement
24 Administrator") and a third party verifier ("Verifier"). The Settlement Administrator shall
25 be an independent firm that is substantially experienced in the administration of consumer
26 payment programs. The Verifier shall be an independent firm containing one or more
27 certified public accountants experienced in verification and examination procedures. The
28

1 Verifier shall have responsibility for the following:

2 A. The Verifier shall verify that information provided to plaintiff by First
3 American was substantially complete and accurate at the time the information was presented.
4 The verification procedure may include a reasonable examination and testing of First
5 American's records and interviews of First American's personnel.

6 B. The procedures to be employed by the Verifier to determine compliance
7 and payment shall be developed by the Verifier consistent with applicable standards
8 established by the American Institute of Certified Public Accountants and shall include
9 testing and such other procedures sufficient to enable the Verifier to render an opinion
10 concerning the defendants' assertion of compliance relied on by plaintiff as a basis for
11 settlement.

12 C. The Verifier shall provide First American and counsel for plaintiff with
13 a final report no later than March 1, 2003, unless First American and counsel for plaintiff
14 agree to a later date, which agreement shall not be unreasonably withheld if additional time
15 is needed to prepare an appropriate report. The final report shall be issued promptly upon
16 completion of all action required hereunder. The final report shall (1) summarize all tasks
17 undertaken by the Verifier, (2) set forth the Verifier's opinion that defendants have furnished
18 substantially accurate and complete information to counsel for plaintiff, and (3) set forth the
19 Verifier's certification of its compliance with the procedures set forth in this Judgment
20 except to the extent of any specifically described deficiencies in compliance. The final report
21 shall be provided to the Attorney General of California, Consumer Law Section, 300 S.
22 Spring Street, Los Angeles, CA 90013, Attention: Deputy Attorney General Christina Tusan;
23 to the San Francisco District Attorney, Consumer and Environmental Protection Unit, 732
24 Brannan Street, San Francisco, California, Attention: June Cravett; and to the City Attorney
25 of San Francisco, 1390 Market Street, 6th Floor, San Francisco, California 94102-5408,
26 Attention: Donald P. Margolis (and/or to such other address or to the attention of such other
27 person as the offices of the Attorney General, District Attorney of San Francisco, or City
28

1 Attorney of San Francisco shall specify in writing to First American and the Verifier).

2 D. The letter of engagement entered into between First American and the
3 Verifier shall provide the following: (1) a description of the Verifier's duties as provided in
4 this Judgment, (2) a requirement that the Verifier shall make available to First American and
5 counsel for plaintiff, within 30 days of written request, copies of all records, documents,
6 reports and work papers obtained or prepared in connection with the duties set forth herein,
7 and (3) a requirement that the Verifier make available to First American and counsel for
8 plaintiff a person or persons familiar with the procedures to be performed as required by this
9 Judgment or provided in the letter of engagement. If First American has already produced
10 documents responsive to the request, the Verifier may identify those documents in lieu of
11 providing duplicates. The letter of engagement shall acknowledge that the Attorney General,
12 the District Attorney of San Francisco, and the City Attorney of San Francisco are each an
13 intended user or beneficiary of the report.

14 25. To facilitate the Verifier's responsibilities, First American shall make
15 available, at First American's expense, to the Verifier sufficient documents, persons, and
16 other information, including data bases, to enable the Verifier to fulfill its functions under
17 this Judgment, including documents, access to persons, and information reasonably related
18 to the determination of whether First American furnished substantially accurate and complete
19 information to counsel for plaintiff.

20 26. First American and the Verifier shall provide for review by the Attorney
21 General, the District Attorney of San Francisco, and/or the City Attorney of San Francisco,
22 within 30 days of a written request, all records, documents and personnel reasonably
23 necessary to ascertain First American's and the Verifier's compliance with this Judgment .
24 Nothing herein limits the right of the Attorney General, the District Attorney of San
25 Francisco, or the City Attorney of San Francisco to request or obtain information from
26 defendants as otherwise provided in this Judgment or as provided by law.

1

2

7

8

8

1 of providing duplicates. The letter of engagement shall acknowledge that the Attorney
2 General, the District Attorney of San Francisco, and the City Attorney of San Francisco are
3 each an intended user or beneficiary of the report.

4 30. To facilitate the Settlement Administrator's responsibilities, First American
5 shall make available, at First American's expense, to the Settlement Administrator sufficient
6 documents, persons, and other information, including data bases, to enable the Settlement
7 Administrator to fulfill its functions under this Judgment, including documents, access to
8 persons, and information reasonably related to the determination of whether First American
9 furnished (A) substantially accurate and complete information to counsel for plaintiff
10 regarding payment of claims, (B) properly determined claimants' eligibility for payment
11 under paragraphs 6 through 15 of this Judgment, and (C) timely paid eligible cash claimants.

12 31. A. On or before September 1, 2003, First American and the Settlement
13 Administrator shall provide, to the extent applicable to each, to the Attorney General of
14 California, Consumer Law Section, 300 S. Spring Street, Los Angeles, CA 90013, Attention:
15 Deputy Attorney General Christina Tusan; to the San Francisco District Attorney, Consumer
16 and Environmental Protection Unit, 732 Brannan Street, San Francisco, California, Attention:
17 June Cravett; and to the City Attorney of San Francisco, 1390 Market Street, 6th Floor, San
18 Francisco, California 94102-5408, Attention: Donald P. Margolis (and/or to such other
19 address or to the attention of such other person as the offices of the Attorney General,
20 District Attorney of San Francisco, or City Attorney of San Francisco shall specify in writing
21 to First American and the Settlement Administrator), a Final Certification Report containing
22 the following information:

23 (1) A certification by First American that all monetary relief
24 provided for herein due to all eligible claimants has been paid. The report shall also certify
25 compliance by First American and the Settlement Administrator with each provision of this
26 Judgment related to such monetary relief to the extent applicable to each.

27 (2) An alphabetical list of the name, address, and telephone number
28

1 of every eligible cash claimant to whom payment was made and a list of the name, address,
2 and telephone number of every person who filed a claim that was determined to be ineligible
3 for payment together with a brief description of the basis for concluding that the claimant
4 was ineligible.

5 B. First American and the Settlement Administrator shall provide for
6 review by the Attorney General, the District Attorney of San Francisco, or the City Attorney
7 of San Francisco, within 30 days of a written request, all records, documents and personnel
8 reasonably necessary to ascertain First American's and the Settlement Administrator's
9 compliance with this Judgment as to claimants (for example, in response to inquiries
10 concerning specific claimants). Nothing herein limits the right of the Attorney General, the
11 District Attorney of San Francisco, or the City Attorney of San Francisco to request or
12 obtain information from defendants as otherwise provided in this Judgment or as provided
13 by law.

14 RETENTION OF JURISDICTION

15 32. This Court shall retain jurisdiction over this matter for the purpose of enabling
16 any of the parties to apply to the Court at any time for such further orders or directives as
17 may be necessary or appropriate for the modification of the injunctive provisions herein or
18 for the interpretation or enforcement of any of the provisions of this Judgment.

19 BUSINESS AND PROFESSIONS CODE SECTION 17203

20 33. All injunctive and other equitable relief under this Judgment, including all
21 relief described in paragraphs 5 through 22 inclusive, is ordered pursuant to the court's
22 equitable powers, including those remedial powers authorized by Business and Professions
23 Code section 17203.

24 PAYMENT OF COURT COSTS

25 34. First American shall pay all court costs associated with its appearance in this
26 action, including any fee for the filing of the stipulation for entry of judgment. Except as
27 otherwise provided herein, each party shall bear its own costs, including attorneys' fees.
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

EFFECTIVE DATE AND SCOPE OF JUDGMENT

35. This Judgment shall be binding and effective when entered by the Court.

36. As the parties have stipulated, plaintiff has determined that this Judgment, including the payment provisions, is a fair, equitable, and final resolution and disposition of all and only those matters pleaded in the Complaint to constitute violations of Business and Professions Code sections 17200 et seq. and 17500 during the period from May 19, 1995 until the date of entry of this judgment. As the parties have further stipulated and the court adjudges, the Stipulation for Entry of Final Judgment and this Judgment do not settle, compromise, bar, or otherwise in any manner affect either (1) any claims that the State Controller may have against First American, which claims, if any the State Controller may pursue notwithstanding the Stipulation for Entry of Final Judgment or the entry of this Judgment or (2) any defenses that First American may have to those claims.

DATED: _____

JUDGE OF THE SUPERIOR COURT

BILL LOCKYER, Attorney General
of the State of California
HERSCHEL T. ELKINS, (SBN 27279)
Senior Assistant Attorney General
CHRISTINA V. TUSAN, (SBN 192203)
Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, California 90013

RONALD A. REITER, (SBN 62497)
Supervising Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, California 94102

Attorneys for Plaintiff the People of the State of California
(Additional co-counsel on following page)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

THE PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
Plaintiff,)	FINAL JUDGMENT
)	
v.)	
)	
LANDAMERICA FINANCIAL GROUP, INC.,)	
COMMONWEALTH LAND TITLE INSURANCE)	
COMPANY, COMMONWEALTH LAND TITLE)	
COMPANY, LAWYERS TITLE INSURANCE)	
CORPORATION, AND LAWYERS TITLE)	
COMPANY)	
)	
Defendants.)	

1 TERENCE HALLINAN, (SBN 39953)
2 District Attorney for the City and County of San Francisco
3 DAVID A. PFEIFER, (SBN 127785)
4 JUNE D. CRAVETT, (SBN 105094)
5 Assistant District Attorneys
6 732 Brannan Street
7 San Francisco, California 94103

8 DENNIS HERRERA,
9 City Attorney for the City and County of San Francisco
10 JOANNE HOEPER, (SBN 114961)
11 Chief Trial Attorney
12 DONALD P. MARGOLIS, (SBN 116588)
13 Deputy City Attorney
14 1390 Market Street, 6th Floor
15 San Francisco, California 94102-5408

16 Attorneys for Plaintiff the People of the State of California

1 Plaintiff, the People of the State of California, appeared through the Attorney General,
2 Bill Lockyer, by Deputy Attorneys General Ronald A. Reiter and Christina V. Tusan, through
3 the District Attorney of San Francisco, Terence Hallinan, by Assistant District Attorney June
4 Cravett, and through the City Attorney of San Francisco, Dennis Herrera, by Deputy City
5 Attorney Donald P. Margolis. Defendants LandAmerica Financial Group, Inc.,
6 Commonwealth Land Title Insurance Company, Commonwealth Land Title Company,
7 Lawyer's Title Insurance Corporation, and Lawyers Title Company (hereafter collectively
8 referred to as "LandAmerica") appeared through their attorneys Gorry, Meyer & Rudd, LLP,
9 by Christopher L. Rudd.

10 The Court having considered the Stipulation For Entry of Final Judgment executed
11 by the parties and filed herewith, and good cause appearing,

12 IT IS HEREBY AGREED, ORDERED, ADJUDGED AND DECREED THAT:

13 JURISDICTION

14 1. This Court has jurisdiction of the subject matter of this action and of the
15 parties. Venue as to all matters between the parties relating hereto lies in this Court. The
16 plaintiff's Complaint in this matter states claims upon which relief may be granted under
17 Section 17200 et seq. of the Business and Professions Code.

18 INJUNCTION

19 2. The injunctive provisions of this judgment apply to LandAmerica; its directors
20 and officers, to the employees, representatives, agents, subsidiary and affiliated companies
21 (regardless of the form of business organization), successors-in-interest, and assigns of
22 LandAmerica; and any person or entity acting by, through, under, on behalf of, or in concert
23 with LandAmerica or any other person or entity described in this paragraph, whether acting
24 as a principal or agent, all of whom are referred to as "defendants." For the purpose of the
25 injunctive provisions of this judgment, the term "agent" does not apply to non-subsiary
26 companies or entities in which LandAmerica does not have an ownership interest under the
27 following circumstances: 1) those entities are performing escrows services on their own
28 behalf and 2) those entities are acting as LandAmerica's agent solely through their

1 involvement in facilitating the provision of title insurance on behalf of LandAmerica.

2 3. For the purpose of this judgment, the term “financial benefit” means any
3 consideration, other than consideration denominated as interest, that defendants obtain from
4 a financial institution in connection with the defendants’ deposit of escrow funds with that
5 financial institution. “Financial benefit” includes a financial institution’s absorption of
6 expenses incident to providing normal banking functions or its forbearance from charging
7 a fee in connection with providing normal banking functions or services, including those
8 normal banking functions and services that the Federal Reserve Board determines may be
9 provided without full charge consistent with 12 C.F.R. part 217. Examples of “financial
10 benefits” that may be provided by a financial institution include, but are not limited to,
11 escrow accounting services and bank reconciliation, wire transfers, and loans at preferential
12 interest rates.

13 4. Defendants, and each of them, are permanently enjoined and restrained from
14 engaging in any of the following:

15 A. Billing or collecting from title insurance or escrow customers an amount
16 that exceeds the actual cost to defendants of services provided by third parties in connection
17 with defendants’ performance of escrow and title services, such as overnight mail, courier,
18 and notary services, unless (1) such practice is permitted by state and federal law and (2)
19 defendants clearly and conspicuously disclose that the defendants have marked-up the third
20 party charge.

21 B. Obtaining any financial benefit in connection with the deposit of escrow
22 funds unless the full value of all financial benefits is (1) exclusively used to underwrite the
23 cost of escrow services and (2) fully allocated to LandAmerica’s escrow division.
24 LandAmerica shall continually maintain, with a retention period of a minimum of three fiscal
25 years, accounting information that clearly, accurately, and in sufficient detail demonstrates
26 its compliance with this provision.

27 C. Assessing a separate charge to escrow or title customers for any service
28 such as wire transfers, if the service is provided as a financial benefit or the cost of the

1 service is otherwise waived, credited, paid, or assumed by the provider of the service.

2 D. Depositing escrow funds in any financial institution in which defendants
3 have any ownership interest, management, or control if (1) the deposit of funds in that
4 financial institution would breach LandAmerica's fiduciary duties as escrow agent or (2) that
5 financial institution failed to provide financial benefits in connection with the deposit of
6 escrow funds that were comparable to the best arrangement for the provision of financial
7 benefits offered by California financial institutions in connection with the deposit of escrow
8 funds.

9 E. Demanding, charging, or collecting a separate fee from escrow or title
10 insurance customers in connection with investigating or tracking whether a beneficiary under
11 a deed of trust causes a deed of reconveyance to be recorded after the obligation owed to the
12 beneficiary has been satisfied, except to the extent that a separate fee is affirmatively and
13 explicitly authorized by a subsequent statute.

14 F. Demanding, charging, or collecting a separate fee from escrow or title
15 insurance customers in connection with preparing, issuing, or recording a release of
16 obligation or providing notice of intention to do so, except to the extent that a separate fee
17 is affirmatively and explicitly authorized by a subsequent statute.

18 G. Collecting a separate fee for a deed of reconveyance (including any
19 recording fee therefore) from an escrow or title insurance customer without separately
20 accounting for this fee in a suspense account or otherwise segregating this fee from
21 defendants' funds in accordance with generally acceptable accounting principles until the fee
22 is transmitted to the trustee or beneficiary under the deed of trust, is returned to the customer,
23 or is paid as required by law.

24 H. Raising any fees charged in connection with escrow services or the
25 provision of title insurance to circumvent or offset any discounts offered pursuant to
26 paragraphs 16 through 22. Defendants shall have the burden of establishing to plaintiffs
27 and/or the Department of Insurance that the basis for any rate or fee increase is unrelated to
28 the discounts offered pursuant to paragraphs 16 through 22.

1 I. Using the term “discount” or otherwise advertising or promoting
2 LandAmerica’s escrow services on the basis of the discounts offered pursuant to paragraphs
3 16 through 22. Nothing herein prevents defendants from informing the public of
4 LandAmerica’s charges for escrow services.

5 J. Disbursing monies to financial institutions that are beneficiaries under
6 deeds of trust at the close of escrow unless disbursed in the following manner:

7 (1) By wire or electronic fund transfer upon close of escrow; by
8 check sent upon close of escrow via a next day delivery service, such as Federal Express, for
9 delivery on the next business day following the close of escrow; or by hand delivery for
10 delivery on the same day as, or on the next business day following, the close of escrow.

11 (2) In the event that the close of escrow occurs so late in the day that
12 it would be impracticable for the funds to be disbursed in the manner described in
13 subparagraph J(1), the funds shall be disbursed on the next business day following the close
14 of escrow by the most expeditious means available.

15 (3) Notwithstanding subparagraphs J(1) and J(2), any means directed
16 by the seller or refinancing owner in an escrow instruction signed or initialed by the seller
17 or refinancing owner.

18 (4) If the defendant acts as the escrow, any instruction described in
19 subparagraph J(3) shall appear on a separate page with no other writing except that
20 necessary to identify the escrow, the parties, the property, the date, the signature of the party
21 giving the instruction, and the following notice which shall clearly and conspicuously appear
22 immediately above or adjacent to the place reserved for the escrow customer's signature.
23 “Any delay in sending funds to a beneficiary under a deed of trust could result in additional
24 interest charges or other expense. You should compare the amount of interest charges or
25 other expenses resulting from a delay in sending funds with the amount you will be charged
26 for wire, electronic fund transfer, or overnight delivery before you sign or initial this escrow
27 instruction.”

28 (5) When disbursing funds by wire or electronic transfer, defendant

1 shall utilize to the fullest extent practicable wire transfers (or similar electronic transfers)
2 where such transfers are included in earned credits furnished by the depositing institution.

3 RESTITUTION

4 5. LandAmerica shall pay restitution in the total amount of eight million dollars
5 (\$8,000,000) in the form of cash payments, as provided in paragraphs 6 through 15, with the
6 balance of the restitution remaining after deducting the amount of cash payments to be paid
7 in the form of discounts, as provided in paragraphs 16 through 22. The discount restitution
8 payments will begin within five business days after the completion of the cash claims process
9 described in paragraphs 6 through 15 of this Judgment.

10 Payments to Claimants

11 6. A. LandAmerica shall pay sixty-five dollars (\$65) to each of its former
12 escrow customers who meet all of the following conditions:

13 (1) The customer closed an escrow transaction in which
14 LandAmerica acted as escrow agent between May 19, 1995 and the date of the entry of
15 judgment.

16 (2) The customer was charged and paid a fee for any services
17 involved in the preparation, execution and recordation of a deed of reconveyance
18 including but not limited to document preparation or forwarding services.

19 (3) The customer received a release of obligation, or did not
20 receive a release of obligation or a reconveyance.

21 (4) The customer files a timely claim as provided in paragraph 8.

22 (5) The customer is a natural person or a trust.

23 B. LandAmerica may treat multiple buyers, sellers, and borrowers in an
24 escrow transaction (e.g., tenants in common, a husband and wife in a community property
25 transaction) as a single customer or claimant for the purpose of paying claims.

26 7. LandAmerica shall have no obligation to make payment under paragraph 6 if
27 LandAmerica establishes that it did any of the following:

28 A. Transmitted the customer's reconveyance fee to the trustee or

1 beneficiary under the deed of trust that encumbered the customer's property.

2 B. Prepared and recorded a deed of reconveyance while acting in the
3 capacity of trustee under the deed of trust.

4 C. Escheated to the state the fee charged the customer.

5 8. Within five business days after the Attorney General has given LandAmerica
6 notice that the verification process has been completed and that the Attorney General has
7 determined that the information provided was substantially complete and accurate, as more
8 fully described in paragraphs 24 through 26 of this Judgment and paragraph 1F of the
9 Stipulation, LandAmerica, at its sole expense, shall cause to be published a notice, whose
10 form and contents are satisfactory to plaintiff, at least once per week for three consecutive
11 weeks. The published notices will appear in the Los Angeles Times, the San Francisco
12 Chronicle and Examiner, the Sacramento Bee, the Modesto Bee, the Fresno Bee, the San
13 Diego Union Tribune, the Bakersfield Californian, the Orange County Register, the San Jose
14 Mercury News, and the Oakland Tribune. The notice shall state that former escrow
15 customers who meet the criteria set forth in paragraph 6 are eligible to file a claim to recover
16 sixty-five dollars (\$65) if the claim is returned by a date specified in the notice that is at least
17 90 days after the date on which the first notice is published. The notice shall indicate that
18 the claim must indicate the claimant's name and the address of the property involved in the
19 escrow. The notice may request additional documentation if available to the customer but
20 shall clearly indicate that the customer is not obliged to provide any further information to
21 be eligible. The published notice shall state that no specific claim form is required as long
22 as the claimant's name and property address is set forth, but the notice shall set forth a
23 sample form that may be completed and returned. The notice shall also set forth the address
24 to which the claim form is to be sent and a toll-free telephone number to which inquiries may
25 be directed.

26 9. The claims shall be returned to a Settlement Administrator, as more
27 particularly described in paragraph 24. The Settlement Administrator shall log the claims
28 and transmit them to LandAmerica.

1 10. Within 60 days after the close of the settlement period described in paragraph
2 8 of this Judgment, the Settlement Administrator will transmit all claims to LandAmerica.
3 After the completion of the LandAmerica shall (A) pay the claim without further review or
4 (B) review the claim, conduct a diligent search of its records, and determine the claimant's
5 eligibility for payment. If LandAmerica determines that the claimant is eligible, or if
6 LandAmerica cannot determine the claimant is ineligible, LandAmerica shall pay the claim
7 within 15 days. If LandAmerica determines that the claimant is not eligible, LandAmerica
8 shall provide the Settlement Administrator, within 15 days, with the name and address of
9 each person who submitted the claim that LandAmerica determined was ineligible and a
10 complete statement of reasons for the denial of that claimant's claim including all of the
11 documentation on which LandAmerica relies to establish LandAmerica's determination that
12 the claimant is not eligible for payment. The Settlement Administrator shall review the
13 rejected claims, any written objections submitted as described under paragraph 12, and the
14 records, including the escrow file, that may be relevant for determining the claimant's
15 eligibility. The Settlement Administrator shall report its evaluation of the merits of each
16 rejected claim to plaintiff. If plaintiff disputes LandAmerica's rejection of a claim and the
17 parties are unable to resolve the dispute, all disputed claims shall be submitted, at
18 LandAmerica's sole expense, to an arbitrator selected by the parties or, in the event the
19 parties do not agree on an arbitrator, to an arbitrator selected by the court.

20 11. For the purpose of this judgment, a claim shall be deemed eligible and the
21 claimant shall be entitled to payment under either of the following circumstances:

22 A. LandAmerica recorded a release of obligation for the claimant and
23 LandAmerica's records do not clearly refute that the claimant paid a fee for a reconveyance
24 or release of obligation.

25 B. LandAmerica did not record a release of obligation or a reconveyance
26 in the capacity of trustee under a deed of trust for the claimant, LandAmerica's records
27 indicate that the claimant paid a fee for a reconveyance or release of obligation, and
28 LandAmerica's records do not establish that LandAmerica either transmitted the fee paid by

1 the claimant to the beneficiary or trustee under the deed of trust or escheated the fee to the
2 state.

3 12. LandAmerica shall notify each person who submitted a claim that was rejected
4 and briefly describe the reason for rejecting the claim. The notice shall indicate that if the
5 claimant disputes the rejection of the claim, the claimant may provide the Settlement
6 Administrator with a written objection stating all of the claimant's grounds for disputing the
7 rejection of the claim. The notice shall indicate that the written objection must be mailed
8 to the Settlement Administrator at an address set forth in the notice and must be submitted
9 by a specified date, which shall not be less than 15 days following the date of the mailing of
10 the notice.

11 13. The Settlement Administrator shall respond to any questions by the public
12 about the claims procedure and, in connection therewith, shall establish a toll free number.

13 14. The envelopes containing the checks sent by LandAmerica to claimants shall
14 be marked with the Settlement Administrator's return address. If any check sent to a
15 claimant is returned undeliverable, the Settlement Administrator shall take or cause to be
16 taken reasonable steps, including skip-tracing if reasonable, to attempt to locate the claimant.
17 If thereafter the claimant is still not located or if the claimant's check is not cashed within
18 six months, any funds payable under the judgment shall be promptly, but in no event later
19 than April 1, 2004 paid as cy pres restitution as provided in paragraph 23.

20 15. Within 90 days following the closure of the cash claims period, LandAmerica
21 shall provide plaintiff and the Settlement Administrator with a report indicating the name and
22 address of each claimant paid, the date of payment, and the amount of the claim. If any
23 claims are thereafter paid, LandAmerica shall supplement the report with additional quarterly
24 reports indicating the name and address of each claimant paid, the date of payment, and the
25 amount paid. Within seven months of the date of issuing checks in payment of claims,
26 LandAmerica shall provide plaintiff and the Settlement Administrator with a report of the
27 names and addresses of claimants whose checks are not cashed within six months of
28 issuance. The reports required herein shall be subscribed under oath by an officer of

1 LandAmerica indicating his or her firsthand personal knowledge of the facts set forth in the
2 report.

3 Discounts for Eligible Customers

4 16. LandAmerica shall reduce its charge to customers by twenty dollars (\$20) for
5 escrow services, or by twenty dollars (\$20) for title insurance when escrow services are not
6 directly provided, if the customer satisfies the following conditions:

7 A. The customer closes a transaction for the purchase, sale, or refinancing
8 of residential real property containing one- to four-dwelling units on and after the date the
9 discount restitution payments are to begin pursuant to paragraph 5 of this Judgment.

10 B. That customer previously purchased escrow services (or title insurance
11 without escrow services) between May 19, 1995 and the date of entry of judgment from
12 LandAmerica or from other settling defendants identified by plaintiff in a declaration filed
13 with the court following entry of judgment.

14 C. That customer did not receive cash payment of a claim, as provided in
15 paragraphs 6 through 15 of this judgment.

16 D. The customer is a natural person or a trust.

17 17. Customers who had multiple transactions involving the purchase of escrow
18 services or title insurance without escrow services from LandAmerica or other settling
19 defendants between May 19, 1995 and the date of entry of judgment shall be entitled to a
20 twenty dollar (\$20) discount for each transaction.

21 18. LandAmerica shall determine whether a customer is eligible for a discount
22 based on an examination of its business records and public records. For the purpose of this
23 judgment, it shall be presumed that LandAmerica or another settling defendant provided
24 escrow services or title insurance without escrow services between May 19, 1995 and the
25 date of entry of judgment if a deed or deed of trust recorded during that time period indicates
26 that recording was requested by LandAmerica or another settling defendant.

27 19. Customers shall not be required to provide any documentation or verification
28 of eligibility or to request a discount in order to qualify for a discount. LandAmerica,

1 however, shall consider any documentation voluntarily provided by customers in determining
2 eligibility for a discount.

3 20. LandAmerica shall provide discounts under this judgment until the earlier of
4 (a) the date on which LandAmerica has paid out all discounts owed under this judgment as
5 described in paragraph 5 or (b) 10 years after the date of entry of this judgment.

6 21. If LandAmerica has not fully discharged its obligation to pay discounts within
7 7 years following the date of entry of judgment, the following shall apply:

8 A. Plaintiff and LandAmerica shall review the amount of discounts
9 remaining to be paid and the anticipated number of transactions during the next 3-year period
10 in which LandAmerica is likely to provide escrow services or title insurance without escrow
11 services.

12 B. There is a rebuttable presumption affecting the burden of proof that the
13 number of anticipated transactions in which LandAmerica will provide escrow services or
14 title insurance without escrow services during the next 3-year period is the same as the
15 number of transactions during the previous 3-year period in which LandAmerica provided
16 escrow services or title insurance without escrow services.

17 C. If the parties agree that it is likely that LandAmerica will provide the
18 amount of remaining discounts during the next 3-year period at the rate of twenty dollars
19 (\$20) per discount, LandAmerica shall continue to provide twenty dollar (\$20) discounts
20 until all discounts owing under this judgment have been paid or until the date that is 10 years
21 after the date of the entry of this judgment.

22 D. If the parties agree that it is unlikely that LandAmerica will pay out the
23 amount of remaining discounts during the next 3-year period at the rate of twenty dollars
24 (\$20) per discount, the amount of each discount shall be increased in five dollar (\$5)
25 increments to an amount that the parties agree will likely be sufficient to ensure that
26 LandAmerica provides the remaining amount of discounts owed under this judgment during
27 the next 3-year period. LandAmerica shall provide the increased discount until all discounts
28 owing under this judgment have been paid or until the date that is 10 years after the date of

1 the entry of this judgment.

2 E. If the parties are unable to reach agreement as described in subparagraph
3 C or D, the court shall set the amount of the discount at a sufficient level to
4 ensure that LandAmerica will likely provide all discounts owed under this judgment within
5 10 years after the date of the entry of this judgment.

6 22. LandAmerica shall provide counsel for plaintiff with a report, quarterly during
7 the first year following the date of entry of this judgment and semiannually thereafter,
8 indicating that LandAmerica is acting in compliance with the obligation to provide discounts
9 as set forth in this judgment and stating the names, addresses, and telephone numbers of each
10 person receiving a discount, as required under this judgment, and the amount of the discount.
11 The reports required herein shall be subscribed under oath by an officer of LandAmerica
12 indicating his or her firsthand personal knowledge of the facts set forth in the report.

13 CASH PAYMENT

14 23. LandAmerica is ordered to pay plaintiff the sum of one million six hundred
15 thousand dollars (\$1,600,000). The payment shall be made in the form of a wire transfer to
16 the Office of the Attorney General. The Attorney General shall hold the cash payment until
17 the completion of the verification procedure described in paragraphs 24 through 26 of the
18 Judgment and a determination that the information provided by Land America was
19 substantially complete and accurate as more fully described in paragraph 1F of the
20 Stipulation. Thereafter, the Attorney General shall distribute the payments as follows: seven
21 hundred thousand dollars (\$700,000) as provided under Business and Professions Code
22 sections 17206, 17536 and Government Code section 26506 with one-half of those funds
23 distributed to the Attorney General, one-fourth of those funds distributed to the District
24 Attorney of the City and County of San Francisco and one-fourth of those funds distributed
25 to the City Attorney of the City and County of San Francisco; four hundred fifty thousand
26 dollars (\$450,000) among counsel for plaintiff as reimbursement of attorney's fees and costs,
27 including attorney's fees and costs for the monitoring of LandAmerica's compliance with the
28 judgment; and four hundred fifty thousand dollars (\$450,000) as cy pres restitution to be paid

1 to the Consumer Protection Prosecution Trust Fund, established in People v. ITT Consumer
2 Financial Corporation, et al., Alameda Superior Court Case No. 656038-0, for the
3 investigation and prosecution of cases involving consumer real estate, home mortgage, and
4 consumer finance transactions, civil law enforcement or other consumer protection matters
5 as the trustees of that trust fund in their discretion may direct.

6 VERIFICATION

7 24. LandAmerica and counsel for plaintiff jointly shall select, and
8 LandAmerica shall retain at its sole expense, a third party settlement administrator
9 ("Settlement Administrator") and a third party verifier ("Verifier"). The Settlement
10 Administrator shall be an independent firm that is substantially experienced in the
11 administration of consumer payment programs. The Verifier shall be an independent firm
12 containing one or more certified public accountants experienced in verification and
13 examination procedures. The Verifier shall have responsibility for the following:

14 A. The Verifier shall verify that information provided to plaintiff by
15 LandAmerica was substantially complete and accurate at the time the information was
16 presented. The verification procedure may include a reasonable examination and testing
17 of LandAmerica's records and interviews of LandAmerica's personnel.

18 B. The procedures to be employed by the Verifier to determine
19 compliance and payment shall be developed by the Verifier consistent with applicable
20 standards established by the American Institute of Certified Public Accountants and shall
21 include testing and such other procedures sufficient to enable Verifier to render an
22 opinion concerning the defendants' assertion of compliance relied on by plaintiff as a
23 basis for settlement.

24 C. The Verifier shall provide LandAmerica and counsel for plaintiff
25 with a final report no later than March 1, 2003, unless LandAmerica and counsel for
26 plaintiff agree to a later date, which agreement shall not be unreasonably withheld if
27 additional time is needed to prepare an appropriate report. The final report shall be issued
28 promptly upon completion of all action required hereunder. The final report shall (1)

1 summarize all tasks undertaken by the Verifier, (2) set forth the Verifier's opinion that
2 defendants have furnished substantially accurate and complete information to counsel for
3 plaintiff, and (3) set forth the Verifier's certification of its compliance with the
4 procedures set forth in this Judgment except to the extent of any specifically described
5 deficiencies in compliance. The final report shall be provided to the Attorney General of
6 California, Consumer Law Section, 300 S. Spring Street, Los Angeles, CA 90013,
7 Attention: Deputy Attorney General Christina Tusan; to the San Francisco District
8 Attorney, Consumer and Environmental Protection Unit, 732 Brannan Street, San
9 Francisco, California, Attention: June Cravett; and to the City Attorney of San Francisco,
10 1390 Market Street, 6th Floor, San Francisco, California 94102-5408, Attention: Donald
11 P. Margolis (and/or to such other address or to the attention of such other person as the
12 offices of the Attorney General, District Attorney of San Francisco, or City Attorney of
13 San Francisco shall specify in writing to LandAmerica and the Verifier).

14 D. The letter of engagement entered into between LandAmerica and the
15 Verifier shall provide the following: (1) a description of the Verifier's duties as provided
16 in this Judgment, (2) a requirement that Verifier shall make available to LandAmerica and
17 counsel for plaintiff, within 30 days of written request, copies of all records, documents,
18 reports and work papers obtained or prepared in connection with the duties set forth
19 herein, and (3) a requirement that the Verifier make available to LandAmerica and
20 counsel for plaintiff a person or persons familiar with the procedures to be performed as
21 required by this Judgment or provided in the letter of engagement. If LandAmerica has
22 already produced documents responsive to the request, the Verifier may identify those
23 documents in lieu of providing duplicates. The letter of engagement shall acknowledge
24 that the Attorney General, the District Attorney of San Francisco, and the City Attorney
25 of San Francisco are each an intended user or beneficiary of the report.

26 25. To facilitate the Verifier's responsibilities, LandAmerica shall make
27 available, at LandAmerica's expense, to the Verifier sufficient documents, persons, and
28 other information, including data bases, to enable the Verifier to fulfill its functions under

1 this Judgment, including documents, access to persons, and information reasonably
2 related to the determination of whether LandAmerica furnished substantially accurate and
3 complete information to counsel for plaintiff.

4 26. LandAmerica and the Verifier shall provide for review by the Attorney
5 General, the District Attorney of San Francisco, and/or the City Attorney of San
6 Francisco, within 30 days of a written request, all records, documents and personnel
7 reasonably necessary to ascertain LandAmerica's and the Verifier's compliance with this
8 Judgment . Nothing herein limits the right of the Attorney General, the District Attorney
9 of San Francisco, or the City Attorney of San Francisco to request or obtain information
10 from defendants as otherwise provided in this Judgment or as provided by law.

11 SETTLEMENT ADMINISTRATION

12 27. The Settlement Administrator shall carry out its duties as described in the
13 "Payments to Claimants" portion of this judgment, as set forth in paragraphs 6 through
14 15, and shall verify that LandAmerica has processed claims, properly rejected those
15 claims LandAmerica determined to be ineligible, and actually paid claimants with eligible
16 claims as provided under paragraphs 6 through 15.

17 28. The Settlement Administrator shall provide LandAmerica and counsel for
18 plaintiff with a final report no later than September 1, 2003, unless LandAmerica and
19 counsel for plaintiff agree to a later date, which agreement shall not be unreasonably
20 withheld if additional time is needed to prepare an appropriate report. The final report
21 shall be issued promptly upon completion of all action required hereunder. The final
22 report shall (1) set forth the Settlement Administrator's opinion that LandAmerica has
23 paid cash claims to claimants as provided under paragraphs 6 through 15 of this
24 Judgment, and (2) set forth the Settlement Administrator's certification of its compliance
25 with the procedures set forth in this Judgment except to the extent of any specifically
26 described deficiencies in compliance.

27 29. The letter of engagement entered into between LandAmerica and the
28 Settlement Administrator shall provide the following: (1) a description of the Settlement

1 Administrator's duties as provided in this Judgment, (2) a requirement that the Settlement
2 Administrator shall make available to LandAmerica and counsel for plaintiff, within 30
3 days of written request, copies of all records, documents, reports and work papers
4 obtained or prepared in connection with the duties set forth herein, and (3) a requirement
5 that the Settlement Administrator make available to LandAmerica and counsel for
6 plaintiff a person or persons familiar with the procedures to be performed as required by
7 this Judgment or provided in the letter of engagement. If LandAmerica has already
8 produced documents responsive to the request, the Settlement Administrator may identify
9 those documents in lieu of providing duplicates. The letter of engagement shall
10 acknowledge that the Attorney General, the District Attorney of San Francisco, and the
11 City Attorney of San Francisco are each an intended user or beneficiary of the report.

12 30. To facilitate the Settlement Administrator's responsibilities, LandAmerica
13 shall make available, at LandAmerica's expense, to the Settlement Administrator
14 sufficient documents, persons, and other information, including data bases, to enable the
15 Settlement Administrator to fulfill its functions under this Judgment, including
16 documents, access to persons, and information reasonably related to the determination of
17 whether LandAmerica furnished (A) substantially accurate and complete information to
18 counsel for plaintiff regarding payment of claims, (B) properly determined claimants'
19 eligibility for payment under paragraphs 6 through 15 of this Judgment, and (C) timely
20 paid eligible cash claimants.

21 31. A. On or before September 1, 2003, LandAmerica and the Settlement
22 Administrator shall provide, to the extent applicable to each, to the Attorney General of
23 California, Consumer Law Section, 300 S. Spring Street, Los Angeles, CA 90013,
24 Attention: Deputy Attorney General Christina Tusan; to the San Francisco District
25 Attorney, Consumer and Environmental Protection Unit, 732 Brannan Street, San
26 Francisco, California, Attention: June Cravett; and to the City Attorney of San Francisco,
27 1390 Market Street, 6th Floor, San Francisco, California 94102-5408, Attention: Donald
28 P. Margolis (and/or to such other address or to the attention of such other person as the

1 offices of the Attorney General, District Attorney of San Francisco, or City Attorney of
2 San Francisco shall specify in writing to LandAmerica and the Settlement Administrator),
3 a Final Certification Report containing the following information:

4 (1) A certification by LandAmerica that all monetary relief
5 provided for herein due to all eligible claimants has been paid. The report shall also
6 certify compliance by LandAmerica and the Settlement Administrator with each provision
7 of this Judgment related to such monetary relief to the extent applicable to each.

8 (2) An alphabetical list of the name, address, and telephone
9 number of every eligible cash claimant to whom payment was made and a list of the
10 name, address, and telephone number of every person who filed a claim that was
11 determined to be ineligible for payment together with a brief description of the basis for
12 concluding that the claimant was ineligible.

13 B. LandAmerica and the Settlement Administrator shall provide for
14 review by the Attorney General, the District Attorney of San Francisco, and/or the City
15 Attorney of San Francisco, within 30 days of a written request, all records, documents and
16 personnel reasonably necessary to ascertain LandAmerica's and the Settlement
17 Administrator's compliance with this Judgment as to claimants (for example, in response
18 to inquiries concerning specific claimants). Nothing herein limits the right of the
19 Attorney General, the District Attorney of San Francisco, or the City Attorney of San
20 Francisco to request or obtain information from defendants as otherwise provided in this
21 Judgment or as provided by law.

22 RETENTION OF JURISDICTION

23 32. This Court shall retain jurisdiction over this matter for the purpose of
24 enabling any of the parties to apply to the Court at any time for such further orders or
25 directives as may be necessary or appropriate for the modification of the injunctive
26 provisions herein or for the interpretation or enforcement of any of the provisions of this
27 Judgment.
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

BUSINESS AND PROFESSIONS CODE SECTION 17203

33. All injunctive and other equitable relief under this Judgment, including all relief described in paragraphs 5 through 22 inclusive, is ordered pursuant to the court's equitable powers, including those remedial powers authorized by Business and Professions Code section 17203.

PAYMENT OF COURT COSTS

34. LandAmerica shall pay all court costs associated with its appearance in this action, including any fee for the filing of the stipulation for entry of judgment. Except as otherwise provided herein, each party shall bear its own costs, including attorneys' fees.

EFFECTIVE DATE AND SCOPE OF JUDGMENT

35. This Judgment shall be binding and effective when entered by the Court.

36. As the parties have stipulated, plaintiff has determined that this Judgment, including the payment provisions, is a fair, equitable, and final resolution and disposition of all and only those matters pleaded in the Complaint to constitute violations of Business and Professions Code sections 17200 et seq. and 17500 during the period from May 19, 1995 until the date of entry of this judgment. As the parties have further stipulated and the court adjudges, the Stipulation for Entry of Final Judgment and this Judgment do not settle, compromise, bar, or otherwise in any manner affect either (1) any claims that the State Controller may have against LandAmerica, which claims, if any the State Controller may pursue notwithstanding the Stipulation for Entry of Final Judgment or the entry of this Judgment or (2) any defenses that LandAmerica may have to those claims.

DATED:_____

JUDGE OF THE SUPERIOR COURT