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13 Attorneys for Plaintiffs
 DANIEL TABARES, ET AL.
 14

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 16 FOR THE COUNTY OF LOS ANGELES
 17

18 DANIEL TABARES and RHODORA)
 TABARES; JUDY L. TAYLOR;)
 19 ELIZABETH A. YOUNG; and JUDITH)
 GILBERT, on behalf of themselves and all)
 20 other similarly situated individuals,)
 Plaintiffs,)
 21)
 22 v.)
 23)
 24)
 25)
 26)
 27)
 28)

CASE NO. BC 390195
 Action Filed: May 5, 2008
Assigned to: Hon. Anthony Mohr, D. 309
CCW
CLASS ACTION
~~PROPOSED~~ **FIFTH AMENDED**
COMPLAINT FOR:
 1. **UNFAIR COMPETITION (Cal. Bus. & Prof. Code §§ 17200 et seq.);**
 2. **FRAUD;**
 3. **BREACH OF CONTRACT;**
 4. **DECLARATORY RELIEF;**
 5. **PROFESSIONAL NEGLIGENCE**

DEMAND FOR JURY TRIAL

ORIGINAL FILED

JUL 02 2012
 LOS ANGELES
 SUPERIOR COURT

1 Plaintiffs bring this action on behalf of themselves and all others similarly situated, and on
2 behalf of the general public, against Defendants and Does 1 through 100 as follows:

3 **NATURE OF ACTION**

4 1. This is a class action lawsuit brought by and on behalf of California consumers
5 who purchased deferred annuities from EquiTrust Life Insurance Company ("EquiTrust") and, as
6 subsets of the foregoing, those California consumers who were age 60 or older at the time of
7 purchase, those California consumers who were age 65 or older at the time of purchase, and those
8 California consumers who were sold EquiTrust deferred annuities by EquiTrust's appointed agent,
9 Joseph Sackey ("Sackey").
10

11 2. Abuses in sales of deferred annuities have become a growing problem in California
12 and across the country. Volatility in the stock market and other financial conditions has caused
13 insurance companies to offer hundreds of annuity products. Due to the competition, and the quest
14 for sales agents to market their annuity products, insurance companies have devised unlawful and
15 deceptive sales tactics to induce sales and make enormous profits.
16

17 3. EquiTrust engaged in a plan to sell deferred annuities by recruiting a large number
18 of selling agents and motivating them with high sales commissions. EquiTrust also promised to
19 provide a bonus on its products to induce consumers to buy and to please agents by giving them an
20 extra marketing tool. In doing so, EquiTrust falsely marketed the annuities as having no sales
21 charges or fees and as providing an actual bonus. EquiTrust also represented that the annuities
22 would provide stock market-linked growth and tax-deferred growth. EquiTrust concealed that it
23 would recoup the cost of the sales commissions and the bonus from the purchasers by lowering the
24 annual yields to be paid under the annuities. Thus, EquiTrust's annuities provided less growth, no
25 tax-deferred growth, and no bonus. Additionally, the high marketing expenses utilized by
26 EquiTrust, the high sales commissions and the purported bonus, caused EquiTrust to run afoul of
27 minimum non-forfeiture statutes, consumer protection laws designed to protect consumers from
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1 buying annuities with minimal value. EquiTrust also authorized and ratified the acts of one of its
2 selling agents who made various misrepresentations to California consumers.

3
4 **THE PARTIES**

5 4. Plaintiffs Daniel Tabares and Rhodora Tabares, husband and wife, are, and at all
6 times mentioned herein were, residents and citizens of the State of California, County of San
7 Bernardino. Plaintiff Elizabeth A. Young is, and at all times mentioned herein, was a resident and
8 citizen of the State of California, County of San Bernardino. Plaintiff Judith Gilbert is a resident
9 and citizen of the State of California, County of Los Angeles and her EquiTrust policy was
10 delivered to her in the State of California, County of Los Angeles. Plaintiff Judith L. Taylor is, and
11 at all times mentioned herein, was a resident and citizen of the State of California, County of San
12 Diego.

13 5. EquiTrust is, and at all times mentioned herein was, an Iowa corporation authorized
14 to transact and transacting the business of insurance in the State of California and within this
15 judicial district. It is a wholly owned subsidiary of FBL Financial Group, Inc.

16 6. Sackey was at all times mentioned herein, a California resident, and a
17 licensed life agent authorized to transact and transacting the business of insurance sales in this
18 State and within this judicial district until May 31, 2009.

19 7. Plaintiffs allege that at all times relevant herein, each of the Defendants was the
20 agent, joint venturer, associate, servant and/or employee of each of the other Defendants, and in
21 connection with the action hereinafter alleged, was acting within the scope of such agency,
22 employment and/or relationship, and each Defendant ratified each and every act, omission and
23 thing done by each and every other Defendant named herein.

24 8. Plaintiffs are unaware of the true names and capacities of Defendants DOES 1
25 through 100, inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs will
26 amend this Complaint to allege their true names and capacities when ascertained. Plaintiffs allege
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1 on information and belief that each of the Doe Defendants is responsible or liable in some manner
2 to Plaintiffs and other similarly situated individuals for the conduct alleged in this Complaint and
3 that Plaintiffs' and such other individuals' damages as herein alleged were proximately caused by
4 those Doe Defendants.

5 6 **SUBSTANTIVE ALLEGATIONS**

7 9. In 2001, EquiTrust agreed to coinsure deferred annuities sold by another Iowa-
8 based life insurance company, American Equity Investment Life Insurance Company ("American
9 Equity"). Through this relationship, EquiTrust saw American Equity quickly grow its annuity
10 business by aggressively recruiting new agents with the lure of high sales commissions. EquiTrust
11 observed how American Equity entered into agreements with national marketing organizations
12 ("NMO's") which, in turn, recruited sales agents to sell its annuities to the public. EquiTrust
13 witnessed how American Equity induced these sales agents to promote and sell its annuity
14 products over those of other companies by paying them high sales commissions and by paying
15 overrides to the NMO's. ("We aggressively recruit new agents and expect to continue to expand
16 our independent agency force. . . . These organizations [NMO's] typically recruit agents for us by
17 advertising our products and commission structure. . . ." American Equity 2003 10-K filing at p.
18 7.) By 2003 American Equity had sold hundreds of millions of dollars in deferred annuities in
19 California alone.
20

21 10. EquiTrust decided to follow American Equity's path to profits. In late 2003,
22 EquiTrust created a business plan to sell deferred annuities through an independent agency force,
23 just as American Equity had been doing. EquiTrust's plan was to recruit 30,000 new agents over
24 the course of five years.

25 11. To enlist these agents and to induce them to sell EquiTrust's deferred annuity
26 products over those of other companies, EquiTrust offered them high sales commissions. By the
27 end of 2006, EquiTrust was exceeding its agent recruiting goal. ("Our original business plan
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1 established in late 2003 called for 30,000 agents by the end of the fifth year and we are slightly
2 ahead of that plan.” FBL Financial Group, Inc. 2007 10-K filing, p. 7.) The recruitment of a large
3 agency force and the payment of high sales commissions have enabled EquiTrust to sell in excess
4 of \$400 million of deferred annuities to California consumers.

5
6 12. Like American Equity, EquiTrust also offered products which purported to provide
7 a “bonus.” This is an additional amount of money EquiTrust credits to the annuity’s accumulated
8 value at the time of purchase to entice purchasers to buy its annuities and to please sales agents
9 who use the bonus as a selling tool.

10 13. In selling the annuities, EquiTrust promoted stock market-linked growth its
11 annuities would provide, (“When the Market is Up . . . You’re Up! When it’s Down . . . You’re
12 Not!”; “Market-Linked Earnings”), tax-deferred growth (“tax-deferred earnings”), and, on
13 products with a bonus, the unqualified benefit of a bonus (“And the bonus isn’t just in the name.
14 EquiTrust will immediately credit your contract an extra 10 percent on any premiums paid during
15 the first contract year.”).

16
17 14. What EquiTrust knew and did not disclose to purchasers, however, was that paying
18 sales agents a portion of the premiums deposited by the purchasers, and by adding any bonus that
19 may be promised to the annuities’ accumulated value, would require EquiTrust to recover these
20 monies over the life of the annuities. Because EquiTrust had promised to return the premiums,
21 along with the yields (interest) it was to apply annually to the annuities’ accumulated value,
22 EquiTrust needed to recoup the cost of the sales commissions and the bonus from the purchasers to
23 make money. To do so, EquiTrust surreptitiously shaved monies off the annual yields, thereby
24 lowering the returns received by the purchasers.

25
26 15. Rather than disclose its plan to manipulate the yields and recoup the cost of the high
27 sales commissions and any bonus, EquiTrust did the opposite. In marketing the annuities,
28 EquiTrust falsely represented that the purchaser would pay no sales charges or fees. (“There are

1 no fees, loads or sales charges.”) EquiTrust also represented that any monies to be paid the selling
2 agent would be paid by EquiTrust, without disclosing that the monies are actually paid by the
3 purchaser.

4 16. Additionally, EquiTrust’s high marketing expenses (e.g., 10% sales commissions
5 and 10% bonus) caused it to utilize extremely high surrender penalties that apply over a lengthy
6 period of time (e.g., 20% graduated over 14 years). EquiTrust uses the surrender penalties to
7 coerce purchasers to stay on the policy while it recoups the cost of the high commissions and
8 bonus and, for those who do surrender, to recoup such costs in a lump sum. With respect to
9 California consumers who purchased the annuities when they were age 60 or older, EquiTrust’s
10 use of surrender charges above 10% and longer than 10 years in duration, violates California’s
11 non-forfeiture laws, consumer protection statues designed to provide minimal values in annuities.
12 California Insurance Code sections 10168 et seq. Additionally, EquiTrust failed to comply with
13 Insurance Code section 10127.13 by failing to adequately disclose the actual surrender charges that
14 apply, including the existence of an additional charge known as a Market Value Adjustment,
15 described below.
16

17 17. EquiTrust failed to adequately disclose that it boosts surrender charges when a
18 purchaser wishes to withdraw his or her funds by applying what it calls a Market Value
19 Adjustment (“MVA”). Although surrender charges work as a forfeiture, and must be clearly and
20 adequately disclosed, EquiTrust fails to say precisely how the MVA works, placing an
21 indecipherable mathematical formula in the contract. When a purchaser surrenders, however, and
22 depending on market conditions, EquiTrust increases the surrender charge. EquiTrust does this to
23 hedge its bet on interest rates. EquiTrust realizes that it runs risk from changing interest rates and it
24 attempts to shift this risk to the purchaser without adequately disclosing that it is doing so.
25 (“Interest rate is our primary market risk exposure. Substantial and sustained increases and
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1 decreases in market interest rates can materially and adversely affect the profitability of our
2 products” FBL Financial Group, Inc. filing, p. 20.)

3 **THE TABARES SALE**

4 18. One of the sales agents recruited by EquiTrust was Sackey. Sackey sought an
5 agent appointment with EquiTrust because of the high commissions it provided on its annuity
6 products. Sackey used his appointment with EquiTrust to engage in fraudulent and deceptive
7 practices in selling annuities to California consumers. Those practices include: a) misrepresenting
8 himself as a skilled financial planner and retirement advisor; b) falsely presenting the deferred
9 annuities as immediate annuities, and concealing the actual distribution date for the annuity; d)
10 concealing the significant surrender charges and lengthy surrender period that EquiTrust would
11 apply under the annuities; d) falsely promising that annuitants will be assured of a monthly income
12 of \$2,500, interest only, for life; e) falsely promising that the entirety of the retirees’ principal
13 investment is guaranteed when, in actuality, only 87.5% of the principal investment is guaranteed
14 under the deferred annuity; f) falsely promising that interest rates of up to 10% per year will be
15 paid on the entirety of the initial investment, when in actuality the guaranteed interest rate is only
16 between 1.5% to 2%, and such guaranteed interest rate only applies to the guaranteed portion of
17 the initial investment (i.e., 87.5% of the principal), as opposed to the entirety of the initial
18 investment; g) other acts which Plaintiffs are presently unaware of.

19 19. Since at least 2002, Sackey has been coming to the workplace of the Los Angeles
20 Metropolitan Transportation Authority (hereafter, “MTA”) in the City of Los Angeles for the
21 purpose of soliciting sales of deferred annuities to MTA employees who were approaching the
22 vesting date for their government pensions. In early 2004, Sackey targeted and solicited Plaintiffs,
23 falsely holding himself out to them as a financial planner, annuity specialist, and retirement
24 advisor with extensive experience in retirement planning, estate planning, wills and trusts. With
25 these representations, Sackey was able to acquire the trust and reliance of Plaintiffs. Through the
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1 misrepresentations and calculated concealments set forth above, Sackey convinced Mr. Tabares to
2 roll the entirety of his pension into a private annuity chosen by Sackey: a MarketValue Index
3 annuity issued by EquiTrust.

4 20. In reliance on Sackey's representations, and on the promises provided in
5 EquiTrust's sales brochures and disclosure statement, Mr. Tabares completed the annuity
6 application provided by Sackey on May 4, 2006, and subsequently allowed Sackey to roll
7 Plaintiffs' retirement savings of over \$395,740 from Mr. Tabares' government pension into a
8 MarketValue Index annuity issued by Equitrust. No specimen contract was provided at the point
9 of sale.
10

11 21. However, unbeknownst to Plaintiffs at the time of purchase, and directly contrary
12 to the promises made by Sackey, the annuity sold to Plaintiffs does not provide for immediate
13 monthly interest payments. Far from the impressive returns promised by Sackey, the annuity has a
14 Minimum Guaranteed Interest Rate of between 1.5% to 2%. Furthermore, withdrawals by
15 Plaintiffs from the annuity within the first 10 years from purchase will incur substantial surrender
16 charges of up to 12%. In addition, contrary to Sackey's assurances, the subject annuity does not
17 guarantee the entirety of Plaintiffs' initial investment, but only 87.5% of that investment.
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19 **THE TAYLOR SALE**

20 22. Judy L. Taylor was solicited to purchase an EquiTrust MarketPower Bonus Index
21 annuity by one of EquiTrust's appointed agents. Ms. Taylor was shown the EquiTrust sales
22 brochure and asked to read and sign the Equitrust disclosure statement, which she did. No
23 specimen contract was provided at that time. Based upon the information provided, Ms Taylor
24 purchased the annuity and paid a premium to EquiTrust.
25

26 **THE YOUNG SALE**

27 23. Elizabeth A. Young was solicited to purchase an EquiTrust MarketPower Bonus
28 Index annuity by one of EquiTrust's appointed agents. Mrs. Young was shown the EquiTrust sales

1 documents and asked to read and sign the EquiTrust disclosure statement, which she did. Based
2 upon the information provided, and EquiTrust's promise to pay a 10% bonus on the annuity, Mrs.
3 Young purchased the annuity and paid a premium to EquiTrust. She was 63 years old at the time
4 of purchase.

5 **THE GILBERT SALE**

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7 24. Judith Gilbert was solicited to purchase an EquiTrust MarketTen Bonus Index
8 annuity by one of EquiTrust's appointed agents. Ms. Gilbert's agent recommended that she
9 purchase a MarketTen Bonus Index Annuity and asked her to read and sign the EquiTrust
10 disclosure statement, which she did. No specimen contract was provided at that time. Based upon
11 the information provided, and EquiTrust's promise of a 7% bonus on the annuity, Ms. Gilbert
12 purchased the annuity and paid a premium to EquiTrust. Mrs. Gilbert was 68 years old at the time
13 of purchase.

14 **CLASS ACTION ALLEGATIONS**

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16 25. Pursuant to California Code of Civil Procedure section 382 and California Rules of
17 Court, Rule 1855(b), Plaintiffs seek class certification of the following classes:

18 All California residents who purchased the following deferred annuities from
19 EquiTrust Life Insurance Company: MarketValue Index, MarketPower Bonus
Index, MarketBooster Index, and MarketTen Bonus Index.

20 All California residents who were age 60 or older when they purchased the
21 following deferred annuities from EquiTrust Life Insurance Company:
22 MarketValue Index, MarketPower Bonus Index, MarketBooster Index, and
MarketTen Bonus Index.

23 All California residents who were age 65 or older when they purchased the
24 following deferred annuities from EquiTrust Life Insurance Company:
25 MarketValue Index, MarketPower Bonus Index, MarketBooster Index, and
MarketTen Bonus Index.

26 All California residents who purchased the following deferred annuities from
27 EquiTrust Life Insurance Company through Joseph Sackey: MarketValue Index,
28 MarketPower Bonus Index, MarketBooster Index, and MarketTen Bonus Index.

1 26. Excluded from the classes are: the Defendants, any entity in which Defendants
2 have a controlling interest, and their legal representatives, officers, or directors.

3 27. The members of the class are so numerous that a joinder of all members is
4 impracticable. There are thousands of class members in the classes.

5 28. Plaintiffs' claims are typical of the claims of the class members and are similarly
6 affected by Defendants' wrongful conduct.

7 29. Plaintiffs will fairly and adequately protect the interests of the class members and
8 have retained counsel competent and experienced in class and insurance litigation.

9 30. Common questions of law and fact exist as to all class members and predominate
10 over any questions solely affecting individual members of the classes.

11 31. A class action is superior to all other available methods for the fair and efficient
12 adjudication of this controversy since a joinder of all members is impracticable. Furthermore, as
13 damages suffered by class members may be relatively small, the expense and burden of individual
14 litigation make it impossible for class members to individually redress the wrongs done to them.
15 There will be no difficulty in the management of this action as a class action.
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18 **FIRST CAUSE OF ACTION**

19 (Violation of the Unfair Competition Law Against All Defendants)

20 32. Plaintiffs and the class members hereby repeat and reallege paragraphs 1 through 31
21 and incorporate same as though fully set forth herein.

22 33. Business and Professions Code section 17200 et seq., the Unfair Competition Law
23 ("UCL"), prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent
24 business act or practice" and "unfair, deceptive, untrue or misleading advertising." The acts of
25 Defendants, as alleged herein, constitute unlawful, unfair and/or fraudulent business practices and
26 unfair, deceptive, untrue or misleading advertising within the meaning of § 17200.

27 34. EquiTrust has violated the UCL by:

28 a. Misrepresenting that there would be no sales charges or fees, that any monies

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paid to the selling agents would be paid by it, that the annuities would provide stock market-linked growth and tax-deferred growth, and concealing that it would recoup the cost of the high sales commissions paid the selling agents from the purchasers. EquiTrust surreptitiously shifted the cost of the high sales commissions back to the purchasers by shaving monies off the annual yields to be paid under the annuities;

- b. Misrepresenting that it would pay a bonus on its annuities and concealing that it would recoup cost of the bonus from the purchaser. EquiTrust surreptitiously shifted the cost of the bonus back to the purchasers by shaving monies off the annual yields to be paid under the annuities;
- c. With respect to California consumers who were age 60 or older at the time of purchase, violating Insurance Code sections 10168 et seq. and 10127.13.
- d. Failing to adequately disclose that it boosts surrender charges when a purchaser wishes to withdraw his or her funds by applying an MVA. EquiTrust fails to say precisely how the MVA works, placing an indecipherable mathematical formula in the contract. When a purchaser surrenders, however, and depending on market conditions, EquiTrust increases the surrender charge;
- e. Violating Insurance Code section 332, Civil Code section 1710 and other statutes;
- f. Other acts which Plaintiffs are presently unaware of.

35. Additionally, with respect to those class members that were sold EquiTrust annuities by Sackey, Sackey violated the UCL by:

- a. Misrepresenting himself as a skilled financial planner and retirement Advisor;

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- b. Falsely presenting the deferred annuities as immediate annuities, and concealing the actual distribution date for the annuity;
- c. Concealing the significant surrender charges to be assessed on any withdrawals made within the first 10 years after purchasing the annuity;
- d. Falsely promising that annuitants will be assured of a monthly income of \$2,500, interest only, for life;
- e. Falsely promising that the entirety of the retirees' principal investment is guaranteed when, in actuality, only 87.5% of the principal investment is guaranteed under the deferred annuity;
- f. Falsely promising that interest rates of up to 10% per year will be paid on the entirety of the initial investment, when in actuality the guaranteed interest rate is only between 1.5% to 2%, and such guaranteed interest rate only applies to the guaranteed portion of the initial investment (i.e., 87.5% of the principal), as opposed to the entirety of the initial investment;
- g. Other acts which Plaintiffs are presently unaware of.

36. As a result of Defendants' unfair competition, Plaintiffs have suffered injuries in fact and have lost money or property, as have the other class members.

37. On behalf of themselves and on behalf of the general public, Plaintiffs and the class members respectfully request that the Court order Defendants to grant Plaintiffs restitution of the monies taken from them, and interest thereon, and enjoin Defendants from committing the acts alleged herein in the future.

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

1 annuities by Sackey, Sackey intentionally made the following material misrepresentations and
2 concealments:

- 3 a. Misrepresenting himself as a skilled financial planner and retirement
4 advisor;
- 5 b. Falsely presenting the deferred annuities as immediate annuities, and
6 concealing the actual distribution date for the annuity;
- 7 c. Concealing the significant surrender charges to be assessed on any
8 withdrawals made within the first 10 years after purchasing the annuity;
- 9 d. Falsely promising that annuitants will be assured of a monthly income of
10 \$2,500, interest only, for life;
- 11 e. Falsely promising that the entirety of the retirees' principal investment is
12 guaranteed when, in actuality, only 87.5% of the principal investment is
13 guaranteed under the deferred annuity;
- 14 f. Falsely promising that interest rates of up to 10% per year will be paid on
15 the entirety of the initial investment, when in actuality the guaranteed
16 interest rate is only between 1.5% to 2%, and such guaranteed interest rate
17 only applies to the guaranteed portion of the initial investment (i.e., 87.5%
18 of the principal), as opposed to the entirety of the initial investment;

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21 43. Plaintiffs and the class members relied upon said representations and omissions
22 by purchasing the annuities.

23 44. As a proximate result of the representations and omissions of said Defendants,
24 Plaintiffs and the class members have suffered loss of monies in a sum to be proven at the time of
25 trial.

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

1 appropriate to punish Defendants. Additionally, EquiTrust authorized, approved and ratified the
2 acts of Sackey.

3 46. Defendants knew their conduct was directed to one or more senior citizens, that
4 those senior citizens were more vulnerable to said conduct than other members of the general
5 public, or that their actions would cause harm and injury to the senior citizens and/or their heirs
6 and beneficiaries, thereby entitling Plaintiffs and the Class to trebling of any punitive damages
7 awarded, under Civil Code section 3345.
8

9 **THIRD CAUSE OF ACTION**
10 **(Breach of Contract Against EquiTrust)**

11 47. Plaintiffs and the class members hereby repeat and reallege paragraphs 1 through 46
12 and incorporate the same as though fully set forth herein.

13 48. Plaintiffs and the class members entered into written contracts with EquiTrust, as
14 alleged herein.

15 49. The essential terms of the contracts were that EquiTrust agreed to accept a
16 premium from said purchasers, credit monies to their annuities, and pay interest. Said purchasers,
17 in return, agreed to pay a premium under the contract.

18 50. EquiTrust has breached the terms of the policies by:

- 19 a. Promising that there would be no sales charges or fees, that any monies
20 due agents would be paid by it, that the annuities would provide stock
21 market-linked growth and tax-deferred growth, then surreptitiously shifting
22 the cost of the high sales commissions back to the purchasers by shaving
23 monies off the annual yields to be paid under the annuities;
24
25 b. Promising that it would pay a bonus on its annuities then surreptitiously
26 shifting the cost of the bonus back to the purchasers by shaving monies off
27 the annual yields to be paid under the annuities;
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- 1 c. With respect to California consumers who were age 60 or older at the time
2 of purchase, violating Insurance Code sections 10168 et seq. and 10127.13.
3 d. Increasing the amount of the surrender penalties through an MVA without
4 adequately disclosing that it would boost surrender charges when a
5 purchaser wishes to withdraw his or her funds.
6 e. Other acts which Plaintiffs are presently unaware of.
7

8 51. The acts of EquiTrust in shaving the yields and applying surrender charges and an
9 MVA, as described herein, breached the contracts.

10 52. As a proximate result of the breach of the contracts by EquiTrust, Plaintiffs and the
11 class members have suffered a loss of the monies and interest thereon in an amount to be proven at
12 the time of trial.

13 **FOURTH CAUSE OF ACTION**
14 **(Declaratory Relief Against EquiTrust)**

15 53. Plaintiffs and the class members hereby repeat and reallege paragraphs 1 through 52
16 and incorporate the same as though fully set forth herein.

17 54. As alleged above, an actual controversy exists between the parties regarding their
18 rights and liabilities under the contracts.

19 55. Plaintiffs and the class members request a declaration of the parties' rights and
20 liabilities under the contracts and the statutes cited.

21 **FIFTH CAUSE OF ACTION**
22 **(Professional Negligence Against Sackey)**

23 56. Plaintiffs and the class members hereby repeat and reallege paragraphs 1 through
24 55 and incorporate the same as though fully set forth herein.

25 57. As alleged herein, Sackey acted as a licensed insurance agent, authorized by the
26 State of California, to market and sell annuities to the public. He owed Plaintiffs and the class a
27

1 professional duty to provide honest, accurate, full and complete information regarding the
2 annuities he was selling them.

3 58. Sackey breached his professional duty through false, misleading and deceptive
4 sales and marketing practices as alleged herein, including, but not limited to, the following acts
5 and omissions:

- 6
- 7 a. Misrepresenting himself as a skilled financial planner and retirement
8 advisor;
 - 9 b. Falsely presenting the deferred annuities as immediate annuities, and
10 concealing the actual distribution date for the annuity;
 - 11 c. Concealing the significant surrender charges to be assessed on any
12 withdrawals made within the first 10 years after purchasing the annuity;
 - 13 d. Falsely promising that annuitants will be assured of a monthly income of
14 \$2,500, interest only, for life;
 - 15 e. Falsely promising that the entirety of the retirees' principal investment is
16 guaranteed when, in actuality, only 87.5% of the principal investment is
17 guaranteed under the deferred annuity;
 - 18 f. Falsely promising that interest rates of up to 10% per year will be paid on
19 the entirety of the initial investment, when in actuality the guaranteed
20 interest rate is only between 1.5% to 2%, and such guaranteed interest rate
21 only applies to the guaranteed portion of the initial investment (i.e., 87.5%
22 of the principal), as opposed to the entirety of the initial investment;
 - 23 g. Other acts which Plaintiffs are presently unaware of.
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26 59. As a direct and proximate result of the above-noted breach of professional duties on
27 the part of Sackey, Plaintiffs and the class members have suffered loss of monies in a sum to be
28 proven at the time of trial.

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WHEREFORE, Plaintiffs and the class members pray for judgment against

Defendants as follows:

1. Restitution of the monies improperly collected or withheld;
2. A preliminary and permanent injunction restraining Defendants from further unfair practices;
3. Special damages in an amount to be determined at the time of trial;
4. A declaration of the rights and liabilities of the parties under the EquiTrust deferred annuities;
5. Reasonable attorneys' fees;
6. Punitive damages in an amount appropriate to punish or set an example of Defendants;
7. Treble damages;
8. Costs of suit herein; and
9. For such other and further relief as the Court deems just and proper.

DATED: *July 2, 2012*

GIANELLI & MORRIS
LAW OFFICES OF C. JOE SAYAS, JR.
LAW OFFICES OF RONALD A. MARRON

By: 

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