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18 FIRST AMERICAN TITLE INSURANCE
19 COMPANY and FIRST AMERICAN TITLE
20 COMPANY

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 FOR THE COUNTY OF LOS ANGELES

23 PATRICK KIRK, individually, on behalf of
24 himself and all others similarly situated,

25 Plaintiff,

26 v.

27 FIRST AMERICAN TITLE INSURANCE
28 COMPANY, a California Corporation;
FIRST AMERICAN TITLE COMPANY, a
California Corporation; and DOES 1-500,
inclusive,

Defendants.

Case No. BC372797

(Related Case Nos. BC374557, BC370141,
BC329482, and BC382826)

CLASS ACTION

Assigned to the Hon. Anthony Mohr

ANSWER TO SECOND AMENDED
COMPLAINT

ORIGINAL FILED

JUL 23 2010

LOS ANGELES
SUPERIOR COURT

COPY

GENERAL DENIAL

Defendants, First American Title Insurance Company and First American Title Company, answer the unverified Second Amended Complaint of Patrick Kirk as follows:

1. Pursuant to California Code of Civil Procedure Section 431.30(d), Defendants deny generally and specifically each and every allegation of Plaintiff's unverified Second Amended Complaint. Defendants further expressly deny, generally and specifically, that Plaintiff has been damaged in the sum or sums alleged, or any other sum or sums whatsoever, or at all.

Defendants further deny that Plaintiff has sustained any injury, damage or loss whatsoever by reason of any conduct, action, error or omission on the part of Defendants, or any of their agents, servants or employees.

2. The Court has dismissed with prejudice certain of Plaintiff's causes of action. Accordingly, this answer relates only to Plaintiff's remaining causes of action

3. This answer is without prejudice to Defendants' right to file a further amended answer or other responses after conducting discovery.

SEPARATE AND ADDITIONAL DEFENSES AGAINST NAMED PLAINTIFF

FIRST ADDITIONAL DEFENSE

(Standing)

4. Plaintiff lacks standing to sue Defendants.

SECOND ADDITIONAL DEFENSE

(Statute of Limitations)

5. Plaintiff's claims are barred in whole or in part by the applicable statutes of limitation.

THIRD ADDITIONAL DEFENSE

(Arbitration)

6. Plaintiff is suing, in part, under an agreement containing an arbitration clause and he is therefore bound by that clause under the doctrine of estoppel.

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FOURTH ADDITIONAL DEFENSE

(Filed Rate Doctrine)

7. Plaintiff's claims are barred in whole or in part by the filed rate doctrine.

FIFTH ADDITIONAL DEFENSE

(Exclusive Jurisdiction)

8. Plaintiff's claims are barred in whole or in part by the fact that the California Department of Insurance has exclusive jurisdiction over his claims.

SIXTH ADDITIONAL DEFENSE

(Primary Jurisdiction)

9. Plaintiff's claims are barred in whole or in part by the fact that the California Department of Insurance has primary jurisdiction over his claims.

SEVENTH ADDITIONAL DEFENSE

(Exhaustion)

10. Plaintiff's claims are barred in whole or in part by his failure to exhaust his administrative remedies.

EIGHTH ADDITIONAL DEFENSE

(Waiver and Estoppel)

11. Plaintiff's claims are barred in whole or in part by the doctrines of waiver and/or estoppel.

NINTH ADDITIONAL DEFENSE

(Laches)

12. Plaintiff's claims are barred in whole or in part by the doctrine of laches.

TENTH ADDITIONAL DEFENSE

(Voluntary Payment, Accord, Satisfaction, and Ratification)

13. Plaintiff's claims are barred in whole or in part by the voluntary payment doctrine, accord, satisfaction, and ratification.

1 ELEVENTH ADDITIONAL DEFENSE

2 (Unjust Enrichment)

3 14. Plaintiff's claims are barred in whole or in part by the fact that he would be
4 unjustly enriched were he to recover any sum in this action.

5 TWELFTH ADDITIONAL DEFENSE

6 (Adequate Remedy at law)

7 15. Plaintiff's equitable claims are barred to the extent he has an adequate remedy at
8 law.

9 THIRTEENTH ADDITIONAL DEFENSE

10 (Unclean Hands)

11 16. Plaintiff's equitable claims are barred to the extent he has unclean hands.

12 FOURTEENTH ADDITIONAL DEFENSE

13 (Ascertainable Class)

14 17. Plaintiff's Second Amended Complaint fails to identify an ascertainable class.

15 FIFTEENTH ADDITIONAL DEFENSE

16 (Community of Interest)

17 18. Plaintiff's Second Amended Complaint fails to identify a community of interest with
18 and among the putative class.

19 SIXTEENTH ADDITIONAL DEFENSE

20 (Manageability)

21 19. Plaintiff's Second Amended Complaint fails to identify a manageable class.

22 SEVENTEENTH ADDITIONAL DEFENSE

23 (Punitive Damages)

24 20. To the extent Plaintiff seeks punitive damages, his claims violate the Fifth
25 Amendment to the United States Constitution and similar state constitutional provisions because
26 they would expose First American to multiple punishments and fines for the same act or
27 conduct.
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1 EIGHTEENTH ADDITIONAL DEFENSE

2 (Punitive Damages)

3 21. To the extent Plaintiff seeks punitive damages, his claims violate the Due Process
4 clause of the Fifth and Fourteenth Amendments to the United States Constitution in the absence
5 of an order bifurcating those claims from the issue of liability.

6 NINETEENTH ADDITIONAL DEFENSE

7 (Punitive Damages)

8 22. To the extent Plaintiff seeks punitive damages, his claims are barred by the
9 excessive fines clause of the Eighth Amendment to the United States Constitution, made
10 applicable to the states through the Fourteenth Amendment.

11 TWENTIETH ADDITIONAL DEFENSE

12 (Punitive Damages)

13 23. If Plaintiff were granted punitive damages, it would be grossly excessive and would
14 violate the Due Process clause of the Fourteenth Amendment to the United States Constitution
15 and similar state constitutional provisions. Defendants have not received fair notice that they
16 could be subject to substantial damages in this state for the conduct alleged. Punitive damages
17 would be greatly disproportionate to any actual damages and far exceed any civil or criminal
18 sanctions that could be imposed for similar alleged misconduct.

19 SEPARATE AND ADDITIONAL DEFENSES AGAINST PUTATIVE CLASS MEMBERS

20 Defendants contend that class certification is inappropriate in this case. Nevertheless,
21 were a court to certify a class, Defendants would have several defenses against any putative
22 class members. The identity of any putative class members is unknown, accordingly Defendants
23 assert the following defenses on information and belief.

24 TWENTY-FIRST ADDITIONAL DEFENSE

25 (Standing)

26 24. One, or more, putative class member lacks standing to sue Defendants.
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1 TWENTY-SECOND ADDITIONAL DEFENSE

2 (Statute of Limitations)

3 25. One, or more, putative class member's claims are barred in whole or in part by the
4 applicable statutes of limitation.

5 TWENTY-THIRD ADDITIONAL DEFENSE

6 (Arbitration)

7 26. One, or more, putative class member's claims is subject to an arbitration clause and
8 is bound by that clause.

9 TWENTY-FOURTH ADDITIONAL DEFENSE

10 (Filed Rate Doctrine)

11 27. One, or more, putative class member's claims are barred in whole or in part by the
12 filed rate doctrine.

13 TWENTY-FIFTH ADDITIONAL DEFENSE

14 (Exclusive Jurisdiction)

15 28. One, or more, putative class member's claims are barred in whole or in part by the
16 fact that the California Department of Insurance has exclusive jurisdiction over his or her claims.

17 TWENTY-SIXTH ADDITIONAL DEFENSE

18 (Primary Jurisdiction)

19 29. One, or more, putative class member's claims are barred in whole or in part by the
20 fact that the California Department of Insurance has primary jurisdiction over his or her claims.

21 TWENTY-SEVENTH ADDITIONAL DEFENSE

22 (Exhaustion)

23 30. One, or more, putative class member's claims are barred in whole or in part by his
24 failure to exhaust his or her administrative remedies.

25 TWENTY-EIGHTH ADDITIONAL DEFENSE

26 (Waiver and Estoppel)

27 31. One, or more, putative class member's claims are barred in whole or in part by the
28 doctrines of waiver and/or estoppel.

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TWENTY-NINTH ADDITIONAL DEFENSE

(Laches)

32. One, or more, putative class member's claims are barred in whole or in part by the doctrine of laches.

THIRTIETH ADDITIONAL DEFENSE

(Voluntary Payment, Accord, Satisfaction, and Ratification)

33. One, or more, putative class member's claims are barred in whole or in part by the voluntary payment doctrine, accord, satisfaction, and ratification.

THIRTY-FIRST ADDITIONAL DEFENSE

(Unjust Enrichment)

34. One, or more, putative class member's claims are barred in whole or in part by the fact that he or she would be unjustly enriched were he or she to recover any sum in this action.

THIRTY-SECOND ADDITIONAL DEFENSE

(Adequate Remedy at law)

35. One, or more, putative class member's equitable claims are barred to the extent he or she has an adequate remedy at law.

THIRTY-THIRD ADDITIONAL DEFENSE

(Unclean Hands)

36. One, or more, putative class member's equitable claims are barred to the extent he or she has unclean hands.

THIRTY-FOURTH ADDITIONAL DEFENSE

(Dissimilar Class Member)

37. One, or more, putative class member is not similarly situated to Plaintiff.

THIRTY-FIFTH ADDITIONAL DEFENSE

(Punitive Damages)

38. To the extent a class member seeks punitive damages, his or her claims violate the Fifth Amendment to the United States Constitution and similar state constitutional provisions

1 because they would expose First American to multiple punishments and fines for the same act or
2 conduct.

3 THIRTY-SIXTH ADDITIONAL DEFENSE

4 (Punitive Damages)

5 39. To the extent a class member seeks punitive damages, his or her claims violate the
6 Due Process clause of the Fifth and Fourteenth Amendments to the United States Constitution in
7 the absence of an order bifurcating those claims from the issue of liability.

8 THIRTY-SEVENTH ADDITIONAL DEFENSE

9 (Punitive Damages)

10 40. To the extent a class member seeks punitive damages, his or her claims are barred
11 by the excessive fines clause of the Eighth Amendment to the United States Constitution, made
12 applicable to the states through the Fourteenth Amendment.

13 THIRTY-EIGHTH ADDITIONAL DEFENSE

14 (Punitive Damages)

15 41. If any class member were granted punitive damages, it would be grossly excessive
16 and would violate the Due Process clause of the Fourteenth Amendment to the United States
17 Constitution and similar state constitutional provisions. Defendants have not received fair
18 notice that they could be subject to substantial damages in this state for the conduct alleged.
19 Punitive damages would be greatly disproportionate to any actual damages and far exceed any
20 civil or criminal sanctions that could be imposed for similar alleged misconduct.

21 ADDITIONAL DEFENSES

22 42. Defendants reserve the right to amend this general denial to assert such additional
23 defenses as may become apparent during the continuing course of discovery in this action.

24 PRAYER

25 WHEREFORE, Defendants pray for judgment on Plaintiff's Second Amended
26 Complaint as follows:

- 27 1. That Plaintiff takes nothing;
28 2. That the Second Amended Complaint be dismissed in its entirety with prejudice;

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- 3. That judgment be entered for Defendants;
- 4. That Defendants be awarded their reasonable attorneys' fees and costs incurred;
- and
- 5. That Defendants be awarded such other and further relief as the Court deems just and proper.

Dated: July 23, 2010

SONNENSCHN NATH & ROSENTHAL LLP

By Joel D. Siegel / JDS
JOEL D. SIEGEL

Attorneys for Defendants FIRST AMERICAN
TITLE INSURANCE COMPANY and FIRST
AMERICAN TITLE COMPANY

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California, I am over the age of 18 and not a party to the within action. My business address is 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017; my e-mail notification address is lainsworth@sonnenschein.com.

On July 23, 2010, I served the foregoing document, described as **ANSWER TO SECOND AMENDED COMPLAINT**, on the interested parties in this action, as follows:

U.S. Mail: By placing for collection and mailing the original a true copy of said document enclosed in a sealed envelope addressed to counsel for such parties as set forth below. I am personally and readily familiar with the business practice of Sonnenschein Nath & Rosenthal LLP for the collection and processing of documents for mailing with the United States Postal Service. Pursuant to that practice, mail placed for collection in the ordinary course of business is deposited the same day, with proper postage fully prepaid, with the United States Postal Service.

Federal Express: By depositing in a box or other facility maintained by Federal Express, an express carrier service, or delivered to a courier or driver authorized by said express carrier service to receive documents, the original a true copy of the document sealed in an envelope designated by said express carrier service, with delivery fees paid or provided for, and addressed to counsel for such parties as set forth below.

Electronic Mail: By transmitting, at or before _____ .m., a true copy of said document to counsel for such parties at the electronic notification address(es) set forth below, said transmission being reported as complete and without error.

Facsimile: By transmitting, at or before _____ .m., a true copy of said document to counsel for such parties at the fax telephone number(s) set forth below and receiving a transmission report, properly issued by the sending facsimile machine, that the transmission was complete and without error.

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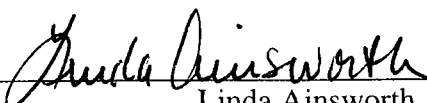
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I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 23, 2010, at Los Angeles, California.



Linda Ainsworth