

1 CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION

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5 Attorneys for the

6 California Department of Insurance

7 **BEFORE THE INSURANCE COMMISSIONER**

8 **OF THE STATE OF CALIFORNIA**

9 **SACRAMENTO**

10
11 In the Matter of the Licenses and Licensing
12 Rights of:

File No. RC 7104-A

13
14 FIRST AMERICAN TITLE INSURANCE
COMPANY; and,

STIPULATION AND WAIVER

15 FIRST AMERICAN TITLE COMPANY,

16 Respondents.
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19 Respondents, FIRST AMERICAN TITLE INSURANCE COMPANY and FIRST
20 AMERICAN TITLE COMPANY (collectively "FIRST AMERICAN"), and the California
21 Department of Insurance ("Department"), stipulate as set forth herein:

22 1. Respondent, FIRST AMERICAN TITLE INSURANCE COMPANY ("FATIC"),
23 is licensed by the Insurance Commissioner to act as a title insurer in the State of California,
24 pursuant to section 12340.1 of the California Insurance Code;

25 2. Respondent, FIRST AMERICAN TITLE COMPANY ("FATC"), is licensed by
26 the Insurance Commissioner to act as an underwritten title company in the State of California,
pursuant to section 12389 of the California Insurance Code. FATC is licensed to transact the

1 business of title insurance in the counties of Alameda, Alpine, Amador, Calaveras, Contra Costa,
2 Del Norte, El Dorado, Fresno, Humboldt, Imperial, Kern, Kings, Lake, Lassen, Los Angeles,
3 Madera, Marin, Mariposa, Mendocino, Monterey, Nevada, Orange, Placer, Plumas, Riverside,
4 Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Luis Obispo, San
5 Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Solano, Sonoma, Stanislaus,
6 Sutter, Trinity, Tulare, Tuolumne, Ventura, Yolo, and Yuba;

8 3. In March 2006, the Department of Insurance ("Department") began examining the
9 operations of FIRST AMERICAN TITLE INSURANCE COMPANY and FIRST AMERICAN
10 TITLE COMPANY (collectively "FIRST AMERICAN"), pursuant to California Insurance Code
11 sections 790.04 and 12407, after the Department received written complaints alleging illegal
12 rebating activities by FIRST AMERICAN. These complaints raised the issue of whether certain
13 activities implemented by FIRST AMERICAN, from February 2005 to February 2006,
14 constituted violations of California's insurance laws. The examination occurred in FIRST
15 AMERICAN'S San Bernardino county office. The investigation included an examination of the
16 books and records of FIRST AMERICAN and interviews with employees of FIRST
17 AMERICAN, as authorized by California Insurance Code sections 790.04 and 12407;

19 4. On or about November 9, 2006, the Department caused to be served upon
20 FIRST AMERICAN an Accusation, Notice of Noncompliance, Demand for Monetary Penalty,
21 and Right to Issue Order to Show Cause, denominated "In the Matter of the Licenses and
22 Licensing Rights of: FIRST AMERICAN TITLE INSURANCE COMPANY and FIRST
23 AMERICAN TITLE COMPANY, Respondents," File No. RC 7104-A, incorporated herein by
24 reference. Said Accusation alleged that between February 2005 and November 2005, FIRST
25 AMERICAN made cash payments to settlement service providers for the referral of title
26 insurance business; paid the business support expenses of persons covered by California

1 Insurance Code section 12404 ("12404 persons"), which were unrelated to the business of title
2 insurance; paid the accommodations of and entertainment expenses for 12404 persons, which
3 were unrelated to the business of title insurance; provided gifts, gift certificates, gift cards, and
4 miscellaneous gifts and merchandise to 12404 persons as an inducement for the referral and
5 placement of title business, and unrelated to the business of title insurance, paid the food and
6 beverage expenses of 12404 persons; and paid transportation expenses for the benefit of 12404
7 persons, and unrelated to the business of title insurance, in violation of California Insurance Code
8 sections 12404, 12405 and 12408 et. seq.;

10 5. FIRST AMERICAN and the Department have undertaken discussions to resolve
11 the issues in this proceeding and now wish to resolve those issues and other issues identified in
12 paragraph 16 pending with the Department without the need for a hearing or further
13 administrative action; therefore FIRST AMERICAN waives any and all rights to a hearing in this
14 matter, and any and all other rights related to this proceeding which may be accorded pursuant to
15 Chapter 5, Part 1, Division 3, Title 2 (commencing with section 11500) of the California
16 Government Code, and by the California Insurance Code;

18 6. FIRST AMERICAN agrees to and shall Cease and Desist from activities which
19 may be in violation of, or noncompliant with, California Insurance Code sections 790.03(e),
20 790.06(a), and Article 6, Chapter 1, Part 6, Division 2 (commencing with section 12404) of the
21 Insurance Code upon written Order of the Insurance Commissioner to be made and filed herein
22 and without further notice to FIRST AMERICAN;

24 7. FIRST AMERICAN agrees to and shall comply with the provisions of California
25 Insurance Code section 12404 prohibiting illegal rebate/inducement activities upon written Order
26 of the Insurance Commissioner to be made and filed herein and without further notice to FIRST
AMERICAN;

1 8. FIRST AMERICAN agrees to and shall Cease and Desist statewide its marketing,
2 operation and/or maintenance of the DailyContact.com program;

3 9. FIRST AMERICAN agrees to and shall Cease and Desist statewide its marketing,
4 operation and/or maintenance of the Realty DataLink program;

5 10. FIRST AMERICAN agrees to and shall have an appropriate officer of FIRST
6 AMERICAN diligently review and monitor throughout 2007 FIRST AMERICAN'S compliance
7 with the anti-rebate provisions of the California Insurance Code with respect to its business
8 dealings with Frontier Homes, Inc. Such officer shall certify, based on and subject to his or her
9 diligent review, to the Sacramento Legal Division of the California Department of Insurance, on
10 June 30, 2007, that between January 1 and June 30, 2007, FIRST AMERICAN was in compliance
11 with the anti-rebate provisions of the California Insurance Code in its business dealings with
12 Frontier Homes, Inc., in California, and shall similarly certify, on December 31, 2007, that
13 between July 1 and December 31, 2007, FIRST AMERICAN was in compliance with the anti-
14 rebate provisions of the California Insurance Code in its business dealings with Frontier Homes,
15 Inc., in California;

16 11. FIRST AMERICAN agrees to and shall have an appropriate officer of FIRST
17 AMERICAN diligently review and monitor through 2007 FIRST AMERICAN'S National
18 Homebuilders Division's compliance with the anti-rebate provisions of the California Insurance
19 Code. Such officer shall certify, based on and subject to his or her diligent review, to the
20 Sacramento Legal Division of the California Department of Insurance, on June 30, 2007, that
21 between January 1 and June 30, 2007, the California operations of FIRST AMERICAN'S
22 National Homebuilders Division were in compliance with the anti-rebate provisions of the
23 California Insurance Code, and shall similarly certify, on December 31, 2007, that between July 1
24 and December 31, 2007, the California operations of FIRST AMERICAN'S National
25
26

1 Homebuilders Division were in compliance with the anti-rebate provisions of the California
2 Insurance Code;

3 12. FIRST AMERICAN agrees to and shall submit to the California Department of
4 Insurance, Field Rating and Underwriting Bureau, responses to the allegations contained in the
5 Comprehensive Market Conduct Examination dated "As of October 26, 2004;"
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7 13. FIRST AMERICAN agrees to and shall pay, within ten (10) days after receiving
8 an invoice from the California Department of Insurance, Division of Accounting, the amount of
9 nine million nine hundred forty nine thousand five hundred dollars (\$9,949,500.00) to the
10 California Department of Insurance as a monetary penalty arising out of the matters resolved
11 herein pursuant to California Insurance Code section 12976 upon written Order of the Insurance
12 Commissioner to be made and filed herein and without further notice to FIRST AMERICAN;
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14 14. FIRST AMERICAN agrees to and shall pay, within ten (10) days after receiving
15 an invoice from the California Department of Insurance, Division of Accounting, the amount of
16 forty five thousand five hundred dollars (\$45,500.00) to the California Department of Insurance
17 for reimbursement of costs upon written Order of the Insurance Commissioner to be made and
18 filed herein and without further notice to FIRST AMERICAN;

19 15. FIRST AMERICAN agrees to and shall pay, within ten (10) days after receiving
20 an invoice from the California Department of Insurance, Division of Accounting, the amount of
21 five thousand dollars (\$5,000.00) in light of the Department's determination of FIRST
22 AMERICAN'S willful failure to comply with a final Order of the Commissioner, dated
23 November 2, 2005, in File No. DISP05046622, pursuant to California Insurance Code section
24 12414.25 upon written Order of the Insurance Commissioner to be made and filed herein and
25 without further notice to FIRST AMERICAN;
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1 16. This Stipulation and Waiver resolves fully the matters (a) alleged or arising out of,
2 the allegations in File No. RC 7104-A, (b) the seventy-two complaints, pending investigation,
3 reported to the Department through and including December 31, 2006, and (c) all matters arising
4 out of the Comprehensive Market Conduct Examination dated "as of October 26, 2004;"
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6 17. This Stipulation and Waiver does not constitute an admission of liability or
7 ~~wrongdoing by FIRST AMERICAN;~~

8 18. This Stipulation and Waiver does not resolve any issues surrounding applications
9 filed by FIRST AMERICAN with the Corporate Affairs Bureau of the California Department of
10 Insurance, or the computer software and natural hazard disclosure report inquiries by the
11 Department currently pending with FIRST AMERICAN;
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13 19. This Stipulation and Waiver does not settle, waive, release, limit, or prohibit civil,
14 administrative, or criminal investigations and enforcement actions against FIRST AMERICAN,
15 involving matters alleged or arising out of the allegations in File No. RC 7104-A, that may be
16 commenced by any state or federal agency other than the California Department of Insurance. By
17 entering into this Stipulation and Waiver, FIRST AMERICAN does not agree to waive or limit
18 any defense that might otherwise apply in such subsequent investigation or action.

19 20. Neither this Stipulation and Waiver nor the Order approving this Stipulation and
20 Waiver are in any way intended to limit or waive the Commissioner's authority to bring further
21 disciplinary action against FIRST AMERICAN for violations not covered by the Accusation or
22 this Stipulation and Waiver, whether such violations occurred prior or subsequent to the date of
23 this Stipulation and Waiver;
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25 21. Nothing contained in this Stipulation and Waiver or the Order approving this
26 Stipulation and Waiver shall prevent the Department from taking action at any time to enforce
this Stipulation and Waiver or the Order approving this Stipulation and Waiver if the Department

1 believes that FIRST AMERICAN is not in compliance with the terms and conditions of the
2 Stipulation and Waiver and/or the Order approving this Stipulation and Waiver;

3 22. The Insurance Commissioner retains jurisdiction to ensure that FIRST
4 AMERICAN complies with the provisions and terms of this Stipulation and Waiver and/or Order
5 approving this Stipulation and Waiver;
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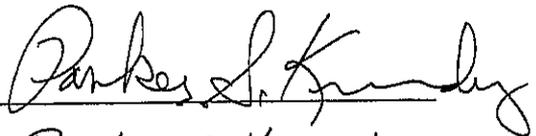
7 23. ~~FIRST AMERICAN represents and warrants that the persons executing this~~
8 Stipulation and Waiver on behalf of FIRST AMERICAN are authorized to enter into and execute
9 this Stipulation and Waiver and that FIRST AMERICAN has consulted with its counsel regarding
10 this document; and,

11 24. Pursuant to California Insurance Code section 12921(b)(1), this Stipulation and
12 Waiver is not final unless and until approved by the Insurance Commissioner as evidenced by an
13 Order of the Commissioner expressly adopting this Stipulation and Waiver.
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22 Dated: December 27, 2006

FIRST AMERICAN TITLE INSURANCE
COMPANY

Signed: 

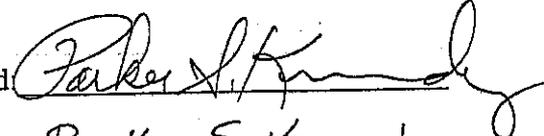
Name: Parker S. Kennedy

Title: Chairman

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Dated: December 27, 2006

FIRST AMERICAN TITLE COMPANY

Signed: 

Name: Parker S. Kennedy

Title: Chairman

ORDER

The preceding Stipulation and Waiver is hereby adopted as the Order of the Insurance
Commissioner of the State of California.

Dated: JANUARY 3, 2007

JOHN GARAMENDI
Insurance Commissioner

