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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Certificate of Authority of) File No. DISP 06092656
METROPOLITAN LIFE)
INSURANCE COMPANY,) STIPULATION, WAIVER AND ORDER
Respondent.)

1 Respondent Metropolitan Life Insurance Company (“Respondent”) and the California
2 Department of Insurance (“Department”) stipulate as follows:

3 1. All terms not otherwise defined herein shall have the meaning, if any, assigned to them,
4 as of the Effective Date of this Stipulation, Waiver and Order or as subsequently modified, by the
5 California Insurance Code and its implementing regulations. Whenever the terms listed below are used
6 in this Stipulation, Waiver and Order, the following definitions shall apply:

7 (a) “Agreements” shall mean all understandings, agreements, contracts and
8 arrangements concerning any Compensation or Contingent Compensation to be paid to a Producer in
9 connection with the bidding, placement or renewal of Employee Benefit Insurance. The term
10 Agreements includes, but is not limited to, “Preferred Broker Compensation Plans,” “Preferred Broker
11 Compensation Plan II,” “Preferred Broker Compensation Plan III,” “Preferred Compensation Plan IV,”
12 “Group Disability Alliance Commitment and Compensation Agreements,” “Placement Service
13 Agreements,” “Market Service Agreements,” and all other agreements, by whatever name, and whether
14 written or oral, under which Compensation or Contingent Compensation is paid to a Producer, in
15 connection with the bidding, placement or renewal of Employee Benefit Insurance;

16 (b) “Base Compensation” shall mean an amount paid to a producer in connection
17 with the issuance, renewal or servicing of Employee Benefit Insurance that is a percentage of premium
18 or a fixed dollar amount, whether characterized as base compensation or supplemental compensation, of
19 the type which Respondent is required to report to certain customers in order for the customers to
20 complete Schedule A of the Form 5500. For the purposes of this Stipulation, Waiver and Order, Base
21 Compensation shall include “Supplemental Compensation,” which shall mean any Compensation paid
22 to a Producer that is either set as a fixed percentage or based on the amount of premiums, in respect of
23 Employee Benefit Insurance issued by Respondent, or number of accounts sold, through that Producer
24 during a previous year. The Supplemental Compensation percentage payable to any Producer must be
25 fixed prior to the start of the year in which Supplemental Compensation is payable to the Producer, and
26 the percentage may not be varied during the year;

27 (c) “Compensation” shall mean anything of material value provided to a Producer in
28 connection with the placement or renewal of Employee Benefit Insurance, including, but not limited to,

1 Service Fees, money, credits, loans, forgiveness of principal or interest, vacations, prizes, gifts, or the
2 payment of the Producer’s employee salaries or expenses. For purposes of this Stipulation, Waiver and
3 Order, “Contingent Compensation” (defined below) and reasonable entertainment expenses shall not be
4 considered “Compensation.” The treatment of entertainment expenses shall be subject to any and all
5 Department of Labor (“DOL”) requirements, including the DOL’s Advisory Opinion 2005-02A
6 (“Fortis”);

7 (d) “Contingent Compensation” shall mean with respect to Employee Benefit
8 Insurance any payment to a Producer contingent upon that Producer: (i) placing a particular number of
9 contracts, policies, lives or dollar value of premium with Respondent; (ii) achieving a particular level
10 of growth in the number of contracts, policies or lives placed or dollar value of premium with
11 Respondent; (iii) meeting a particular rate of retention or renewal of contracts, policies, lives or
12 premium in force with Respondent; (iv) placing or keeping sufficient business with Respondent to
13 achieve a particular ratio or amount of profitability; or (v) providing preferential treatment to
14 Respondent in the placement process, including but not limited to, giving last looks, first looks, rights
15 of first refusal, competitive bidding information not otherwise given to other insurers, or limiting the
16 number of quotes sought from insurers for insurance premiums;

17 (e) “Effective Date” shall mean the date upon which this Stipulation, Waiver and
18 Order is executed by the Department and Respondent;

19 (f) “Employee Benefit Insurance” shall mean an insurance contract, policy, service
20 or product issued by Respondent to or insuring California customers or residents or provided in
21 connection with any employment relationship (or any other group relationship) issued to an employer
22 (or any other group entity), whether or not the plan is an ERISA plan, including, but not limited to,
23 regular employer or group entity-paid plan insurance, for any of the products offered by Respondent to
24 California customers or residents, which are: group life, accidental death and dismemberment, long and
25 short term disability, health (including long-term care and critical illness), dental, vision, travel accident
26 insurance, and/or medical stop loss insurance. Employee Benefit Insurance shall also include
27 supplemental insurance made available to plan participants (and/or their beneficiaries), partially or
28 entirely at their expense through a policy issued to their employer (or any other group entity), including

1 voluntary and supplemental life, accidental death and dismemberment, long and short term disability,
2 health (including long term care and critical illness), dental, vision, travel accident insurance, and/or
3 medical stop loss insurance. Notwithstanding the foregoing, group annuity products, coverage for legal
4 services, any services performed by Respondent for self-funded plans pursuant to an administrative
5 service agreement and policies initially issued by New England Mutual or New England Life that are
6 now administered by First Health or Great West Life Insurance shall not be considered Employee
7 Benefit Insurance for purposes of this Stipulation, Waiver and Order;

8 (g) "Producer" means any natural person or entity who acts or purports to act on
9 behalf of another to obtain or renew an Employee Benefit Insurance policy, or who provides or purports
10 to provide assistance and/or consultation in connection with the placement, purchase and/or renewal of
11 an Employee Benefit Insurance policy, product or service, regardless of whether that person or entity is
12 licensed as such, and regardless of whether that person or entity styles herself a Producer, broker, agent,
13 consultant or otherwise. A Producer does not include salaried employees of Respondent or captive
14 agents, or any person who obtains written acknowledgement from a buyer or prospective buyer that
15 such person solely represents Respondent and not the buyer or prospective buyer in the transaction at
16 issue and will receive compensation from Respondent in connection with the placement of Employee
17 Benefit Insurance;

18 (h) "Respondent" shall mean Metropolitan Life Insurance Company and any
19 subsidiaries or affiliates that issue and/or sell Employee Benefit Insurance in the United States; and

20 (i) "Service Fees" shall mean any fees paid by Respondent to a Producer in relation
21 to Employee Benefit Insurance in connection with the sale or renewal of such insurance that are in
22 addition to, or outside of, any fees that are treated by Respondent as commissions for the purposes of
23 Schedule A (Form 5500), regardless of whether Respondent is required under ERISA to provide
24 Schedule A (Form 5500) information to the customer, including, but not limited to, communication
25 fees, marketing fees, implementation fees, enrollment fees, audit fees and Request for Proposal fees.

26 2. Respondent currently is, and at all times relevant hereto was, an insurer licensed to
27 transact various classes of insurance in California and has transacted insurance business in California.

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1 3. On November 18, 2004, the Insurance Commissioner filed a complaint in Superior Court
2 pursuant to his authority under Insurance Code §12928.6, which complaint was subsequently amended
3 on June 6, 2005, by the filing of a Second Amended Complaint (“SAC”). That action is *The People of*
4 *the State of California by and through John Garamendi, Insurance Commissioner of the State of*
5 *California, Plaintiff vs. Universal Life Resources, et al.*, Case No. GIC838913 (Cal. Sup. Ct., San
6 Diego) (the “Civil Action”). The allegations recited in the SAC are hereby incorporated as allegations
7 in this Stipulation, Waiver and Order.

8 4. Respondent disputes and denies the material allegations recited in the SAC.

9 5. The Department and Respondent believe that it is in the public interest to resolve all
10 matters raised in the Civil Action.

11 THEREFORE, with respect to the solicitation, negotiation, and sale in California or to
12 California residents of Employee Benefit Insurance, Respondent and the Department agree as follows:

13 A. Respondent waives its right to a hearing and all other due process rights that may be
14 accorded to it by the California Administrative Procedure Act (Sections 11500-11528 of the
15 Government Code), California Insurance Code, California Constitution, United States Constitution, and
16 every other statute, case and regulation.

17 B. Respondent agrees that in lieu of other disciplinary action, the Commissioner, by his
18 execution of this Stipulation, Waiver and Order, and without further notice to Respondent, orders that
19 Respondent comply with Cal. Ins. Code and related regulations including, but not limited to, §§332,
20 781, 790.02, and 790.03.

21 C. Except as otherwise noted, Respondent further agrees to implement within six (6)
22 months following the Effective Date (the “Implementation Date”) the following business reforms:

23 (i) Respondent will assign personnel for the purpose of complying with the
24 Stipulation, Waiver and Order, in connection with the bidding, placement or renewal of Employee
25 Benefit Insurance;

26 (ii) In the case of Employee Benefit Insurance that is not terminable at will by
27 the customer, before the time such coverage is issued, Respondent will provide the customer with a
28 detailed description of any Compensation to be paid. Respondent shall also provide an estimate of the

1 maximum percentage of any Contingent Compensation for which a Producer may be eligible. With
2 respect to Contingent Compensation, such estimate will be expressed as a specific dollar amount and/or
3 as a percentage of premium that may be paid and will note the performance factors such as premiums,
4 persistency and profitability ratios that can trigger the payment of Contingent Compensation, as well as
5 a detailed description of how the Contingent Compensation is (or would be) calculated or determined.
6 With respect to Base Compensation, before the time the applicable Employee Benefit Insurance is
7 issued, Respondent will provide the customer with a description of the Base Compensation payable to
8 the Producer and a detailed description of how the Base Compensation is calculated or determined and
9 paid. Respondent will also inform customers that they may contact Respondent, by providing a toll-free
10 number and an e-mail address, where the customer can find out the specific Base Compensation to be
11 paid to the Producer before retaining Respondent. At the time of policy renewal, Respondent shall also
12 provide the customer with the same information concerning Base Compensation and advise that the
13 amount of Base Compensation to be paid, if any, may change. Before the time the applicable Employee
14 Benefit Insurance is issued, Respondent shall also disclose any equity interest (other than owning
15 publicly traded securities or an interest that is solely for investment purposes and not for direct or
16 indirect management control) held by Respondent in the Producer. In the case of Employee Benefit
17 Insurance that is terminable at will by the customer, beginning January 1, 2008, the disclosures
18 contemplated by this ¶C.ii. shall be provided prior to or with the delivery of the customer's Employee
19 Benefit Insurance policy or renewal information materials that are delivered. Information concerning
20 Respondent's Compensation practices will be made available on Respondent's website commencing on
21 or before January 1, 2008;

22 (iii) Respondent will provide disclosures containing the same information
23 required in ¶C.ii. to employers when the employer's employees are offered Respondent's Group
24 Universal Life policies so that the employers may provide such information to their employees.
25 Additionally, Respondent will provide the same disclosures as provided herein to any California
26 resident employee who opts for coverage under his or her employer's Group Universal Life policy at
27 the same time Respondent provides the employee with a certificate of coverage;

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1 (iv) Respondent will provide adequate training of its employees on
2 compliance with the terms of this Stipulation, Waiver and Order and will (1) monitor the
3 implementation of the business reforms herein; and (2) assign personnel to respond to customer
4 inquiries concerning Compensation and/or Contingent Compensation;

5 (v) Respondent shall provide a verification on the first, second and third
6 anniversary of the Implementation Date that Respondent's employees have been adequately trained
7 about the foregoing obligations as to Producer Compensation and Contingent Compensation issues, and
8 that Respondent is monitoring its compliance with the terms of this Stipulation, Waiver and Order; and

9 (vi) Respondent shall disclose all information contained within its business
10 records as needed by customers to complete Schedule A of the Form 5500 annual report, including but
11 not limited to the name of each Producer and the full amount of any Compensation and Contingent
12 Compensation paid to that Producer that is directly or indirectly attributable to the placement or renewal
13 of Respondent's Employee Benefit Insurance which must be reported on Schedule A in order to comply
14 with all IRS and DOL requirements, including the DOL's Advisory Opinion 2005-02A ("Fortis").

15 D. Respondent further agrees to pay \$700,000 in attorneys' fees and costs incurred by the
16 Department and its counsel relating to this Stipulation, Waiver and Order, and action styled *The People*
17 *of the State of California by and through John Garamendi, Insurance Commissioner of the State of*
18 *California, Plaintiff vs. Universal Life Resources, et al.*, Case No. GIC838913 (Cal. Sup. Ct., San
19 Diego) within five business days of execution of this Stipulation, Waiver and Order. No other monetary
20 payment is required of Respondent.

21 E. Respondent further agrees to fully and promptly cooperate with the Department with
22 regard to any investigation, or related regulatory proceeding or action, regarding any Compensation and
23 Contingent Compensation of any type paid by Respondent to any Producer ("Regulatory
24 Investigation"). Such cooperation shall include, without limitation,

25 (i) the voluntary production (without service of subpoena) of (1) any and all
26 non-privileged information and documents or other tangible evidence reasonably available and
27 requested by the Department in connection with a Regulatory Investigation and (2) any non-privileged
28 compilations or summaries of information or data that the Department requests be prepared; and

1 (ii) Respondent will use its best efforts to ensure that officers, directors,
2 employees and agents of Respondent fully and promptly cooperate with the Department in connection
3 with any Regulatory Investigation, including attendance (without service of a subpoena) at any
4 proceeding or other meeting as requested by the Department.

5 F. Respondent further warrants that the following information provided to and relied on by
6 the Department in its investigation and negotiation of this Stipulation, Waiver and Order is true and
7 correct as of the date hereof and that, where applicable, the following practices will not change except
8 as provided for in ¶H:

9 (i) Prior to the time Respondent is selected to provide Employee Benefit
10 Insurance, Respondent typically has no direct contact (“direct contact” means face-to-face, telephonic,
11 or personally-directed email or correspondence) with a prospective customer’s employees with respect
12 to the sale of Employee Benefit Insurance, but provides all information to the employer or the Producer.
13 In accordance with and subject to ¶F.(iv) *infra*, the disclosures required by ¶C.(ii) herein will be
14 provided to the employer (either directly or indirectly through a Producer) whose employees may
15 purchase the Employee Benefit Insurance. Whenever Respondent has any direct contact with an
16 employee or other participant in an Employee Benefit Insurance program regarding such program and
17 prior to Respondent being selected, the disclosure contemplated by ¶C.(ii) must be provided to the
18 employee or participant. If an employer requests assistance in providing information concerning
19 Compensation and/or Contingent Compensation to its employees, Respondent will use its best efforts to
20 facilitate such disclosure, but may charge the employer for any additional services or documentation
21 provided. If an employee requests information at any time from Respondent concerning the
22 Compensation and/or Contingent Compensation paid to a Producer for the insurance coverage
23 purchased by the employee, Respondent will provide same;

24 (ii) Concerning the sale of Employee Benefit Insurance, which is conducted
25 in Respondent’s Institutional Business area, oversight involving Producer Compensation and
26 Contingent Compensation has been consolidated into one unit, Broker Operations, which under the
27 leadership of an officer who reports directly to the President of Institutional Business, is responsible for
28 developing policies and procedures in the Producer Compensation and Contingent Compensation area.

1 To ensure consistency, Broker Operations is now responsible for overseeing the Schedule A
2 (Form 5500) information reporting process across all of Respondent's group life insurance and group
3 accident and health insurance operations;

4 (iii) Respondent's Contingent Compensation programs with respect to
5 Employee Benefit Insurance have been consolidated into a single program with the same terms and
6 conditions applicable to all Producers;

7 (iv) Respondent shall implement by January 1, 2008 a standard Producer
8 compensation plan that will address Compensation payments with respect to the sale of Employee
9 Benefit Insurance by Producers. The standard Producer compensation plan will require each Producer
10 to comply with all Compensation and Contingent Compensation disclosure requirements mandated by
11 Respondent and regulatory authorities;

12 (v) Respondent does not pay a Producer Service Fees for services performed
13 by such Producer with respect to an employer's Employee Benefit Insurance for which such Producer is
14 broker of record without such employer's written authorization;

15 (vi) Respondent does not pay Contingent Compensation to Producers based
16 on the claims experience of the Employee Benefit Insurance placed by the Producers;

17 (vii) Respondent discloses in its responses to requests for proposals ("RFP's"),
18 in its "cost and benefit summaries" that are provided to Producers for a prospective new Employee
19 Benefit Insurance customer, and to customers that renew Employee Benefit Insurance policies, the
20 types of Compensation and Contingent Compensation that Producers may be eligible to receive if the
21 customer retains Respondent and/or renews coverage with Respondent. Further, in its Welcome to
22 MetLife letter sent to all Employee Benefit Insurance new plan sponsors at the inception of coverage,
23 Respondent again discloses the types of Compensation and Contingent Compensation that Producers
24 may be eligible to receive;

25 (viii) All forms of cash and non-cash Compensation and Contingent
26 Compensation paid or provided to Producers that relate to an ERISA plan are included as applicable on
27 the information Respondent is required to provide to plans for their inclusion on Schedule A (Form
28 5500). In 2005, Respondent distributed a written explanation of the new Schedule A information

1 process to its customers that are required to file Schedule A's. Additionally, in 2005, before paying
2 Contingent Compensation attributable to 2004 production, Respondent wrote to approximately 16,000
3 group insurance customers apprising them that their Producers were eligible for a Contingent
4 Compensation payment. Respondent provided those customers with general information about the
5 Contingent Compensation programs and directed them to contact their Producers or Respondent if they
6 wanted more information regarding the programs. Respondent followed the same process in 2006
7 before paying Contingent Compensation attributable to 2005 production. Respondent shall follow the
8 same process in 2007 before paying Contingent Compensation attributable to 2006 production;

9 (ix) Respondent has apprised all Producers that qualified for Contingent
10 Compensation of the new Contingent Compensation payment process and disclosure process. The
11 Producers were notified in 2005 of, among other things, the disclosure to Respondent's customers of the
12 2004 Contingent Compensation payment information with the Schedule A information, where
13 applicable;

14 (x) Respondent has implemented the following internal reforms and
15 measures:

16 1) Respondent's Law Department provided training to more than 200
17 sales and service leaders regarding Producer Compensation issues. The training included information
18 regarding regulatory investigations and changes to Respondent's business processes. The training also
19 included a discussion on corporate responsibility and ethics;

20 2) Various Respondent sales and service personnel involved in
21 Employee Benefit Insurance participated in informational conference calls and training materials and
22 field alerts have been developed for Respondent's personnel. The field alerts, conference calls and
23 training materials provided information regarding the new Contingent Compensation program payment
24 process, Schedule A information reporting, responding to customer and Producer inquiries, and the
25 changes made to the Contingent Compensation programs in respect of Employee Benefit Insurance;

26 3) A letter describing Producer issues and related changes in business
27 processes has been distributed to Respondent's affected officers and managers;

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1 G. Respondent agrees to comply with this Stipulation, Waiver and Order. Any violation of
2 this Stipulation, Waiver and Order shall be deemed an unfair act as if defined in Cal. Ins. Code §790.03
3 and shall be subject to proceedings and penalties pursuant to Cal. Ins. Code §§790.035 and 790.05.
4 Respondent acknowledges that if there is a failure to comply, the Commissioner may bring appropriate
5 disciplinary action against Respondent, pursuant to Cal. Ins. Code §790.05, subject to notice and
6 hearing pursuant to the California Administrative Procedure Act (California Government Code §11370,
7 *et seq.*) and the provisions of California Code of Regulations, title 10, Chapter 5, Subchapter 3, Article
8 19 (Title 10 CCR §2591, *et seq.*). Respondent reserves all defenses including the extent of any
9 penalties or fines assessed pursuant to the above in accordance with Title 10 CCR §2591, *et seq.*

10 H. If, after the Effective Date, the Department or the California Legislature enacts statutes,
11 rules or other regulations which modify, circumvent or alter the terms of this Stipulation, Waiver and
12 Order, then Respondent shall comply with same and the terms herein are so modified. If Respondent
13 has agreed, or agrees to any additional disclosures and/or other requirements, including business
14 conduct reforms, in connection with Employee Benefit Insurance in addition to those contemplated
15 herein with any other civil, criminal, regulatory and/or licensing authority, Respondent shall provide
16 such additional disclosures in connection with its Employee Benefit Insurance. At the end of three
17 years from the Implementation Date, Respondent may seek relief from any of the terms of the
18 Stipulation and Waiver from the Department with a written explanation as to the relief sought and the
19 reasons therefor. The Department will grant any such relief that seeks to subject Respondent to
20 substantially the same restrictions on the payment and/or disclosure of Compensation that the
21 Department has agreed to for any other insurer (or an affiliate of such an insurer) in the Civil Action,
22 and/or which is in compliance with the law at that time. Notwithstanding the foregoing, with respect to
23 those items set forth in ¶¶F.(ii), (x)(4), (x)(5) and (xi), Respondent will notify the Department of
24 material changes, if any, in any of the processes described therein prior to the third anniversary of the
25 Implementation Date and with respect to ¶¶F(ii), (x)(4) and (x)(5) will not implement such changes, if
26 any, for a period of 60 days after such notice is given so that the Department has sufficient time and
27 opportunity to respond and/or object.

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1 I. Respondent and Department further agree that this Stipulation, Waiver and Order is an
2 agreement between the parties and does not create a private right of action on behalf of any third party.

3 J. The “Findings and Declaration of Commissioner” portion of this Stipulation, Waiver and
4 Order will have collateral estoppel effect in any subsequent proceedings between the parties to enforce
5 compliance with this Stipulation, Waiver and Order. In any proceedings unrelated to the enforcement
6 of this Stipulation, Waiver and Order, the “Findings and Declaration of Commissioner” may only be
7 used by the Department in the same manner as against any other insurer.

8 K. This Stipulation, Waiver and Order is not an admission of liability, wrongdoing or
9 violation of the law. Respondent and Department further agree that this Stipulation, Waiver and Order
10 represents a complete resolution of the issues raised in the Civil Action referenced above and no further
11 action will be brought against Respondent for similar incidents as those raised in the Civil Action that
12 pre-date 30 days after the date of the approval of this Stipulation, Waiver and Order by the
13 Commissioner. Upon execution of this Stipulation, Waiver and Order, the Commissioner will forthwith
14 dismiss the Civil Action as against Respondent with prejudice.

15 L. Respondent acknowledges that this Stipulation, Waiver and Order is a public record
16 under California Government Code Section 11517(d), and that it and any order issued pursuant thereto
17 is accessible to the public pursuant to California Public Records Act, California Government Code
18 Section 6250 *et seq.* Pursuant to Cal. Ins. Code §12968 the Stipulation, Waiver and Order will also be
19 posted on the Department’s Internet website.

20 M. Respondent acknowledges that Cal. Ins. Code §12921 requires the Commissioner to
21 approve the final settlement of this matter, and that both the settlement terms and conditions contained
22 herein and the acceptance of those terms and conditions are contingent upon the Commissioner’s
23 personal approval.

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1 N. This Stipulation, Waiver and Order may be executed in counterparts, each of which shall
2 be deemed to constitute an original, and all of which, taken together, shall constitute one and the same
3 instrument. The execution of one counterpart by any Party shall have the same force and effect as if
4 that Party had signed all other counterparts.

5 DATED: March 26, 2007

METROPOLITAN LIFE INSURANCE
COMPANY

6
7 By /s/

8 _____
Nicholas D. Latrenta
Senior Chief Counsel – Insurance Group

9 DATED: March 27, 2007

CALIFORNIA DEPARTMENT OF INSURANCE

10
11 By /s/

12 _____
Jon Tomashoff
Senior Staff Counsel

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15 **FINDINGS AND DECLARATION OF COMMISSIONER**

16 The Commissioner finds and declares as follows:

17 1. Section 332 imposes upon an insurer a duty to disclose to applicants for its insurance,
18 prior to issuance of a policy, the material details of Compensation and Contingent Compensation the
19 insurer may pay or will pay to a Producer that represents the policyholder or applicant;

20 2. A violation of §332 is *per se* hazardous to policyholders and the public, and constitutes
21 grounds, pursuant to §§701, 1065.1 and 1065.3 for the Commissioner to issue an order requiring an
22 insurer to comply with that section;

23 3. All insurers conducting business in California, including, but not limited to Respondent,
24 must comply with §332 by disclosing to policyholders or applicants for its insurance, prior to issuance
25 of a policy, the material details of Compensation and Contingent Compensation the insurer may pay or
26 will pay to a Producer as provided for herein;

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ORDER

The Commissioner orders as follows:

1. Respondent must perform all actions required under this Stipulation and Waiver and abide by all covenants and representations recited therein.

DATED: March 27, 2007

STEVE POIZNER
Insurance Commissioner

/s/ _____

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