

1 CALIFORNIA DEPARTMENT OF INSURANCE  
2 LEGAL DIVISION

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10  
11 **BEFORE THE INSURANCE COMMISSIONER**  
12 **OF THE STATE OF CALIFORNIA**  
13 **SACRAMENTO**

14 In the Matter of the Licenses and Licensing  
15 Rights of:

File No. RC 7104-A

16 FIRST AMERICAN TITLE INSURANCE  
17 COMPANY; and,  
18 FIRST AMERICAN TITLE COMPANY,

19 **ACCUSATION**  
(Insurance Code §§790.03, 790.04, 790.05,  
20 790.06, 12389.2, 12404, 12405, 12405.7,  
21 12407, and 12408.5; and RESPA, 12 U.S.C.  
22 §§2607(a) and (d));

23 Respondents.

24 **NOTICE OF NONCOMPLIANCE AND**  
25 **HEARING**  
(Insurance Code §§790.03, 790.05, 790.06,  
26 12404, 12405, 12405.7, 12408.5, 12410,  
27 12411, and 12928.6);

28 **DEMAND FOR MONETARY PENALTY**  
(Insurance Code §§790.035, 790.08, 12409,  
12414.25 and 12976; and 12 U.S.C.  
§§2607(d)(1) and (d)(2)); and,

**RIGHT TO ISSUE ORDER TO SHOW**  
**CAUSE**  
(Insurance Code §§790.05, and 790.06).

29 The Insurance Commissioner of the State of California (“Insurance Commissioner”) in his  
30 official capacity alleges that:

1 **JURISDICTION AND PARTIES**

2 1. Respondent, FIRST AMERICAN TITLE INSURANCE COMPANY (“FATIC”),  
3 is licensed by the Insurance Commissioner to act as a title insurer in the State of California,  
4 pursuant to section 12340.1 of the California Insurance Code;<sup>1</sup>

5  
6 2. Respondent, FIRST AMERICAN TITLE COMPANY (“FATC”), is licensed by  
7 the Insurance Commissioner to act as an underwritten title company in the State of California,  
8 pursuant to section 12389 of the California Insurance Code. FATC is licensed to transact the  
9 business of title insurance in the counties of Alameda, Alpine, Amador, Calaveras, Contra Costa,  
10 Del Norte, El Dorado, Fresno, Humboldt, Imperial, Kern, Kings, Lake, Lassen, Los Angeles,  
11 Madera, Marin, Mariposa, Mendocino, Monterey, Nevada, Orange, Placer, Plumas, Riverside,  
12 Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Luis Obispo, San  
13 Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Solano, Sonoma, Stanislaus,  
14 Sutter, Trinity, Tulare, Tuolumne, Ventura, Yolo, and Yuba;

15  
16 3. In March 2006, the Department of Insurance (“Department”) began examining the  
17 operations of FIRST AMERICAN TITLE INSURANCE COMPANY and FIRST AMERICAN  
18 TITLE COMPANY (collectively “FIRST AMERICAN”), pursuant to California Insurance Code  
19 sections 790.04 and 12407, after the Department received written complaints alleging illegal  
20 rebating activities by FIRST AMERICAN. These complaints raised the issue of whether certain  
21 activities implemented by FIRST AMERICAN, from February 2005 to February 2006,  
22 constituted violations of California’s insurance laws. The examination occurred in FIRST  
23 AMERICAN’S San Bernardino county office. The investigation included an examination of the  
24 books and records of FIRST AMERICAN and interviews with employees of FIRST  
25 AMERICAN, as authorized by California Insurance Code sections 790.04 and 12407;  
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28 \_\_\_\_\_  
<sup>1</sup> Unless otherwise stated, all references are to the California Insurance Code.

1           4.       California Insurance Code section 790.035 states that “Any person who engages in  
2 any unfair method of competition or any unfair or deceptive act or practice... is liable to the state  
3 for a civil penalty to be fixed by the commissioner, not to exceed five thousand dollars (\$5,000)  
4 for each act, or, if the act or practice was willful, a civil penalty not to exceed ten thousand dollars  
5 (\$10,000) for each act. The commissioner shall have the discretion to establish what constitutes  
6 an act;”  
7

8           5.       California Insurance Code section 790.04 authorizes the Insurance Commissioner  
9 to “examine and investigate into the affairs of every person engaged in the business of insurance  
10 in the State in order to determine whether such person has been or is engaged in any unfair  
11 method of competition or in any unfair or deceptive act or practice prohibited by Section  
12 790.03...;”  
13

14           6.       California Insurance Code section 790.05 states that “Whenever the commissioner  
15 shall have reason to believe that a person has been engaged or is engaging in this state in any  
16 unfair method of competition or any unfair or deceptive act or practice... and that a proceeding  
17 by the commissioner in respect thereto would be to the interest of the public, he or she shall issue  
18 and serve upon that person an order to show cause containing a statement of the charges in that  
19 respect, a statement of that person’s potential liability under section 790.035, and a notice of  
20 hearing thereon...;”  
21

22           7.       California Insurance Code section 790.06 provides for the prosecution of unfair  
23 methods of competition and unfair and deceptive acts or practices in the business of insurance  
24 that are not defined in Section 790.03;

25           8.       California Insurance Code section 790.08 states that “The powers vested in the  
26 commissioner in this article shall be additional to any other powers to enforce any penalties, fines  
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1 or forfeitures, denials, suspensions or revocations of licenses or certificates authorized by law  
2 with respect to the methods, acts and practices hereby declared to be unfair or deceptive;”

3 9. California Insurance Code section 12389.1 states that “Before granting a license or  
4 a reissued license to act as an underwritten title company to any applicant, the commissioner shall  
5 consider the qualifications of the applicant in respect to the following subjects: ... (e) competency,  
6 character, and integrity of management; and... (g) fairness and honesty of methods of doing  
7 business...;”

8  
9 10. California Insurance Code section 12389.2 provides that “After the issuance or  
10 reissuance of a license to act as an underwritten title company, the holder shall continue to  
11 comply with the requirements as to its business set forth in section 12389.1 and in the other  
12 applicable sections of this code, and in the other laws of this state;”

13  
14 11. California Insurance Code section 12404 provides, in pertinent part, that “it is  
15 unlawful for any title insurer, underwritten title company, or controlled escrow company, to pay,  
16 directly or indirectly, any commission, compensation, or other consideration to any person as an  
17 inducement for the placement or referral of title business;”

18 12. California Insurance Code section 12404(b)(1) defines “person” as “any individual  
19 or entity who is any owner or prospective owner, lessee or prospective lessee of real property or  
20 any interest therein, any obligee or prospective obligee of an obligation secured or to be secured  
21 either in whole or in part by real property or any interest therein, or any person who is acting or  
22 who is in the business of acting as agent, representative, attorney, or employee of those persons”  
23 (hereafter collectively referred to as “12404 persons”);

24  
25 13. California Insurance Code section 12404(c) enumerates certain activities which  
26 are “deemed per se inducements for the placement or referral of title insurance business by any  
27 person, and are unlawful;”  
28

1           14.     California Insurance Code section 12404(g) states that “The Legislature hereby  
2 intends that this section, including the specific terms employed within it, shall be liberally  
3 construed for the purpose of protecting consumers of title business;”

4           15.     California Insurance Code section 12405 provides, in relevant part, that “no  
5 underwritten title company shall make any rebate of any portion of the fee or charge” shown in its  
6 schedule of rates filed with the Commissioner;

7           16.     California Insurance Code section 12405.7 provides in pertinent part that “no...  
8 person engaged in the business of selling or furnishing to the public, directly or indirectly,  
9 evidence to title to real property shall: (a) pay for or furnish or offer to pay for or furnish any part  
10 of the advertising or promotional material of the customer in connection with the sale or  
11 of the advertising or promotional material of the customer in connection with the sale or  
12 encumbrance of real property;”

13           17.     California Insurance Code section 12408.5 provides that “...no underwritten title  
14 company shall pay any commission for the solicitation or negotiation of any services constituting  
15 the business of title insurance;”

16           18.     California Insurance Code section 12409 states that “Every... underwritten title  
17 company which pays any commission or which makes any unlawful rebate in violation of this  
18 article shall be liable to the people of California for five times the amount of that commission or  
19 unlawful rebate...;”

20           19.     California Insurance Code section 12410 states that “In enforcing any of the  
21 provisions of this article, the commissioner shall be entitled to the remedies provided for in  
22 section 12928.6 of this code;”

23           20.     California Insurance Code section 12411 provides “The commissioner may after a  
24 hearing suspend or revoke the... license of any underwritten title company licensed pursuant to  
25 the provisions of Section 12389...;”  
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1           21.     California Insurance Code section 12414.25 provides that “Any person, title  
2 insurer, underwritten title company, or controlled escrow company who fails to comply with a  
3 final order of the commissioner under this chapter shall be liable to the state in an amount not  
4 exceeding one hundred dollars (\$100), but if such failure is willful he or it shall be liable to the  
5 state in an amount not exceeding five thousand dollars (\$5,000) for such failure;”

6           22.     California Insurance Code section 12928.6 provides that “Whenever the  
7 commissioner believes, from evidence satisfactory to him, that any person is violating or about to  
8 violate any provisions of this code or any order or requirement of the commissioner issued or  
9 promulgated pursuant to authority expressly granted the commissioner by any provision of this  
10 code or by law, the commissioner may bring an action in the name of the people of the State of  
11 California in the superior court of the State of California against such person to enjoin such  
12 person from continuing such violation or engaging therein or doing any act in furtherance  
13 thereof;”

14           23.     Section 8(a) of the Real Estate Settlement Practices Act (“RESPA”), 12 U.S.C.  
15 section 2607(a) states that “No person shall give and no person shall accept any fee, kickback, or  
16 thing of value pursuant to any agreement or understanding, oral or otherwise, that business  
17 incident to or part of a real estate settlement service involving a federally related mortgage loan  
18 shall be referred to any person;”

19           24.     Section 8(d) of the Real Estate Settlement Practices Act (“RESPA”), 12 U.S.C.  
20 section 2607(d)(1) states “Any person or persons who violate the provisions of this section shall  
21 be fined not more than \$10,000 or imprisoned for not more than one year, or both;”

22           25.     Section 8(d) of the Real Estate Settlement Practices Act (“RESPA”), 12 U.S.C.  
23 section 2607(d)(2) states “Any person or persons who violate the prohibitions or limitations of  
24 this section shall be jointly and severally liable to the person or persons charged for the settlement  
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1 service involved in the violation in an amount equal to three times the amount of any charge paid  
2 for such settlement service;”

3 26. Section 8(d) of the Real Estate Settlement Practices Act (“RESPA”), 12 U.S.C.  
4 section 2607(d)(4) states “...the insurance commissioner of any State may bring an action to  
5 enjoin violations of this section;”  
6

### 7 FACTUAL ALLEGATIONS

8 27. Between February 2005 and November 2005, the Department received written  
9 complaints from persons concerned about illegal rebating activities implemented and conducted  
10 by FIRST AMERICAN. The Department investigated these complaints, and as a result, the  
11 Insurance Commissioner alleges that FIRST AMERICAN has engaged in the following illegal  
12 rebate activities:

#### 13 A. Cash Payments

14 On or about June 1, 2003, FIRST AMERICAN entered into a Selected Service  
15 Provider Agreement with Frontier Homes, LLC (“Frontier Homes”), a California limited  
16 liability company, whereby FIRST AMERICAN agreed to “pay Frontier \$100 for each  
17 closed First American title insurance order” if Frontier “provide[d] the following  
18 Transaction Coordination services to First American in the counties of Riverside, San  
19 Bernardino and Los Angeles, California: 1.1 Coordination of pre phase release meetings  
20 to disburse phase release information to title and escrow; 1.2 Receive contracts, loan  
21 applications and buyers’ deposits from the sales office; 1.3 Ratification of sales contracts  
22 and transmission of them to the mortgage and escrow companies; 1.4 Transmission of the  
23 loan application to the mortgage company and State of Information to First American; 1.5  
24 Obtains credit approval from the lender and contacts Interior Design Center; 1.6  
25 Coordination with the buyer regarding timing of showroom visits; 1.7 Receiving flooring  
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1 and showroom options and buyer's funds; forwards to escrow; 1.8 Obtain necessary  
2 signatures required by seller; 1.9 Notarize seller's documents; 1.10 Follow up with buyer  
3 regarding outstanding escrow conditions; 1.11 Follow up with lender on status of loan;  
4 1.12 Follow up with lender on outstanding funding conditions; 1.13 Order loan  
5 documents; 1.14 Coordination of close of escrow with builder (construction) and escrow.  
6 Notification to buyer of changes in completion dates; 1.15 Conducts the pre-walk with the  
7 buyer to determine if property is ready to close. Communication with escrow regarding  
8 any changes in close of escrow date; 1.16 Receive closing statement (HUD-1) and  
9 verification of accuracy; 1.17 Preparation of status report for weekly, monthly and/or  
10 quarterly projected closings; 1.18 Orders and obtains Property Disclosure/Natural Hazard  
11 reports; 1.19 Collection of required DRE documentation including bonds for escrow.”  
12  
13 Between July 21, 2003 and August 3, 2006, FIRST AMERICAN tendered fifteen (15)  
14 payments to Frontier Homes for a total of one hundred six thousand dollars (\$106,000.00)  
15 for “Transaction Coordination Services.” FIRST AMERICAN’S Selected Service  
16 Provider Agreement constitutes a per se inducement for the placement or referral of title  
17 insurance business in that the Transaction Coordination services provided by Frontier are  
18 unrelated to the business of title insurance, and constitute cash payments to Frontier for  
19 the referral of title insurance business to FIRST AMERICAN, pursuant to California  
20 Insurance Code section 12404(c)(2);  
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22

23 B. Business Support Expenses

24 FIRST AMERICAN submitted receipts, invoices, and expense reports totaling not  
25 less than seventy seven thousand six hundred ninety dollars and thirteen cents  
26 (\$77,690.13) for business support expenses. FIRST AMERICAN county managers, sales  
27 managers and sales representatives submitted in excess of thirty three (33) receipts and  
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1 invoices documenting expenditures for the business support expenses of 12404 persons,  
2 which were unrelated to the business of title insurance. Examples from these receipts and  
3 invoices include, but are not limited to, consulting, license and training fees paid to  
4 Farbod McCubbin of Web Realty Solutions.com related to the Realty DataLink software  
5 program; consulting, license and marketing fees to Eudicor Consultants related to the  
6 DailyContact.com on-line Direct Mail Solution program; printing raffle prize tickets for  
7 realtor association events; and underwriting the costs for real estate agents and brokers to  
8 attend annual award meetings;

9  
10 C. Accommodations and Entertainment Expenses

11 FIRST AMERICAN submitted receipts, invoices, and expense reports totaling not  
12 less than forty one thousand one hundred seventeen dollars and seventy-four cents  
13 (\$41,117.74) for accommodations and entertainment expenses. FIRST AMERICAN  
14 county managers, sales managers and sales representatives submitted in excess of sixty six  
15 (66) receipts, invoices and Ticket Request Forms documenting expenditures for the  
16 accommodation and entertainment expenses of 12404 persons, which were unrelated to  
17 the business of title insurance. Examples from these receipts, invoices and Ticket Request  
18 Forms include, but are not limited to, accommodations at the Marriot Hotel in Palm  
19 Desert, California prior to a golf tournament; tickets for a college football game in Texas;  
20 tickets to an NFL football game in Minnesota; chartered fishing trips; riverboat dinner  
21 cruises; Del Mar racetrack trips; football tickets; baseball tickets; soccer game tickets;  
22 musicals; comedy club tickets; Teen Choice Award tickets; and concert tickets to Gwen  
23 Stefani, U2, Elton John, Velvet Revolver, Eagles and Paul McCartney;

24 D. Gifts, Gift Certificates, Gift Cards, Miscellaneous Gifts and Merchandise  
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1           FIRST AMERICAN submitted receipts, invoices, and expense reports totaling not  
2 less than seventeen thousand six hundred ninety four dollars and ninety three cents  
3 (\$17,694.93) for gifts, gift certificates, gift cards, miscellaneous gifts and merchandise.  
4 FIRST AMERICAN county managers, sales managers and sales representatives submitted  
5 in excess of one hundred seventy nine (179) receipts and invoices documenting  
6 expenditures for gifts, gift certificates, gift cards, miscellaneous gifts and merchandise  
7 provided to 12404 persons as an inducement for the referral and placement of title  
8 business, and unrelated to the business of title insurance. Examples from these receipts  
9 and invoices include, but are not limited to, gifts, gift cards, miscellaneous gifts and  
10 merchandise in the form of Starbucks gift cards; theatre gift cards; movie ticket gift cards;  
11 Blockbuster gift cards; restaurant gift certificates; amusement park certificates;  
12 department store gift certificates; flowers; books; Thomas Guides; gift baskets; computer  
13 monitors; cigars; and wine;

16           E.     Food and Beverages

17           FIRST AMERICAN submitted receipts, invoices, and expense reports totaling not  
18 less than one hundred thirteen thousand three hundred seventy five dollars and ninety-nine  
19 cents (\$113,375.99) for food and beverages. FIRST AMERICAN county managers, sales  
20 managers and sales representatives submitted in excess of seven hundred thirty two (732)  
21 receipts and invoices documenting expenditures for food and beverages on behalf of  
22 12404 persons, and unrelated to the business of title insurance. Examples from these  
23 receipts and invoices include, but are not limited to, food and beverages for training  
24 meetings; Grand Openings; Open Houses; Christmas parties; birthday parties; broker  
25 caravans; concerts; MLS tours; cocktail parties; Halloween parties; Monday night football  
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1 events; catering; chocolate fountain for Re/Max Grand Opening; Cinco de Mayo events;  
2 Broker of the Year ceremonies; and sporting events;

3 F. Transportation Expenses

4 FIRST AMERICAN submitted receipts, invoices, and expense reports totaling not  
5 less than fifteen thousand six hundred twelve dollars and four cents (\$15,612.04) for  
6 transportation expenses. FIRST AMERICAN county managers, sales managers and sales  
7 representatives submitted in excess of seventeen (17) receipts and invoices documenting  
8 expenditures for transportation expenses for the benefit of 12404 persons, and unrelated to  
9 the business of title insurance. Examples from these receipts and invoices include, but are  
10 not limited to, limousine rides and chartered bus trips to realtor award dinners, baseball  
11 games, casinos, and racetracks;  
12

13 **STATUTORY ALLEGATIONS**

14  
15 28. The facts alleged herein demonstrate that FIRST AMERICAN TITLE  
16 INSURANCE COMPANY and FIRST AMERICAN TITLE COMPANY have made payments in  
17 the form of commissions, compensation, and/or other consideration to any person as an  
18 inducement for the placement or referral of title business, and constitute an unfair method of  
19 competition and/or unfair or deceptive acts or practices in the marketplace affecting title  
20 insurance competitors and consumers in this State, in violation of subsection (a) of section 790.06  
21 of the California Insurance Code, and constitute grounds for the Insurance Commissioner to  
22 suspend or revoke the licenses and licensing rights of FIRST AMERICAN TITLE INSURANCE  
23 COMPANY and FIRST AMERICAN TITLE COMPANY pursuant to California Insurance Code  
24 section 790.08;  
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26 29. The facts alleged herein demonstrate that FIRST AMERICAN TITLE  
27 INSURANCE COMPANY and FIRST AMERICAN TITLE COMPANY have paid, directly or  
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1 indirectly, any commission, compensation, or other consideration to any person as an inducement  
2 for the placement or referral of title business, in violation of California Insurance Code section  
3 12404(a), and constitute grounds for the Insurance Commissioner to restrict or suspend the  
4 licenses and licensing rights of FIRST AMERICAN TITLE INSURANCE COMPANY and  
5 FIRST AMERICAN TITLE COMPANY pursuant to California Insurance Code section 12409;

7 30. The facts alleged herein demonstrate that FIRST AMERICAN TITLE  
8 INSURANCE COMPANY and FIRST AMERICAN TITLE COMPANY have paid, provided or  
9 offered to provide assistance with the business expenses of any person, in violation of California  
10 Insurance Code section 12404(c)(1), and constitute grounds for the Insurance Commissioner to  
11 restrict or suspend the licenses and licensing rights of FIRST AMERICAN TITLE INSURANCE  
12 COMPANY and FIRST AMERICAN TITLE COMPANY pursuant to California Insurance Code  
13 section 12409;

15 31. The facts alleged herein demonstrate that FIRST AMERICAN TITLE  
16 INSURANCE COMPANY and FIRST AMERICAN TITLE COMPANY have provided or  
17 offered to provide consideration for the benefit of any person, in violation of California Insurance  
18 Code section 12404(c)(2), and constitute grounds for the Insurance Commissioner to restrict or  
19 suspend the licenses and licensing rights of FIRST AMERICAN TITLE INSURANCE  
20 COMPANY and FIRST AMERICAN TITLE COMPANY pursuant to California Insurance Code  
21 section 12409;

23 32. The facts alleged herein demonstrate that FIRST AMERICAN TITLE  
24 INSURANCE COMPANY and FIRST AMERICAN TITLE COMPANY have furnished or  
25 offered to furnish all or any part of the time or productive effort of any employee of the title  
26 insurer and the underwritten title company for services unrelated to the title business, in violation  
27 of California Insurance Code section 12404(c)(6), and constitute grounds for the Insurance  
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1 Commissioner to restrict or suspend the licenses and licensing rights of FIRST AMERICAN  
2 TITLE INSURANCE COMPANY and FIRST AMERICAN TITLE COMPANY pursuant to  
3 California Insurance Code section 12409;

4           33. The facts alleged herein demonstrate that FIRST AMERICAN TITLE  
5 INSURANCE COMPANY and FIRST AMERICAN TITLE COMPANY have paid consideration  
6 as an inducement for the placement or referral of title business not specifically set forth in this  
7 section, in violation of California Insurance Code section 12404(e), and constitute grounds for the  
8 Insurance Commissioner to restrict or suspend the licenses and licensing rights of FIRST  
9 AMERICAN TITLE INSURANCE COMPANY and FIRST AMERICAN TITLE COMPANY  
10 pursuant to California Insurance Code section 12409;

11           34. The facts alleged herein demonstrate that FIRST AMERICAN TITLE  
12 INSURANCE COMPANY and FIRST AMERICAN TITLE COMPANY have rebated portions  
13 of the fee or charge for a title policy, in violation of California Insurance Code section 12405, and  
14 constitute grounds for the Insurance Commissioner to restrict or suspend the licenses and  
15 licensing rights of FIRST AMERICAN TITLE INSURANCE COMPANY and FIRST  
16 AMERICAN TITLE COMPANY pursuant to California Insurance Code section 12409;

17           35. The facts alleged herein demonstrate that FIRST AMERICAN TITLE  
18 INSURANCE COMPANY and FIRST AMERICAN TITLE COMPANY have paid for or  
19 furnished the advertising or promotional material of a customer in connection with the sale or  
20 encumbrance of real property in violation of California Insurance Code section 12405.7, and  
21 constitute grounds for the Insurance Commissioner to restrict or suspend the licenses and  
22 licensing rights of FIRST AMERICAN TITLE INSURANCE COMPANY and FIRST  
23 AMERICAN TITLE COMPANY pursuant to California Insurance Code section 12409;

1           36.     The facts alleged herein demonstrate that FIRST AMERICAN TITLE  
2 INSURANCE COMPANY and FIRST AMERICAN TITLE COMPANY have paid or offered to  
3 pay, either directly or indirectly, any part of the employee compensation to persons or entities as  
4 an inducement for, or as compensation for, any title insurance business, in violation of California  
5 Insurance Code section 12408.5, and constitute grounds for the Insurance Commissioner to  
6 restrict or suspend the licenses and licensing rights of FIRST AMERICAN TITLE INSURANCE  
7 COMPANY and FIRST AMERICAN TITLE COMPANY pursuant to California Insurance Code  
8 section 12409;

10           37.     The facts alleged herein demonstrate that FIRST AMERICAN TITLE  
11 INSURANCE COMPANY and FIRST AMERICAN TITLE COMPANY have provided  
12 kickbacks for the referral of title insurance business in connection with transactions involving  
13 federally related mortgage loans, in direct contravention of RESPA, 12 U.S.C. section 2607(a)  
14 and 24 C.F.R. section 3500.14(g)(4), and constitute grounds for the Insurance Commissioner to  
15 assess monetary penalties against FIRST AMERICAN TITLE INSURANCE COMPANY and  
16 FIRST AMERICAN TITLE COMPANY pursuant to 12 U.S.C. section 2607(d)(1);

18           38.     The facts alleged herein demonstrate that FIRST AMERICAN TITLE  
19 INSURANCE COMPANY and FIRST AMERICAN TITLE COMPANY have provided  
20 kickbacks for the referral of title insurance business in connection with transactions involving  
21 federally related mortgage loans, in direct contravention of RESPA, 12 U.S.C. section 2607(a)  
22 and 24 C.F.R. section 3500.14(g)(4), and constitute grounds for the Insurance Commissioner to  
23 assess treble damages against FIRST AMERICAN TITLE INSURANCE COMPANY and FIRST  
24 AMERICAN TITLE COMPANY pursuant to 12 U.S.C. section 2607(d)(2);

26           39.     The facts alleged herein demonstrate that FIRST AMERICAN TITLE  
27 INSURANCE COMPANY and FIRST AMERICAN TITLE COMPANY have provided  
28

1 kickbacks for the referral of title insurance business in connection with transactions involving  
2 federally related mortgage loans, in direct contravention of RESPA, 12 U.S.C. section 2607(a)  
3 and 24 C.F.R. section 3500.14(g)(4), and constitute grounds for the Insurance Commissioner to  
4 enjoin FIRST AMERICAN TITLE INSURANCE COMPANY and FIRST AMERICAN TITLE  
5 COMPANY against further violations of these sections;

7 40. The Insurance Commissioner hereby notifies FIRST AMERICAN TITLE  
8 INSURANCE COMPANY and FIRST AMERICAN TITLE COMPANY that based upon the  
9 facts alleged herein, FIRST AMERICAN TITLE INSURANCE COMPANY and FIRST  
10 AMERICAN TITLE COMPANY are in violation of California Insurance Code sections 790.06,  
11 12389.2, 12404(a), 12404(c), 12404(e), 12405, 12405.7, and 12408.5, and RESPA, 12 U.S.C.  
12 section 2607(a), and that FIRST AMERICAN TITLE INSURANCE COMPANY and FIRST  
13 AMERICAN TITLE COMPANY have ten (10) days to comply with the provisions of those  
14 sections, or FIRST AMERICAN TITLE INSURANCE COMPANY and FIRST AMERICAN  
15 TITLE COMPANY will be considered to be willfully failing to comply. If FIRST AMERICAN  
16 TITLE INSURANCE COMPANY and FIRST AMERICAN TITLE COMPANY are found  
17 willfully failing to comply, each company will be subject to an Order by the Commissioner  
18 prohibiting it from conducting its businesses for a period of not more than one year, and will also  
19 be subject to the suspension or revocation of its licenses and licensing rights by the Insurance  
20 Commissioner pursuant to California Insurance Code sections 790.08 and 12411;

23 **DEMAND PURSUANT TO**  
24 **CALIFORNIA INSURANCE CODE SECTIONS 790.035, 12409, and 12976**  
25 **and RESPA, 12 U.S.C. 2607(d)(1) and (d)(2)**

26 41. As a result of the actions of FIRST AMERICAN TITLE INSURANCE  
27 COMPANY and FIRST AMERICAN TITLE COMPANY, as set forth hereinabove, and pursuant  
28 to California Insurance Code sections 790.035 and 790.06, FIRST AMERICAN TITLE

1 INSURANCE COMPANY and FIRST AMERICAN TITLE COMPANY are liable to the people  
2 of California in the amount of five million six hundred twenty five thousand dollars  
3 (\$5,625,000.00), as a civil penalty for engaging in one thousand one hundred twenty five (1,125)  
4 acts of unfair methods of competition or unfair or deceptive acts or practices;

5  
6 42. As a result of the actions of FIRST AMERICAN TITLE INSURANCE  
7 COMPANY and FIRST AMERICAN TITLE COMPANY, as set forth hereinabove, and pursuant  
8 to California Insurance Code section 12409, FIRST AMERICAN TITLE INSURANCE  
9 COMPANY and FIRST AMERICAN TITLE COMPANY are liable to the people of California  
10 in the amount of one million eight hundred fifty seven thousand four hundred fifty four dollars  
11 and fifteen cents (\$1,857,454.15), which is five times the amount of the unlawful rebates of three  
12 hundred seventy one thousand four hundred ninety dollars and eight-three cents (\$371,490.83);

13  
14 43. As a result of the actions of FIRST AMERICAN TITLE INSURANCE  
15 COMPANY, as set forth hereinabove, and pursuant to California Insurance Code section  
16 12414.25, FIRST AMERICAN TITLE INSURANCE COMPANY is liable to the people of  
17 California in the amount of five thousand dollars (\$5,000.00), for its willful failure to comply  
18 with a final Order of the Commissioner, dated November 2, 2005, in File No. DISP05046622;

19  
20 44. As a result of the actions of FIRST AMERICAN TITLE INSURANCE  
21 COMPANY, as set forth hereinabove, and pursuant to RESPA, 12 U.S.C. section 2607(d)(1),  
22 FIRST AMERICAN TITLE INSURANCE COMPANY is liable in the amount of ten thousand  
23 dollars (\$10,000.00) as a monetary penalty for providing kickbacks and unearned fees to  
24 settlement service providers;

25  
26 45. As a result of the actions of FIRST AMERICAN TITLE COMPANY, as set forth  
27 hereinabove, and pursuant to RESPA, 12 U.S.C. section 2607(d)(1), FIRST AMERICAN TITLE  
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1 COMPANY is liable in the amount of ten thousand dollars (\$10,000.00) as a monetary penalty  
2 for providing kickbacks and unearned fees to settlement service providers;

3 46. As a result of the actions of FIRST AMERICAN TITLE INSURANCE  
4 COMPANY and FIRST AMERICAN TITLE COMPANY, as set forth hereinabove, and pursuant  
5 to RESPA, 12 U.S.C. section 2607(d)(2), FIRST AMERICAN TITLE INSURANCE  
6 COMPANY and FIRST AMERICAN TITLE COMPANY are liable to the people of the State of  
7 California in the amount of one million one hundred fourteen thousand four hundred seventy two  
8 dollars and forty-nine cents (\$1,114,472.49), which is three times the amount of the unlawful  
9 rebates of three hundred seventy one thousand four hundred ninety dollars and eight-three cents  
10 (\$371,490.83);  
11

12 47. Demand for eight million six hundred twenty one thousand nine hundred twenty  
13 six dollars and sixty-four cents (\$8,621,926.64) is hereby made to FIRST AMERICAN TITLE  
14 INSURANCE COMPANY and FIRST AMERICAN TITLE COMPANY. Pursuant to California  
15 Insurance Code section 12976, FIRST AMERICAN TITLE INSURANCE COMPANY and  
16 FIRST AMERICAN TITLE COMPANY have ten (10) days to make payment;  
17

18 **ORDER TO SHOW CAUSE PURSUANT TO CALIFORNIA INSURANCE CODE**  
19 **SECTIONS 790.05 and 790.06**

20 48. WHEREAS, the Insurance Commissioner has reason to believe that a proceeding  
21 by the Insurance Commissioner would be in the public interest, he shall bring an Order to Show  
22 Cause pursuant to section 790.05 of the California Insurance Code, containing a statement of the  
23 charges and FIRST AMERICAN TITLE INSURANCE COMPANY and FIRST AMERICAN  
24 TITLE COMPANY'S potential liability under section 790.06;  
25

26 49. WHEREAS, the Insurance Commissioner has reason to believe, based upon the  
27 facts sets forth herein, that FIRST AMERICAN TITLE INSURANCE COMPANY and FIRST  
28 AMERICAN TITLE COMPANY have engaged in and are currently engaging in a method of

1 competition and/or an act or practice in the conduct of its business that is not defined in California  
2 Insurance Code section 790.03, and that the method is unfair and/or the act or practice is unfair or  
3 deceptive pursuant to California Insurance Code section 790.06;

4           50.     WHEREAS, the Insurance Commissioner reserves his right to bring, in the future,  
5 such Order to Show Cause against FIRST AMERICAN TITLE INSURANCE COMPANY and  
6 FIRST AMERICAN TITLE COMPANY for the acts set forth herein.  
7

8           WHEREFORE, the Insurance Commissioner prays for the following:

- 9           1. An Order to Cease and Desist, against FIRST AMERICAN TITLE INSURANCE  
10           COMPANY and FIRST AMERICAN TITLE COMPANY, from engaging in unfair  
11           methods of competition and unfair and deceptive acts or practices in the business of  
12           title insurance in violation of California Insurance Code section 790.06;
- 13           2. An Order to Cease and Desist, against FIRST AMERICAN TITLE INSURANCE  
14           COMPANY and FIRST AMERICAN TITLE COMPANY, from engaging in  
15           practices, methods, acts or conduct in violation of California Insurance Code sections  
16           12404, 12405, and 12408.5, and RESPA, 12 U.S.C. section 2607(a);
- 17           3. The restriction or suspension, on a statewide basis or in specified counties, of the  
18           licenses and licensing rights of FIRST AMERICAN TITLE INSURANCE  
19           COMPANY and FIRST AMERICAN TITLE COMPANY, pursuant to California  
20           Insurance Code section 12409;
- 21           4. The imposition of Notice on FIRST AMERICAN TITLE INSURANCE COMPANY  
22           and FIRST AMERICAN TITLE COMPANY that they have ten (10) days within  
23           which to comply with the provisions of California Insurance Code sections 790.06,  
24           12404, 12405, and 12408.5, and RESPA, 12 U.S.C. section 2607(a). If FIRST  
25           AMERICAN TITLE INSURANCE COMPANY and FIRST AMERICAN TITLE  
26           COMPANY and FIRST AMERICAN TITLE COMPANY fail to comply with the provisions of  
27           California Insurance Code sections 790.06, 12404, 12405, and 12408.5, and RESPA, 12 U.S.C.  
28           section 2607(a), the Insurance Commissioner shall file a petition with the Superior Court  
          of the County of Los Angeles for an order compelling compliance with the provisions of  
          California Insurance Code sections 790.06, 12404, 12405, and 12408.5, and RESPA, 12 U.S.C.  
          section 2607(a).

1 COMPANY do not comply, the non compliant entity will be considered willful, and  
2 will be subject, after hearing, to an Order by the Insurance Commissioner prohibiting  
3 the non compliant entity from conducting title business for a period of not more than  
4 one year, and to the possible suspension or revocation of its license and licensing  
5 rights, pursuant to California Insurance Code section 12411;  
6

7 5. The imposition of a monetary penalty of five million six hundred twenty five thousand  
8 dollars (\$5,625,000.00), as a civil penalty, pursuant to California Insurance Code  
9 sections 790.035 and 790.06;

10 6. The imposition of a monetary penalty of one million eight hundred fifty seven  
11 thousand four hundred fifty four dollars and fifteen cents (\$1,857,454.15), against  
12 FIRST AMERICAN TITLE INSURANCE COMPANY and FIRST AMERICAN  
13 TITLE COMPANY LE COMPANY, pursuant to California Insurance Code section  
14 12409;  
15

16 7. The imposition of a fine of ten thousand dollars (\$10,000.00), against FIRST  
17 AMERICAN TITLE INSURANCE COMPANY, pursuant to RESPA, 12 U.S.C.  
18 section 2607(d)(1);

19 8. The imposition of a fine of ten thousand dollars (\$10,000.00), against FIRST  
20 AMERICAN TITLE COMPANY, pursuant to RESPA, 12 U.S.C. section 2607(d)(1);

21 9. The imposition of a monetary penalty of one million one hundred fourteen thousand  
22 four hundred seventy two dollars and forty-nine cents (\$1,114,472.49), against FIRST  
23 AMERICAN TITLE INSURANCE COMPANY and FIRST AMERICAN TITLE  
24 COMPANY, pursuant to RESPA, 12 U.S.C. section 2607(d)(2); and,  
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10. The reservation of the right to bring an Order to Show Cause against FIRST AMERICAN TITLE INSURANCE COMPANY and FIRST AMERICAN TITLE COMPANY, pursuant to California Insurance Code sections 790.05 and 790.06.

Dated: November 6, 2006

JOHN GARAMENDI  
Insurance Commissioner

By:           /s/            
Rebecca M. Westmore  
Senior Staff Counsel