IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CURTIS MOORE and JOSEPH MOORE, individually and on behalf of all others similarly situated,	Case No. __________
Plaintiffs,	CLASS ACTION
v.	JURY TRIAL DEMANDED
EPS SETTLEMENTS GROUP, JOHN CANTWELL, AND DOES 1 – 100,	
Defendant.	

CLASS ACTION COMPLAINT

INTRODUCTION

1. Plaintiffs Curtis Moore and Joseph Moore ("Plaintiffs") bring this action against EPS SETTLEMENTS GROUP and Doe Defendants 1 – 100 (collectively, "EPS" or "Defendants," unless otherwise specified), individually and on behalf of a class consisting of all persons who: (1) entered into structured settlement agreements ("SSAs") funded by qualified assignment annuity contracts brokered by EPS or any of its affiliate or predecessor companies in states where Executive Life Insurance Company of New York ("ELNY") was not licensed to do business or sell annuities, (2) received annuity benefits from ELNY pursuant to a SSA brokered by EPS, and (3) suffered annuity benefit cuts on or after August 8, 2013. Plaintiffs' allegations are based on the investigation of counsel, and thus on information and belief, except as to the individual actions of Plaintiffs, as to which Plaintiffs have personal knowledge.

2. Defendant EPS is a primary market SSA broker. A SSA is an agreement whereby a defendant or its liability insurer agrees to pay the claimant or plaintiff a certain amount of money over a period of time (usually many years) instead of in a lump sum. Most often SSAs are used in resolving wrongful death or personal physical injury or sickness claims. According to EPS's website, structured settlements "create a stream of customized periodic payments and lump sums that are funded by annuities with a fixed rate of return from highly-rated Life Insurance companies." http://www.epssettlements.com/Services.aspx?Service=Structured +Settlements.

3. SSA brokers serve several functions within this highly specialized market. One function is to determine the medical costs that the injured party will be burdened on an ongoing basis, such as expenses associated with home nursing and medication, in addition to regular cost of living to the injured party and his or her family. These projections are used to establish the amount of annuity payments to be made over the lifetime of the agreement, including cost of living adjustments tied to future needs. Another function is to procure SSAs from the types of "highly-rated" life insurance companies EPS touts on its website. The SSA broker then facilitates the annuity payout schedule. A final function is to inform the annuitant of any significant changes in the financial health of the insurance company from which it obtained the annuity contract.

4. In fulfilling their obligations, reasonable SSA brokers must scrutinize the financial health and prospects of the life insurance company providing the annuity and ensure that the life insurance company is properly licensed in the annuitant's state of residence. Indeed, reasonable brokers necessarily procure SSAs from insurance companies that are licensed in the states where the annuitants reside because state licensing provides important safeguards for

consumers. For example, each state's insurance commissioner requires insurance companies to go through a licensing process so that it can monitor the solvency of its licensee insurance companies in order to promote a healthy, responsive and willing marketplace for consumers who purchase insurance products. In the event a life insurance company fails, every state has a guarantee association that can pay for all or part of insureds' losses (depending on the size of the loss). However, most state's guarantee association excludes coverage of any annuity issued in the state at a time when the issuer was not licensed to issue the annuity in the state.[1]

5. Plaintiffs and class members are annuitants in SSAs funded by annuities that EPS procured from ELNY. ELNY was not licensed to sell insurance in states where Plaintiffs and class members resided when entering into their SSAs. Furthermore, Defendants did not properly scrutinize ELNY's financial health to determine signs that ELNY would go into receivership a few years after Plaintiffs' SSAs were brokered. Defendants brokered the sales of ELNY-backed annuities anyway, in return for an undisclosed 4% commission payable in full up front before the claimants received their periodic payments.

6. Predictably, given its investment asset mix, ELNY ran into significant financial difficulty. In 1991, its parent company collapsed and in April 1991, the New York Superintendent of Insurance placed ELNY into rehabilitation.

7. Financial reports published by the New York Liquidation Bureau, showed that by 2002 ELNY was already operating with a $110 million deficit.

[1] States where ELNY was not licensed and therefore unauthorized to sell insurance include Alabama, Alaska, Arkansas, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Massachusetts, Minnesota, Missouri, Montana, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Washington, Wisconsin, and Wyoming.

8. In 2007, the National Structured Settlement Trade Association ("NSSTA"), of which EPS was a member, held meetings to discuss the "potential shortfalls in investment assets at Executive Life of New York." http://s2kmblog.typepad.com/rethinking_structured_set/2007/10/nssta-2007-fall.html.

9. By the end of 2010, ELNY was operating with a $1.5 billion deficit.

10. In April of 2012, the New York State Liquidation Bureau declared ELNY to be insolvent and a liquidation plan was approved. However, the plan left over 1,500 ELNY annuitants, including Plaintiffs and the Class, with a shortfall totaling over $920 million. As a result, class members' benefits were decreased by as much as 69%.

11. As professionals in the structured settlement industry, members of NSSTA, and participants on the ELNY task force that was set up to address ELNY's inevitable insolvency, Defendants knew or should have known of ELNY's severe financial problems long before it was officially declared insolvent in 2012, yet Defendants failed to disclose such problems to Plaintiffs and class members.

12. Furthermore, Defendants knew or should have known that ELNY was not licensed to provide annuities to residents of Plaintiffs' and class members' states of residence and failed to disclose that fact. As a result, Defendants failed to disclose to Plaintiffs and class members' that their states' guarantee associations were not obligated to protect them.

13. Plaintiffs and class members were injured as a direct result of Defendants' negligence and are also entitled to damages under Fla. Stat. § 626.901 and similar statutes that provide a private right of action against persons who assist in unlicensed insurance transactions.[2]

[2] *See* Ala. Code 1975 § 27-10-1; Alaska Stat. § 21.33.037; HI ST § 431:8-202-04; MN ST § 60K.47; NC ST § 58-28-45; Or. Rev. Stat. Ann. § 746.310; SC ST § 38-45-120.

JURISDICTION AND VENUE

14. This court has subject matter jurisdiction over this class action pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d)(2) and (6), because the matter in controversy, upon information and belief, exceeds $5,000,000.00, exclusive of interests and costs; is a class action involving 100 or more class members; and at least one member of the class is a citizen of a different state from Defendant.

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the misconduct at issue took place and had effects in this District. Plaintiffs and numerous Class members reside in this District, transacted structured settlement annuity contracts in this District, and were injured in this District.

16. This Court has personal jurisdiction over Defendants because Defendants received substantial compensation and profits from commissions on the brokering of structured settlement annuities in this District. Thus, Defendants' liability arose in part in this District.

PARTIES

17. Plaintiff Curtis Moore is a resident and citizen of West Palm Beach, Florida. Plaintiff Joseph Moore is a resident and citizen of Palm Beach Gardens, Florida. On November 28, 1984, when Curtis and Joseph were three and ten years old, respectively, their mother was killed in a car accident that left Joseph injured. Following litigation in the Circuit Court of Duval County, Florida (the "Moore litigation"), the defendants in the Moore litigation agreed to pay Curtis $725,000, and Joseph $550,000. The Moores entered into a structured settlement with defendants in the Moore litigation, pursuant to which EPS brokered the sale of two annuities benefitting the Moores from ELNY. ELNY was obligated to pay Curtis a lifetime annuity of $9,500 a month (in addition to several larger, yearly payments), beginning in 1999, when Curtis

turned eighteen. Under Joseph's annuity, he was to receive $2,900 a month between May 28, 1990 and April 28, 2016.

18. Defendant EPS is incorporated in California and headquartered in Greenwood Village, Colorado. EPS, therefore, is a citizen of California and Colorado. EPS was created pursuant to a 1998 merger or acquisition of three different structured settlement companies, and is the successor in interest of these three companies: Kenneth H. Wells & Associates ("Kenneth H. Wells"), TSSC, and Benefit Designs (the term "EPS" is used herein to refer collectively to EPS and its predecessor corporations). EPS claims that their consultants "have an average of 25 years of experience in the structured settlement industry," and "have become the nation's preeminent structured settlement company." EPS also advertises the benefits of structured settlements, such as the "predictability of payments" and "financial security and freedom." Furthermore, EPS emphasizes that the periodic payments of structured settlements are "funded by annuities . . . from highly-rated Life Insurance companies." EPS has over 120 employees in forty-five different offices nationwide, including three different offices in Florida.

19. Defendant John Cantwell resides in, and is a citizen of, New Mexico. Defendant Carntwell was the EPS agent who brokered the sale of the annuity intended to benefit the Moores. Mr. Cantwell's signature appears on the "Application for an Immediate Annuity" provided to ELNY on behalf of the Moores by Kenneth H. Wells. EPS is the successor in interest of Kenneth H. Wells and Mr. Cantwell is described in that same document as an agent of Kenneth H. Wells.

20. Does 1-100 represent those individual insurance brokers who, as employees and agents of EPS, its affiliates, or predecessor companies, brokered the sale of the SSAs at issue in this case, of which unnamed members of the proposed class were beneficiaries. The identities of

these Doe Defendants are not presently known to Plaintiffs. Plaintiffs believe, however, that with proper discovery into the matter these Defendants can be identified, and the complaint can be amended at a later date to include the individual names of these Defendants.

FACTUAL ALLEGATIONS

A. Structured Settlements

21. A structured settlement is a consensual agreement whereby a lawsuit defendant or its liability insurer agrees to pay the claimant or plaintiff a certain agreed upon amount of money over a long period of time instead of in a lump sum. Under a structured settlement, the claimant or plaintiff agrees to delay receipt of immediate payment in return for settling her claim for a greater total amount of tax free income in installments over an extended period of time.

22. To meet its obligations under the relevant settlement agreement, the lawsuit defendant or its liability insurer will typically purchase an annuity from a life insurance company. The payments under the annuity are made to the plaintiff over a long period of time, often for life. Structured settlements are designed to benefit both parties in an injury claim. The lawsuit defendant can spread out payments over a long period of time and can take a one-time exclusion from income and deduct the cost of the annuity contract as a business expense. Lawsuit defendants can also avoid carrying a contingent liability on their books if they comply with Section 130 of the Internal Revenue Code and enter into a Qualified Assignment. The settlement proceeds are essentially invested with an insurance company in exchange for the insurance company's promise to remit the periodic payments to the claimant over time. The injured party—often a person who can no longer work, has been permanently disabled, and/or has lost the primary earner in his or her family—receives spendthrift protection, guaranteed

income over a long period of time (often for life), and all of the payments are tax free to the claimant.

23. Structured settlements are particularly attractive in personal injury cases where damages are often intended to cover the costs of a plaintiff's long-term healthcare, and in cases involving minors where the minor cannot take possession of a recovery.

24. Structured settlements generally take one of two forms—either a "buy and hold" structured settlement where the defendant or liability insurer remains liable, or a structured settlement using a qualified assignment, as the term is defined under Section 130 of the Internal Revenue Code (I.R.C. § 130). The structured settlements at issue here involve qualified assignments.

25. In a "qualified assignment" structured settlement, the settling defendant or its property/casualty insurer does not wish to retain the long-term periodic payment obligation on its books. Accordingly, the settling defendant or its property/casualty insurer, transfers its obligations through a qualified assignment to a third party. The third party, called an assignment company or qualified assignee, becomes the owner of the annuity that funds the periodic payments due under the settlement agreement. Under a qualified assignment, the settling defendant and/or its property/casualty insurer has no further liability to make periodic payments once it funds the annuity and makes the assignment. Accordingly, the solvency of the life insurance company issuing the annuity and the ability to access state guarantee associations is more important than in "buy and hold" structured settlements where the litigating defendant or its insurer retains liability if the annuity company becomes insolvent. I.R.C. § 130 permits the qualified assignee to own the annuity tax-free, and the annuity enjoys tax-free build-up as a "qualified funding asset."

B. Defendants Knew or Should Have Known of ELNY's Risky Asset Pool and Deteriorating Financial Condition

26. ELNY was a life insurance company founded in New York in 1935 that sold annuity contracts and insurances policies across the country.

27. First Executive Corporation ("FEC") owned the Executive Life Insurance Company of California ("ELIC") which, in turn, owned ELNY.

28. Both FEC and ELIC were heavily invested in junk bonds. In fact, in 1986, when the value of junk bonds collapsed, FEC was the world's largest holder of junk bonds. During the collapse, the negative publicity surrounding FEC's investments caused ELIC policyholders to surrender their policies en masse, creating the insurance company equivalent to a run on the bank.

29. To combat ELIC's financial tailspin, on April 11, 1991, California Insurance Commissioner John Garamendi got a court order to seize control of ELIC shortly before FEC filed for bankruptcy. ELIC underwent an orderly liquidation and rehabilitation. That resulted in a full recovery for 92% of the insolvent insurer's former policy holders.

30. ELNY was not immune from its parent companies' over-investment in junk bonds. Indeed, ELNY was also over-exposed during the junk bond collapse. In 1987, the New York Insurance Department fined ELNY $250,000 for violating eight sections of the New York insurance law. The Insurance Department also disallowed a number of reserve credits resulting from questionable reinsurance treaties with FEC and required FEC to infuse $151 million in capital to shore up ELNY's depleted reserves.

31. By the early 1990s, after FEC declared bankruptcy, ELNY was placed into Receivership under the direction of the New York Liquidation Bureau ("NYLB").

32. Although ELNY continued to make all of its annuity payments to Plaintiffs and class members while in receivership, financial reports published by ELNY's receiver, the NYLB, showed that by 2002 ELNY was operating with a $110 million deficit. NYLB used a historic discount rate in excess of 10% in calculating ELNY's liabilities. Defendants knew or should have known that the use of historical discount rates in excess of 10% dramatically understated ELNY's liabilities and that a shortfall was likely, yet Defendants did not notify Plaintiffs or class members of the problem.

33. In 2007, the National Structured Settlement Trade Association ("NSSTA"), of which EPS was a member, held meetings to discuss the "potential shortfalls in investment assets at Executive Life of New York." Defendants knew or should have known of ELNY's deteriorating financial condition at this time but failed to disclose this fact from Plaintiffs and class members.

34. In 2009 the NSSTA informed its members of ELNY's deteriorating condition and the fact that shortfalls were all but inevitable. Rather than instruct its members to disclose this fact to their clients, the NSSTA encouraged its members (including Defendants) not to allow the ELNY situation to undermine the confidence in SSAs. Defendants knew or should have known of ELNY's deteriorating financial condition at this time but failed to disclose this fact to Plaintiffs and class members in order to protect their revenue streams associated with brokering SSAs.

35. By December 31, 2010, ELNY was operating with a deficit of over $1.5 billion. Defendants knew or should have known of ELNY's deteriorating financial condition at this time but still failed to disclose this fact from Plaintiffs and class members.

36. On April 16, 2012, Judge John M. Galasso of the New York Supreme Court (Nassau County) declared ELNY insolvent and approved a liquidation plan presented by the New York State Superintendent of Financial Services. ELNY's liquidation plan cut over $920 million of payments owed to approximately 1500 payees nationwide. These cuts became effective August 8, 2013.

C. EPS's Purchase of ELNY SSAs for Plaintiffs and the Class

37. Defendants brokered Plaintiffs' and class members' SSAs. ELNY was one of several life insurance companies offering SSAs at the time Defendants brokered Plaintiffs' and class members' SSAs. Defendants were free to select from one or more of these insurers when tailoring a structured settlement plan to meet the needs of their clients. However, ELNY was not licensed to sell insurance in many states, including Alabama, Alaska, Arkansas, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Massachusetts, Minnesota, Missouri, Montana, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Washington, Wisconsin, and Wyoming. Despite this fact, Defendants brokered Plaintiffs' and class members' structured settlements funded exclusively by ELNY annuities, even in states, including Florida, where ELNY was not licensed. In return, Defendants received from ELNY an undisclosed commission of 4% of each annuity purchased, payable in full up front before the claimants received their periodic payments.

38. The choice of insurance company or companies is particularly important in qualified assignment SSAs like those of Plaintiffs and the class because of the nature of the product, where severely injured people depend on periodic payments over a long period of time, and the fact that, if the insurance company becomes insolvent, the annuitant has no recourse to the original litigation defendant or its insurer. State insurance commissions seek to limit the risk

of such situations by requiring life insurance companies seeking to do business in their respective states to go through a licensing process. Almost every state has set up a guarantee association to deal with the possibility of a failure of the life insurance company. These guarantee associations exclude coverage, however, for any annuity issued in a state at a time when the issuer was not licensed to issue the annuity in that state. *See, e.g.*, Alaska Stat. §§ 27.79.010 – 27.79.990, 27.79.020(c)(7), 21.79.900(16), 27.79.020(e); Fla. Stat. §§ 631.711-631.737; Mass. Gen. Laws 175 §§ 1465B(2), (4)(B)(1); Mont. Code. Ann. §§ 33-10-201 – 33-10-236, 33-10-202(11), 33-10-224(2)(b)(vi), 33-10-202(19), 33-10-224(1)(c), 33-10-224(3)(b)(iii); N.M. Stat. §§ 59A-42-1 (1978) – 59A-42-17 (1978), 59A-42-3(M), 59A-42-4(E)(6), 59A-42-3(T), 59A-42-4(A)(4), 59A-42-4(F)(4); O.R.S. §§ 734.790(d)(A), § 734.810(2); Tex. Ins. Code. Ann. §§ 463.001 – 463.451, 463.202(a), 463.003(7), 463.201(a)(4), 463.204(5).

39. Brokers, including Defendants, were aware or should have been aware that procuring an annuity to provide payments in a SSA from an insurance company that is not licensed in the annuitant's state increases the exposure to the annuitant in the event of the insurance company's default.

40. When brokering the purchase of a structured settlement annuity, insurance brokers are aware of the state in which annuitants reside. The annuitant's address is listed on the annuity application and provided to the insurer by the broker. *See, e.g.*, Plaintiffs' annuity applications attached hereto as Exhibits A and B.

41. Defendants EPS and Cantwell knew that the Moores resided in Florida at the time that Defendants brokered Plaintiffs' ELNY annuities. Defendants knew or should have known that ELNY was not licensed to issue annuities to residents of the state of Florida.

42. Similarly, Defendants knew or should have known the residences of absent class members, and knew or should have known that ELNY was not licensed to issue annuities in the states of Alabama, Alaska, Arkansas, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Massachusetts, Minnesota, Missouri, Montana, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Washington, Wisconsin, and Wyoming. Defendants never disclosed this to Plaintiffs or class members.

43. Each state decides whether or not to license an insurance company in order to, *inter alia*, protect its citizens from engaging in insurance transactions with financially unstable companies. For example, the Florida Insurance Department states that its mission is to "ensure that insurance companies licensed to do business in Florida are financially viable," and that they "operat[e] within the laws and regulations governing the insurance industry." http://www.floir.com/Office/MissionStatement.aspx. Because ELNY was not licensed in Florida, or in each class member's state, those states could not exercise this important oversight function.

44. Many states, including those where Plaintiffs and class members reside or resided when entering into their structured settlements, disclose a legislative intent to protect the public from the risks attendant upon doing business with insurance companies not authorized to write policies in their respective states.

45. For example, many states have passed statutes that impose penalties on brokers for aiding non-licensed insurers with transactions in their respective states. *See, e.g.*, Ala. Code § 27-10-1 (Representing or aiding unauthorized insurer not allowed); Alaska Stat. Ann. § 21.33.037 (Prohibiting the acting or aiding of unauthorized insurers); Ark. Code § 23-65-101 (Unauthorized insurance transactions prohibited); Fla. Stat. Ann. § 626.901 (Representing or aiding unauthorized insurer prohibited); Ga. Code Ann. § 33-5-1 (Representation of

unauthorized insurers prohibited); Haw. Rev. Stat. Ann. § 431:8-202 (Acting for or aiding unauthorized insurer prohibited); Idaho Code Ann. § 41-1201 (Representing or aiding unauthorized insurer prohibited); Kan. Stat. Ann. § 304.11-030 (Prohibition of unauthorized insurance business); Mass. Gen. Laws Ann. ch. 175, § 3 (Prohibiting unauthorized contracting of insurance or annuity); Mass. Gen. Laws Ann. ch. 175, § 45 (Prohibiting unauthorized establishment of agencies or appointment of agents); Mont. Code Ann. § 33-2-104 (Prohibiting representing or aiding unauthorized insurer prohibited); N.C. Gen. Stat. Ann. § 58-28-45 (Acting as agent for unauthorized insurer prohibited); N.M. Stat. Ann. § 59A-15-2 (Prohibiting the representing or aiding of unauthorized insurers); Okla. Stat. Ann. tit. 36, § 1-1101 (Representation of nonadmitted insurers prohibited); Or. Rev. Stat. Ann. § 746.310 (Acting as insurance producer for unauthorized insurer prohibited); S.C. Code Ann. § 38-25-120 (Acting as agent for unauthorized insurer prohibited); S.D. Codified Laws § 58-8-1 (Representing or aiding unauthorized insurer prohibited); Tex. Ins. Code Ann. § 101.102 (a) (Prohibition against unauthorized insurance); Wash. Rev. Code Ann. § 48.15.020 (2) (a) (Representation of unauthorized insurer prohibited); Wis. Stat. Ann. § 618.39 (Assisting unauthorized insurers prohibited); Wyo. Stat. Ann. § 26-12-102 (Representing or aiding unauthorized insurers prohibited).

46. Defendants concealed the fact that ELNY was not licensed in Plaintiffs' and class members' respective states. In addition, after brokering Plaintiffs' and class members' SSAs in states where ELNY was not licensed (leaving them potentially unprotected by state guarantee associations in the event of ELNY's failure), Defendants knew or should have known that ELNY's financial health was failing, but concealed this from Plaintiffs and the class members.

47. Structured settlement brokers, including Defendants, were aware or should have been aware of the very real dangers of funding structured settlements with annuities from financially weak companies in that the industry suffered a significant collapse in 1983, when Baldwin United became insolvent and was unable to pay annuitants.

48. Life insurance companies that provide structured settlement annuities are required by state insurance commissioners to file financial reports that disclose important facts about the insurance companies' financial health and prospects. Reasonable SSA brokers would have scrutinized such reports for ELNY. Had Defendants properly scrutinized ELNY's reports, Defendants should have recognized the risks imposed by ELNY's asset mix and informed Plaintiffs and class members of ELNY's risk of default.

49. At the time Defendants brokered Plaintiffs' and class members' SSAs, a reasonable broker would have disclosed the following risks to Plaintiffs and class members associated with a qualified assignment structured settlement annuity agreement with ELNY: (1) that given the long term of the annuities, using a qualified assignment structured settlement increases the risk of default by the benefits payor because the payee is releasing the original defendant and/or its insurance company from liability for non-payment of benefits; (2) that ELNY managed a significantly riskier asset pool than other competing annuity sellers, which increases ELNY's risk of defaulting on its SSA payment obligations; and (3) that ELNY was not licensed in Plaintiffs' and class members' states of residence and therefore (a) class members' respective states' insurance commissioners could not exercise oversight over ELNY and (b) in the event of ELNY's default, Plaintiffs' and class members' state guarantee funds were not obligated to protect them.

50. Defendants failed to make any of those disclosures.

51. After ELNY was declared insolvent, under the liquidation plan, Plaintiff Curtis Moore's payments were reduced from $9,500 to approximately $4,500 (a 53% reduction) and Plaintiff Joseph Moore's payments were reduced from $2,900 to approximately $2,400 (a 17% reduction). Class members' payments were collectively reduced by 69%.

52. At the time Defendants brokered class members' structured settlement annuities and through the time that ELNY was declared insolvent, other life insurance companies were licensed in the states where class members reside and offered structured settlement products that were available to Plaintiffs and class members. None of these companies has had to reduce benefits.

53. Plaintiffs and class members were harmed as a result of Defendants' negligent procurement of SSAs from ELNY and subsequent failure to disclose ELNY's severe financial problems to Plaintiffs and the class.

CLASS ACTION ALLEGATIONS

54. This action is maintainable as a class action under Fed. R. Civ. P. 23(b)(3). Plaintiffs' actions satisfy the Rule 23 requirements of numerosity, commonality, typicality, adequacy, predominance, and superiority.

55. Plaintiffs assert Count I (negligence) on behalf of a multistate class (the "Nationwide Negligence Class") and a Florida subclass (the "Florida Negligence Subclass"). The Nationwide Negligence Class is defined as:

> All persons who (1) entered into structured settlement agreements funded by annuity contracts issued by ELNY and resided in Alabama, Alaska, Arkansas, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Massachusetts, Minnesota, Missouri, Montana, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Washington, Wisconsin, or Wyoming—where ELNY was not licensed to do business—at the time the agreements were brokered; (2) received annuity benefits from ELNY pursuant to that structured settlement; and (3) suffered annuity benefit cuts on or after August

> 8, 2013. The Class does not include Defendants, its parents, subsidiaries, or affiliates, any governmental entities, or any judicial officer to whom this case is assigned.

The Florida Negligence Subclass is defined as:

> All persons who (1) entered into structured settlement agreements funded by annuity contracts issued by ELNY and resided in Florida—where ELNY was not licensed to do business—at the time the agreements were brokered; (2) received annuity benefits from ELNY pursuant to that structured settlement; and (3) suffered annuity benefit cuts on or after August 8, 2013. The Class does not include Defendants, its parents, subsidiaries, or affiliates, any governmental entities, or any judicial officer to whom this case is assigned.

56. Plaintiffs assert Count II (violation of Fla. Stat. § 626.901 and similar state statutes prohibiting aiding unadmitted insurers) on behalf of a multistate subclass (the "Multistate Statutory Subclass") and a Florida subclass (the "Florida Statutory Subclass"). The Multistate Statutory Subclass is defined as:

> All persons who (1) entered into structured settlement agreements brokered by Defendants and who resided in Alaska, Oregon, Alabama, Florida, Hawaii, Minnesota, North Carolina, or South Carolina at the time the agreements were brokered; (2) received annuity benefits from ELNY pursuant to that structured settlement; and (3) suffered annuity benefit cuts on or after August 8, 2013. The Class does not include Defendants, their parents, subsidiaries, or affiliates, any governmental entities, or any judicial officer to whom this case is assigned.

The Florida Statutory Subclass is defined as:

> All persons who (1) entered into structured settlement agreements brokered by Defendants and who resided in Florida at the time the agreements were brokered; (2) received annuity benefits from ELNY pursuant to that structured settlement; and (3) suffered annuity benefit cuts on or after August 8, 2013. The Class does not include Defendants, their parents, subsidiaries, or affiliates, any governmental entities, or any judicial officer to whom this case is assigned.

57. Members of these Classes are so numerous that joinder is impracticable. Plaintiffs believe that members of the Classes number in the hundreds. Further, the Classes are readily identifiable from information and records kept in the possession of Defendants and/or the Classes.

58. Plaintiffs' claims are typical of the claims of the Classes in that Plaintiffs are owed structured settlement annuity benefits from ELNY, these annuities were brokered by Defendants, all Class members were damaged by the same wrongful conduct, and the relief sought is common to the Classes.

59. Numerous common questions of law or fact arise from the Defendants' conduct, including:

(a) whether Defendants knew or should have known that ELNY was not authorized to transact insurance in Alabama, Alaska, Arkansas, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Massachusetts, Minnesota, Missouri, Montana, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Washington, Wisconsin, and Wyoming;

(b) whether Defendants knew or should have known of ELNY's poor financial health;

(c) whether Defendants failed to disclose facts regarding ELNY's poor financial health;

(d) whether Defendants failed to disclose that ELNY was not licensed to provide SSAs in class members' home states and the risks attendant thereto;

(e) whether and to what extent Defendants solicited, negotiated, took applications for, or effectuated insurance contracts with ELNY; and

(f) whether Plaintiffs and Class members are owed monetary damages for the unpaid SSAs brokered by Defendants and the appropriate measure of damages.

60. These common questions of law or fact predominate over any other questions affecting only individual Class members.

61. Plaintiffs will fairly and adequately represent the interests of the Classes in that they are typical persons to which unpaid structured settlement annuities are owed by ELNY and which structured settlements were brokered by Defendants, and have no conflicts with any other member of the Classes. Plaintiffs have retained competent counsel experienced in class action litigation.

62. A class action is superior to the alternatives, if any, for the fair and efficient adjudication of this controversy.

63. Prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

64. Plaintiffs reserve the right to expand, modify, or alter the Class definitions in response to information learned during discovery.

COUNT I – NEGLIGENCE (On Behalf of the Multistate Negligence Class and the Florida Negligence Subclass)

65. Plaintiffs incorporate by reference the allegations in the above paragraphs as if fully set forth herein.

66. As insurance brokers, Defendants owed a duty to Plaintiffs, the Multistate Negligence Class, and the Florida Negligence Subclass (collectively, the "Negligence Classes") to exercise reasonable care when procuring annuities from life insurance companies to fund structured settlements. Further, Defendants had a duty to inform Plaintiffs and members of the Negligence Classes that their coverage may be threatened due to ELNY's financial condition.

67. Defendants breached their duty of care to Plaintiffs and the Negligence Classes in purchasing structured settlement annuities from ELNY and then failing to disclose facts about ELNY's deteriorating financial condition. A reasonable insurance broker would have or should have known that ELNY was not licensed to sell insurance in the states of Alabama, Alaska, Arkansas, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Massachusetts, Minnesota, Missouri, Montana, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Washington, Wisconsin, and Wyoming, and would have or should have placed Plaintiffs and class members with structured settlement products that were available from life insurance companies licensed in Plaintiffs' and class members' respective states. After procuring the unlicensed insurance, Defendants knew or should have known that ELNY's financial condition was deteriorating but failed to disclose this to Plaintiffs and class members.

68. As a result of Defendants' breach, Plaintiffs and members of the Negligence Classes have been damaged. Following ELNY's declared insolvency, Plaintiff Curtis Moore's payments were reduced from $9,500 to approximately $4,500 (a 53% reduction), and Plaintiff Joseph Moore's payments were reduced from $2,900 to approximately $2,400 (a 17% reduction).

COUNT II – VIOLATION OF FLA. STAT. § 626.901 AND SIMILAR STATE STATUTES (On Behalf of the Multistate Statutory Subclass and the Florida Statutory Subclass)

69. Plaintiffs incorporate by reference the allegations in the above paragraphs as if fully set forth herein.

70. Plaintiffs bring this claim pursuant to Fla. Stat. § 626.901, and other applicable state statutes that were enacted and designed to protect insureds against harm caused by the sale of unlicensed insurance.[3]

71. The State Statutes prohibit persons from assisting unlicensed insurers transact business.

72. Under Fla. Stat. § 626.901:

> (1) No person shall, from offices or by personnel or facilities located in this state, or in any other state or country, directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact such insurance in this state in:
>
> (a) The solicitation, negotiation, procurement, or effectuation of insurance or annuity contracts, or renewals thereof;
>
> (b) The dissemination of information as to coverage or rates;
>
> (c) The forwarding of applications;
>
> (d) The delivery of policies or contracts;
>
> (e) The inspection of risks;
>
> (f) The fixing of rates;
>
> (g) The investigation or adjustment of claims or losses; or
>
> (h) The collection or forwarding of premiums;
>
> or in any other manner represent or assist such an insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state.

73. "If an unauthorized insurer fails to pay in full or in part any claim or loss within the provisions of any insurance contract which is entered into in violation of this section," then—

[3] *See also* Alaska Stat. § 21.33.037; OR. Rev. Stat. ANN. § 746.310; Ala. Code 1975 § 27-10-1; HI ST § 431:8-202-04; MN ST § 60K.47; NC ST § 58-28-45; and SC ST § 38-45-120 (collectively the "State Statutes").

provided the person "knew or reasonably should have known" that the insurer was unauthorized—the person "is liable to the insured for the full amount of the claim or loss not paid." Fla. Stat. § 626.901(2).

74. ELNY has failed to pay in part a claim within the provisions of an insurance contract entered into with Plaintiffs.

75. ELNY was not authorized to transact insurance within Florida at the time Defendants EPS and Cantwell brokered the sale, by ELNY, of the annuities intended to benefit Plaintiffs.

76. ELNY was not authorized to transact insurance within the states of Alaska, Alabama, Florida, Hawaii, Minnesota, North Carolina, Oregon, or South Carolina at the time Defendants EPS and Doe Defendants 1 – 100 brokered the sales, by ELNY, of the annuities intended to benefit the absent class members.

77. Defendants, as brokers for the sale of ELNY's annuities, solicited, negotiated, procured, and effectuated insurance contracts, and performed other functions that ultimately assisted ELNY in transacting the sale of unlicensed insurance to Plaintiffs, members of the Multistate Statutory Subclass, and members of the Florida Statutory Subclass (collectively, the "Statutory Subclasses").

78. Plaintiffs and members of the Statutory Subclasses are entitled to damages for the full amount of their unpaid claims pursuant to the State Statutes.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that:

A. This action may properly be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiffs as class representatives and designating their counsel as counsel for the Classes;

B. Plaintiffs and the Classes be awarded actual and statutory relief, including pre-judgment and post-judgment interest under common law and the statutes cited herein;

C. Plaintiffs and the Classes be awarded their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

D. Judgment be entered in favor of Plaintiffs and the Classes against Defendants, including interest thereon; and

E. For such other and further relief as the nature of this case may require or as this Court deems just, equitable, and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

DATED: April 16, 2014

Respectfully submitted,

s/ Scott R. Shepherd
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