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ATTORNEYS FOR PLAINTIFFS
AND THE CLASS

STATE OF MINNESOTA
COUNTY OF HENNEPIN

FILED F.,L DISTRICT COURT

JRT:M: JUDICIAL DISTRICT
CASE TYPE: OTHER CIVIL

RICHARD W. and ELIZABETH J.
THORESEN, On Behalf of Themselves
and All Others Similarly Situated,

Plaintiffs,

vs.

AMERICAN EXPRESS FINANCIAL
CORPORATION, AMERICAN
CENTURION LIFE ASSURANCE
COMPANY, AMERICAN ENTERPRISE
LIFE INSURANCE COMPANY,
AMERICAN PARTNERS LIFE
INSURANCE COMPANY, IDS LIFE
INSURANCE COMPANY, and IDS
LIFE INSURANCE COMPANY OF
NEW YORK,

Defendants.

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CLASS ACTION

COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs assert the following allegations for their Complaint. The allegations with respect to plaintiffs and their counsel are asserted upon personal knowledge. Other allegations are asserted upon information and belief based upon the investigation of plaintiffs' counsel.

JURISDICTION AND VENUE

1. This Court has jurisdiction over all causes of action asserted herein pursuant to the common law and the consumer protection statutes of the State of Minnesota, and the Minnesota *Uniform Deceptive Trade Practices Act*.

2. Each defendant has sufficient minimum contacts with Minnesota or otherwise intentionally avails itself of the laws and markets of Minnesota so as to sustain this Court's jurisdiction over such defendant.

3. Venue is proper in Hennepin County, Minnesota. Each of the defendants maintains administrative offices and does business within Hennepin County. Many members of the proposed plaintiff class reside within this county.

**FINANCIAL STRUCTURE AND DECEPTIVE MARKETING
OF DEFENDANTS' DEFERRED ANNUITY PRODUCTS**

4. Defendants are financial services subsidiaries of American Express Company. Defendants sell, among other financial products, deferred annuities to members of the public. Deferred annuities are marketed to, and often purchased by, people who use them as investments for their retirement years. This type of investment became extraordinarily popular during the 1990's. For example, sales of "variable" deferred annuities --which offer investment returns linked to stock market performance, similar to mutual funds --reportedly were \$85 billion in 1997, compared to only \$28 billion in 1992, and have increased sixteen-fold since 1985.

5. This Complaint challenges defendants' deceptive and abusive marketing practices based on defendants' active marketing of their deferred annuity products for placement into tax-deferred contributory retirement investment plans (for example, IRAs and 401(k)s). The main selling point of deferred annuities is that earnings on investments contained in such annuities accumulate on a tax-deferred basis. The deferred annuities sold by defendants are never appropriate investments for placement in tax-deferred retirement plans, because earnings on any investment placed in such plans are already tax-deferred, and purchase of a deferred annuity represents a completely unwarranted "belt and suspenders" approach with respect to tax-deferral. Nevertheless,

defendants permitted and encouraged their agents to sell these products to individuals and small business owners for placement into tax-deferred retirement plans. When they succeed in selling these annuities, defendants or their agents reap double or triple the normal commission rate for regular investment products (like mutual funds). Moreover, because of the subtraction of annual annuity fees, calculated as a percent of total assets in the account, purchasers are deprived of up to one-third of their total account value (compared to a regular investment) over the years, and are not informed that the circumstances under which the insurance features for which they are paying fees would have any value are remote.

6. Despite the fact that the deferred annuities sold by defendants are never appropriate investments for qualified retirement plans, approximately one-half of the industry's deferred annuities sold last year were placed in plans that were already tax-qualified. One-third of the industry's individual annuities are sold into IRAs alone.

7. Defendants are among the largest sellers in the nation of deferred annuities for funding qualified plans. In particular, AM. Best Company ranked IDS Life Insurance Company as the 7th largest seller of deferred annuities for funding 401(k), 457 and other qualified plans, based on calendar year 1996 premiums.

8. Defendants' deceptive and abusive practices are referred to in this Complaint as the "qualified annuity sales scheme" -- "qualified," because these products are marketed for placement in contributory retirement plans that already are qualified for tax deferral; "annuity," because the products are deferred annuities; and "sales scheme," because defendants deceptively and abusively sell these products to qualified plan investors through a uniform marketing program designed solely to enrich defendants at the expense of their customers.

9. The retirement savings market in the United States has undergone a revolution over the last two decades. Instead of guaranteed lifetime pension benefits, calculated based on retirees' life expectancies, today's retirement plans focus on maximizing asset accumulation for retirement. Investment growth on a tax-deferred basis accordingly has become an important goal. A retirement investor who has contributed the annual maximum amount to his tax-deferred (qualified planes) can invest unlimited additional sums on a tax-deferred basis through the purchase of a deferred annuity.

10. In its classic sense, an annuity is the reverse of life insurance. Life insurance pools the risk of a premature death, while an annuity pools the risk of living too long. When a consumer purchases an annuity, the consumer typically acquires, in exchange for a premium payment, the right to a stream of periodic payments from the insurer that is guaranteed to continue for as long as the annuitant is alive. An annuity can provide comfort and protection for persons who are afraid they may outlive their assets. To find the best deal, consumers can shop for an annuity that provides the highest benefits in comparison with the premium paid in, also taking into consideration the fact that the financial strength of the issuing life insurance company is the sole basis of its payment guarantee. This "classic" annuity is known as an "immediate annuity" (or "payout annuity") because annuity payments to the contract owner (purchaser) begin immediately after she tenders the premium to the insurer,

11. In contrast to an immediate annuity, a "deferred annuity" -- the type of annuity at issue in this Complaint -- has an accumulation (or investment) phase during which the purchaser invests money and allows the value of the account to grow (depending on the type of investment vehicle that is chosen); and then a payout period during which the purchaser may elect to take out the amounts contributed and earned, with one such payout option being an annuity.

(a) The investment phase. With a deferred annuity, the premium(s) paid by the purchaser to the insurance company are invested until the time specified in the contract for payout. Various deferred annuities offer a wide range of investment options. In a fixed deferred annuity, the purchaser receives from the insurer an interest rate on the amount of premium invested by the purchaser; the insurer may contractually agree to a particular rate for a period of time, but more typically the insurer adjusts the rate at its discretion. In a variable deferred annuity, the purchaser receives "units" representing interests in one or more "subaccounts" of the insurer's separate account, containing equity, bond, or money market portfolios, which are usually managed by outside investment managers (and are often managed and named so as to mimic well-known "brand name" mutual funds offered by those managers, even though they are different investments and will have a different performance record).

(b) The payout phase. A deferred annuity contract typically gives the contract owner a number of options when the investment phase ends. The owner may take an immediate lump sum or a periodic withdrawal plan. Or, as another payout option, she may "annuitize." This is an irrevocable decision to give the accumulation account to the insurer in exchange for a stream of periodic payments. Contract owners may choose payments that continue for life or for the joint lives of the annuitant and her spouse. The amount of the periodic payment is calculated based on the life expectancy of a person of the annuitant's age. To "annuitize" a deferred annuity is functionally the same as the purchase of an immediate annuity.

12. Deferred annuities typically contain two insurance features: an annuity payout option, as described above (other payout options, such as lump-sum or systematic withdrawal, are much more popular); and a "death benefit" to ensure that, if the account owner dies during the

investment period, the heirs receive *some* defined investment value (usually, the principal amount invested) even if the investment has crashed at that time. In practice, the circumstances under which the insurance features *of* a deferred annuity will have any value are remote:

- On average, fewer than 1 percent *of* deferred annuity owners choose *to* exercise the annuity payout option at the end *of* the investment period. *Of* those who *do*, few, if any, annuitize at the contract's minimum guaranteed rate, which tends *to* be less favorable than the annuitization rate available in the market at that time.
- *Of* the contracts "surrendered" during the investment phase due *to* the death *of* the account owner, only a few, if any, involve investment losses across all the portfolios in which the contract owner may be invested *of* such a magnitude that any meaningful death benefit is paid.

13. Because *of* their insurance features, deferred annuities are deemed *to* be mortality products, and as such enjoy a privileged status under the income tax laws. Beginning with the Income Tax Law *of* 1913 (the first income tax statute promulgated pursuant *to* the Sixteenth Amendment) and continuously at all times thereafter, the Internal Revenue *Code* has provided that annuities are treated as an instrument *of* insurance. Most significantly, this means that annuity earnings (interest, dividends, *or* capital gains) accumulate on a tax-deferred basis. IRe. §72. This is true regardless *of* whether the contract owner elects to exercise his option to purchase an annuity at the end *of* the investment period.

14. State insurance laws require that persons who sell annuities must be licensed insurance agents. Minn. Stat. § 60K01, et seq. In addition, variable annuities that are registered with the Securities and Exchange Commission may only be sold by persons who are registered with the National Association *of* Securities Dealers. 15 u.S.e. § 780.

15. Because *of* their tax-deferred status, deferred annuities are potentially attractive financial products to people seeking tax-deferral *for* their retirement investments (and may be

appropriate for those who have already made their maximum contributions to IRAs or other qualified plans available to them). However, the price of tax-deferral is the very substantial, and often exorbitant, fees charged by the sellers of deferred annuities -- fees that substantially exceed the fees charged for similar non-annuity investment products like mutual funds. The basis on which these fees are calculated and charged is described later in this Complaint. Over time, these fees can reduce the amounts earned in the account by as much as one-third.

16. Although deferred annuities may be appropriate investments for some retirement plans, there is one category of retirement plans for which the deferred annuities sold by defendants are never appropriate: contributory plans and accounts which themselves already enjoy tax-deferred status (and are thus "qualified") under the Internal Revenue Code. These include many of the most popular and common plans for retirement investing: Individual Retirement Arrangements (IRA), Keogh and 401(k) plans, and other accounts treated similarly by the tax code.¹ Collectively, these are referred to as "qualified plans" or "qualified retirement plans."²

17. Accordingly, many companies other than defendants that sell deferred annuities (reportedly including those affiliated with Fidelity, Charles Schwab and Vanguard) are careful not to market their deferred annuities for placement in any qualified retirement plan. If a customer is seeking an annuity feature (i.e., fixed payments for life) for retirement, an immediate annuity can

¹Specifically, these are qualified for favorable income tax treatment pursuant to Internal Revenue Code §§401(a), 401(k), 403(a), 403(b), 408(a), 408(b), 408(k), 408(p), 408A, or 457. "Qualified plans," as that term is used in this Complaint, exclude defined benefit plans (traditional non-contributory pension plans).

²In industry parlance, an individual purchases an annuity "contract," and a participant in a group retirement plan invested in a deferred annuity holds a "certificate," evidencing his rights to an account balance in the contract's fixed accounts and/or unit interests in variable subaccounts offered within the deferred annuity.

invariably be purchased at the time the investment is withdrawn at the end of the investment period (for example, upon retirement)

18. However, unscrupulous companies, including defendants in this action, specifically permit and encourage their agents to market and sell their deferred annuities to people who are making investments for their IRAs, Keoghs, 401(k)s, or other qualified retirement plans. The amounts of money being invested in qualified plans are so large that defendants apparently cannot resist the immense profits they and their agents can make by proposing deferred annuities for investment in qualified plans, even though such an investment is never appropriate. Many people who are making investments for their retirement -- particularly those who have changed jobs and are rolling over a large lump-sum qualified plan distribution into an IRA -- are unaware of the financial, tax, and investment aspects of deferred annuities, and are susceptible to defendants' deceptive and abusive marketing practices. Defendants, which are advisors and fiduciaries with superior knowledge about these matters and accordingly are trusted by their customers, nevertheless mislead those prospective investors into purchasing inappropriate deferred annuities for placement into qualified retirement plans.

19. Defendants' sales presentations, materials, contracts, and prospectuses affirmatively mislead prospective customers into believing that deferred annuities may be appropriate investments for placement into qualified retirement plans, and fail to disclose the inappropriateness of such investments and the highly remote circumstances in which the expensive insurance features can

³Similarly, other tax-advantaged financial products are often sold in a responsible fashion by companies that offer them --for example, municipal bond mutual funds (whose yields are decreased, compared to taxable bond yields, due to their tax-free status) are either not made available for sale for placement into qualified plans, or include in their sales materials prominent warnings to consumers that these funds are not suitable for placement into qualified plans.

provide any value, as more fully particularized below. Defendants have entered into a common course of conduct and conspiracy to effectuate these profitable sales throughout the American Express Financial Corporation enterprise. These practices constitute deceptive and abusive practices in violation of the laws governing deceptive trade practices, false advertising, consumer deception, and related laws of this state and throughout the United States. Defendants' practices are particularly outrageous because defendants and their agents have a fiduciary relationship with their customers, and therefore owe fiduciary duties of good faith, fair dealing, full and fair disclosure, and care to plaintiffs and the class members.

20. Plaintiffs are among those who have been deceived and abused by defendants' misconduct. Plaintiffs are suing in their individual capacities and on behalf of a class, defined as:

All persons who purchased an individual deferred annuity contract or who received a certificate to a group deferred annuity contract, sold by one of the defendants, which was used to fund a contributory (not defined benefit) retirement plan or arrangement qualified for favorable income tax treatment pursuant to Internal Revenue Code sections 401(a), 401(k), 403(a), 403(b), 408(a), 408(b), 408(k), 408(P), 408A, or 457. Excluded from the class are officers, directors, and agents of the defendants.

Plaintiffs seek damages, including return of the excessive and unreasonable fee amounts paid by plaintiffs and class members, and reformation of plaintiffs' and class members' investment contracts to place them in the investment positions they would enjoy if they had not been deceived into investing in defendants' inappropriate deferred annuities. Plaintiffs also seek injunctive relief prohibiting defendants from continuing to engage in such practices and from charging surrender fees to any plaintiff or class member terminating a deferred annuity contract, and otherwise, as described below.

PARTIES

21. (a) Plaintiff Richard W. Thoresen is a citizen and resident of the State of Oregon. In May 1992, Mr. Thoresen purchased a deferred variable annuity contract from IDS Life (contract number 9310-02975997).

(b) Plaintiff Elizabeth I. Thoresen is a citizen and resident of the State of Oregon. In May 1992, Mrs. Thoresen purchased a deferred variable annuity contract from IDS Life (contract number 9310-02974325).

22. Defendant American Express Financial Corporation ("AEFC") is a wholly-owned subsidiary of American Express Company, a publicly traded corporation. AEFC provides "a variety of financial products and services to help individuals, businesses and institutions establish and achieve their financial goals," according to the American Express Company Form 10-K for the fiscal year ended December 31, 1997, filed with the Securities and Exchange Commission on or about March 31, 1998 (the "Form 10-K"). Operations of AEFC and its subsidiaries named as defendants in this action are conducted in all 50 states and the District of Columbia.

23. AEFC is incorporated in Delaware and maintains its principal office in the IDS Tower, Minneapolis, Minnesota. AEFC wholly owns defendant IDS Life Insurance Company ("IDS Life"). IDS Life in turn is parent to the four other life insurance company defendants named in this action.

24. IDS Life is a stock life insurance company organized in 1957 under the laws of the State of Minnesota. IDS Life maintains its principal offices in the IDS Tower in Minneapolis, Minnesota. IDS Life is currently licensed to do business in the District of Columbia and all states except New York. IDS Life is, according to the American Express Company Form 10-K, the

fifteenth largest life insurance company in the United States, with consolidated assets at December 31, 1997 of \$53.0 billion. IDS Life sells fixed and variable deferred annuities.

25. Defendant IDS Life Insurance Company of New York ("IDS Life-NY") is domiciled in New York and licensed in New York and North Dakota. The company maintains offices at 20 Madison Avenue Extension, Albany, New York as well as administrative offices in the IDS Tower in Minneapolis, Minnesota, and serves New York State residents. IDS Life-NY sells fixed and variable deferred annuities.

26. Defendant American Centurion Life Assurance Company ("American Centurion Life") is domiciled in New York, and is licensed in Alabama, Delaware and New York. The company maintains offices at 20 Madison Avenue Extension, Albany, New York as well as administrative offices in the IDS Tower in Minneapolis, Minnesota. American Centurion Life offers fixed and variable annuities to American Express Cardmembers and others in New York, primarily on a direct response basis.

27. Defendant American Enterprise Life Insurance Company ("American Enterprise Life") is domiciled in Indiana and is licensed in the District of Columbia and all states except New Hampshire, New York and Wyoming. American Enterprise Life maintains administrative offices in the IDS Tower in Minneapolis, Minnesota. American Enterprise Life sells primarily single premium deferred annuity contracts written through financial institutions, thrifts and credit unions.

28. Defendant American Partners Life Insurance Company ("American Partners Life") is domiciled in Arizona and licensed in the District of Columbia and all states except Hawaii, New Hampshire, New York and Wyoming. American Partners Life maintains administrative offices in

the IDS Tower in Minneapolis, Minnesota. America Partners Life sells fixed and variable annuity contracts to American Express Cardmembers and others who reside in states other than New York.

29. Sales of deferred annuities by defendants are targeted to the financial planning client base of defendant AEFC, and sold through that company's exclusive financial advisor network, American Express Financial Advisors. There are 8,300 financial advisors reportedly in the network, and they account for approximately 82% of total annuity premiums written by the defendant Insurers. The remaining annuity sales are primarily generated through agents in distribution arrangements with banks and other financial institutions, as well as sales generated by direct response advertising through American Express Financial Direct.

DEFENDANTS' CONCERTED ACTIVITY AS JOINT CONSPIRATORS

30. The life insurance company defendants are inextricably intertwined with AEFC and each other, and function as the operating units of AEFC. Advertising, sales presentation, and other materials used in connection with the sale of defendants' insurance products to the public, including computer software used to generate such materials, are developed, approved, and disseminated by all defendants.

31. Other joint activities of the defendants include interacting with the public through common facilities, including shared customer service and marketing support centers. In addition, defendants promote annuity sales in unison through American Express-branded national advertising and their shared internet site at www.americanexpress.com.

The Solicitation And Sale Of Richard W. and Elizabeth J. Thoresen's Annuity Contracts

32. On January 14, 1992, the Thoresens attended a "Planning for Financial Success" adult education class at the Cedar Hills Recreation Center near their home in Portland, Oregon. The

class was lead by Judy Rubino, a "Personal Financial Planner" with "IDS Financial Services, Inc." The Thoresens accepted Rubino's invitation of a ITee analysis of their personal finances, and subsequently gave Rubino copies of their personal financial documents.

33. Thereafter, Rubino gave the Thoresens a 106-page "IDS Financial Analysis." The report mostly described the complex tax laws that govern retirement accounts, and recommended mutual funds as an appropriate retirement investment. The report does not mention annuities. In a follow-up meeting, Rubino recommended to the Thoresens that they each reinvest their IRAs into IDS Life deferred variable annuities. Based on her apparent expertise in retirement planning, the Thoresens accepted Rubino's recommendation and agreed to the arrangement.

34. On May 4, 1992, IDS Life issued the Thoresens two "Flexible Annuity" deferred variable annuity contracts. Rubino acted as an agent for IDS Life in the transactions. The Thoresens had been led to believe that this was a type of mutual fund appropriate for placement in an IRA. They were not told that a deferred annuity is inappropriate for placement in an IRA. They were not told that they were buying an insurance product and would be paying substantial fees for insurance features.

35. The quarterly statements that the Thoresens received ITomIDS Life further misled them as to the nature of their investment. For example, the statements reflect the deduction of a \$6 per quarter "contract charge" ITomtheir subaccount investments, but fail to disclose the additional deduction of asset-based annuity insurance fees.

36. Upon learning of the true nature of the product sold to them by IDS Life, the Thoresens sought to cancel their contracts but have been deterred by the substantial surrender fees that would be imposed upon termination. Had the Thoresens been informed of the true nature of the

investment before it was made -- insurance features, high fees, and loss of liquidity in exchange for unnecessary tax-deferral -- they would not have purchased the deferred annuities.

**DEFENDANTS' DECEPTIVE AND ABUSIVE MARKETING
PRACTICES DESIGNED TO SELL DEFERRED ANNUITIES
FOR INVESTMENT IN QUALIFIED RETIREMENT PLANS**

37. As a result of defendants' training, their agents develop close, confidential relationships with their customers. These agents encourage customers, including plaintiffs and class members, to reveal personal confidential information to the agents, and to rely upon the agents for financial advice and counseling based on the agents' knowledge and expertise concerning the sophisticated and complex financial products offered by defendants. Defendants' customers, including plaintiffs and the members of the class, repose their trust and confidence in defendants and their agents in making their decisions to purchase defendants' financial products, including the deferred annuity contracts at issue herein.

38. Many of defendants' agents hold themselves out to the public as "financial planners" or "financial advisors," or conduct business as "financial services" firms, in order to encourage consumers, including plaintiffs and class members, to trust their recommendations on the appropriateness of various financial products to meet the investment objectives of these investors.

39. Sales commissions paid to agents who sell deferred annuities are two to three times higher than the commissions paid on pure investment products, such as mutual funds -- thus motivating defendants' agents to target the qualified retirement plan market for selling defendants' deferred annuity products.

40. For example, defendants' agents viewed as prospects persons leaving employment and needing a rollover IRA in which to place the proceeds of their employers' qualified plans while

preserving the tax-deferred status of the investments. These agents also targeted small businesses, where decision-makers responsible *for* setting up 401(k) and other qualified plans are less likely to be financially sophisticated. Defendants' agents also targeted the employees of nonprofit organizations, hospitals, educational institutions, and state and local governmental units, improperly recommending deferred annuities *for* funding 403(b) and 457 plans.

41. In order to carry out their fraudulent qualified annuity sales scheme, defendants prepared and disseminated uniform advertising and written and oral sales presentations and sales materials to create the illusion that their deferred annuity products *were* appropriate funding vehicles *for* qualified plans.

42. As particularized below, the advertising, sales presentations, and sales materials provided to and used by defendants' agents contained false and misleading information and omitted material facts. Defendants also knew that their agents *were* selecting persons interested in funding qualified plans as targets *for* defendants' deferred annuities sales. Defendants failed to properly train and supervise their agents to ensure that deferred annuities *were* not sold to persons investing through qualified plans (and who had already taken full advantage of their 401(k), IRA, or other tax-deferred qualified retirement plans *before* purchasing a deferred annuity).

43. Sales of deferred annuities into qualified retirement plans, based upon the uniform advertising, sales presentations, and sales materials, have been and continue to be an enormous marketing success *for* defendants. Defendants have received and continue to receive hundreds of millions of dollars in annuity fees *from* the sales of deferred annuities into qualified plans, which sales *were* predicated upon uniformly false and misleading advertising, sales presentations, and sales materials.

44. The advertising, sales presentations, and sales materials that defendants employed to sell deferred annuities to plaintiffs and class members or their employers in order to fund retirement plans were false and misleading by design. The advertising, sales presentations, and sales materials were designed to deceive such persons into believing that they were purchasing financial products appropriate for the accumulation of tax-deferred wealth for retirement. The material emphasized the savings and investment features of the contract, and obscured or misled prospective purchasers about the insurance features of the contract and the fees for those features.

UNREASONABLE AND EXCESSIVE ANNUITY FEES CHARGED BY DEFENDANTS

45. As a direct result of defendants' misconduct, plaintiffs and class members have paid fees and charges in excess of what they would have paid for appropriate investment vehicles. The unreasonable and excessive fees charged for the deferred annuities sold by defendants include:

(a) With a fixed annuity (or the fixed-rate account option in a variable annuity), the insurer's fee for the annuity is generally the spread between the return on general account investments and the interest rate credited to contract owners. These fees are usually substantial, often 2 to 3 percent (200 to 300 basis points) of the total account value annually, and the exact amounts are not disclosed to purchasers.

(b) With a variable annuity, the annuity fees are typically in the form of annual asset-based percentage charges assessed against the contract owner's account value. These fees are in addition to the asset-based investment management fees assessed by the managers of the investments. The two major asset-based annuity fees are the "mortality and expense-risk" (M&E) charge, which averages 1.25 percent (125 basis points) annually according to industry surveys, and the "administration" charge, an additional 0.15 percent (15 basis points) annually.

(c) A contract charge of \$25 to \$40 is assessed annually against variable annuity accounts.

(d) Deferred annuities also have back-end loads, or "surrender *fees*," These *fees* are assessed in the event that the contract owner elects to withdraw invested funds prior to the expiration of a contractually specified period. The *fees* are calculated as a percentage charge of the withdrawn funds, typically 6 to 9 percent if the "surrender" occurs in the first year and on a declining scale thereafter *for* 7 to 10 years. With many contracts, the surrender *fee* period begins anew *for* each additional investment of principal after the initial investment.

46. Although defendants' sales materials and prospectuses state to prospective purchasers that the variable annuity *fees* charged by defendants are used solely to pay *for* the insurance features, and imply that there are no loads or sales charges assessed on the purchases, in fact the actual cost of the insurance features accounts *for* the smallest portion of the variable annuity *fees*.

47. The annuity *fees* collected by defendants are so high in part because of the high commission rates defendants pay to their agents *for* selling the deferred annuities. The agents receive the commissions either as up-front payments or spread over time. If an annuity purchaser decides to terminate her investment within the first six or eight years -- i.e., before defendants have had a chance to collect enough in annual annuity *fees* to cover the sales commission paid to the agent -- the additional surrender *fee* provides defendants with funds to cover the full amount of commissions. As a result, plaintiffs and the class members are trapped: by the time they realize they are paying exorbitant annual asset-based annuity *fees* out of their retirement accounts *for* unwanted insurance features, the only way they can extract themselves from the arrangement is to pay a further

large asset-based surrender fee, which is used to finance the compensation of the agent that recommended the inappropriate deferred annuity investment in the first place.

48. The compounded effect of these unreasonable and excessive annuity fees paid for deferred annuities over the course of a few decades -- not counting any surrender fees -- can consume as much as one-third of a retirement investor's account.

**PARTICULARIZATION OF DEFENDANTS'
MISREPRESENTATIONS AND FAILURES TO DISCLOSE**

49. Defendants made misrepresentations or failed to disclose facts to plaintiffs and the class members or their employers as follows:

(a) Defendants failed to disclose to prospective purchasers, in any of defendants' sales presentations, materials, contracts, or prospectuses, that the deferred annuities defendants sell are never appropriate investments for placement into the purchasers' tax-deferred qualified retirement plans.

(b) Defendants affirmatively deceived and made misrepresentations to prospective purchasers by presenting defendants' deferred annuities as appropriate for placement into (among other options) tax-deferred plans or accounts, such as IRAs and 401(k)s. For example, the sales materials and prospectuses utilized by defendants for their deferred annuities state, verbatim or in substance:

This prospectus describes the following types of tax-qualified variable annuity contracts offered by IDS Life: a) three individual variable annuity contracts for use with plans qualifying under Sections 401, 403, 408 or 408A of the Internal Revenue Code (the Code), and, b) a group variable annuity contract designed to provide benefits under annuity purchase plans adopted by public school systems and certain tax-exempt organizations pursuant to Section 403(b) of the Code.

Defendants also affirmatively deceived prospective purchasers into concluding that defendants' deferred annuities were appropriate for placement into qualified plans by offering a lower initial investment requirement if the deferred annuity was used to fund a qualified plan, and by including detailed discussions of the tax laws governing qualified plans in their sales materials.

(c) In light of defendants' uniform affirmative statements in their sales presentations, materials, contracts, and prospectuses that the primary benefit of their deferred annuities was tax-deferral of earnings, defendants' failure to disclose that such benefit did not apply to investments into qualified plans was materially misleading. Defendants failed to make any provision for customers to affirmatively accept or decline the purchase of mortality insurance features with their qualified plan investments. Defendants affirmatively deceived prospective purchasers into concluding that mortality insurance features were non-elective features of investment products appropriate for qualified plan investing. Defendants failed to disclose to purchasers that mortality insurance features were optional, extra cost items not necessary for qualified plan retirement investors to achieve a tax-favored basis for their investment.

(d) Defendants failed to fairly and accurately disclose the fact that the insurance features of their deferred annuities would provide any benefit or economic value only in highly remote circumstances. The benefits of annuitization can be obtained by any person at any time as an immediate annuity, and the lock-in of a minimum annuitization rate offered by a deferred annuity at the inception of the contract can have value only if human life expectancy dramatically increased during the investment phase of the annuity, the likelihood of which is remote. When present, the death benefit insurance feature also is rarely invoked, because few of the contracts surrendered due to death during their investment phase involve losses that result in payment of any meaningful death

benefit (i.e., investment losses depleting the account value to less than the principal amount invested). Moreover, defendants did not meaningfully disclose to prospective purchasers that death benefits could be purchased far more economically through a normal term life insurance policy.

(e) Defendants failed to disclose that their fixed annuities, and fixed-rate general account investment options in variable annuities, contain substantial annuity fees, included in the spread between the credited interest rate and the return earned by defendants on the consumers' invested funds. Defendants' sales materials for their fixed annuity products implied that surrender fees constituted the only fees or charges applicable to those products, obscuring the fees derived by defendants from the spread between the credited interest rate and defendants' earnings on invested funds, and thus in turn obscuring the amount of investment management and annuity insurance charges inherent in making an investment in an insurance company's general account through a deferred annuity.

50. The misrepresentations and omissions described above were contained in the uniform advertising, sales presentations, and sales materials prepared, approved, and disseminated by defendants and used by their agents in selling deferred annuities to plaintiffs and class members. The misrepresentations and omissions were false and deceptive.

51. The misrepresentations and omissions described above were material. Plaintiffs and class members or their employers would not have purchased deferred annuities from defendants if they had been told the truth about those subjects.

**DEFENDANTS' FRAUDULENT CONCEALMENT
OF THEIR QUALIFIED ANNUITY SALES SCHEME**

52. Defendants affirmatively concealed the foregoing material misrepresentations and omissions from plaintiffs and the class. This fraudulent concealment began at the time defendants

sold their annuities for placement in plaintiffs' and class members' qualified plans and continued through the present.

53. Defendants' fraudulent concealment was carried out either by their failure to deliver written contracts to deferred annuity purchasers at the time of sale, or by use of contracts written in technical insurance jargon designed to conceal the inappropriateness of deferred annuities for the funding of qualified retirement plans and the other misrepresentations and omissions described above. The sales process was designed to conceal the fact that plaintiffs and class members, by entering into such agreements, have had their retirement monies invested in an inappropriate insurance product rather than in an appropriate retirement investment product.

54. Defendants concealed the true facts concerning the appropriateness or performance of their deferred annuities with half-truths and further false and misleading statements. For instance, defendants concealed the reasons that their variable annuity contracts were performing worse than expected (e.g., that annuity fees charged for insurance features were consuming the account's value) by raising other factors such as market conditions, timing of investments, or plan-related fees. In so doing, defendants prevented and deterred any meaningful inquiry or investigation by plaintiffs and class members that would have disclosed defendants' fraudulent common course of conduct.

55. The exorbitant fees charged against the deferred annuity accounts are also concealed. For example, account statements sent by defendants to plaintiffs and members of the class did not disclose the asset-based annuity insurance fees being paid by plaintiffs and the class. However, account statements did prominently display the deduction of "administrative charges" and "contract charges" from deferred annuity accounts (deceptively implying that such charges were the only

charge against the account for fees) while failing to disclose the additional deduction of the much larger asset-based annuity insurance fees.

56. The running of the statute of limitations has been tolled with respect to any claims which plaintiffs and class members have brought or could bring as a result of the unlawful and fraudulent concealment and course of conduct alleged herein. Defendants, through various devices of misrepresentation and secrecy as alleged herein, affirmatively and fraudulently concealed the truth about the nature of their deferred annuity products from plaintiffs and class members. Plaintiffs and class members had no knowledge of defendants' schemes and unlawful conduct, or any of the facts that might have led to the discovery of the wrongdoing, and could not reasonably have obtained such knowledge even through diligent effort, before the filing of this Complaint.

DEFENDANTS' FIDUCIARY DUTIES AND SPECIAL
RELATIONSHIP TO PLAINTIFFS AND CLASS MEMBERS

57. In selling deferred annuities, defendants pursued, fostered, and accepted a relationship with their customers that was based on trust, confidence, and a corresponding duty to keep their annuity owners and participants fully and fairly informed and not to mislead them, both prior to and at contract inception and throughout the life of the contract. However, in violation and breach of this duty, defendants embarked upon a fraudulent common course of conduct to sell qualified annuities to the public through false and misleading uniform advertising, sales presentations, and sales materials.

58. Defendants held and continue to hold a relationship of trust and confidence with plaintiffs and class members as a result of the following:

(a) Defendants are insurers characterized by elements of public interest which subject defendants to more stringent standards of conduct than those normally arising out of contract.

(b) Defendants cultivated a relationship of trust and confidence in plaintiffs and class members through defendants' marketing, sales, and servicing of the complex and sophisticated insurance products purchased by plaintiffs and class members or their employers.

(c) The contracts purchased by plaintiffs and class members or their employers were contracts of adhesion that were prepared by defendants and were not subject to negotiation. Neither plaintiffs and class members nor their employers possess bargaining power equal to that of defendants.

(d) Some contract owners had prior relationships with defendants, and these defendants and their agents abused and manipulated those relationships to create trust and confidence in plaintiffs and class members and used such trust and confidence to sell deferred annuities for the funding of qualified plans.

(e) Defendants and their agents held themselves out as highly skilled financial experts, possessing the knowledge and expertise needed to navigate and understand the complex rules that govern qualified plans. Defendants encouraged plaintiffs and class members or their employers to rely on this knowledge and expertise as a basis for trusting and accepting their subsequent recommendations for purchase of the contracts to fund the qualified plans at issue.

(f) Defendants and their agents, in inducing plaintiffs and class members or their employers to purchase the contracts, held themselves out as experts to and confidants of plaintiffs and class members or their employers, thereby encouraging the revelation of private and confidential

information, including financial statements, tax returns, business plans, and other documents pertinent to financial planning.

(g) Defendants knew that plaintiffs and class members, or their employers, were unsophisticated financial consumers, particularly in the area of qualified plans, and were ill-equipped to understand the unfamiliar and technical language of the contracts or the complexities of defendants' products.

59. Based on the foregoing, defendants owed plaintiffs and class members fiduciary duties, including the duty of good faith and fair dealing, the duty of loyalty, the duty to avoid self-dealing, the duty of full and fair disclosure, and the duty of care arising out of the relationship of defendants and their agents with plaintiffs and class members.

60. Defendants had a duty to provide complete and truthful information to plaintiffs and class members when preparing sales materials and other materials intended to induce purchase of their deferred annuities for investment in qualified plans, including a duty to comply with existing state and federal disclosure laws and a duty to cure any prior misrepresentations or omissions.

61. In addition to their duties derived from their relationship of trust and confidence, defendants had an independent duty to disclose information to plaintiffs and class members by virtue of their special relationship with them. Defendants had sole knowledge of, or access to, material facts concerning the inappropriateness of their products for qualified retirement plans, including the fact that the contracts were insurance products. Defendants were aware that plaintiffs and class members did not have access to critically important information and therefore could not evaluate the accuracy of the information provided to them, because of the complex nature of qualified plans and the complicated nature of defendants' annuity products. Defendants intentionally kept plaintiffs

and class members uninformed of these facts and capitalized on defendants' sole possession of the material facts by providing plaintiffs and class members or their employers with misleading advertising, sales presentations, and sales materials.

CLASS ACTION ALLEGATIONS

62. This action is brought by the plaintiffs individually and on behalf of a class pursuant to Rule 23 of the Minnesota Rules of Civil Procedure. The class consists of:

All persons who purchased an individual deferred annuity contract or who received a certificate to a group deferred annuity contract, sold by one of the defendants, which was used to fund a contributory (not defined benefit) retirement plan or arrangement qualified for favorable income tax treatment pursuant to Internal Revenue Code sections 401(a), 401(k), 403(a), 403(b), 408(a), 408(b), 408(k), 408(P), 408A, or 457. Excluded from the class are officers, directors, and agents of the defendants.

63. This action is properly maintainable as a class action for the following reasons:

(a) The class consists of hundreds of thousands of people and is thus so numerous that joinder of all members is impracticable.

(b) There is a well-defined community of interest among class members in the questions of law or fact affecting the class which predominate over questions affecting only individual members. Those common questions include:

(i) Whether defendants engaged in a fraudulent common course of conduct which included the deceptive acts and practices identified herein in the marketing and sales of deferred annuity contracts to fund qualified retirement plans;

(ii) Whether defendants knowingly, intentionally, recklessly, or negligently engaged in a nationwide fraudulent course of conduct in order to induce the purchase of the deferred annuity contracts by plaintiffs and class members or their employers;

(iii) Whether plaintiffs and class members have sustained damages, and the proper measure of compensatory damages;

(iv) Whether punitive damages should be awarded; and

(v) Whether plaintiffs and class members are entitled to the injunctive and declaratory relief requested herein.

(c) The claims asserted by plaintiffs are typical of the claims of class members.

(d) Plaintiffs will fairly and adequately protect the interests of the class in that they have no interests antagonistic to those of the other class members, and plaintiffs have retained as counsel attorneys who are knowledgeable and experienced in insurance industry trade practices and sales methods, as well as class and complex litigation.

(e) A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

(i) Given the size of individual class members' claims, most class members could not afford to seek legal redress individually for the wrongs the defendants committed against them;

(ii) When defendants' liability has been adjudicated, claims of all class members can be determined by the Court;

(iii) This action will cause an orderly and expeditious administration of the class claims and foster economies of time, effort and expense and ensure uniformity of decisions;

(iv) Without a class action, many class members would continue to suffer damages, and defendants' violations of law will be without redress while defendants continue to reap and retain the substantial proceeds of their wrongful conduct; and

(v) This action does not present any undue difficulties that would impede its management by the Court as a class action.

COUNT I

**Deceptive Trade Practices in Violation
of Minnesota Statute §§ 325D.43 - 325D.48**

64. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-63 above as if fully set forth herein.

65. This action is brought pursuant to this state's consumer protection laws and to the extent applicable, the consumer protection laws of other states. The defendants have engaged in acts and practices, including misrepresentation, concealment, and deceit, which confuse and mislead consumers. Defendants' acts and practices, as alleged herein, violated and continue to violate the Minnesota Uniform Deceptive Trade Practices Act, §§ 325D.43 - 325D.48, in at least the following respects:

(a) The acts, omissions, misrepresentations, practices and nondisclosures of the defendants relating to the sale of deferred annuities for qualified plans violated Minn. Stat. § 325D.44, for the following reasons:

(i) Defendants' acts and practices constitute representations that the deferred annuities have qualities, characteristics, benefits or uses which they do not have;

(ii) Defendants' acts and practices constitute misrepresentations that the goods or services are of a particular standard, quality or grade;

(iii) Defendants' acts and practices constitute advertisements of goods and services with the intent not to sell them as advertised; and

(iv) Defendants' acts and practices constitute conduct which creates a likelihood of confusion or misunderstanding.

(b) Defendants' acts, omissions, misrepresentations, practices, and nondisclosures relating to the sale of the deferred annuities for qualified plans also violated Minn. Stat. § 325D.44 as follows:

(i) All written promotional materials, advertising, standardized oral presentations, telephone solicitations and other publicity and promotional efforts undertaken by the defendants constitute unlawful business practices in violation of Minnesota's Prevention of Consumer Fraud Act, Minn. Stat. § 325F.69, as set forth more fully in Count III, because defendants engaged in a plan to deceive the public with respect to the truth and validity of their advertising and representations concerning deferred annuities, as described more fully in this Complaint;

(ii) The acts, omissions, misrepresentations, practices and nondisclosures of defendants, as more fully described in the preceding paragraphs, constitute a deceptive trade practice within the meaning of Minnesota's Unlawful Trade Practices Act, Minn. Stat. § 325D.13;

(iii) Accordingly, plaintiff and members of the class are entitled to restitution, actual damages, equitable and injunctive relief, costs, and attorneys' fees pursuant to Minn. Stat. § 8.31, subd. 3a.

(c) Certain members of the class are senior citizens (age 62 or older) and/or handicapped, within the meaning of Minn. Stat. § 325F.71, subd. 1(b). Defendants knew or should have known that their conduct, as alleged above, was directed to senior citizens and handicapped persons, in that such persons constitute a significant market for deferred annuities. Many such persons are widows who are forced by circumstance to reinvest large sums of money distributed from the qualified plans

of their recently deceased spouses. Further, many such persons are more vulnerable to defendants' marketing tactics and representations than other members of the public, due to their age, poor health or infirmity, impaired understanding, restricted mobility or disability.

66. As a result of defendants' violations of Minn. Stat. §§ 325D.43 - 325D.48, plaintiffs and members of the class who are senior citizens and/or handicapped persons are entitled to damages, equitable relief, costs and attorneys' fees as determined by the Court, pursuant to Minn. Stat. § 325F.71, subd. 4, as well as civil penalties in the amount of \$10,000.00 per violation, pursuant to Minn. Stat. § 325F.71, subd. 2.

COUNT n

False Or Misleading: Advertising:

67. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-63 above as if fully set forth herein.

68. The nationwide newspaper, radio, television and magazine campaign, high pressure sales techniques, written promotional materials, telephone solicitations and all other promotional efforts undertaken by the defendants constitute advertising devices, disseminated by the defendants, containing material assertions, representations or statements concerning their products which are untrue, deceptive and/or misleading, and which are known, or by the exercise of reasonable care should have been known, to be untrue, deceptive or misleading, by the defendants, in violation of Minnesota's false statement in advertising statute, Minn. Stat. § 325F.67.

69. Plaintiffs and the class members accordingly are entitled to restitution, their actual damages, equitable and injunctive relief, costs and attorneys' fees, pursuant to Minn. Stat. § 8.31, subd. 3a.

70. Certain members of the *class* are senior citizens (age 62 or older) and/or handicapped, within the meaning of Minn. Stat. § 325F.71, subd. 1(b).

71. Defendants knew or should have known that their conduct, as alleged above, was directed to senior citizens and handicapped persons, in that such persons constitute a significant market for deferred annuities. Many such persons are widows who are forced by circumstance to reinvest large sums of money distributed from the qualified plans of their recently deceased spouses. Further, many such persons are more vulnerable to defendants' marketing tactics and representations than other members of the public, due to their age, poor health or infirmity, impaired understanding, restricted mobility or disability.

72. As a result of defendants' violations of these statutes, plaintiffs and members of the class who are senior citizens and/or handicapped persons are entitled to damages, equitable relief, costs and attorneys' fees as determined by the Court, pursuant to Minn. Stat. § 325F.71, subd. 4, as well as civil penalties in the amount of \$10,000.00 per violation, pursuant to Minn. Stat. § 325F.71, subd. 2.

COUNT III

Consumer Fraud in Violation of Minnesota Statutes. §§ 325F.68 - 325F.70

73. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-63 above as if fully set forth herein.

74. As detailed in the preceding paragraphs, defendants engaged in a pattern or practice involving fraudulent and deceptive schemes to sell deferred annuities as appropriate investments for funding qualified plans by the use of uniform misrepresentations and nondisclosures made to plaintiffs, class members, and members of the general public. The conduct complained of offends

public policy, as set forth more fully in the statutes and common law alleged in this Complaint. Moreover, defendants' practices were unethical, oppressive, and unscrupulous. Defendants' conduct caused and continues to cause substantial injury to consumers, including plaintiffs and class members. The justifications for defendants' wrongful conduct were and are vastly outweighed by the adverse effects of such conduct.

75. Defendants acts, practices, misrepresentations and omissions constitute fraud, false pretense, false promise, and misrepresentation as well as deceptive sales practices and dissemination of misleading information.

76. Defendants engaged in such acts, practices, misrepresentations and omissions with the intent that plaintiffs, class members and/or their employers would rely on such misrepresentations and omissions in connection with the sale of the deferred annuities to plaintiffs, class members and/or their employers, and with specific and deliberate intent to oppress, defraud, and deceive plaintiffs and members of the class. Further, defendants persisted in the conduct described herein, despite knowing, or recklessly disregarding, that said conduct constituted a breach of their duties to plaintiffs and class members, and further constituted fraud.

77. As a direct and proximate result of defendants' conduct, plaintiffs and class members have incurred damages and are, pursuant to Minn. Stat. § 8.31, subd. 3a, entitled to be compensated in an amount to be established according to the proof at trial.

78. Certain members of the class are senior citizens (age 62 or older) and/or handicapped, within the meaning of Minn. Stat. § 325F.71, subd. 1(b).

79. Defendants knew or should have known that their conduct, as alleged above, was directed to senior citizens and handicapped persons, in that such persons constitute a significant

market for deferred annuities. Many such persons are widows who are forced by circumstance to reinvest large sums of money distributed from the qualified plans of their recently deceased spouses. Further, many such persons are more vulnerable to defendants' marketing tactics and representations than other members of the public, due to their age, poor health or infirmity, impaired understanding, restricted mobility or disability.

80. As a result of defendants' violations of these statutes, plaintiffs and members of the class who are senior citizens and/or handicapped persons are entitled to damages, equitable relief, costs and attorneys' fees as determined by the Court, pursuant to Minn. Stat. § 325F.71, subd. 4, as well as civil penalties in the amount of \$10,000.00 per violation, pursuant to Minn. Stat. § 325F.71, subd. 2.

COUNT IV

Fraud. Fraudulent Concealment And Deceit

81. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-63 above as if fully set forth herein.

82. Defendants made numerous material misrepresentations and failed to disclose material information to plaintiffs and class members or their employers, through uniform advertising, sales presentations, and sales materials, as set forth in this Complaint.

83. Defendants knowingly failed to disclose material information to plaintiffs and class members or their employers in the sales process that defendants were under a duty to disclose, as set forth in this Complaint.

84. At the time that defendants made these misrepresentations or omissions of fact, they knew or were reckless in not knowing that such misrepresentations and omissions were false and

misleading. Defendants knew such information was material and knew of the information that was not disclosed, as described above. Moreover, defendants had a duty to plaintiffs and class members to disclose such facts, and to ensure that all of their statements and representations were complete, truthful, and not false or misleading.

85. Plaintiffs and class members or their employers were unaware that defendants' misrepresentations and omissions were false and misleading and that defendants had not disclosed material information. Plaintiffs and class members or their employers reasonably relied on the misrepresentations, and relied on information provided by defendants without knowing of defendants' omissions, and plaintiffs and class members were thereby detrimentally affected due to these inappropriate investments and their payment of excessive and unreasonable fees. Plaintiffs and class members or their employers were unaware of defendants' material misrepresentations and nondisclosures, and could not have discovered them through reasonable diligence as a result of defendants' conduct in fraudulently concealing their wrongdoing, as described more fully in this Complaint.

86. Defendants intended for plaintiffs and class members or their employers to rely on the foregoing misrepresentations and omissions of fact, based on the method and manner of the uniform sales presentations and schemes as set forth in this Complaint.

87. By reason of the foregoing, plaintiffs and class members are entitled to compensatory damages in the amount to be determined at the trial of this action.

COUNT V

Breach Of Fiduciary Duty/Constructive Fraud

88. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-63 above as fully set forth herein.

89. Defendants owed plaintiffs and class members fiduciary duties, including the duty of good faith and fair dealing, the duty of full disclosure, and the duty of care arising out of their relationship with plaintiffs and class members as alleged more fully above.

90. Defendants held and continue to hold a special relationship with plaintiffs and class members, as alleged more fully above.

91. Defendants had a duty to provide complete and truthful information to plaintiffs and class members or their employers when selling the deferred annuity contracts at issue, including, without limitation, complying with state and federal disclosure laws and curing any prior misrepresentations or omissions.

92. By engaging in the conduct alleged herein, defendants breached their fiduciary duties to plaintiffs and class members or their employers, by misrepresenting or omitting and failing to disclose, while under a duty to do so, the numerous material facts set forth more fully in this Complaint.

93. Defendants took steps to actively conceal material information and the fundamental nature of the contracts from plaintiffs and class members or their employers, as alleged more fully herein.

94. As a result of defendants' breaches of fiduciary duty and constructive fraud, plaintiffs and class members are entitled to compensatory damages in an amount to be determined at trial.

COUNT VI

Neelieent Misrepresentation

95. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-63 above as if fully set forth herein.

96. Defendants falsely stated and misrepresented to plaintiffs and class members, or their employers, through uniform advertising, sales presentations and sales materials approved, prepared and disseminated by them, that the deferred annuity contracts at issue were appropriate investments for qualified retirement plans.

97. At the time defendants made these misrepresentations, they were both material and false.

98. These statements and misrepresentations were negligently made by defendants without reasonable grounds to believe that they were true.

99. Plaintiffs and class members reasonably relied on defendants' misrepresentations. If defendants had not made those misrepresentations, plaintiffs and class members or their employers would not have purchased defendants' deferred annuities.

100. Defendants reasonably should have known that plaintiffs and class members or their employers, at the time these misrepresentations were made, did not know the truth but believed defendants' misrepresentations to be true, reasonably relied upon them, and were thereby induced to purchase the deferred annuity contracts at issue.

101. Defendants reasonably should have known that plaintiffs and class members would suffer injury from the purchases of the deferred annuity contracts at issue. Plaintiffs and class members were so injured.

102. By reason of the foregoing, plaintiffs and class members are entitled to compensatory damages in an amount to be determined at the trial of this action.

COUNT vn

Ne&li&ence

103. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-63 above as if fully set forth herein.

104. Defendants owed plaintiffs and class members a duty to act with reasonable care in hiring, retaining, and promoting agents so that these defendants did not hire, retain, promote or associate themselves with agents who they reasonably should have known engaged in the illegal and wrongful conduct complained of in this Complaint. Defendants also owed plaintiffs and class members a duty to act with reasonable care in training and educating their agents, in preparing sales materials, and in selling their products to consumers, and to supervise and oversee those agents such that the agents did not make material misrepresentations and omissions of fact and did not violate state and federal laws in selling defendants' deferred annuities.

105. Defendants breached their duties, as set forth herein, by hiring, retaining, promoting, and associating themselves with agents who they reasonably should have known had engaged in the conduct complained of in this Complaint. Defendants further breached their duties, as set forth herein, by failing to properly train agents not to engage in such activities, and by failing to supervise agents to prevent the conduct complained of herein.

106. Plaintiffs and class members have been damaged as a result of defendants' misconduct.

107. By reason of the foregoing, plaintiffs and class members are entitled to compensatory damages in an amount to be determined at the trial of this action.

COUNT VIII

Negligence Per Se

108. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-63 above as if fully set forth herein.

109. In the effectuation of the qualified annuity sales scheme, defendants and their agents violated numerous applicable state laws and regulations designed to protect consumers from deceptive insurance sales practices, including Minn. Stat. § 72A.20, subd. 1(2). Defendants and their agents also failed to obey conduct rules promulgated by NASD Regulation, Inc. governing the sale of variable annuities, including NASD Conduct Rule 2210, which are designed to prevent consumer confusion about the nature of those products. Compliance with NASD conduct rules is mandated by federal law. 15 U.S.C. § 780(b)(8). Defendants' violation of those federal and state laws constitutes negligence per se.

110. Plaintiffs and class members have been harmed as a result of defendants' breaches of their duties under the law.

111. By reason of the foregoing, plaintiffs and class members are entitled to compensatory damages in an amount to be determined at the trial of this action.

COUNT IX

Unjust Enrichment And
Imposition of Constructive Trust

112. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-63 above as if fully set forth herein.

113. Defendants received ITom plaintiffs and class members annuity fees and other expenses and fees that, but for the material misrepresentations and omissions alleged herein, would not have been paid by plaintiffs and the class.

114. As a result, defendants will be unjustly enriched if they are allowed to retain such funds. Plaintiffs and class members are entitled to restitution of all monies wrongfully obtained by defendants.

115. Such monies are traceable to defendants, who are the current possessors of such funds. Plaintiffs and class members have no adequate remedy at law if these monies are dissipated. As a result of the relationships between the parties and the facts as stated above, a constructive trust should be established over the monies paid by plaintiffs and members of the class, including annuity fees and other expenses and fees charged by defendants.

COUNT X

Declaratory And Injunctive Relief

116. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-63 above as if fully set forth herein.

117. On each cause of action stated above, plaintiffs and class members will be irreparably injured in the future by defendants' misconduct to the extent that defendants continue to impose surrender fees upon any plaintiff's or class member's election to terminate a deferred annuity contract.

118. Plaintiffs, on behalf of themselves and the class, seek a judgment declaring that defendants must cease charging surrender fees, and enjoining defendants from charging or collecting surrender fees with respect to any qualified annuity contract.

119. Plaintiffs, for themselves and on behalf of the class, also seek injunctive relief enjoining defendants from the solicitation or sale of qualified annuities, and the assessment or collection of fees on such annuities, as defined herein, based upon the qualified annuity sales scheme described herein.

120. Plaintiffs and class members do not have a plain, adequate, speedy, or complete remedy at law to address the wrongs alleged in this Complaint, and will suffer irreparable injury as a result of defendants' misconduct unless injunctive and declaratory relief are granted.

121. By reason of the foregoing, plaintiffs and class members are entitled to declaratory and injunctive relief as set forth above.

COUNT XI

Reformation

122. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-63 above as if fully set forth herein.

123. As alleged herein, defendants uniformly represented to plaintiffs and class members or their employers that plaintiffs and class members were purchasing or receiving investment products appropriate for placement into plaintiffs' and class members' qualified plans.

124. The deferred annuities provided by defendants contain features -- the insurance features and annuity fees -- whose characteristics and values defendants did not adequately disclose to plaintiffs and class members and which were inconsistent with the parties' agreement, as alleged above. Plaintiffs' and class members' deferred annuity contracts have now been partially performed.

125. As alleged herein, the contracts were procured by plaintiffs and class members or their employers from defendants as a result of defendants' promises, fraudulent and negligent misrepresentations, fraudulent concealment and constructive fraud.

126. As a result of the foregoing, plaintiffs and class members are entitled to equitable reformation of the contracts, to provide for the appropriate investment product agreed to by the parties.

PRA YER FOR RELIEF

WHEREFORE, plaintiffs, on behalf of themselves and class members (and, as to Count I, on behalf of the general public), request judgment and relief as follows:

1. An order certifying that the action may be maintained as a class action and certifying an appropriate plaintiff class.
2. Compensatory damages in an amount to be proven at trial, including any damages as may be provided for by statute.
3. An order requiring disgorgement of, imposing a constructive trust upon, or impounding defendants' ill-gotten monies and profits, or freezing defendants' assets, and requiring defendants to pay restitution to plaintiffs and all class members, including return of annuity fees, surrender fees, and state premium taxes, and restitution of the investment earnings that plaintiffs and class members would have received on those amounts if they had not been induced to invest in inappropriate deferred annuities, and/or restoring all funds acquired by means of any act or practice declared by this Court to be an unlawful, fraudulent, or unfair business act or practice.
4. An award of prejudgment and postjudgment interest.
5. An order providing for declaratory and injunctive relief, including the following:

(a) an order declaring defendants' qualified annuity sales scheme to be in violation of law;

(b) an order declaring that defendants' fees charged or assessed for deferred annuities invested in qualified plans are unreasonable and excessive;

(c) an order enjoining defendants from charging surrender fees with respect to any qualified annuity contract;

(d) an order declaring that defendants must remove unreasonable and excessive fees charged to plaintiffs and class members and restore their contract values accordingly;

(e) an order enjoining defendants from soliciting sales of or selling deferred annuities for placement in qualified plans;

(f) an order reforming plaintiffs' and class members' contracts with defendants in accordance with the parties' agreement as described above; and

(g) other equitable relief that the Court may deem proper.

6. An award of attorneys' fees and the costs and expenses of this litigation, including experts' fees.

7. Any other or further relief that this Court deems just and equitable.

DEMAND FOR TRIAL BY JURY

Plaintiffs demand trial by jury.

DATED: October ~ 1998

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ACKNOWLEDGMENT REQUIRED BY MINN. STAT. § 549.211

The undersigned hereby acknowledges that sanc . Minn. Stat.
§ 549.211.

Dated: October 17 1998