

USDC SCAN INDEX SHEET



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3:04-CV-01038 SELZNICK V. XELAN INC

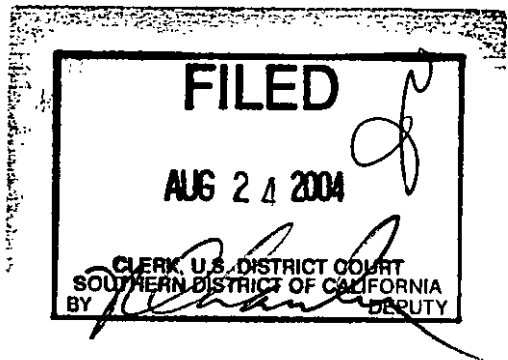
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ANS.

ORIGINAL

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6 Indianapolis Life Insurance Company



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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 JAY KEVIN SELZNICK, D.M.D.,
M.D., an individual, DOUBLE R. ORAL
13 & MAXILLOFACIAL SURGERY,
INC., a Nevada personal service
14 corporation; DOUBLE R. ORAL &
MAXILLOFACIAL SURGERY, INC.
15 EMPLOYEE BENEFITS PLAN, an
employee benefits plan under ERISA,
16 BRANDY J. ROWLAND, an individual,

17 Plaintiffs,

18 vs.

19 XELAN, INC. aka XELAN, a California
corporation; XELAN THE ECONOMIC
20 ASSOCIATION OF HEALTH
PROFESSIONALS aka XELAN, a
21 California corporation; XELAN
WELFARE BENEFIT TRUST, aka
22 "XELAN 419 PLAN," "multi-employer
group welfare benefit plan"; L.
23 DONALD GUESS, DMD aka LEWIS D.
GUESS, DMD, TRUSTEE OF XELAN
24 WELFARE BENEFIT TRUST; L.
DONALD GUESS, DMD aka LEWIS D.
25 GUESS, DMD, an individual;
INDIANAPOLIS LIFE INSURANCE
26 COMPANY, a Domestic Insurance
Corporation; PYRAMIDAL FUNDING
27 SYSTEMS INC. d/b/a XELAN
INSURANCE SERVICES, a California
28 Corporation; XELAN MALPRACTICE

Case No. 04CV1038 L (JFS)

Judge: Hon. M. James Lorenz
Magistrate Judge: Hon. James S. Stiven
Courtroom E

**DEFENDANT INDIANAPOLIS LIFE
INSURANCE COMPANY'S ANSWER
TO COMPLAINT**

Date Action Filed: May 20, 2004
Trial Date: None

Handwritten signature
Rutan & Tucker LLP
attorneys at law

1 EQUITY TRUST, a Xelan Trust in the
2 British Virgin Islands; XELAN
3 INSURANCE COMPANY aka XELAN
4 INSURANCE COMPANY, LTD.,
5 domiciled and licensed in Barbados,
6 BVI; XELAN DISABILITY EQUITY
7 TRUST, a Xelan Trust in Canada; PAN-
8 AMERICAN LIFE INSURANCE
9 COMPANY, a Louisiana corporation,
10 and DOES 1 through 100, inclusive,

11 Defendants.

12 Defendant Indianapolis Life Insurance Company (“Indianapolis Life” or
13 “Answering Defendant”) answers the complaint (“Complaint”) of plaintiffs Jay
14 Kevin Selznick, D.M.D., M.D., an individual (“Selznick”), Double R Oral &
15 Maxillofacial Surgery, Inc., a Nevada personal service corporation (“Double R”),
16 Double R Oral & Maxillofacial Surgery, Inc. Employee Benefit Plan, an employee
17 benefits plan under ERISA (“Double R Plan”), and Brandy J. Rowland, an
18 individual (“Rowland”) (collectively, “Plaintiffs”), and admits, denies, and alleges
19 as follows:

20 PRELIMINARY STATEMENT

21 1. Answering paragraph 1 of the Complaint, Indianapolis Life admits that
22 the action purports to concern a number of alleged matters. Except as so expressly
23 admitted or alleged, Answering Defendant lacks sufficient information or belief to
24 answer the allegations of said paragraph and, basing its denial on that ground, denies
25 each and every allegation contained in said paragraph.

26 2. Answering paragraph 2 of the Complaint, Indianapolis Life denies that
27 it is a party to, participated in, or assisted in any misrepresentation, concealment,
28 deceit, breach of fiduciary duty, self-dealing, conversion, or violation of statute
asserted by Plaintiffs, denies that it is a fiduciary, and denies that any conduct of
Indianapolis Life has caused any damage to Plaintiffs. Except as so expressly

1 admitted, alleged, or denied, Answering Defendant lacks sufficient information or
2 belief to answer the allegations of said paragraph and, basing its denial on that
3 ground, denies each and every allegation contained in said paragraph.

4 3. Answering paragraph 3 of the Complaint, Answering Defendant lacks
5 sufficient information or belief to answer the allegations of said paragraph and,
6 basing its denial on that ground, denies each and every allegation contained in said
7 paragraph.

8 4. Answering paragraph 4 of the Complaint, Answering Defendant lacks
9 sufficient information or belief to answer the allegations of said paragraph and,
10 basing its denial on that ground, denies each and every allegation contained in said
11 paragraph.

12 5. Answering paragraph 5 of the Complaint, Indianapolis Life admits that
13 Plaintiffs assert certain claims. Except as so expressly admitted or alleged,
14 Answering Defendant lacks sufficient information or belief to answer the allegations
15 of said paragraph and, basing its denial on that ground, denies each and every
16 allegation contained in said paragraph.

17 6. Answering paragraph 6 of the Complaint, Indianapolis Life admits that
18 Plaintiffs seek certain remedies. Answering Defendant denies that Plaintiffs are
19 entitled to such remedies against Answering Defendant. Except as so expressly
20 admitted or alleged, Answering Defendant lacks sufficient information or belief to
21 answer the remaining allegations of said paragraph and, basing its denial on that
22 ground, denies each and every allegation contained in said paragraph.

23 7. Answering paragraph 7 of the Complaint, Indianapolis Life admits that
24 Plaintiffs seek to hold it and other insurers accountable under various traditional
25 state laws. Answering Defendant expressly denies Plaintiffs are entitled to such
26 remedies against Answering Defendant. Except as so expressly admitted or alleged,
27 Answering Defendant denies each and every remaining allegation contained in said
28 paragraph.

1 **JURISDICTION AND VENUE**

2 8. Answering paragraph 8 of the Complaint, Indianapolis Life lacks
3 sufficient information or belief to answer the allegations of said paragraph and,
4 basing its denial on that ground, denies each and every allegation contained in said
5 paragraph.

6 9. Answering paragraph 9 of the Complaint, Indianapolis Life lacks
7 sufficient information or belief to answer the allegations of said paragraph and,
8 basing its denial on that ground, denies each and every allegation contained in said
9 paragraph.

10 **THE PARTIES**

11 10. Answering paragraph 10 of the Complaint, Indianapolis Life lacks
12 sufficient information or belief to answer the allegations of said paragraph and,
13 basing its denial on that ground, denies each and every allegation contained in said
14 paragraph.

15 11. Answering paragraph 11 of the Complaint, Indianapolis Life lacks
16 sufficient information or belief to answer the allegations of said paragraph and,
17 basing its denial on that ground, denies each and every allegation contained in said
18 paragraph.

19 12. Answering paragraph 12 of the Complaint, Indianapolis Life lacks
20 sufficient information or belief to answer the allegations of said paragraph and,
21 basing its denial on that ground, denies each and every allegation contained in said
22 paragraph.

23 13. Answering paragraph 13 of the Complaint, Indianapolis Life lacks
24 sufficient information or belief to answer the allegations of said paragraph and,
25 basing its denial on that ground, denies each and every allegation contained in said
26 paragraph.

27 14. Answering paragraph 14 of the Complaint, Indianapolis Life lacks
28 sufficient information or belief to answer the allegations of said paragraph and,

1 basing its denial on that ground, denies each and every allegation contained in said
2 paragraph.

3 15. Answering paragraph 15 of the Complaint, Indianapolis Life lacks
4 sufficient information or belief to answer the allegations of said paragraph and,
5 basing its denial on that ground, denies each and every allegation contained in said
6 paragraph.

7 16. Answering paragraph 16 of the Complaint, Indianapolis Life lacks
8 sufficient information or belief to answer the allegations of said paragraph and,
9 basing its denial on that ground, denies each and every allegation contained in said
10 paragraph.

11 17. Answering paragraph 17 of the Complaint, Indianapolis Life lacks
12 sufficient information or belief to answer the allegations of said paragraph and,
13 basing its denial on that ground, denies each and every allegation contained in said
14 paragraph.

15 18. Answering paragraph 18 of the Complaint, Indianapolis Life lacks
16 sufficient information or belief to answer the allegations of said paragraph and,
17 basing its denial on that ground, denies each and every allegation contained in said
18 paragraph.

19 19. Answering paragraph 19 of the Complaint, Indianapolis Life admits
20 and alleges that at all times relevant herein, Answering Defendant was and is an
21 Indiana Corporation. Indianapolis Life further admits and alleges that at times
22 Indianapolis Life has had its principal offices in Indianapolis, Indiana. Except as so
23 expressly admitted or alleged, Answering Defendant denies each and every
24 allegation contained in said paragraph.

25 20. Answering paragraph 20 of the Complaint, Indianapolis Life admits
26 and alleges that at various times relevant herein, L. Donald Guess ("Guess") is and
27 was an independent contractor insurance agent of Indianapolis Life for the limited
28 purpose of selling certain policies of life insurance. Except as so expressly admitted

1 or alleged, Answering Defendant lacks sufficient information or belief to answer the
2 allegations of said paragraph and, basing its denial on that ground, denies each and
3 every allegation contained in said paragraph.

4 21. Answering paragraph 21 of the Complaint, Answering Defendant lacks
5 sufficient information or belief to answer the allegations of said paragraph and,
6 basing its denial on that ground, denies each and every allegation contained in said
7 paragraph.

8 22. Answering paragraph 22 of the Complaint, Answering Defendant lacks
9 sufficient information or belief to answer the allegations of said paragraph and,
10 basing its denial on that ground, denies each and every allegation contained in said
11 paragraph.

12 23. Answering paragraph 23 of the Complaint, Answering Defendant lacks
13 sufficient information or belief to answer the allegations of said paragraph and,
14 basing its denial on that ground, denies each and every allegation contained in said
15 paragraph.

16 24. Answering paragraph 24 of the Complaint, Answering Defendant lacks
17 sufficient information or belief to answer the allegations of said paragraph and,
18 basing its denial on that ground, denies each and every allegation contained in said
19 paragraph.

20 25. Answering paragraph 25 of the Complaint, Answering Defendant lacks
21 sufficient information or belief to answer the allegations of said paragraph and,
22 basing its denial on that ground, denies each and every allegation contained in said
23 paragraph.

24 26. Answering paragraph 26 of the Complaint, Answering Defendant lacks
25 sufficient information or belief to answer the allegations of said paragraph and,
26 basing its denial on that ground, denies each and every allegation contained in said
27 paragraph.

28 27. Answering paragraph 27 of the Complaint, Answering Defendant lacks

1 sufficient information or belief to answer the allegations of said paragraph and,
2 basing its denial on that ground, denies each and every allegation contained in said
3 paragraph.

4 28. Answering paragraph 28 of the Complaint, Answering Defendant lacks
5 sufficient information or belief to answer the allegations of said paragraph and,
6 basing its denial on that ground, denies each and every allegation contained in said
7 paragraph.

8 29. Answering paragraph 29 of the Complaint, Answering Defendant
9 admits and alleges that the allegations of the Complaint speak for themselves.
10 Except as so expressly admitted or alleged, Answering Defendant lacks sufficient
11 information or belief to answer the allegations of said paragraph and, basing its
12 denial on that ground, denies each and every allegation contained in said paragraph.

13 30. Answering paragraph 30 of the Complaint, Answering Defendant lacks
14 sufficient information or belief to answer the allegations of said paragraph and,
15 basing its denial on that ground, denies each and every allegation contained in said
16 paragraph.

17 31. Answering paragraph 31 of the Complaint, Answering Defendant lacks
18 sufficient information or belief to answer the allegations of said paragraph and,
19 basing its denial on that ground, denies each and every allegation contained in said
20 paragraph.

21 32. Answering paragraph 32 of the Complaint, Answering Defendant lacks
22 sufficient information or belief to answer the allegations of said paragraph and,
23 basing its denial on that ground, denies each and every allegation contained in said
24 paragraph.

25 33. Answering paragraph 33 of the Complaint, Answering Defendant
26 denies each and every allegation contained in said paragraph.

27 **FIDUCIARY STATUS OF CERTAIN DEFENDANTS**

28 34. Answering paragraph 34 of the Complaint, Answering Defendant lacks

1 sufficient information or belief to answer the allegations of said paragraph and,
2 basing its denial on that ground, denies each and every allegation contained in said
3 paragraph.

4 35. Answering paragraph 35 of the Complaint, Answering Defendant lacks
5 sufficient information or belief to answer the allegations of said paragraph and,
6 basing its denial on that ground, denies each and every allegation contained in said
7 paragraph.

8 36. Answering paragraph 36 of the Complaint, Indianapolis Life admits
9 and alleges that the ERISA statutes speak for themselves. Except as so expressly
10 admitted or alleged, Answering Defendant lacks sufficient information or belief to
11 answer the allegations of said paragraph and, basing its denial on that ground, denies
12 each and every allegation contained in said paragraph.

13 37. Answering paragraph 37 of the Complaint, Indianapolis Life admits
14 and alleges that the ERISA statutes speak for themselves. Except as so expressly
15 admitted or alleged, Answering Defendant lacks sufficient information or belief to
16 answer the allegations of said paragraph and, basing its denial on that ground, denies
17 each and every allegation contained in said paragraph.

18 38. Answering paragraph 38 of the Complaint, Answering Defendant lacks
19 sufficient information or belief to answer the allegations of said paragraph and,
20 basing its denial on that ground, denies each and every allegation contained in said
21 paragraph.

22 39. Answering paragraph 39 of the Complaint, Indianapolis Life admits
23 and alleges that the ERISA statutes speak for themselves. Except as so expressly
24 admitted or alleged, Answering Defendant lacks sufficient information or belief to
25 answer the allegations of said paragraph and, basing its denial on that ground, denies
26 each and every allegation contained in said paragraph.

27 40. Answering paragraph 40 of the Complaint, Answering Defendant lacks
28 sufficient information or belief to answer the allegations of said paragraph and,

1 basing its denial on that ground, denies each and every allegation contained in said
2 paragraph.

3 41. Answering paragraph 41 of the Complaint, Indianapolis Life admits
4 and alleges that the ERISA statutes speak for themselves. Except as so expressly
5 admitted or alleged, Answering Defendant lacks sufficient information or belief to
6 answer the allegations of said paragraph and, basing its denial on that ground, denies
7 each and every allegation contained in said paragraph.

8 42. Answering paragraph 42 of the Complaint, Indianapolis Life admits
9 and alleges that the ERISA statutes speak for themselves. Indianapolis Life further
10 admits and alleges that Indianapolis Life issued a life insurance policy. Except as so
11 expressly admitted or alleged, Answering Defendant lacks sufficient information or
12 belief to answer the allegations of said paragraph and, basing its denial on that
13 ground, denies each and every allegation contained in said paragraph.

14 **GENERAL ALLEGATIONS**

15 43. Answering paragraph 43 of the Complaint, Answering Defendant lacks
16 sufficient information or belief to answer the allegations of said paragraph and,
17 basing its denial on that ground, denies each and every allegation contained in said
18 paragraph.

19 44. Answering paragraph 44 of the Complaint, Indianapolis Life admits
20 and alleges that the ERISA statutes speak for themselves. Except as so expressly
21 admitted or alleged, Answering Defendant lacks sufficient information or belief to
22 answer the allegations of said paragraph and, basing its denial on that ground, denies
23 each and every allegation contained in said paragraph.

24 45. Answering paragraph 45 of the Complaint, Answering Defendant lacks
25 sufficient information or belief to answer the allegations of said paragraph and,
26 basing its denial on that ground, denies each and every allegation contained in said
27 paragraph.

28 46. Answering paragraph 46 of the Complaint, Answering Defendant lacks

1 sufficient information or belief to answer the allegations of said paragraph and,
2 basing its denial on that ground, denies each and every allegation contained in said
3 paragraph.

4 47. Answering paragraph 47 of the Complaint, Answering Defendant lacks
5 sufficient information or belief to answer the allegations of said paragraph and,
6 basing its denial on that ground, denies each and every allegation contained in said
7 paragraph.

8 48. Answering paragraph 48 of the Complaint, Answering Defendant lacks
9 sufficient information or belief to answer the allegations of said paragraph and,
10 basing its denial on that ground, denies each and every allegation contained in said
11 paragraph.

12 49. Answering paragraph 49 of the Complaint, Answering Defendant lacks
13 sufficient information or belief to answer the allegations of said paragraph and,
14 basing its denial on that ground, denies each and every allegation contained in said
15 paragraph.

16 50. Answering paragraph 50 of the Complaint, Answering Defendant lacks
17 sufficient information or belief to answer the allegations of said paragraph and,
18 basing its denial on that ground, denies each and every allegation contained in said
19 paragraph.

20 51. Answering paragraph 51 of the Complaint, Answering Defendant lacks
21 sufficient information or belief to answer the allegations of said paragraph and,
22 basing its denial on that ground, denies each and every allegation contained in said
23 paragraph.

24 52. Answering paragraph 52 of the Complaint, Indianapolis Life admits
25 and alleges that the Xelan Welfare Benefit Trust obtained certain life insurance
26 policies issued by Indianapolis Life. Except as so expressly admitted or alleged,
27 Answering Defendant lacks sufficient information or belief to answer the allegations
28 of said paragraph and, basing its denial on that ground, denies each and every

1 allegation contained in said paragraph.

2 53. Answering paragraph 53 of the Complaint, Answering Defendant lacks
3 sufficient information or belief to answer the allegations of said paragraph and,
4 basing its denial on that ground, denies each and every allegation contained in said
5 paragraph.

6 54. Answering paragraph 54 of the Complaint, Answering Defendant lacks
7 sufficient information or belief to answer the allegations of said paragraph and,
8 basing its denial on that ground, denies each and every allegation contained in said
9 paragraph.

10 55. Answering paragraph 55 of the Complaint, Answering Defendant lacks
11 sufficient information or belief to answer the allegations of said paragraph and,
12 basing its denial on that ground, denies each and every allegation contained in said
13 paragraph.

14 56. Answering paragraph 56 of the Complaint, Answering Defendant lacks
15 sufficient information or belief to answer the allegations of said paragraph and,
16 basing its denial on that ground, denies each and every allegation contained in said
17 paragraph.

18 57. Answering paragraph 57 of the Complaint, Answering Defendant lacks
19 sufficient information or belief to answer the allegations of said paragraph and,
20 basing its denial on that ground, denies each and every allegation contained in said
21 paragraph.

22 58. Answering paragraph 58 of the Complaint, Answering Defendant lacks
23 sufficient information or belief to answer the allegations of said paragraph and,
24 basing its denial on that ground, denies each and every allegation contained in said
25 paragraph.

26 59. Answering paragraph 59 of the Complaint, Answering Defendant lacks
27 sufficient information or belief to answer the allegations of said paragraph and,
28 basing its denial on that ground, denies each and every allegation contained in said

1 paragraph.

2 60. Answering paragraph 60 of the Complaint, Answering Defendant lacks
3 sufficient information or belief to answer the allegations of said paragraph and,
4 basing its denial on that ground, denies each and every allegation contained in said
5 paragraph.

6 61. Answering paragraph 61 of the Complaint, Answering Defendant lacks
7 sufficient information or belief to answer the allegations of said paragraph and,
8 basing its denial on that ground, denies each and every allegation contained in said
9 paragraph.

10 62. Answering paragraph 62 of the Complaint, Answering Defendant lacks
11 sufficient information or belief to answer the allegations of said paragraph and,
12 basing its denial on that ground, denies each and every allegation contained in said
13 paragraph.

14 63. Answering paragraph 63 of the Complaint, Answering Defendant lacks
15 sufficient information or belief to answer the allegations of said paragraph and,
16 basing its denial on that ground, denies each and every allegation contained in said
17 paragraph.

18 64. Answering paragraph 64 of the Complaint, Answering Defendant lacks
19 sufficient information or belief to answer the allegations of said paragraph and,
20 basing its denial on that ground, denies each and every allegation contained in said
21 paragraph.

22 65. Answering paragraph 65 of the Complaint, Answering Defendant lacks
23 sufficient information or belief to answer the allegations of said paragraph and,
24 basing its denial on that ground, denies each and every allegation contained in said
25 paragraph.

26 66. Answering paragraph 66 of the Complaint, Answering Defendant lacks
27 sufficient information or belief to answer the allegations of said paragraph and,
28 basing its denial on that ground, denies each and every allegation contained in said

1 paragraph.

2 67. Answering paragraph 67 of the Complaint, Answering Defendant lacks
3 sufficient information or belief to answer the allegations of said paragraph and,
4 basing its denial on that ground, denies each and every allegation contained in said
5 paragraph.

6 68. Answering paragraph 68 of the Complaint, Answering Defendant lacks
7 sufficient information or belief to answer the allegations of said paragraph and,
8 basing its denial on that ground, denies each and every allegation contained in said
9 paragraph.

10 69. Answering paragraph 69 of the Complaint, Answering Defendant lacks
11 sufficient information or belief to answer the allegations of said paragraph and,
12 basing its denial on that ground, denies each and every allegation contained in said
13 paragraph.

14 70. Answering paragraph 70 of the Complaint, Answering Defendant lacks
15 sufficient information or belief to answer the allegations of said paragraph and,
16 basing its denial on that ground, denies each and every allegation contained in said
17 paragraph.

18 71. Answering paragraph 71 of the Complaint, Answering Defendant lacks
19 sufficient information or belief to answer the allegations of said paragraph and,
20 basing its denial on that ground, denies each and every allegation contained in said
21 paragraph.

22 72. Answering paragraph 72 of the Complaint, Answering Defendant lacks
23 sufficient information or belief to answer the allegations of said paragraph and,
24 basing its denial on that ground, denies each and every allegation contained in said
25 paragraph.

26 73. Answering paragraph 73 of the Complaint, Answering Defendant lacks
27 sufficient information or belief to answer the allegations of said paragraph and,
28 basing its denial on that ground, denies each and every allegation contained in said

1 paragraph.

2 74. Answering paragraph 74 of the Complaint, Answering Defendant lacks
3 sufficient information or belief to answer the allegations of said paragraph and,
4 basing its denial on that ground, denies each and every allegation contained in said
5 paragraph.

6 75. Answering paragraph 75 of the Complaint, Answering Defendant lacks
7 sufficient information or belief to answer the allegations of said paragraph and,
8 basing its denial on that ground, denies each and every allegation contained in said
9 paragraph.

10 76. Answering paragraph 76 of the Complaint, Answering Defendant lacks
11 sufficient information or belief to answer the allegations of said paragraph and,
12 basing its denial on that ground, denies each and every allegation contained in said
13 paragraph.

14 77. Answering paragraph 77 of the Complaint, Answering Defendant lacks
15 sufficient information or belief to answer the allegations of said paragraph and,
16 basing its denial on that ground, denies each and every allegation contained in said
17 paragraph.

18 78. Answering paragraph 78 of the Complaint, Answering Defendant lacks
19 sufficient information or belief to answer the allegations of said paragraph and,
20 basing its denial on that ground, denies each and every allegation contained in said
21 paragraph.

22 79. Answering paragraph 79 of the Complaint, Answering Defendant lacks
23 sufficient information or belief to answer the allegations of said paragraph and,
24 basing its denial on that ground, denies each and every allegation contained in said
25 paragraph.

26 80. Answering paragraph 80 of the Complaint, Answering Defendant lacks
27 sufficient information or belief to answer the allegations of said paragraph and,
28 basing its denial on that ground, denies each and every allegation contained in said

1 paragraph.

2 81. Answering paragraph 81 of the Complaint, Answering Defendant lacks
3 sufficient information or belief to answer the allegations of said paragraph and,
4 basing its denial on that ground, denies each and every allegation contained in said
5 paragraph.

6 82. Answering paragraph 82 of the Complaint, Answering Defendant lacks
7 sufficient information or belief to answer the allegations of said paragraph and,
8 basing its denial on that ground, denies each and every allegation contained in said
9 paragraph.

10 83. Answering paragraph 83 of the Complaint, Answering Defendant lacks
11 sufficient information or belief to answer the allegations of said paragraph and,
12 basing its denial on that ground, denies each and every allegation contained in said
13 paragraph.

14 84. Answering paragraph 84 of the Complaint, Answering Defendant lacks
15 sufficient information or belief to answer the allegations of said paragraph and,
16 basing its denial on that ground, denies each and every allegation contained in said
17 paragraph.

18 85. Answering paragraph 85 of the Complaint, Answering Defendant lacks
19 sufficient information or belief to answer the allegations of said paragraph and,
20 basing its denial on that ground, denies each and every allegation contained in said
21 paragraph.

22 86. Answering paragraph 86 of the Complaint, Answering Defendant lacks
23 sufficient information or belief to answer the allegations of said paragraph and,
24 basing its denial on that ground, denies each and every allegation contained in said
25 paragraph.

26 87. Answering paragraph 87 of the Complaint, Answering Defendant lacks
27 sufficient information or belief to answer the allegations of said paragraph and,
28 basing its denial on that ground, denies each and every allegation contained in said

1 paragraph.

2 88. Answering paragraph 88 of the Complaint, Answering Defendant lacks
3 sufficient information or belief to answer the allegations of said paragraph and,
4 basing its denial on that ground, denies each and every allegation contained in said
5 paragraph.

6 89. Answering paragraph 89 of the Complaint, Answering Defendant lacks
7 sufficient information or belief to answer the allegations of said paragraph and,
8 basing its denial on that ground, denies each and every allegation contained in said
9 paragraph.

10 90. Answering paragraph 90 of the Complaint, Answering Defendant lacks
11 sufficient information or belief to answer the allegations of said paragraph and,
12 basing its denial on that ground, denies each and every allegation contained in said
13 paragraph.

14 91. Answering paragraph 91 of the Complaint, Answering Defendant lacks
15 sufficient information or belief to answer the allegations of said paragraph and,
16 basing its denial on that ground, denies each and every allegation contained in said
17 paragraph.

18 92. Answering paragraph 92 of the Complaint, Answering Defendant lacks
19 sufficient information or belief to answer the allegations of said paragraph and,
20 basing its denial on that ground, denies each and every allegation contained in said
21 paragraph.

22 93. Answering paragraph 93 of the Complaint, Indianapolis Life admits
23 and alleges that effective on or about September 29, 1999, Indianapolis Life issued a
24 policy of life insurance having an initial death benefit of ten million dollars covering
25 the life of Selznick. Indianapolis Life further admits and alleges that the referenced
26 life insurance policy called for initial premium payments of \$281,000 per year.
27 Except as so expressly admitted or alleged, Answering Defendant lacks sufficient
28 information or belief to answer the allegations of said paragraph and, basing its

1 denial on that ground, denies each and every allegation contained in said paragraph.

2 94. Answering paragraph 94 of the Complaint, Indianapolis Life admits
3 and alleges that the policy covering the life of Selznick was obtained from
4 Indianapolis Life. Except as so expressly admitted or alleged, Answering Defendant
5 lacks sufficient information or belief to answer the allegations of said paragraph
6 and, basing its denial on that ground, denies each and every allegation contained in
7 said paragraph.

8 95. Answering paragraph 95 of the Complaint, Indianapolis Life admits
9 and alleges that at various times relevant to this dispute, Guess was an independent
10 contractor insurance agent of Indianapolis Life for the limited purpose of selling
11 certain policies of life insurance. Except as so expressly admitted or alleged,
12 Answering Defendant lacks sufficient information or belief to answer the allegations
13 of said paragraph and, basing its denial on that ground, denies each and every
14 allegation contained in said paragraph.

15 96. Answering paragraph 96 of the Complaint, Answering Defendant lacks
16 sufficient information or belief to answer the allegations of said paragraph and,
17 basing its denial on that ground, denies each and every allegation contained in said
18 paragraph.

19 97. Answering paragraph 97 of the Complaint, Answering Defendant lacks
20 sufficient information or belief to answer the allegations of said paragraph and,
21 basing its denial on that ground, denies each and every allegation contained in said
22 paragraph.

23 98. Answering paragraph 98 of the Complaint, Answering Defendant lacks
24 sufficient information or belief to answer the allegations of said paragraph and,
25 basing its denial on that ground and on the fact that the referenced document has not
26 been provided, denies each and every allegation contained in said paragraph.

27 99. Answering paragraph 99 of the Complaint, Indianapolis Life admits
28 and alleges that effective on or about September 29, 1999, Answering Defendant

1 issued a policy of life insurance having an initial death benefit of \$10,000,000
2 covering the life of Selznick. Except as so expressly admitted or alleged,
3 Answering Defendant lacks sufficient information or belief to answer the allegations
4 of said paragraph and, basing its denial on that ground, denies each and every
5 allegation contained in said paragraph.

6 100. Answering paragraph 100 of the Complaint, Answering Defendant
7 lacks sufficient information or belief to answer the allegations of said paragraph
8 and, basing its denial on that ground, denies each and every allegation contained in
9 said paragraph.

10 101. Answering paragraph 101 of the Complaint, Indianapolis Life admits
11 and alleges that the life insurance policy covering the life of Selznick called for
12 initial annual premium payments of \$281,000 and contained certain surrender
13 charges. Answering Defendant further admits that Plaintiffs' purport to make
14 certain mathematical calculations. Except as so expressly admitted or alleged,
15 Answering Defendant lacks sufficient information or belief to answer the remaining
16 allegations of said paragraph and, basing its denial on that ground, denies each and
17 every allegation contained in said paragraph.

18 102. Answering paragraph 102 of the Complaint, Answering Defendant
19 lacks sufficient information or belief to answer the allegations of said paragraph
20 and, basing its denial on that ground, denies each and every allegation contained in
21 said paragraph.

22 103. Answering paragraph 103 of the Complaint, Indianapolis Life is
23 unaware what Selznick found in or about September 2003 and, therefore, except as
24 so expressly admitted or alleged, Answering Defendant lacks sufficient information
25 or belief to answer the allegations of said paragraph and, basing its denial on that
26 ground, denies each and every allegation contained in said paragraph.

27 104. Answering paragraph 104 of the Complaint, Answering Defendant
28 lacks sufficient information or belief to answer the allegations of said paragraph

1 and, basing its denial on that ground, denies each and every allegation contained in
2 said paragraph.

3 105. Answering paragraph 105 of the Complaint, Answering Defendant
4 lacks sufficient information or belief to answer the allegations of said paragraph
5 and, basing its denial on that ground, denies each and every allegation contained in
6 said paragraph.

7 106. Answering paragraph 106 of the Complaint, Answering Defendant
8 lacks sufficient information or belief to answer the allegations of said paragraph
9 and, basing its denial on that ground, denies each and every allegation contained in
10 said paragraph.

11 107. Answering paragraph 107 of the Complaint, Answering Defendant
12 lacks sufficient information or belief to answer the allegations of said paragraph
13 and, basing its denial on that ground, denies each and every allegation contained in
14 said paragraph.

15 108. Answering paragraph 108 of the Complaint, Answering Defendant
16 lacks sufficient information or belief to answer the allegations of said paragraph
17 and, basing its denial on that ground, denies each and every allegation contained in
18 said paragraph.

19 109. Answering paragraph 109 of the Complaint, Answering Defendant
20 lacks sufficient information or belief to answer the allegations of said paragraph
21 and, basing its denial on that ground, denies each and every allegation contained in
22 said paragraph.

23 110. Answering paragraph 110 of the Complaint, Indianapolis Life admits
24 and alleges that in 2001 Answering Defendant issued insurance policies covering
25 the lives of Leanne Wright (policy no. B05009478, with initial policy death benefit
26 of \$433,500), and Brandy Rowland (policy no. B05009477, with initial policy death
27 benefit of \$450,300). Answering Defendant denies that Indianapolis Life provided
28 life insurance covering the life of Rosanna Hernandez. Except as so expressly

1 admitted or alleged, Answering Defendant lacks sufficient information or belief to
2 answer the allegations of said paragraph and, basing its denial on that ground, denies
3 each and every allegation contained in said paragraph.

4 111. Answering paragraph 111 of the Complaint, Answering Defendant
5 lacks sufficient information or belief to answer the allegations of said paragraph
6 and, basing its denial on that ground, denies each and every allegation contained in
7 said paragraph.

8 112. Answering paragraph 112 of the Complaint, Answering Defendant
9 lacks sufficient information or belief to answer the allegations of said paragraph
10 and, basing its denial on that ground, denies each and every allegation contained in
11 said paragraph.

12 113. Answering paragraph 113 of the Complaint, Answering Defendant
13 lacks sufficient information or belief to answer the allegations of said paragraph
14 and, basing its denial on that ground, denies each and every allegation contained in
15 said paragraph.

16 114. Answering paragraph 114 of the Complaint, Answering Defendant
17 lacks sufficient information or belief to answer the allegations of said paragraph
18 and, basing its denial on that ground, denies each and every allegation contained in
19 said paragraph.

20 115. Answering paragraph 115 of the Complaint, Answering Defendant
21 lacks sufficient information or belief to answer the allegations of said paragraph
22 and, basing its denial on that ground, denies each and every allegation contained in
23 said paragraph.

24 116. Answering paragraph 116 of the Complaint, Answering Defendant
25 lacks sufficient information or belief to answer the allegations of said paragraph
26 and, basing its denial on that ground, denies each and every allegation contained in
27 said paragraph.

28 117. Answering paragraph 117 of the Complaint, Answering Defendant

1 lacks sufficient information or belief to answer the allegations of said paragraph
2 and, basing its denial on that ground, denies each and every allegation contained in
3 said paragraph.

4 118. Answering paragraph 118 of the Complaint, Answering Defendant
5 lacks sufficient information or belief to answer the allegations of said paragraph
6 and, basing its denial on that ground, denies each and every allegation contained in
7 said paragraph.

8 119. Answering paragraph 119 of the Complaint, Answering Defendant
9 lacks sufficient information or belief to answer the allegations of said paragraph
10 and, basing its denial on that ground, denies each and every allegation contained in
11 said paragraph.

12 120. Answering paragraph 120 of the Complaint, Answering Defendant
13 lacks sufficient information or belief to answer the allegations of said paragraph
14 and, basing its denial on that ground, denies each and every allegation contained in
15 said paragraph.

16 121. Answering paragraph 121 of the Complaint, Answering Defendant
17 lacks sufficient information or belief to answer the allegations of said paragraph
18 and, basing its denial on that ground, denies each and every allegation contained in
19 said paragraph.

20 122. Answering paragraph 122 of the Complaint, Answering Defendant
21 lacks sufficient information or belief to answer the allegations of said paragraph
22 and, basing its denial on that ground, denies each and every allegation contained in
23 said paragraph.

24 123. Answering paragraph 123 of the Complaint, Answering Defendant
25 lacks sufficient information or belief to answer the allegations of said paragraph
26 and, basing its denial on that ground, denies each and every allegation contained in
27 said paragraph.

28 124. Answering paragraph 124 of the Complaint, Answering Defendant

1 lacks sufficient information or belief to answer the allegations of said paragraph
2 and, basing its denial on that ground, denies each and every allegation contained in
3 said paragraph.

4 125. Answering paragraph 125 of the Complaint, Indianapolis Life alleges
5 that it is unable to comprehend the allegations of this paragraph. Except as so
6 expressly admitted or alleged, Answering Defendant lacks sufficient information or
7 belief to answer the allegations of said paragraph and, basing its denial on that
8 ground, denies each and every allegation contained in said paragraph.

9 126. Answering paragraph 126 of the Complaint, Indianapolis Life admits
10 and alleges that it paid certain commissions to Pyramidal Funding Systems, Inc., in
11 connection with certain policies of life insurance covering the lives of Selznick and
12 Rowland. Except as so expressly admitted or alleged, Answering Defendant denies
13 each and every allegation contained in said paragraph.

14 127. Answering paragraph 127 of the Complaint, Indianapolis Life admits
15 and alleges that the annual premium owing on the life insurance policy covering the
16 life of Selznick was \$281,000. Except as so expressly admitted or alleged,
17 Answering Defendant lacks sufficient information or belief to answer the allegations
18 of said paragraph and, basing its denial on that ground, denies each and every
19 allegation contained in said paragraph.

20 128. Answering paragraph 128 of the Complaint, Answering Defendant
21 lacks sufficient information or belief to answer the allegations of said paragraph
22 and, basing its denial on that ground, denies each and every allegation contained in
23 said paragraph.

24 129. Answering paragraph 129 of the Complaint, Answering Defendant
25 lacks sufficient information or belief to answer the allegations of said paragraph
26 and, basing its denial on that ground, denies each and every allegation contained in
27 said paragraph.

28 130. Answering paragraph 130 of the Complaint, Answering Defendant

1 lacks sufficient information or belief to answer the allegations of said paragraph
2 and, basing its denial on that ground, denies each and every allegation contained in
3 said paragraph.

4 131. Answering paragraph 131 of the Complaint, Indianapolis Life cannot
5 determine what is being asserted when Plaintiffs allege that “Indianapolis Life
6 documented receipt of \$281,000, in payment of the premium on Selznick’s policy;”
7 however, to the extent the allegation is understood, Answering Defendant denies
8 said allegation. Except as so expressly admitted or alleged, lacks sufficient
9 information or belief to answer the allegations of said paragraph and, basing its
10 denial on that ground, denies each and every allegation contained in said paragraph.

11 132. Answering paragraph 132 of the Complaint, Indianapolis Life cannot
12 determine what is being asserted when Plaintiffs allege that Guess “authorized
13 payment of the amount due from Plaintiff’s policy.” Except as so expressly
14 admitted or alleged, Answering Defendant lacks sufficient information or belief to
15 answer the allegations of said paragraph and, basing its denial on that ground, denies
16 each and every allegation contained in said paragraph.

17 133. Answering paragraph 133 of the Complaint, Indianapolis Life admits
18 that Guess was an independent contractor insurance agent of Indianapolis Life.
19 Except as so expressly admitted or alleged, Answering Defendant lacks sufficient
20 information or belief to answer the allegations of said paragraph and, basing its
21 denial on that ground, denies each and every allegation contained in said paragraph.

22 134. Answering paragraph 134 of the Complaint, Indianapolis Life admits
23 and alleges that the language of Indianapolis Life insurance policy no. 100055098
24 speaks for itself. Except as so expressly admitted or alleged, Answering Defendant
25 lacks sufficient information or belief to answer the allegations of said paragraph
26 and, basing its denial on that ground, denies each and every allegation contained in
27 said paragraph.

28 135. Answering paragraph 135 of the Complaint, Indianapolis Life admits

1 and alleges that the language of Indianapolis Life insurance policy no. 100055098
2 speaks for itself. Except as so expressly admitted or alleged, Answering Defendant
3 lacks sufficient information or belief to answer the allegations of said paragraph
4 and, basing its denial on that ground, denies each and every allegation contained in
5 said paragraph.

6 136. Answering paragraph 136 of the Complaint, Indianapolis Life admits
7 and alleges that the language of Indianapolis Life insurance policy no. 100055098
8 speaks for itself. Except as so expressly admitted or alleged, Answering Defendant
9 lacks sufficient information or belief to answer the allegations of said paragraph
10 and, basing its denial on that ground, denies each and every allegation contained in
11 said paragraph.

12 137. Answering paragraph 137 of the Complaint, Indianapolis Life denies
13 each and every allegation contained in said paragraph.

14 138. Answering paragraph 138 of the Complaint, Answering Defendant
15 lacks sufficient information or belief to answer the allegations of said paragraph
16 and, basing its denial on that ground, denies each and every allegation contained in
17 said paragraph.

18 139. Answering paragraph 139 of the Complaint, Answering Defendant
19 lacks sufficient information or belief to answer the allegations of said paragraph
20 and, basing its denial on that ground, denies each and every allegation contained in
21 said paragraph.

22 140. Answering paragraph 140 of the Complaint, Answering Defendant
23 lacks sufficient information or belief to answer the allegations of said paragraph
24 and, basing its denial on that ground and on the fact that the referenced statement
25 has not been produced, denies each and every allegation contained in said
26 paragraph.

27 141. Answering paragraph 141 of the Complaint, Indianapolis Life admits
28 and alleges that by letter dated January 27, 2004, the Client Service Department of

1 Indianapolis Life forwarded Selznick a Minimum Deposit Illustration and loan
2 form. Answering Defendant further admits and alleges that the contents of the letter
3 and enclosures speak for themselves. Except as so expressly admitted or alleged,
4 Answering Defendant lacks sufficient information or belief to answer the allegations
5 of said paragraph and, basing its denial on that ground, denies each and every
6 allegation contained in said paragraph.

7 142. Answering paragraph 142 of the Complaint, Indianapolis Life admits
8 and alleges that the referenced letter contains a "cc" reference of "PY000/PY003."
9 Answering Defendant further admits and alleges that the "cc" reference speaks for
10 itself. Except as so expressly admitted or alleged, Answering Defendant lacks
11 sufficient information or belief to answer the allegations of said paragraph and,
12 basing its denial on that ground, denies each and every allegation contained in said
13 paragraph.

14 143. Answering paragraph 143 of the Complaint, Answering Defendant is
15 continuing its investigation of this matter but currently lacks sufficient information
16 or belief to answer the allegations of said paragraph and, basing its denial on that
17 ground, denies each and every allegation contained in said paragraph.

18 144. Answering paragraph 144 of the Complaint, Answering Defendant
19 lacks sufficient information or belief to answer the allegations of said paragraph
20 and, basing its denial on that ground, denies each and every allegation contained in
21 said paragraph.

22 145. Answering paragraph 145 of the Complaint, Indianapolis Life admits
23 and alleges that by letter dated February 19, 2004, the Client Services Department of
24 Indianapolis Life advised Selznick of various facts, including but not limited to the
25 fact that his life insurance coverage was paid to March 29, 2004, through the
26 Automatic Premium Loan Provision in his insurance policy. Indianapolis Life
27 further admits and alleges that the letter speaks for itself, as does the language of the
28 applicable insurance policy. Except as so expressly admitted or alleged, Answering

1 Defendant lacks sufficient information or belief to answer the allegations of said
2 paragraph and, basing its denial on that ground, denies each and every allegation
3 contained in said paragraph.

4 146. Answering paragraph 146 of the Complaint, Indianapolis Life admits
5 and alleges that the February 19, 2004, letter from the Client Services Department of
6 Indianapolis Life to Selznick speaks for itself. Except as so expressly admitted or
7 alleged, Answering Defendant denies each and every allegation contained in said
8 paragraph.

9 147. Answering paragraph 147 of the Complaint, Indianapolis Life admits
10 and alleges that an Indianapolis Life Policy Status Inquiry report dated July 13,
11 2004, reflects the cash value of the policy covering the life of Selznick as
12 \$247,204.38 as of July 9, 2004, before reduction for policy loans totaling
13 \$219,142.22 as of that date. Except as so expressly admitted or alleged, Answering
14 Defendant denies each and every allegation contained in said paragraph.

15 148. Answering paragraph 148 of the Complaint, Answering Defendant is
16 continuing its investigation into this matter but at this time lacks sufficient
17 information or belief to answer the allegations of said paragraph and, basing its
18 denial on that ground, denies each and every allegation contained in said paragraph.

19 149. Answering paragraph 149 of the Complaint, Indianapolis Life denies
20 each and every allegation contained in said paragraph.

21 150. Answering paragraph 150 of the Complaint, Indianapolis Life denies
22 that it has engaged in any of the fraud, misrepresentation, deception, or concealment
23 claimed by Plaintiffs. Except as so expressly admitted, alleged, or denied,
24 Answering Defendant lacks sufficient information or belief to answer the allegations
25 of said paragraph and, basing its denial on that ground, denies each and every
26 allegation contained in said paragraph.

27 151. Answering paragraph 151 of the Complaint, Indianapolis Life denies
28 that any demand has been made on Answering Defendant to "return the premiums

1 and other expenses, commissions, and amounts paid for the Policies,” as asserted by
2 Plaintiffs. Answering Defendant further denies that it is obligated to return the
3 premiums paid in connection with the policies. Except as so expressly admitted or
4 alleged, Answering Defendant lacks sufficient information or belief to answer the
5 allegations of said paragraph and, basing its denial on that ground, denies each and
6 every allegation contained in said paragraph.

7 152. Answering paragraph 152 of the Complaint, Indianapolis Life cannot
8 determine whether the term “Defendants” as utilized in paragraph 152 of the
9 Complaint is intended to include Indianapolis Life or its agents or representatives.
10 Assuming the term “Defendants” includes Indianapolis Life or its agents or
11 representatives, Answering Defendant denies each and every allegation contained in
12 said paragraph. Assuming the term “Defendants” does not include Indianapolis Life
13 or agents or representatives, Answering Defendant lacks sufficient information or
14 belief to answer the allegations of said paragraph and, basing its denial on that
15 ground, denies each and every allegation contained in said paragraph.

16 153. Answering paragraph 153 of the Complaint, Answering Defendant
17 lacks sufficient information or belief to answer the allegations of said paragraph
18 and, basing its denial on that ground, denies each and every allegation contained in
19 said paragraph.

20 154. Answering paragraph 154 of the Complaint, Answering Defendant
21 lacks sufficient information or belief to answer the allegations of said paragraph
22 and, basing its denial on that ground, denies each and every allegation contained in
23 said paragraph.

24 155. Answering paragraph 155 of the Complaint, Answering Defendant
25 lacks sufficient information or belief to answer the allegations of said paragraph
26 and, basing its denial on that ground, denies each and every allegation contained in
27 said paragraph.

28 156. Answering paragraph 156 of the Complaint, Answering Defendant

1 lacks sufficient information or belief to answer the allegations of said paragraph
2 and, basing its denial on that ground, denies each and every allegation contained in
3 said paragraph.

4 157. Answering paragraph 157 of the Complaint, Answering Defendant
5 lacks sufficient information or belief to answer the allegations of said paragraph
6 and, basing its denial on that ground, denies each and every allegation contained in
7 said paragraph.

8 **FIRST CLAIM FOR RELIEF**
9 **DECLARATORY RELIEF**

10 (Against Defendant XELAN WBT and its sponsors

11 XELAN ASSOCIATION, XELAN, INC., and Trustee, Dr. Guess)

12 158. Answering paragraph 158 of the Complaint, Indianapolis Life
13 incorporates by reference herein its responses to paragraphs 1 through 157 of the
14 Complaint.

15 159. Answering paragraph 159 of the Complaint, Indianapolis Life admits
16 and alleges that this paragraph is not directed at Answering Defendant. Except as so
17 expressly admitted or alleged, Answering Defendant lacks sufficient information or
18 belief to answer the allegations of said paragraph and, basing its denial on that
19 ground, denies each and every allegation contained in said paragraph.

20 160. Answering paragraph 160 of the Complaint, Indianapolis Life admits
21 and alleges that this paragraph is not directed at Answering Defendant. Except as so
22 expressly admitted or alleged, Answering Defendant lacks sufficient information or
23 belief to answer the allegations of said paragraph and, basing its denial on that
24 ground, denies each and every allegation contained in said paragraph.

25 161. Answering paragraph 161 of the Complaint, Indianapolis Life admits
26 and alleges that this paragraph is not directed at Answering Defendant. Except as so
27 expressly admitted or alleged, Answering Defendant lacks sufficient information or
28 belief to answer the allegations of said paragraph and, basing its denial on that

1 ground, denies each and every allegation contained in said paragraph.

2 162. Answering paragraph 162 of the Complaint, Indianapolis Life admits
3 and alleges that this paragraph is not directed at Answering Defendant. Except as so
4 expressly admitted or alleged, Answering Defendant lacks sufficient information or
5 belief to answer the allegations of said paragraph and, basing its denial on that
6 ground, denies each and every allegation contained in said paragraph.

7 163. Answering paragraph 163 of the Complaint, Indianapolis Life admits
8 and alleges that this paragraph is not directed at Answering Defendant. Except as so
9 expressly admitted or alleged, Answering Defendant lacks sufficient information or
10 belief to answer the allegations of said paragraph and, basing its denial on that
11 ground, denies each and every allegation contained in said paragraph.

12 164. Answering paragraph 164 of the Complaint, Indianapolis Life admits
13 and alleges that this paragraph is not directed at Answering Defendant and that it
14 paid certain commissions to Pyramidal Funding Systems, Inc., in connection with
15 certain life insurance policies issued by Indianapolis Life. Except as so expressly
16 admitted or alleged, Answering Defendant lacks sufficient information or belief to
17 answer the allegations of said paragraph and, basing its denial on that ground, denies
18 each and every allegation contained in said paragraph.

19 165. Answering paragraph 165 of the Complaint, Indianapolis Life admits
20 and alleges that this paragraph is not directed at Answering Defendant. Except as so
21 expressly admitted or alleged, Answering Defendant lacks sufficient information or
22 belief to answer the allegations of said paragraph and, basing its denial on that
23 ground, denies each and every allegation contained in said paragraph.

24 166. Answering paragraph 166 of the Complaint, Indianapolis Life admits
25 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
26 expressly admitted or alleged, Answering Defendant lacks sufficient information or
27 belief to answer the allegations of said paragraph and, basing its denial on that
28 ground, denies each and every allegation contained in said paragraph.

1 167. Answering paragraph 167 of the Complaint, Indianapolis Life admits
2 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
3 expressly admitted or alleged, Answering Defendant lacks sufficient information or
4 belief to answer the allegations of said paragraph and, basing its denial on that
5 ground, denies each and every allegation contained in said paragraph.

6 168. Answering paragraph 168 of the Complaint, Indianapolis Life admits
7 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
8 expressly admitted or alleged, Answering Defendant lacks sufficient information or
9 belief to answer the allegations of said paragraph and, basing its denial on that
10 ground, denies each and every allegation contained in said paragraph.

11 169. Answering paragraph 169 of the Complaint, Indianapolis Life admits
12 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
13 expressly admitted or alleged, Answering Defendant lacks sufficient information or
14 belief to answer the allegations of said paragraph and, basing its denial on that
15 ground, denies each and every allegation contained in said paragraph.

16 170. Answering paragraph 170 of the Complaint, Indianapolis Life admits
17 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
18 expressly admitted or alleged, Answering Defendant lacks sufficient information or
19 belief to answer the allegations of said paragraph and, basing its denial on that
20 ground, denies each and every allegation contained in said paragraph.

21 171. Answering paragraph 171 of the Complaint, Indianapolis Life admits
22 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
23 expressly admitted or alleged, Answering Defendant lacks sufficient information or
24 belief to answer the allegations of said paragraph and, basing its denial on that
25 ground, denies each and every allegation contained in said paragraph.

26 172. Answering paragraph 172 of the Complaint, Indianapolis Life admits
27 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
28 expressly admitted or alleged, Answering Defendant lacks sufficient information or

1 belief to answer the allegations of said paragraph and, basing its denial on that
2 ground, denies each and every allegation contained in said paragraph.

3 173. Answering paragraph 173 of the Complaint, Indianapolis Life admits
4 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
5 expressly admitted or alleged, Answering Defendant lacks sufficient information or
6 belief to answer the allegations of said paragraph and, basing its denial on that
7 ground, denies each and every allegation contained in said paragraph.

8 174. Answering paragraph 174 of the Complaint, Indianapolis Life admits
9 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
10 expressly admitted or alleged, Answering Defendant lacks sufficient information or
11 belief to answer the allegations of said paragraph and, basing its denial on that
12 ground, denies each and every allegation contained in said paragraph.

13 175. Answering paragraph 175 of the Complaint, Indianapolis Life admits
14 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
15 expressly admitted or alleged Answering Defendant lacks sufficient information or
16 belief to answer the allegations of said paragraph and, basing its denial on that
17 ground, denies each and every allegation contained in said paragraph.

18 176. Answering paragraph 176 of the Complaint, Indianapolis Life admits
19 and alleges that this paragraph is not directed at Indianapolis Life and Plaintiffs'
20 request for a judicial determination speaks for itself. Except as so expressly
21 admitted or alleged, Answering Defendant lacks sufficient information or belief to
22 answer the allegations of said paragraph and, basing its denial on that ground, denies
23 each and every allegation contained in said paragraph.

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1 **SECOND CLAIM FOR RELIEF**

2 **RESCISSION OF AND UNWINDING OF THE TRANSACTIONS**
3 **AND RESTORATION OF ALL AMOUNTS PAID BY PLAINTIFFS TO**
4 **DEFENDANTS**

5 ERISA § 502(a)(3); 502(a)(2) for appropriate relief under § 409
6 (Against the Fiduciary Defendants, the XELAN Defendants, the Plan Trustees)

7 alternatively

8 pursuant to state law, Ins. C. §§ 331, 338, 359, Civ. C. § 1689(b)(7)

9 (Against Dr. Guess, PYRAMIDAL FUNDING, the
10 XELAN Defendants, the Insurer Defendants)

11 177. Answering paragraph 177 of the Complaint, Indianapolis Life
12 incorporates by reference herein its responses to paragraphs 1 through 176 of the
13 Complaint.

14 178. Answering paragraph 178 of the Complaint, Indianapolis Life admits
15 and alleges that the ERISA statutes speak for themselves. Except as so expressly
16 admitted or alleged, Answering Defendant denies each and every allegation
17 contained in said paragraph.

18 179. Answering paragraph 179 of the Complaint, Indianapolis Life admits
19 and alleges that the ERISA statutes speak for themselves. Except as so expressly
20 admitted or alleged, Answering Defendant denies each and every allegation
21 contained in said paragraph.

22 180. Answering paragraph 180 of the Complaint, Indianapolis Life admits
23 and alleges that the ERISA statutes speak for themselves. Except as so expressly
24 admitted or alleged, Answering Defendant denies each and every allegation
25 contained in said paragraph.

26 181. Answering paragraph 181 of the Complaint, Indianapolis Life admits
27 and alleges that the ERISA statutes speak for themselves. Except as so expressly
28 admitted or alleged, Answering Defendant denies each and every allegation

1 contained in said paragraph.

2 182. Answering paragraph 182 of the Complaint, Indianapolis Life admits
3 and alleges that at certain times relevant to this dispute, Guess was an independent
4 contractor insurance agent of Indianapolis Life for the limited purpose of selling
5 certain policies of life insurance. Except as so expressly admitted or alleged,
6 Answering Defendant lacks sufficient information or belief to answer the allegations
7 of said paragraph and, basing its denial on that ground, denies each and every
8 allegation contained in said paragraph.

9 183. Answering paragraph 183 of the Complaint, Indianapolis Life denies
10 each and every allegation contained in said paragraph.

11 184. Answering paragraph 184 of the Complaint, Indianapolis Life admits
12 and alleges that the ERISA statutes and regulations speak for themselves. Except as
13 so expressly admitted or alleged, Answering Defendant denies each and every
14 allegation contained in said paragraph.

15 185. Answering paragraph 185 of the Complaint, Indianapolis Life admits
16 and alleges that the ERISA statutes, exemptions, and regulations speak for
17 themselves. Except as so expressly admitted or alleged, Answering Defendant
18 denies each and every allegation contained in said paragraph.

19 186. Answering paragraph 186 of the Complaint, Indianapolis Life admits
20 and alleges that at certain times relevant to this dispute, Guess was an independent
21 contractor insurance agent of Indianapolis Life for the limited purpose of selling
22 certain policies of life insurance. Indianapolis Life further admits and alleges that it
23 issued life insurance policies covering the lives of Selznick, Rowland, and Leanne
24 Wright. Except as so expressly admitted or alleged, Answering Defendant lacks
25 sufficient information or belief to answer the allegations of said paragraph and,
26 basing its denial on that ground, denies each and every allegation contained in said
27 paragraph.

28 187. Answering paragraph 187 of the Complaint, Indianapolis Life cannot

1 determine whether the term "Defendants" as utilized in paragraph 187 is intended to
2 include Indianapolis Life. To the extent the term "Defendants" is intended to refer
3 to Indianapolis Life, Answering Defendant denies that Indianapolis Life is required
4 to provide Plaintiffs with the information described by Plaintiffs in said paragraph.
5 Except as so expressly admitted or alleged, Answering Defendant lacks sufficient
6 information or belief to answer the allegations of said paragraph and, basing its
7 denial on that ground, denies each and every allegation contained in said paragraph.

8 188. Answering paragraph 188 of the Complaint, Indianapolis Life denies
9 each and every allegation contained in said paragraph.

10 189. Answering paragraph 189 of the Complaint, Indianapolis Life admits
11 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
12 expressly admitted or alleged, Answering Defendant lacks sufficient information or
13 belief to answer the allegations of said paragraph and, basing its denial on that
14 ground, denies each and every allegation contained in said paragraph.

15 190. Answering paragraph 190 of the Complaint, Indianapolis Life admits
16 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
17 expressly admitted or alleged, Answering Defendant lacks sufficient information or
18 belief to answer the allegations of said paragraph and, basing its denial on that
19 ground, denies each and every allegation contained in said paragraph.

20 191. Answering paragraph 191 of the Complaint, Indianapolis Life admits
21 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
22 expressly admitted or alleged, Answering Defendant lacks sufficient information or
23 belief to answer the allegations of said paragraph and, basing its denial on that
24 ground, denies each and every allegation contained in said paragraph.

25 192. Answering paragraph 192 of the Complaint, Indianapolis Life denies
26 each and every allegation contained in said paragraph.

27 193. Answering paragraph 193 of the Complaint, Indianapolis Life admits
28 and alleges that this paragraph is not directed at Indianapolis Life. Except as so

1 expressly admitted or alleged, Answering Defendant lacks sufficient information or
2 belief to answer the allegations of said paragraph and, basing its denial on that
3 ground, denies each and every allegation contained in said paragraph.

4 194. Answering paragraph 194 of the Complaint, Indianapolis Life denies
5 each and every allegation contained in said paragraph.

6 195. Answering paragraph 195 of the Complaint, Indianapolis Life admits
7 and alleges that Civil Code section 1691 speaks for itself. Except as so expressly
8 admitted or alleged, Answering Defendant denies each and every allegation
9 contained in said paragraph.

10 196. Answering paragraph 196 of the Complaint, Indianapolis Life admits
11 and alleges that Plaintiffs purport in said paragraph to offer to rescind one or more
12 transactions to which Plaintiffs, or some of them, are not parties and that Plaintiffs
13 have failed to restore to Indianapolis Life all value obtained. Except as so expressly
14 admitted or alleged, Answering Defendant denies each and every allegation
15 contained in said paragraph.

16 197. Answering paragraph 197 of the Complaint, Indianapolis Life admits
17 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
18 expressly admitted or alleged, Answering Defendant lacks sufficient information or
19 belief to answer the allegations of said paragraph and, basing its denial on that
20 ground, denies each and every allegation contained in said paragraph.

21 198. Answering paragraph 198 of the Complaint, Indianapolis Life admits
22 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
23 expressly admitted or alleged, Answering Defendant lacks sufficient information or
24 belief to answer the allegations of said paragraph and, basing its denial on that
25 ground, denies each and every allegation contained in said paragraph.

26 199. Answering paragraph 199 of the Complaint, Indianapolis Life admits
27 and alleges that this paragraph is not directed at Indianapolis Life and that the
28 contentions of Plaintiffs in paragraph 199 speak for themselves. Except as so

1 expressly admitted or alleged, Answering Defendant denies each and every
2 allegation contained in said paragraph.

3 200. Answering paragraph 200 of the Complaint, Indianapolis Life admits
4 that it contends that its conduct conforms with all applicable rules and regulations,
5 that neither Indianapolis Life nor anyone acting on its behalf made any
6 misrepresentations or omissions of any material fact to Plaintiffs, and that Plaintiffs
7 are not entitled to restoration of any premiums paid to Indianapolis Life on life
8 insurance covering any of the Plaintiffs. Except as so expressly admitted or alleged,
9 Answering Defendant lacks sufficient information or belief to answer the allegations
10 of said paragraph and, basing its denial on that ground, denies each and every
11 allegation contained in said paragraph.

12 201. Answering paragraph 201 of the Complaint, Indianapolis Life admits
13 and alleges that it is not a party to any alleged failure of any Defendant to comply
14 with the purported requirements of ERISA. Indianapolis Life further admits and
15 alleges that Plaintiffs have failed properly to restore to Answering Defendant all the
16 benefits obtained by Plaintiffs, that Plaintiffs are not entitled to rescind, and that
17 Plaintiffs lack standing to seek rescission of any insurance contract covering the
18 lives of any of the Plaintiffs. Except as so expressly admitted or alleged, Answering
19 Defendant lacks sufficient information or belief to answer the allegations of said
20 paragraph and, basing its denial on that ground, denies each and every allegation
21 contained in said paragraph.

22 202. Answering paragraph 202 of the Complaint, Indianapolis Life admits
23 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
24 expressly admitted or alleged, Answering Defendant lacks sufficient information or
25 belief to answer the allegations of said paragraph and, basing its denial on that
26 ground, denies each and every allegation contained in said paragraph.

27 203. Answering paragraph 203 of the Complaint, Plaintiffs' request for a
28 judicial determination speaks for itself. Except as so expressly admitted or alleged,

1 Answering Defendant lacks sufficient information or belief to answer the allegations
2 of said paragraph and, basing its denial on that ground, denies each and every
3 allegation contained in said paragraph.

4 204. Answering paragraph 204 of the Complaint, Indianapolis Life denies
5 each and every allegation contained in said paragraph.

6 205. Answering paragraph 205 of the Complaint, Indianapolis Life denies
7 each and every allegation contained in said paragraph.

8 206. Answering paragraph 206 of the Complaint, Indianapolis Life denies
9 each and every allegation contained in said paragraph and denies that Plaintiffs are
10 entitled to reasonable attorneys' fees or costs against Answering Defendant.

11 **THIRD CLAIM FOR RELIEF**

12 **502(c) PENALTY CLAIM ENFORCED THROUGH ERISA § 502(a)(1)(a)**

13 **for failure to provide documents as required by ERISA**

14 (Against all Defendant Plan Administrators and fiduciaries administering the Plan)

15 207. Answering paragraph 207 of the Complaint, Indianapolis Life
16 incorporates by reference herein its responses to paragraphs 1 through 206 of the
17 Complaint.

18 208. Answering paragraph 208 of the Complaint, Indianapolis Life admits
19 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
20 expressly admitted or alleged, Answering Defendant lacks sufficient information or
21 belief to answer the allegations of said paragraph and, basing its denial on that
22 ground, denies each and every allegation contained in said paragraph.

23 209. Answering paragraph 209 of the Complaint, Indianapolis Life admits
24 and alleges that this paragraph is not directed at Indianapolis Life and that the
25 enumerated statute speaks for itself. Except as so expressly admitted or alleged,
26 Answering Defendant lacks sufficient information or belief to answer the allegations
27 of said paragraph and, basing its denial on that ground, denies each and every
28 allegation contained in said paragraph.

1 210. Answering paragraph 210 of the Complaint, Indianapolis Life admits
2 and alleges that this paragraph is not directed at Indianapolis Life and that the
3 enumerated statute speaks for itself. Except as so expressly admitted or alleged,
4 Answering Defendant lacks sufficient information or belief to answer the allegations
5 of said paragraph and, basing its denial on that ground, denies each and every
6 allegation contained in said paragraph.

7 211. Answering paragraph 211 of the Complaint, Indianapolis Life admits
8 and alleges that this paragraph is not directed at Indianapolis Life and that the
9 enumerated statute speaks for itself. Except as so expressly admitted or alleged,
10 Answering Defendant lacks sufficient information or belief to answer the allegations
11 of said paragraph and, basing its denial on that ground, denies each and every
12 allegation contained in said paragraph.

13 212. Answering paragraph 212 of the Complaint, Indianapolis Life admits
14 and alleges that this paragraph is not directed at Indianapolis Life and that the
15 enumerated Department of Labor Advisory Opinion Letter speaks for itself. Except
16 as so expressly admitted or alleged, Answering Defendant lacks sufficient
17 information or belief to answer the allegations of said paragraph and, basing its
18 denial on that ground, denies each and every allegation contained in said paragraph.

19 213. Answering paragraph 213 of the Complaint, Indianapolis Life admits
20 and alleges that this paragraph is not directed at Indianapolis Life and that the
21 enumerated Department of Labor regulation speaks for itself. Except as so
22 expressly admitted or alleged, Answering Defendant lacks sufficient information or
23 belief to answer the allegations of said paragraph and, basing its denial on that
24 ground, denies each and every allegation contained in said paragraph.

25 214. Answering paragraph 214 of the Complaint, Indianapolis Life admits
26 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
27 expressly admitted or alleged, Answering Defendant lacks sufficient information or
28 belief to answer the allegations of said paragraph and, basing its denial on that

1 ground, denies each and every allegation contained in said paragraph.

2 215. Answering paragraph 215 of the Complaint, Indianapolis Life admits
3 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
4 expressly admitted or alleged, Answering Defendant lacks sufficient information or
5 belief to answer the allegations of said paragraph and, basing its denial on that
6 ground, denies each and every allegation contained in said paragraph.

7 216. Answering paragraph 216 of the Complaint, Indianapolis Life admits
8 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
9 expressly admitted or alleged, Answering Defendant lacks sufficient information or
10 belief to answer the allegations of said paragraph and, basing its denial on that
11 ground, denies each and every allegation contained in said paragraph.

12 217. Answering paragraph 217 of the Complaint, Indianapolis Life admits
13 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
14 expressly admitted or alleged, Answering Defendant lacks sufficient information or
15 belief to answer the allegations of said paragraph and, basing its denial on that
16 ground, denies each and every allegation contained in said paragraph.

17 218. Answering paragraph 218 of the Complaint, Indianapolis Life admits
18 and alleges that this paragraph is not directed at Indianapolis Life and the
19 enumerated statute speaks for itself. Except as so expressly admitted or alleged,
20 Answering Defendant lacks sufficient information or belief to answer the allegations
21 of said paragraph and, basing its denial on that ground, denies each and every
22 allegation contained in said paragraph.

23 219. Answering paragraph 219 of the Complaint, Indianapolis Life admits
24 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
25 expressly admitted or alleged, Answering Defendant lacks sufficient information or
26 belief to answer the allegations of said paragraph and, basing its denial on that
27 ground, denies each and every allegation contained in said paragraph.

28 220. Answering paragraph 220 of the Complaint, Indianapolis Life admits

1 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
2 expressly admitted or alleged, Answering Defendant lacks sufficient information or
3 belief to answer the allegations of said paragraph and, basing its denial on that
4 ground, denies each and every allegation contained in said paragraph.

5 221. Answering paragraph 221 of the Complaint, Indianapolis Life admits
6 and alleges that this paragraph is not directed at Indianapolis Life and that said
7 paragraph states the remedy sought by Plaintiffs. Except as so expressly admitted or
8 alleged, Answering Defendant lacks sufficient information or belief to answer the
9 allegations of said paragraph and, basing its denial on that ground, denies each and
10 every allegation contained in said paragraph.

11 **FOURTH CLAIM FOR RELIEF**

12 **For Accounting**

13 (Against all Defendants)

14 222. Answering paragraph 222 of the Complaint, Indianapolis Life
15 incorporates by reference herein its responses to paragraphs 1 through 221 of the
16 Complaint.

17 223. Answering paragraph 223 of the Complaint, Answering Defendant
18 lacks sufficient information or belief to answer the allegations of said paragraph
19 and, basing its denial on that ground, denies each and every allegation contained in
20 said paragraph.

21 224. Answering paragraph 224 of the Complaint, Indianapolis Life denies
22 that Plaintiffs have made any request for an accounting that has been denied by
23 Answering Defendant. Except as so expressly admitted or alleged, Answering
24 Defendant lacks sufficient information or belief to answer the allegations of said
25 paragraph and, basing its denial on that ground, denies each and every allegation
26 contained in said paragraph.

27 225. Answering paragraph 225 of the Complaint, Indianapolis Life admits
28 and alleges that pursuant to the terms of the applicable insurance policy, certain

1 premium payments were made on the referenced policy through policy loans.
2 Except as so expressly admitted or alleged, Answering Defendant denies each and
3 every allegation contained in said paragraph, and denies that Plaintiffs have been
4 damaged in the amount alleged or in any amount whatsoever.

5 226. Answering paragraph 226 of the Complaint, Answering Defendant
6 denies each and every allegation contained in said paragraph.

7 227. Answering paragraph 227 of the Complaint, Answering Defendant
8 lacks sufficient information or belief to answer the allegations of said paragraph
9 and, basing its denial on that ground, denies each and every allegation contained in
10 said paragraph.

11 228. Answering paragraph 228 of the Complaint, Answering Defendant
12 admits and alleges that the relief requested by Plaintiffs speaks for itself. Except as
13 so expressly admitted or alleged, Answering Defendant lacks sufficient information
14 or belief to answer the allegations of said paragraph and, basing its denial on that
15 ground, denies each and every allegation contained in said paragraph.

16 **FIFTH CLAIM FOR RELIEF**

17 **BREACH OF FIDUCIARY AND CO-FIDUCIARY DUTY**

18 **FRAUD AND MISREPRESENTATION UNDER ERISA**

19 (29 U.S.C. §§ 1104, 1105(a), 1106(a), 1109(a), 1132(a)(2) & (3)

20 [ERISA §§ 404(a), 405(a), 406(a), 409(a), 502(a)(2) & (3)]);

21 (Against all XELAN Plan Defendants including XELAN, XELAN WBT,
22 XELAN ASSOCIATION, and all Fiduciary defendants)

23 229. Answering paragraph 229 of the Complaint, Indianapolis Life
24 incorporates by reference herein its responses to paragraphs 1 through 228 of the
25 Complaint.

26 230. Answering paragraph 230 of the Complaint, Indianapolis Life admits
27 and alleges that this paragraph is not directed at Indianapolis Life and that the
28 common law and ERISA statutes speak for themselves. Except as so expressly

1 admitted or alleged, Answering Defendant lacks sufficient information or belief to
2 answer the allegations of said paragraph and, basing its denial on that ground, denies
3 each and every allegation contained in said paragraph.

4 231. Answering paragraph 231 of the Complaint, Indianapolis Life admits
5 and alleges that this paragraph is not directed at Indianapolis Life and that the
6 ERISA statutes speak for themselves. Except as so expressly admitted or alleged,
7 Answering Defendant lacks sufficient information or belief to answer the allegations
8 of said paragraph and, basing its denial on that ground, denies each and every
9 allegation contained in said paragraph.

10 232. Answering paragraph 232 of the Complaint, Indianapolis Life admits
11 and alleges that this paragraph is not directed at Indianapolis Life and that the
12 ERISA statutes speak for themselves. Except as so expressly admitted or alleged,
13 Answering Defendant lacks sufficient information or belief to answer the allegations
14 of said paragraph and, basing its denial on that ground, denies each and every
15 allegation contained in said paragraph.

16 233. Answering paragraph 233 of the Complaint, Indianapolis Life admits
17 and alleges that this paragraph is not directed at Indianapolis Life and that the
18 ERISA statutes speak for themselves. Except as so expressly admitted or alleged,
19 Answering Defendant lacks sufficient information or belief to answer the allegations
20 of said paragraph and, basing its denial on that ground, denies each and every
21 allegation contained in said paragraph.

22 234. Answering paragraph 234 of the Complaint, Indianapolis Life admits
23 and alleges that this paragraph is not directed at Indianapolis Life and that the
24 ERISA statutes speak for themselves. Except as so expressly admitted or alleged,
25 Answering Defendant lacks sufficient information or belief to answer the allegations
26 of said paragraph and, basing its denial on that ground, denies each and every
27 allegation contained in said paragraph.

28 235. Answering paragraph 235 of the Complaint, Indianapolis Life admits

1 and alleges that this paragraph is not directed at Indianapolis Life and that the
2 ERISA statutes speak for themselves. Except as so expressly admitted or alleged,
3 Answering Defendant lacks sufficient information or belief to answer the allegations
4 of said paragraph and, basing its denial on that ground, denies each and every
5 allegation contained in said paragraph.

6 236. Answering paragraph 236 of the Complaint, Indianapolis Life admits
7 and alleges that this paragraph is not directed at Indianapolis Life and that the
8 ERISA statutes speak for themselves. Except as so expressly admitted or alleged,
9 Answering Defendant lacks sufficient information or belief to answer the allegations
10 of said paragraph and, basing its denial on that ground, denies each and every
11 allegation contained in said paragraph.

12 237. Answering paragraph 237 of the Complaint, Indianapolis Life admits
13 and alleges that this paragraph is not directed at Indianapolis Life and that the
14 common law and ERISA statutes speak for themselves. Except as so expressly
15 admitted or alleged, Answering Defendant lacks sufficient information or belief to
16 answer the allegations of said paragraph and, basing its denial on that ground, denies
17 each and every allegation contained in said paragraph.

18 238. Answering paragraph 238 of the Complaint, Indianapolis Life admits
19 and alleges that this paragraph is not directed at Indianapolis Life and that the
20 ERISA statutes speak for themselves. Except as so expressly admitted or alleged,
21 Answering Defendant lacks sufficient information or belief to answer the allegations
22 of said paragraph and, basing its denial on that ground, denies each and every
23 allegation contained in said paragraph.

24 239. Answering paragraph 239 of the Complaint, Indianapolis Life admits
25 and alleges that this paragraph is not directed at Indianapolis Life and that the
26 ERISA statutes speak for themselves. Except as so expressly admitted or alleged,
27 Answering Defendant lacks sufficient information or belief to answer the allegations
28 of said paragraph and, basing its denial on that ground, denies each and every

1 allegation contained in said paragraph.

2 240. Answering paragraph 240 of the Complaint, Indianapolis Life admits
3 and alleges that this paragraph is not directed at Indianapolis Life and that the
4 ERISA statutes speak for themselves. Except as so expressly admitted or alleged,
5 Answering Defendant lacks sufficient information or belief to answer the allegations
6 of said paragraph and, basing its denial on that ground, denies each and every
7 allegation contained in said paragraph.

8 241. Answering paragraph 241 of the Complaint, Indianapolis Life admits
9 and alleges that this paragraph is not directed at Indianapolis Life and that the
10 common law and ERISA statutes speak for themselves. Except as so expressly
11 admitted or alleged, Answering Defendant lacks sufficient information or belief to
12 answer the allegations of said paragraph and, basing its denial on that ground, denies
13 each and every allegation contained in said paragraph.

14 242. Answering paragraph 242 of the Complaint, Indianapolis Life admits
15 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
16 expressly admitted or alleged, Answering Defendant lacks sufficient information or
17 belief to answer the allegations of said paragraph and, basing its denial on that
18 ground, denies each and every allegation contained in said paragraph.

19 243. Answering paragraph 243 of the Complaint, Indianapolis Life admits
20 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
21 expressly admitted or alleged, Answering Defendant lacks sufficient information or
22 belief to answer the allegations of said paragraph and, basing its denial on that
23 ground, denies each and every allegation contained in said paragraph.

24 244. Answering paragraph 244 of the Complaint, Indianapolis Life admits
25 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
26 expressly admitted or alleged, Answering Defendant lacks sufficient information or
27 belief to answer the allegations of said paragraph and, basing its denial on that
28 ground, denies each and every allegation contained in said paragraph and further

1 denies that it owed or violated any fiduciary duty to Plaintiffs, or any of them.

2 245. Answering paragraph 245 of the Complaint, Indianapolis Life admits
3 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
4 expressly admitted or alleged, Answering Defendant lacks sufficient information or
5 belief to answer the allegations of said paragraph and, basing its denial on that
6 ground, denies each and every allegation contained in said paragraph and further
7 denies that it owed or violated any fiduciary duty to Plaintiffs, or any of them.

8 246. Answering paragraph 246 of the Complaint, Indianapolis Life admits
9 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
10 expressly admitted or alleged, Answering Defendant lacks sufficient information or
11 belief to answer the allegations of said paragraph and, basing its denial on that
12 ground, denies each and every allegation contained in said paragraph and further
13 denies that it owed or violated any fiduciary duty to Plaintiffs, or any of them.

14 247. Answering paragraph 247 of the Complaint, Indianapolis Life admits
15 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
16 expressly admitted or alleged, Answering Defendant lacks sufficient information or
17 belief to answer the allegations of said paragraph and, basing its denial on that
18 ground, denies each and every allegation contained in said paragraph and further
19 denies that it owed or violated any fiduciary duty to Plaintiffs, or any of them.

20 248. Answering paragraph 248 of the Complaint, Indianapolis Life admits
21 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
22 expressly admitted or alleged, Answering Defendant lacks sufficient information or
23 belief to answer the allegations of said paragraph and, basing its denial on that
24 ground, denies each and every allegation contained in said paragraph and further
25 denies that it owed or violated any fiduciary duty to Plaintiffs, or any of them.

26 249. Answering paragraph 249 of the Complaint, Indianapolis Life admits
27 and alleges that this paragraph is not directed at Indianapolis Life and that the relief
28 sought by Plaintiffs speaks for itself. Except as so expressly admitted or alleged,

1 Answering Defendant lacks sufficient information or belief to answer the allegations
2 of said paragraph and, basing its denial on that ground, denies each and every
3 allegation contained in said paragraph and further denies that it owed or violated any
4 fiduciary duty to Plaintiffs, or any of them or that it is responsible for any of
5 Plaintiffs' attorneys' fees and costs of suit.

6 **SIXTH CLAIM FOR RELIEF**

7 **SUPPLEMENTAL/PENDENT STATE CLAIM**

8 **for Pre-Plan negligent misrepresentations**

9 (Against Defendants XELAN, XELAN WBT, XELAN ASSOCIATION,
10 Dr. Guess)

11 250. Answering paragraph 250 of the Complaint, Indianapolis Life
12 incorporates by reference herein its responses to paragraphs 1 through 249 of the
13 Complaint.

14 251. Answering paragraph 251 of the Complaint, Indianapolis Life admits
15 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
16 expressly admitted or alleged, Answering Defendant lacks sufficient information or
17 belief to answer the allegations of said paragraph and, basing its denial on that
18 ground, denies each and every allegation contained in said paragraph.

19 252. Answering paragraph 252 of the Complaint, Indianapolis Life admits
20 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
21 expressly admitted or alleged, Answering Defendant lacks sufficient information or
22 belief to answer the allegations of said paragraph and, basing its denial on that
23 ground, denies each and every allegation contained in said paragraph.

24 253. Answering paragraph 253 of the Complaint, Indianapolis Life admits
25 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
26 expressly admitted or alleged, Answering Defendant lacks sufficient information or
27 belief to answer the allegations of said paragraph and, basing its denial on that
28 ground, denies each and every allegation contained in said paragraph.

1 254. Answering paragraph 254 of the Complaint, Indianapolis Life admits
2 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
3 expressly admitted or alleged, Answering Defendant lacks sufficient information or
4 belief to answer the allegations of said paragraph and, basing its denial on that
5 ground, denies each and every allegation contained in said paragraph.

6 255. Answering paragraph 255 of the Complaint, Indianapolis Life admits
7 and alleges that paragraph 255 is ambiguous in its reference to Answering
8 Defendant, as no claim against Indianapolis Life is asserted in the Sixth Claim for
9 Relief. Indianapolis Life further admits and alleges that to the extent paragraph 255
10 is intended to assert any negligence by Indianapolis Life, such claim is expressly
11 denied. Except as so expressly admitted or alleged, Answering Defendant lacks
12 sufficient information or belief to answer the allegations of said paragraph and,
13 basing its denial on that ground, denies each and every allegation contained in said
14 paragraph.

15 256. Answering paragraph 256 of the Complaint, Indianapolis Life admits
16 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
17 expressly admitted or alleged, Answering Defendant lacks sufficient information or
18 belief to answer the allegations of said paragraph and, basing its denial on that
19 ground, denies each and every allegation contained in said paragraph and further
20 denies that Plaintiffs were damaged by any act or omission of Indianapolis Life.

21 257. Answering paragraph 257 of the Complaint, Indianapolis Life admits
22 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
23 expressly admitted or alleged, Answering Defendant lacks sufficient information or
24 belief to answer the allegations of said paragraph and, basing its denial on that
25 ground, denies each and every allegation contained in said paragraph.

26 258. Answering paragraph 258 of the Complaint, Indianapolis Life admits
27 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
28 expressly admitted or alleged, Answering Defendant lacks sufficient information or

1 belief to answer the allegations of said paragraph and, basing its denial on that
2 ground, denies each and every allegation contained in said paragraph and further
3 denies that Indianapolis Life negligently concealed or wrongfully failed to disclose
4 any information to the Plaintiffs.

5 259. Answering paragraph 259 of the Complaint, Indianapolis Life admits
6 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
7 expressly admitted or alleged, Answering Defendant lacks sufficient information or
8 belief to answer the allegations of said paragraph and, basing its denial on that
9 ground, denies each and every allegation contained in said paragraph.

10 260. Answering paragraph 260 of the Complaint, Indianapolis Life admits
11 and alleges that paragraph 260 is ambiguous in its reference to Answering
12 Defendant, as no claim against Indianapolis Life is asserted in the Sixth Claim for
13 Relief. Except as so expressly admitted or alleged, Answering Defendant denies
14 each and every allegation contained in said paragraph.

15 261. Answering paragraph 261 of the Complaint, Indianapolis Life admits
16 and alleges that it was not and is not an ERISA entity or fiduciary in connection
17 with the matters asserted in the Complaint. Except as so expressly admitted or
18 alleged, Answering Defendant alleges that its investigation into this matter and as to
19 the application and preemption of ERISA is ongoing but that currently Answering
20 Defendant lacks sufficient information or belief to answer the remaining allegations
21 of said paragraph and, basing its denial on that ground, denies each and every
22 allegation contained in said paragraph.

23 262. Answering paragraph 262 of the Complaint, Indianapolis Life admits
24 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
25 expressly admitted or alleged, Answering Defendant denies each and every
26 allegation contained in said paragraph.

27 263. Answering paragraph 263 of the Complaint, Indianapolis Life admits
28 and alleges that this paragraph is not directed at Indianapolis Life. Except as so

1 expressly admitted or alleged, Answering Defendant denies each and every
2 allegation contained in said paragraph.

3 264. Answering paragraph 264 of the Complaint, Indianapolis Life admits
4 and alleges that this paragraph is not directed at Indianapolis Life. Except as so
5 expressly admitted or alleged, Answering Defendant denies each and every
6 allegation contained in said paragraph.

7 **SEVENTH CLAIM FOR RELIEF**

8 **SUPPLEMENTAL/PENDENT STATEMENT CLAIM**

9 **alternatively for Pre-Plan fraud, deceit, concealment, fraudulent inducement**
10 **and post-plan termination fraud and deceit, misrepresentation and**
11 **concealment, and conspiracy to defraud**

12 Civ. C §§ 1709, 1710, 1711, 1712, 1713;

13 Fraudulent acts by agents, Civ. C. §§ 2306, 2316, 2317, 2318, 2330,
14 2333, 2334, 2338, 2343

15 (Against Defendants Dr. Guess, XELAN, XELAN ASSOCIATION, XELAN
16 WBT, and the Insurance Defendants)

17 265. Answering paragraph 265 of the Complaint, Indianapolis Life
18 incorporates by reference herein its responses to paragraphs 1 through 264 of the
19 Complaint.

20 266. Answering paragraph 266 of the Complaint, Indianapolis Life denies
21 each and every allegation contained in said paragraph.

22 267. Answering paragraph 267 of the Complaint, Indianapolis Life denies
23 that it engaged in any of the purported misrepresentations and concealments asserted
24 in said paragraph. Except as so expressly admitted or alleged, Answering Defendant
25 lacks sufficient information or belief to answer the allegations of said paragraph
26 and, basing its denial on that ground, denies each and every allegation contained in
27 said paragraph.

28 268. Answering paragraph 268 of the Complaint, Indianapolis Life denies

1 each and every allegation contained in said paragraph.

2 269. Answering paragraph 269 of the Complaint, Indianapolis Life denies
3 each and every allegation contained in said paragraph.

4 270. Answering paragraph 270 of the Complaint, Indianapolis Life denies
5 each and every allegation contained in said paragraph.

6 271. Answering paragraph 271 of the Complaint, Indianapolis Life denies
7 each and every allegation contained in said paragraph.

8 272. Answering paragraph 272 of the Complaint, Indianapolis Life denies
9 each and every allegation contained in said paragraph.

10 273. Answering paragraph 273 of the Complaint, Indianapolis Life denies
11 each and every allegation contained in said paragraph.

12 274. Answering paragraph 274 of the Complaint, Indianapolis Life denies
13 each and every allegation contained in said paragraph.

14 275. Answering paragraph 275 of the Complaint, Indianapolis Life admits
15 and alleges that it is not an "ERISA entity or fiduciary" as described in paragraph
16 275 of the Complaint for any purpose in connection with the events asserted in the
17 Complaint. Indianapolis Life further admits and alleges that Answering Defendant
18 made no pre-plan misrepresentations or fraudulent inducements to Plaintiffs.

19 Except as so expressly admitted or alleged, Answering Defendant lacks sufficient
20 information or belief to answer the allegations of said paragraph and, basing its
21 denial on that ground, denies each and every allegation contained in said paragraph.

22 276. Answering paragraph 276 of the Complaint, Indianapolis Life denies
23 each and every allegation contained in said paragraph.

24 277. Answering paragraph 277 of the Complaint, Indianapolis Life denies
25 each and every allegation contained in said paragraph.

26 278. Answering paragraph 278 of the Complaint, Indianapolis Life admits
27 and alleges that Indianapolis Life paid certain commissions to Pyramidal Funding
28 Systems, Inc., in connection with certain life insurance policies covering the lives of

1 certain of the Plaintiffs. Except as so expressly admitted or alleged, Answering
2 Defendant denies each and every allegation contained in said paragraph.

3 279. Answering paragraph 279 of the Complaint, Indianapolis Life denies
4 each and every allegation contained in said paragraph.

5 280. Answering paragraph 280 of the Complaint, Indianapolis Life denies
6 that it engaged in any "secret" communications and proposals" with Guess or
7 Pyramidal Funding Systems, Inc., concerning any Indianapolis Life insurance policy
8 covering the life of Selznick. Except as so expressly admitted or alleged,
9 Answering Defendant lacks sufficient information or belief to answer the allegations
10 of said paragraph and, basing its denial on that ground, denies each and every
11 allegation contained in said paragraph.

12 281. Answering paragraph 281 of the Complaint, Indianapolis Life admits
13 and alleges that it is not an ERISA entity or fiduciary as described in paragraph 281
14 of the Complaint for any purpose based on any of the facts asserted in the
15 Complaint. Indianapolis Life further admits and alleges that the ERISA statutes
16 speak for themselves as to the application of the pre-emption doctrine. Except as so
17 expressly admitted or alleged, Indianapolis Life states that its investigation into this
18 matter and as to the application and preemption of ERISA are ongoing but that
19 currently Answering Defendant lacks sufficient information or belief to answer the
20 remaining allegations of this paragraph and, basing its denial on that ground, denies
21 each and every allegation contained in said paragraph.

22 282. Answering paragraph 282 of the Complaint, Indianapolis Life denies
23 each and every allegation contained in said paragraph.

24 283. Answering paragraph 283 of the Complaint, Indianapolis Life denies
25 each and every allegation contained in said paragraph.

26 284. Answering paragraph 284 of the Complaint, Indianapolis Life denies
27 each and every allegation contained in said paragraph.

28 285. Answering paragraph 285 of the Complaint, Indianapolis Life denies

1 each and every allegation contained in said paragraph.

2 286. Answering paragraph 286 of the Complaint, Indianapolis Life denies
3 each and every allegation contained in said paragraph.

4 287. Answering paragraph 287 of the Complaint, Indianapolis Life denies
5 each and every allegation contained in said paragraph.

6 288. Answering paragraph 288 of the Complaint, Indianapolis Life denies
7 each and every allegation contained in said paragraph.

8 **EIGHTH CLAIM FOR RELIEF**

9 **ALTERNATIVELY, SUPPLEMENTAL/PENDENT STATEMENT CLAIM**

10 **For fraud and deceit, misrepresentation and concealment**

11 **during the administration of the 419 Plan**

12 289. Answering paragraph 289 of the Complaint, Indianapolis Life
13 incorporates by reference herein its responses to paragraphs 1 through 288 of the
14 Complaint.

15 290. Answering paragraph 290 of the Complaint, Indianapolis Life cannot
16 determine whether this paragraph is directed at Answering Defendant. Except as so
17 expressly admitted or alleged, Answering Defendant lacks sufficient information or
18 belief to answer the allegations of said paragraph and, basing its denial on that
19 ground, denies each and every allegation contained in said paragraph.

20 291. Answering paragraph 291 of the Complaint, Indianapolis Life cannot
21 determine whether this paragraph is directed at Answering Defendant. Except as so
22 expressly admitted or alleged, Answering Defendant denies that it or any agent
23 acting on its behalf made any misrepresentation or concealment or engaged in any
24 self-dealing. Except as so expressly admitted or alleged, Answering Defendant
25 lacks sufficient information or belief to answer the allegations of said paragraph
26 and, basing its denial on that ground, denies each and every allegation contained in
27 said paragraph.

28 292. Answering paragraph 292 of the Complaint, Indianapolis Life cannot

1 determine whether this paragraph is directed at Answering Defendant. Except as so
2 expressly admitted or alleged, Answering Defendant lacks sufficient information or
3 belief to answer the allegations of said paragraph and, basing its denial on that
4 ground, denies each and every allegation contained in said paragraph.

5 293. Answering paragraph 293 of the Complaint, Indianapolis Life cannot
6 determine whether this paragraph is directed at Answering Defendant. Except as so
7 expressly admitted or alleged, Answering Defendant denies each and every
8 allegation contained in said paragraph.

9 294. Answering paragraph 294 of the Complaint, Indianapolis Life cannot
10 determine whether this paragraph is directed at Answering Defendant. Except as so
11 expressly admitted or alleged, Answering Defendant denies each and every
12 allegation contained in said paragraph.

13 295. Answering paragraph 295 of the Complaint, Indianapolis Life cannot
14 determine whether this paragraph is directed at Answering Defendant. Except as so
15 expressly admitted or alleged, Answering Defendant denies each and every
16 allegation contained in said paragraph.

17 296. Answering paragraph 296 of the Complaint, Indianapolis Life cannot
18 determine whether this paragraph is directed at Answering Defendant. Except as so
19 expressly admitted or alleged, Answering Defendant admits and alleges that an
20 Indianapolis Life Policy Status Inquiry dated July 13, 2004, reflects a policy cash
21 value of \$247,204.38 as of July 9, 2004, before consideration of policy loans.
22 Except as so expressly admitted or alleged, Answering Defendant denies each and
23 every allegation contained in said paragraph.

24 297. Answering paragraph 297 of the Complaint, Indianapolis Life cannot
25 determine whether this paragraph is directed at Answering Defendant. Except as so
26 expressly admitted or alleged, Answering Defendant lacks sufficient information or
27 belief to answer the allegations of said paragraph and, basing its denial on that
28 ground, denies each and every allegation contained in said paragraph.

1 298. Answering paragraph 298 of the Complaint, Indianapolis Life cannot
2 determine whether this paragraph is directed at Answering Defendant. Except as so
3 expressly admitted or alleged, Answering Defendant denies each and every
4 allegation contained in said paragraph.

5 299. Answering paragraph 299 of the Complaint, Indianapolis Life cannot
6 determine whether this paragraph is directed at Answering Defendant. Except as so
7 expressly admitted or alleged, Answering Defendant denies each and every
8 allegation contained in said paragraph.

9 300. Answering paragraph 300 of the Complaint, Indianapolis Life cannot
10 determine whether this paragraph is directed at Answering Defendant. Except as so
11 expressly admitted or alleged, Answering Defendant denies each and every
12 allegation contained in said paragraph.

13 301. Answering paragraph 301 of the Complaint, Indianapolis Life cannot
14 determine whether this paragraph is directed at Answering Defendant. Except as so
15 expressly admitted or alleged, Answering Defendant denies each and every
16 allegation contained in said paragraph.

17 **NINTH CLAIM FOR RELIEF**

18 **Supplemental State Claim for**

19 **BREACH OF COVENANT OF GOOD FAITH and FAIR DEALING**

20 Against all defendants

21 302. Answering paragraph 302 of the Complaint, Indianapolis Life
22 incorporates by reference herein its responses to paragraphs 1 through 301 of the
23 Complaint.

24 303. Answering paragraph 303 of the Complaint, Indianapolis Life denies
25 each and every allegation contained in said paragraph.

26 304. Answering paragraph 304 of the Complaint, Indianapolis Life admits
27 and alleges that it cannot determine what "oral and written assurances" Plaintiffs
28 refer to in this paragraph. Indianapolis Life further admits and alleges that neither it

1 nor anyone acting on its behalf made ANY misrepresentations to Plaintiffs. Except
2 as so expressly admitted or alleged, Answering Defendant lacks sufficient
3 information or belief to answer the allegations of said paragraph and, basing its
4 denial on that ground, denies each and every allegation contained in said paragraph.

5 305. Answering paragraph 305 of the Complaint, Indianapolis Life denies
6 each and every allegation contained in said paragraph.

7 306. Answering paragraph 306 of the Complaint, Indianapolis Life admits
8 and alleges that the laws relating to fiduciaries speak for themselves. Except as so
9 expressly admitted or alleged, Indianapolis Life denies each and every allegation
10 contained in said paragraph.

11 307. Answering paragraph 307 of the Complaint, Indianapolis Life denies
12 each and every allegation contained in said paragraph.

13 308. Answering paragraph 308 of the Complaint, Indianapolis Life denies
14 each and every allegation contained in said paragraph and denies that Plaintiffs have
15 been injured in the amount alleged in the Complaint or in any amount whatsoever.

16 309. Answering paragraph 309 of the Complaint, Indianapolis Life denies
17 each and every allegation contained in said paragraph.

18 310. Answering paragraph 310 of the Complaint, Indianapolis Life denies
19 each and every allegation contained in said paragraph.

20 311. Answering paragraph 311 of the Complaint, Indianapolis Life denies
21 each and every allegation contained in said paragraph.

22 **TENTH CLAIM FOR RELIEF**

23 **Supplemental State Claim**

24 **Violation of Unfair competition Act** (Cal. Bus. & Prof. Code § 17200);

25 **Violation of Unfair Practices or Deceptive Acts** (Cal.Ins.C. § 790.02, 790.03)

26 (against the XELAN Defendants, INDIANAPOLIS LIFE, Dr. Guess)

27 312. Answering paragraph 312 of the Complaint, Indianapolis Life
28 incorporates by reference herein its responses to paragraphs 1 through 311 of the

1 Complaint.

2 313. Answering paragraph 313 of the Complaint, Indianapolis Life denies
3 each and every allegation contained in said paragraph.

4 314. Answering paragraph 314 of the Complaint, Indianapolis Life denies
5 each and every allegation contained in said paragraph.

6 315. Answering paragraph 315 of the Complaint, Indianapolis Life denies
7 each and every allegation contained in said paragraph.

8 316. Answering paragraph 316 of the Complaint, Indianapolis Life admits
9 and alleges that the relief requested by Plaintiffs speaks for itself. Except as so
10 expressly admitted or alleged, Answering Defendant denies each and every
11 allegation contained in said paragraph.

12 317. Answering paragraph 317 of the Complaint, Indianapolis Life admits
13 and alleges that this paragraph is incomplete and indecipherable. Except as so
14 expressly admitted or alleged, Answering Defendant denies each and every
15 allegation contained in said paragraph.

16 318. Answering paragraph 318 of the Complaint, Indianapolis Life denies
17 each and every allegation contained in said paragraph.

18 319. Answering paragraph 319 of the Complaint, Indianapolis Life denies
19 each and every allegation contained in said paragraph.

20 320. Answering paragraph 320 of the Complaint, Indianapolis Life denies
21 each and every allegation contained in said paragraph and denies that Plaintiffs have
22 been injured in the amount alleged in the Complaint or in any amount whatsoever
23 based on any conduct of Answering Defendant

24 **FIRST AFFIRMATIVE DEFENSE**

25 (Failure to State a Claim Upon Which Relief Can Be Granted)

26 321. The Complaint, and each and every purported claim for relief asserted
27 therein, fails to state facts sufficient to constitute a claim for relief against
28 Indianapolis Life.

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SECOND AFFIRMATIVE DEFENSE

(ERISA Preemption)

322. If and to the extent that the purported claims for relief against Indianapolis Life relate to one or more employee benefit plans subject to ERISA, the Complaint, and each and every purported claim for relief against Indianapolis Life asserted therein, is preempted by the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001, *et seq.*, and Plaintiffs' remedies are limited to those provided for under ERISA. If and to the extent that the purported claims relate to one or more employee benefit plans subject to ERISA, Indianapolis Life is informed and believes, and thereon alleges, that it is not a party in interest or a fiduciary under any such plan, and that Plaintiffs cannot assert a claim for punitive damages, have no right to trial by jury, are prohibited from recovering damages on behalf of individual plan participants, and are barred from bringing their claims by the applicable statutes of limitation.

THIRD AFFIRMATIVE DEFENSE

(Plaintiffs Lack Standing)

323. Defendant Indianapolis Life is informed and believes and thereon alleges that Plaintiffs, including but not limited to Selznick and Rowland, lack standing to assert the claims alleged in the Complaint against Indianapolis Life, including but not limited to their claims for relief under Business and Professions Code section 17200, *et. seq.*

FOURTH AFFIRMATIVE DEFENSE

(Acts of Third Parties Outside Scope Of Agency)

324. Without admitting any of the allegations of the Complaint denied herein, Indianapolis Life is informed and believes, and thereon alleges, that Answering Defendant is not legally responsible for the acts or omissions or misrepresentations of any other defendant or individual or entity as alleged in the Complaint, as such acts and/or omissions and/or misrepresentations were performed

1 and/or made by such defendants or individuals or entities outside and beyond the
2 course and scope of their duties and/or authority as agents and/or representatives of
3 Indianapolis Life

4 **FIFTH AFFIRMATIVE DEFENSE**

5 (Defendant Indianapolis Life Did Not Cause Damages)

6 325. Plaintiffs' prayer for judgment and damages against Indianapolis Life is
7 barred because any damages purportedly sustained by Plaintiffs were not the result
8 of any act, representation, or omission of Indianapolis Life, or any of its agents,
9 representatives and/or employees, but instead were the direct and proximate result of
10 the conduct of persons other than Defendant Indianapolis Life, for whose conduct
11 Defendant Indianapolis Life is not responsible.

12 **SIXTH AFFIRMATIVE DEFENSE**

13 (No reasonable reliance)

14 326. Indianapolis Life is informed and believes, and thereon alleges, that
15 Plaintiffs had the resources to engage, and did in fact engage, the services of
16 advisors and experts to advise and assist them in conjunction with the events alleged
17 in the Complaint. Indianapolis Life is further informed and believes, and thereon
18 alleges, that Plaintiffs did in fact rely upon the advice and expertise of their own
19 advisors and experts in connection with the activities alleged in the Complaint.

20 327. Plaintiff Selznick was and is a sophisticated and accomplished oral
21 surgeon. Selznick has admitted to willfully filing false tax returns and engaging in
22 tax fraud, neither of which actions involved participation or encouragement by
23 Indianapolis Life or its agents or representatives, and none of which was known to
24 Indianapolis Life when application was made for a life insurance policy covering the
25 life of Selznick.

26 328. Indianapolis Life at no time made any representations or warranties to
27 Plaintiffs concerning tax treatment for any contribution Plaintiffs, or any of them,
28 might make to any welfare benefit plan. Indianapolis Life is informed and believes,

1 and thereon alleges, that at no time did it or any agent acting on its behalf guarantee
2 the future tax consequence of taking loans from any policy of life insurance
3 obtained from Indianapolis Life. Indianapolis Life is informed and believes, and
4 thereon alleges, that Plaintiffs were aware that Indianapolis Life disclaimed
5 providing any tax advice to Plaintiffs, or any of them, and that Plaintiffs were
6 encouraged to obtain their own counsel and tax advice with regard to the events
7 alleged in the Complaint.

8 329. Notwithstanding the above, based on the allegations in the Complaint,
9 Answering Defendant is informed and believes, and thereon alleges, that Plaintiffs,
10 or some of them, took tax deductions for contributions made to the Xelan Welfare
11 Benefit Trust and took other action knowing they freely and voluntarily assumed
12 and exposed themselves to all risk of harm and consequential injuries and damages,
13 if any, and could not and did not reasonably rely on any purported misrepresen-
14 tation, inaction, advice, or purported expertise of Indianapolis Life or its agents or
15 representatives.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 (Damages Caused By Subsequent/Intervening Acts of Third Parties)

18 330. Without admitting any of the allegations of the Complaint denied
19 herein, Defendant Indianapolis Life asserts that if Plaintiffs have sustained any
20 damages as alleged in the Complaint, which Indianapolis Life denies, such damages
21 were proximately caused by subsequent and intervening or superseding acts of third
22 parties, such that Indianapolis Life is not responsible or liable for any damages
23 allegedly suffered by Plaintiffs.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 (No damages)

26 331. Plaintiffs' Complaint is premature and not ripe for adjudication as
27 against Indianapolis Life in that Plaintiffs fail to allege any actual, present damages
28 suffered as a direct and proximate result of Defendant Indianapolis Life's alleged

1 conduct.

2 **NINTH AFFIRMATIVE DEFENSE**

3 (Moradi-Shalal Doctrine)

4 332. Plaintiffs' Tenth Claim for Relief for Unfair Competition (Bus. & Prof.
5 Code, § 17200, *et. seq.*) and for Violations of the Uniform Insurance Practices and
6 Deception Act (California Ins. Code, §§ 790.02 and 790.03, the "UIPA") are barred
7 by the *Moradi-Shalal* Doctrine under California law. An insured cannot sue an
8 insurer for violations of the UIPA and, likewise, cannot maintain an action for
9 violation of the Unfair Competition Law based on conduct that would constitute a
10 violation of the UIPA. (See, e.g., *Textron Financial Corp. v. National Union Fire*
11 *Ins. Co.* (2004) 118 Cal.App.4th 1061.)

12 **TENTH AFFIRMATIVE DEFENSE**

13 (The Court Should Abstain From Exercising Equitable Jurisdiction)

14 333. Indianapolis Life admits and alleges that the courts have a policy of not
15 intervening in areas of complex economic policy, particularly in the context of
16 actions brought under California's Unfair Competition Law. (See, e.g., *Wolfe v.*
17 *State Farm Fire & Cas. Ins. Co.* (1996) 46 Cal.App.4th 554.) Indianapolis Life
18 further admits and alleges that the insurance industry is heavily regulated, that
19 Plaintiffs' Tenth Claim for Relief based on California's Unfair Competition Law is
20 directly encompassed by the UIPA, and that the manifest purpose of the UIPA is to
21 vest in an administrative agency the power to police unfair practice in the insurance
22 industry. Indianapolis Life is informed and believes, and thereon alleges, that in
23 light of the above, the Court should refuse to entertain equitable jurisdiction under
24 Plaintiffs' Tenth Claim for Relief.

25 **ELEVENTH AFFIRMATIVE DEFENSE**

26 (Parol Evidence Rule)

27 334. Indianapolis Life is informed and believes, and thereon alleges, that the
28 claims asserted against Answering Defendant in this Complaint are barred by the

1 Parol Evidence Rule.

2 **TWELFTH AFFIRMATIVE DEFENSE**

3 (Statutes of Limitation)

4 335. Indianapolis Life is informed and believes, and thereon alleges, that the
5 claims asserted against Answering Defendant are barred by the applicable statutes of
6 limitation, including but not limited to California Code of Civil Procedure sections
7 337, 338, 339, 340, and 343.

8 **THIRTEENTH AFFIRMATIVE DEFENSE**

9 (No Basis for Punitive Damages)

10 336. The Complaint, and each and every purported claim for relief asserted
11 therein, fails to state facts sufficient to entitle Plaintiffs to an award of general
12 damages, special damages, exemplary or punitive damages. Plaintiffs are not
13 entitled to recover any punitive or exemplary damages, because:

- 14 a) Plaintiffs have failed to plead facts sufficient to support allegations of
15 oppression, fraud, and/or malice as against Indianapolis Life. (Civ.
16 Code, § 3294, subd. (a)); and/or
- 17 b) Plaintiffs have failed to plead facts sufficient to support allegations of
18 gross or reckless disregard for the rights of Plaintiffs, or that
19 Indianapolis Life was motivated by evil motive or intent; and/or
- 20 c) Neither Indianapolis Life nor any of its agents committed any alleged
21 oppressive, fraudulent or malicious act, authorized or ratified such an
22 act, or had advance knowledge of the unfitness, if any, of any employee
23 or employees who allegedly committed such an act, or employed any
24 such employee or employees with a conscious disregard of the rights or
25 safety of others. (Civ. Code, § 3294, subd. (b))
- 26 d) California's laws regarding the alleged conduct in question in this
27 action are too vague to permit the imposition of punitive damages, and
28 California's laws, rules and procedures regarding punitive damages

1 deny Indianapolis Life's substantive due process rights under the Fifth
2 and Fourteenth Amendments to the United States Constitution, impose
3 criminal penalties without the requisite protections, and place an
4 unreasonable burden on interstate commerce.

5 e) The imposition of punitive damages in this case would violate
6 Defendant Indianapolis Life's right to protection from "excessive
7 fines," as provided in the Eighth Amendment to the Constitution of the
8 United States of America, and Article 1, Section 17, of the Constitution
9 of the State of California.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 (The Alleged Misrepresentations Were Not Statements of Fact)

12 337. Without admitting any of the allegations of the Complaint denied
13 herein, Indianapolis Life is informed and believes, and thereon alleges, that the
14 representations which form the basis of Plaintiffs' fraud and misrepresentation
15 claims were not statements of fact and, consequently, cannot form the basis of a
16 fraud or misrepresentation claim.

17 **FIFTEENTH AFFIRMATIVE DEFENSE**

18 (Indianapolis Life Acted At Plaintiffs' Direction)

19 338. Indianapolis Life is informed and believes, and thereon alleges, that
20 Plaintiffs (directly or through their agents and/or representatives) directed, ordered,
21 approved and/or consented to Indianapolis Life's conduct, thereby barring Plaintiffs
22 from seeking the relief prayed for in the Complaint against Indianapolis Life.

23 **SIXTEENTH AFFIRMATIVE DEFENSE**

24 (Reasonable and Good Faith Actions)

25 339. The Complaint, and each and every purported claim for relief asserted
26 therein against Indianapolis Life, is barred because at all times mentioned in the
27 Complaint, Indianapolis Life's actions and conduct were undertaken in a
28 permissible way and in good faith, without malice, and with the reasonable belief

1 that such actions and conduct were lawful and valid.

2 **SEVENTEENTH AFFIRMATIVE DEFENSE**

3 (Performance Of Duties Excused)

4 340. The Complaint, and each and every purported claim for relief asserted
5 therein, is barred because Indianapolis Life fully performed any and all contractual,
6 statutory, and other duties that may have been owed to Plaintiffs under applicable
7 law, except for those obligations the performance of which was excused by the
8 conduct or omissions of Plaintiffs, including but not limited to Plaintiffs' breaches
9 and/or failure to perform their obligations.

10 **EIGHTEENTH AFFIRMATIVE DEFENSE**

11 (Estoppel)

12 341. Indianapolis Life is informed and believes, and thereon alleges, that the
13 Complaint, and each and every purported claim for relief asserted against
14 Indianapolis Life, is barred because Plaintiffs are estopped from asserting such
15 claims.

16 **NINETEENTH AFFIRMATIVE DEFENSE**

17 (Unclean Hands)

18 342. Indianapolis Life is informed and believes, and thereon alleges, that the
19 Complaint, and each and every purported claim for relief asserted against
20 Indianapolis Life, is barred by the doctrine of unclean hands.

21 **TWENTIETH AFFIRMATIVE DEFENSE**

22 (Waiver)

23 343. Indianapolis Life is informed and believes, and thereon alleges, that
24 Plaintiffs have, by virtue of their own acts, omissions, conduct, and statements,
25 waived any and all claims against Indianapolis Life.

26 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

27 (Assurance of Independent Advice; Disclaimers)

28 344. Indianapolis Life is informed and believes, and thereon alleges, that to

1 the extent Plaintiffs, or any of them, represented to defendants, orally or in writing,
2 that Plaintiffs had consulted with their own advisors or consultants and were not
3 relying on any representation of defendants outside the express terms of the subject
4 life insurance policy, Plaintiffs cannot now contend that they were in any way
5 misled by any purported representations by any party to this action concerning the
6 legal or tax consequences of the transaction. By reason of the foregoing, Answering
7 Defendant is informed and believes that Plaintiffs could not reasonably have relied
8 upon any statement or representation by any of the Defendants and the claims
9 asserted in the Complaint are barred by Plaintiffs' disclaimers.

10 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

11 (No Representations Made By Indianapolis Life Except Those In Policy)

12 345. Indianapolis Life is informed and believes, and thereon alleges, that no
13 representations were made to Plaintiffs in connection with any life insurance policy
14 provided by Indianapolis Life other than those expressly set forth in the subject
15 policy, certificate of insurance, and related documents. To the extent that any
16 misrepresentation was made to Plaintiffs based on any marketing materials that may
17 have been used by other persons or individuals, including but not limited to other
18 parties named in the Complaint, Answering Defendant is informed and believes, and
19 thereon alleges, that such materials were not approved by Indianapolis Life.

20 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

21 (Assumption of the Risk)

22 346. Indianapolis Life is informed and believes, and thereon alleges, that
23 Plaintiffs knowingly or recklessly assumed the risks asserted in the Complaint and
24 cannot be heard to complain hereof.

25 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

26 (Plaintiffs' Own Negligence)

27 347. Indianapolis Life is informed and believes, and thereon alleges, that the
28 Complaint, and each and every purported claim for relief asserted therein, is barred

1 in whole or in part because Plaintiffs and/or their agents or representatives failed to
2 exercise reasonable and ordinary care, caution, or prudence in order to avoid the
3 alleged injuries or damages, and the resulting damages, if any, sustained by
4 Plaintiffs were proximately caused and contributed to by the negligence of Plaintiffs
5 and/or their agents or representatives.

6 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

7 (Failure to Mitigate Damages)

8 348. Indianapolis Life is informed and believes, and thereon alleges, that
9 Plaintiffs had and have a duty to mitigate their damages, if any, and Plaintiffs'
10 failure to perform such duty exonerates Indianapolis Life from any liability to
11 Plaintiffs, and all damages alleged, if any, were and are the sole and proximate
12 result of Plaintiffs' failure to mitigate damages.

13 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

14 (Statute of Frauds)

15 349. Indianapolis Life is informed and believes, and thereon alleges, that
16 Plaintiffs' claims are barred by the statute of frauds, including but not limited to
17 California Civil Code sections 1624 and 1698.

18 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

19 (Additional Affirmative Defenses)

20 350. Indianapolis Life presently has insufficient knowledge or information
21 on which to form a belief as to whether it may have additional, as yet unstated
22 separate and affirmative defenses. Answering Defendant thus reserves the right to
23 assert additional separate and affirmative defenses in the event discovery or further
24 investigation indicates that asserting additional separate and affirmative defenses
25 would be warranted.

26 WHEREFORE, defendant Indianapolis Life prays:


- 27 1. That plaintiffs take nothing by their Complaint;
28 2. That the Court enter judgment for defendant Indianapolis Life;

1 3. That the Court award defendant Indianapolis Life its costs of suit and
2 any recoverable attorneys' fees; and

3 4. For such other and further relief as the Court deems just and proper.

4 Dated: July 13, 2004

RUTAN & TUCKER, LLP
MICHAEL T. HORNAK
LAYNE H. MELZER
LISA N. NEAL

By: 
Michael T. Hornak
Attorneys for Defendant
Indianapolis Life Insurance Company

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1 **PROOF OF SERVICE BY MAIL**

2 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

3
4 I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State of
5 California. I am over the age of 18 and not a party to the within action. My business address is
6 611 Anton Boulevard, Fourteenth Floor, Costa Mesa, California 92626-1931.

7 On August 23, 2004, I served on the interested parties in said action the within:

8 **DEFENDANT INDIANAPOLIS LIFE INSURANCE COMPANY'S ANSWER TO
9 COMPLAINT**

10 by placing a true copy thereof in sealed envelope(s) addressed as stated on the attached mailing
11 list.

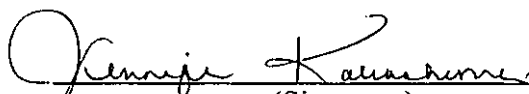
12 In the course of my employment with Rutan & Tucker, LLP, I have, through first-hand
13 personal observation, become readily familiar with Rutan & Tucker, LLP's practice of collection
14 and processing correspondence for mailing with the United States Postal Service. Under that
15 practice I deposited such envelope(s) in an out-box for collection by other personnel of Rutan &
16 Tucker, LLP, and for ultimate posting and placement with the U.S. Postal Service on that same day
17 in the ordinary course of business. If the customary business practices of Rutan & Tucker, LLP
18 with regard to collection and processing of correspondence and mailing were followed, and I am
19 confident that they were, such envelope(s) were posted and placed in the United States mail at
20 Costa Mesa, California, that same date. I am aware that on motion of party served, service is
21 presumed invalid if postal cancellation date or postage meter date is more than one day after date
22 of deposit for mailing in affidavit.

23 Executed on August 23, 2004, at Costa Mesa, California.

24 I declare under penalty of perjury that I am employed in the office of a member of the bar
25 of this Court at whose direction the service was made and that the foregoing is true and correct.

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