MICHAEL MCPHAIL; ROBERT BARR
KIMNACH III; LEONARDO
GIOVANNELLI; KEVIN and JENNIFER
MORRISON; SCOTT and KRYSTIN
WAGNER; CANDACE and NEIL
HURLEY; On Behalf of Themselves and All
Others Similarly Situated

Plaintiffs

v.

FIRST COMMAND FINANCIAL
PLANNING, INC., a Texas Corporation,
FIRST COMMAND FINANCIAL
SERVICES, INC., a Texas Corporation,
LAMAR C. SMITH, HOWARD M.
CRUMP, JAMES PETERSON, RICHARD
GILES, MARTIN DURBIN,

Defendants.

CONSOLIDATED AMENDED COMPLAINT

CASE NO. 05 CV 0179 (IEG)

CONSOLIDATED AMENDED
COMPLAINT FOR VIOLATION OF THE
SECURITIES EXCHANGE ACT OF 1934,
THE SECURITIES ACT OF 1933 AND THE
INVESTMENT ADVISERS ACT

[Filed in Accordance with Stipulation and
Order entered on February 23, 2005]

Action Filed: January 31, 2005

1. Defendants sold investments which required soldiers and sailors to lose more than 50% of their investment dollars in the first year. Because they lost so much money so soon, Defendants were only able to close the sale by lying about the investment's benefits and about available investment alternatives open to servicewomen and women. This fraud was accomplished through a standardized sales pitch of material misrepresentations that did not vary materially from class member to class member and the same material omissions of highly relevant facts.

**DISCIPLINARY ACTIONS BY THE SEC AND NASD**

2. On December 15, 2004 the Securities & Exchange Commission ("SEC") instituted a public administration and cease and desist proceeding against First Command Financial Planning, Inc. ("First Command").

3. In response to the SEC proceeding and related disciplinary actions by the National Association of Securities Dealers ("NASD") alleging, among other things, misleading sales practices in connection with the sale of First Command's Systematic Investment Plan ("SIP"), First Command submitted an Offer of Settlement ("SEC Proceeding") which the SEC accepted. First Command also submitted a
Letter of Acceptance, Waiver, and Consent to the NASD ("NASD Proceeding"). The SEC Proceeding and NASD Proceeding provide for restitution to only those First Command customers who, as of December 15, 2004, had already terminated their First Command SIP. First Command’s settlements with the SEC and NASD provided no relief to Plaintiffs and other similarly situated consumers, who had not terminated their SIP as of December 15, 2004. The Class period is January 31, 2000 through December 31, 2004 ("Class Period"). The Class is comprised of all persons during the Class Period who purchased a SIP from First Command, or one of its predecessors in interest or made a SIP payment or increased their monthly SIP payments, and still owned their SIP as of December 15, 2004 ("Class Members").

4. Prior to the issuance of SEC Release Nos. 50859 and 8153 ("SEC Proceeding") on December 15, 2004, Plaintiffs and the Class Members could not have known of the falsity of Defendants’ fraudulent statements or the true facts that had been previously concealed by Defendants and discovered by the SEC and NASD which give rise to this action. A true and correct copy of the SEC Proceeding is attached hereto as Exhibit #1 and incorporated by this reference herein. First Command, in response to the administrative investigation by the SEC, has admitted the facts set forth in the SEC Proceeding attached as Exhibit #1 hereto, which established the allegations of this complaint. In response to the NASD investigation, First Command again made admissions which establish the allegations of this complaint, and these admissions are set forth in the NASD Proceeding. A true and correct copy of the NASD Proceeding is attached hereto as Exhibit #2 and incorporated by this reference herein.

OVERVIEW

5. This action involves violations of the federal securities laws by Defendants in their use of standardized sales materials to offer and sell mutual-fund investments through an installment method known
as a "Contractual" or "Systematic Investment Plan." First Command's SIP allows investors to indirectly accumulate shares in another mutual fund by contributing fixed monthly payments. SIPs are investments referred to and regulated as "periodic payment plans" under Section 27 of the Investment Company Act of 1940. An investor in a periodic payment plan does not directly own shares of a mutual fund. Instead, he or she owns an interest in the plan trust. The plan trust invests the investor's regular payments, after deducting applicable fees, in shares of a mutual fund. An investor in a plan has an indirect beneficial ownership interest in those shares.

6. First Command's SIP typically call for 180 monthly payments ranging from $100 to $500 paid over a period of 15 years. First Command imposes a sales charge on these SIPs referred to as a "sales and creation charge" or "front end load" that equals 50% of the plan's first 12 monthly payments. Approximately 2% on each additional monthly payment is thereafter charged by the mutual fund manager. From January 1999 through March 2004, First Command collected approximately $175 million in revenue just from front end load charges alone from the sale of the SIPs, which accounted for approximately 70% of First Command's revenue.

7. First Command has over 297,000 customers in the U.S. military, including 40% of the current active-duty general officers, one third of the commissioned officers and 16% of the non-commissioned officers. In order to gain the trust and confidence of the military personnel to whom Defendants sell SIPs, First Command uses former officers in the U.S. military as sales representatives. This sales device is called "affinity marketing." Affinity marketing is an excellent sales tool for military personnel, who are trained to respect authority, follow orders and believe in the honesty, integrity and fidelity of their fellow officers and former officers who recommended the investment.

8. Defendants Lamar Smith together with his co-Defendants Howard M. Curmp, James Peterson, Richard Giles and Martin Durbin hatched, devised, developed and implemented a scheme to prey
upon and defraud the men and women in the United States Armed Forces through standardized
misstatements of material facts and intentional concealment of certain material facts. This scheme was
accomplished through a uniform sales script developed and extensively tested by Defendants and designed
to deceive and defraud the Class Members. This script did not vary from Class Member to Class Member.

Up until about July 1, 2001, First Command Financial Planning, Inc. operated under the trade name, United
Services Planning Association, Inc. (USPA). Defendants’ script was specifically designed in a unique way
to target market to military personnel and take advantage of their common vulnerabilities which were
carefully studied and exploited by Defendants through a well-trained sales force, who were themselves goal-
oriented retired service personnel. Even the name “First Command” demands unquestioned compliance.

Through this scheme, Defendants were able to sell each of the class members a Systematic Investment Plan
(“SIP”) that required each class member to pay 50% of their first year capital contributions as a sales
commission to Defendant First Command Financial Planning, Inc. The SIP’s invested the remaining Class
Members’ funds that were not skimmed off the top by Defendants in one of five mutual funds: (1) the AIM
Summit Investors Fund; (2) the Fidelity Destiny I Fund; (3) the Fidelity Destiny II Fund; (4) the Pioneer
Independence Fund; and (5) the Franklin Templeton Capital Accumulation Fund. Except for the outrageous,
exorbitant and unconscionable 50% front end load charged by First Command Financial Planning Inc., there
was nothing unique or special about these mutual funds.

9. One of the key aspects of Defendants’ scheme was the recruitment of retired military officers
as First Command’s sales representatives. To persuade these sales representatives to make fraudulent
representations and to conceal the truth about alternative investments from these young, impressionable,
newly commissioned military officers, required Defendants to kick back half of the 50% front end load to
these scripted hired-guns to accomplish their mission of defrauding and deceiving these fine young men and
women into buying a SIP.
10. Using a carefully configured and standardized sales script delivered by a thoroughly trained sales force and a tried and tested uniform sales scheme, Defendants were able to accomplish their mission to convince the Class Members, who were newly commissioned active duty military officers targeted by the scheme, to purchase the SIP investment. The Class Members were typically relatively young when they were first targeted by First Command, with a median age of approximately 25 years, and often inexperienced in financial matters. These young men and women were conditioned through their military training to respect, trust, honor and obey their superior officers and to follow orders without questioning higher authority.

11. Through their influence, Defendants and their sales representatives were also able to obtain access to military bases for their finely tuned sales presentations, and these on-base sales presentations further allowed Defendants to create the additional false impression that their investment was approved or endorsed by the military itself. Unfortunately for the Class Members, the 50% front end load paid by each of the Class members was not used for the benefit of their investment to retain the very best expert investment analysts, but rather almost all of it (92.4%) was retained by First Command as a sales commission of which half went to the sales representatives as the boots on the ground.

12. Defendants developed their expertise and honed their skills in target marketing financial products to members of the military and gained invaluable knowledge of the vulnerabilities of these young men and women and how these vulnerabilities could best be exploited through many years of selling life insurance products to military personnel. Defendants used these tried and successfully tested techniques to devise a standardized sales program to indirectly sell these five mutual fund investments to the same target military market solely to enrich First Command with a 50% sales commission. The plan was to intentionally and fraudulently steer these young service men and women to one of these five SIP’s and to intentionally and fraudulently steer them away from all other mutual fund investments. The challenge of the
mission was how to pull off this fraud and deception without detection. The main problem Defendants confronted and had to overcome in devising their sales scheme, presentations and script was the innate resistance any investor would have to paying 50% of the amount invested during the first year as a front end load when other mutual funds were available that charged little or no front end load. Knowing that they could not successfully conceal the 50% sales load from prospective military investors, Defendants were able to overcome the Class Members’ natural scepticism to such a high front end load by leading them to believe that this high front end load was advantageous to the investor and made the investment more disciplined, when in fact Defendants were simply cheating these servicemen and women out of their hard earned savings to line their own pockets using a carefully crafted set of intentional and knowing misstatements and intentional concealments of material facts, cleverly disguised and camouflaged as the truth.

13. Specifically, Defendants, in order to maximize their own profits, concealed from the Class Members that First Command’s SIP was not only not “the best investment option for long term wealth accumulation,” as falsely touted by Defendants, but was, in fact one of the worst, if not the worst, investment for the Class Members. First Command’s SIPs have no redeeming financial upside potential and the same downside risks as comparable investments. Defendants also falsely and fraudulently held themselves out to be investment advisors who would provide personalized financial planning services “custom tailored” for each Class Member with an individual investment plan designed to meet their individual needs. Defendants concealed from each Class Member that Defendants actual intent was to fraudulently induce every Class Member to purchase a First Command SIP. In January 2002, the United States government began offering to military personnel an individual 401(k) type investment, through which employees of the U.S. government could invest in no-load mutual funds backed by U.S. Treasuries and other index funds: The S&P 500 Common Stock Index Fund (C-Fund), The Fixed Income Investment Fund (F-Fund), the Government Securities Investment Fund (G-Fund), the Small Capitalization Stock Investment
Fund (S-Fund), and the International Stock Index Investment Fund (I-Fund). Tellingly, even in the face of this unique and highly advantageous investment opportunity for military personnel, Defendants refused to alter their game plan and continued to do everything possible to continue to fraudulently steer Class Members into their SIPs.

14. The TSP is a unique retirement savings and investment plan sponsored by the federal government that is available only to military personnel and other federal employees. TSPs permit participants to invest periodically in mutual funds as a 401(k) plan with “before tax” dollars. Unlike First Command’s SIP, none of the mutual funds offered through TSPs charge a sales load. First Command deceptively represented the TSP to the Class Members as an unattractive alternative because of the consequences of the early redemption penalty, while concealing the overwhelming tax and investment advantages of the TSP investment vehicle and ignoring the cornerstone of their own SIP sales pitch that investors needed to be in for the long haul (at least 15 years) to be successful. TSP’s are highly advantageous because they have the same tax benefits as 401(k) plans and allow military personnel to invest up to 7% of their base pay each pay period and 100% of any incentive pay. The TSP allows investment of “before tax” dollars which increases the amount invested by up to 30% (taxes) compared to investment of “after tax” dollars in SIPs that are not through IRAs. First Command also steered the Class Members away from the TSP alternative by uniformly misrepresenting the TSPs as “speculative” because the TSP funds did not require annual payments and did not charge a front end sales load and were not designed for long-term investment and did not provide for periodic payments in a dollar cost averaging strategy. These statements were all false and fraudulent. In fact TSPs are not “speculative”, are designed for long term investment and can provide for periodic payments. As to the consequences of early withdrawal penalty, Defendants criticism is inconsistent with Defendants’ own sales pitch for a long term disciplined investment and the special withdrawal and loan features of the TSP. Encouraging long term investment cannot be
advantageous for a SIP but detrimental for a TSP, particularly where the velocity of growth of the capital invested in a TSP is far superior to a SIP because the former is not subject to a 50% front end load and income taxes (approximately 30%).

15. The true facts that were uniformly concealed from the Class Members to hide the advantages of the TSP included the fact that the TSP was designed for long term investment as are all 401(k) accounts, provides for periodic payments pursuant to a dollar cost averaging strategy, and allows for a greater accumulation of wealth with the same investment because of more dollars being invested without a sales commission.

16. First Command marketed their SIPs through a “Family Financial Plan” (“FFP”) using a structured sales process that utilized a standardized script prepared by First Command. The sales script includes hypothetical dialogue between a First Command agent and a military couple Ed and Geri Baker.” In addition, the script contains instructions to the sales agents on how to present the plans’ key points. Each sales representative was periodically evaluated to ensure that they could always spin these key points in their presentations correctly to close the SIP sale and were delivering the standardized scripts approved by headquarters.

17. The sales process with prospective customers is intense and, when possible included (i) an introductory financial seminar; (ii) a one-on-one initial meeting with a First Command agent; (iii) the preparation of the prospective customer’s FFP; and (iv) the presentation of the FFP. The goal of the scam was to fraudulently present the SIP, after careful analysis, as each military customer’s specialized optimal investment option for long-term wealth accumulation. The truth that was concealed from the Class Members is that the SIP was preordained in accordance with Defendants scheme that First Command would uniformly recommend the SIP as the best possible investment for every individual when in fact the SIP was not a suitable investment for any Class Member and every Class Member would have been better off with
more money invested in other available mutual fund investments making these same underlying investments.

18. First Command’s website stated that the FFP is “a personalized road map for your journey in pursuit of financial success, encompassing not only the products you have acquired through your First Command representative, but also assets like 401(k) accounts and military retirement income.” The site further stated that the company maintained a close, but independent, relationship with many “giants of the financial industry,” which allowed the firm “to provide [the customer] with an objective analysis of [the customer’s] situation and to make an independent recommendation for specific products.” Defendant Lamar Smith reiterated these standardized misstatements in each Class Member’s FFP. See Exhibit #3. On or about December 3, 2004, when faced with legislation passed by the United States House of Representatives, Lamar Smith retracted these statements and notified the Plaintiffs and members of the Class that First Command would no longer be selling SIPs. See Exhibit #4.

19. First Command falsely represented to the Class that the FFP is tailored to the specific needs of the customer based, in part, on a “Confidential Checklist” of personal financial information completed by the customer and the agent. The truth is that First Command always recommended that the customer purchase a life insurance policy from one of several insurance companies through the firm’s insurance agency, open an account at the firm’s bank, and purchase a SIP through one or more of First Command’s five SIPs offered by four mutual fund groups.

20. The sale of SIPs to military personnel has historically constituted 70% of First Command’s mutual fund business. Since 1970, First Command customers have invested approximately $10.1 billion in mutual funds. Of this amount, an astonishing $7.4 billion has been invested in SIPs with 50% of the first year’s capital paying a sales commission to First Command. As previously noted, First Command sells five SIPs, which, in turn, make purchases from one of five different mutual funds. These mutual funds are: (1) the AIM Summit Investors Fund; (2) the Fidelity Destiny I Fund; (3) the Fidelity Destiny II Fund; (4) the
Pioneer Independence Fund; and (5) the Franklin Templeton Capital Accumulation Fund. First Command also sells conventional load mutual funds issued by various mutual fund companies to customers who insist on investing directly in such funds. For these funds, the investor pays a commission of approximately 5%, depending on the amount invested. See Newsweek Editorial by Jane Bryant Quinn, dated January 31, 2005, attached hereto as Exhibit #5. Tellingly, First Command does not offer or sell no-load mutual funds or TSPs which are the most advantageous alternatives for a mutual fund investor in the military because there is no 50% sales commission to First Command, which is the true reason Defendants recommend the SIPS.

21. Under First Command's SIPS, the investors were asked to pay 180 fixed monthly installments (15 years). First Command customers paid a front-end sales load equal to 50% of the first 12 payments, and thereafter paid an additional load of approximately 2% of each additional payment. First Command received 92.4% of the 50% first-year sales load, and one-half of that was kicked-back to the selling agent. Assuming a fixed monthly payment of $100, a systematic-plan investor would pay a total of $1200 in the first 12 months. Of this amount, $600 would be applied to pay the 50% sales load and only $600 would purchase an indirect interest in the SIP. The SIP, as an indirect mutual fund, also requires investors to pay additional fees assessed at the fund level, which may include management fees, 12b-1 fees (covering distribution expenses and sometimes shareholder-service expenses), and other expenses of approximately 2% per annum.

22. The following chart illustrates the effective sales load on the total investment at various discontinuation points taking into account the 50% first year load alone and with the 2% annual load for each additional payment thereafter:
### LOAD ON FIRST COMMAND SIPs

<table>
<thead>
<tr>
<th>Contributions</th>
<th>Not Including The Annual 2% Charge</th>
<th>Including The Annual 2% Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discontinued after:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12 payments</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>18 payments</td>
<td>31.6%</td>
<td>34%</td>
</tr>
<tr>
<td>24 payments</td>
<td>25%</td>
<td>26%</td>
</tr>
<tr>
<td>60 payments</td>
<td>10%</td>
<td>12%</td>
</tr>
<tr>
<td>120 payments</td>
<td>5%</td>
<td>8%</td>
</tr>
<tr>
<td>180 payments</td>
<td>3.3%</td>
<td>5.2%</td>
</tr>
</tbody>
</table>

Thus, not until the 180th month does the SIP load come close to equalizing the load on a load fund but, because of the lost initial investment opportunity, the total value of the investment will never catch up to a comparable load fund involving the same investment, or a no-load fund or a TSP with the same underlying rate of return.

23. Historically the majority of First Command customers have not completed the 15-year period of the SIP and this material fact was uniformly concealed from the Class Members. For example, for all First Command SIPs sold between 1980 through 1987, a mere 43% of the plans had actually received payments totaling at least the original face amount of the plan (i.e., 180 monthly payments times the original monthly payment commitment) as of June 17, 2004. Of the remaining 57%, a full 35% were terminated and 22% remained open, including active and inactive accounts. An inactive account is one in which no payment has been made for at least a year. Therefore, not only were the SIPs a poor wealth accumulation financial vehicle, but more than one third of the enlistees never made 180 payments. Concealed all from the potential investors was the load of 25% if terminated in two years, 10% if terminated in 5 years and even...
5% if terminated in 10 years, without factoring the annual fees.

**JURISDICTION AND VENUE**

24. The claims asserted arise under Section 10(b) of the Securities Exchange Act of 1934 ("1934 Act"), Rule 10-b5 promulgated thereunder, Section 12 of the Securities Act of 1933 Act ("1933 Act"), and the Investment Advisers Act of 1940 ("IAA"). Jurisdiction is conferred by Section 27 of the 1934 Act, Section 22 of the 1933 Act and Section 214 of the IAA. Venue is proper under Section 27 of the 1934 Act, Section of the 1933 Act and Section 214 of the IAA. Defendants’ conduct business in this District and some of the wrongful conduct took place here.

25. Plaintiff Michael McPhail is domiciled in California and purchased a SIP through First Command as detailed in the Certification contained in Exhibit #6 hereto, and was damaged thereby in an amount according to proof.

26. Plaintiff Robert Barr Kimmach III is domiciled in California and a SIP through First Command as detailed in the Certification contained in Exhibit #7 hereto, and was damaged thereby in an amount according to proof. Plaintiffs McPhail and Kimmach are each United States Navy Lieutenants on active duty and stationed at North Island in San Diego, California.

27. Plaintiffs Kevin Morrison and his wife Jennifer Morrison are residents of Louisville, Kentucky and purchased a SIP through First Command as detailed in the Certification contained in Exhibit #8 hereto, and were damaged thereby in an amount according to proof.

28. Plaintiff Candace Hurley is an active member of the military and currently resides in Vine Grove, Kentucky. Plaintiff Neil Hurley is an Army Reserve Soldier and currently resides in Vine Grove, Kentucky. The Hurleys purchased a SIP through First Command as detailed in the Certification contained
in Exhibit #9 hereto, and were damaged thereby in an amount according to proof.

29. Plaintiff Scott Wagner is an active member of the military and currently resides in Evans, Georgia with his wife, Krystin Wagner. Plaintiffs Scott and Krystin Wagner purchased a SIP through First Command as detailed in the Certification contained in Exhibit #10 hereto, and were damaged thereby in an amount according to proof.

30. Defendant First Command Financial Planning, Inc. is a Texas Corporation headquartered in Fort Worth Texas and a wholly-owned subsidiary of Defendant First Command Financial Services, Inc.

31. Defendant First Command Financial Services, Inc., is a Texas Corporation headquartered in Fort Worth Texas. First Command Financial Services, Inc. is the corporate parent of Defendant First Command Financial Planning, Inc.

32. Defendant Lamar C. Smith is domiciled in Texas and is the Chief Executive Officer of First Command and Chairman of First Command’s Board of Directors and the principal architect of the fraudulent scheme alleged herein.

33. Defendant Howard M. Crump is domiciled in Texas and is the President of First Command and a member of First Command’s Board of Directors.

34. Defendant James Peterson is domiciled in Texas and is a Senior Vice-President of First Command and a member of First Command’s Board of Directors.

35. Defendant Richard Giles is domiciled in Texas and is a Vice-President of First Command.

36. Defendant Martin Durbin is domiciled in Texas and is a Chief Financial Officer, Treasurer and a Vice-President of First Command.
THE SIP SCHEME

The Introductory Financial Seminar

(The Bait)

37. The sales process usually began at one of approximately 700 finance seminars conducted in proximity to or on military installations throughout the world each year. First Command relied heavily on “word-of-mouth” advertising and referrals to generate interest in the seminars. The standardized finance briefing consisted of a multi-media power point presentation with scripted live narration. The power point presentations all included testimonials from current customers and evokes the themes of patriotism, loyalty, discipline and duty. No specific products were offered at these financial seminars, so as to conceal Defendants’ true intent to sell every prospective customer a SIP as part of a purportedly “customized” financial plans. Instead, these financial seminars were uniformly designed to introduce the prospective customers to the variety of services offered by First Command, certain honest investment concepts such as the need for a financial plan, the need for long-term financial and investment goals, and the benefit of dollar-cost averaging and the benefits of being in for the long haul. This was the bait. Seminar attendees who took the bait were encouraged to make appointments with a First Command agent to develop their own personal “custom made” FFP.

The Initial Sales Meeting with a First Command Agent

(The Switch)

38. At the initial one-on-one sales meeting, before discussing the specifics of the SIP, including any mention of the plan’s upfront sales load, the sales script for the initial one-on-one meeting required discussion of the benefits of dollar-cost averaging and claims that “out of thousands of funds” you can invest in, First Command’s five systematic plans are the only five mutual funds designed for dollar cost averaging.
investors. As part of the scheme to defraud and maneuver the victim to the SIP, the script then introduced
the false and fraudulent theme that no-load funds attract only “speculators,” which prevents a no-load fund
manager from having predictable cash flow and from making purchases for the fund at opportune times.

39. After attempting to obtain the prospective customer’s commitment to dollar cost averaging,
the standardized sales script falsely and fraudulently compared systematic plans to other mutual fund
investments in the following exchange:

Agent: ... There are three categories of funds. First, there are the no-load
funds which are popular among short-term traders and speculators. Ed, do
you think “no-load” means free?

Ed: No.

Agent: Of course not. In fact, no-load funds frequently have some of the
highest long-term costs. Next there are the load funds. These funds are
generally used for large lump sum investments and are sold through
investment professionals who manage many of the larger private accounts in
the country. Finally there are the systematic plans. These are designed for
dollar cost averagers and used by dollar cost averagers exclusively.

40. The sales script also made false and misleading claims about the differences in “stable cash
flow” among the three types of mutual funds without mentioning TSPs. The agent was instructed to use a
sales chart that deceptively reflected that the monthly net cash flow of “no/low-load funds to be 4.7 times
as volatile as systematic plans during the same period.” The script then falsely laid the blame for the cash
volatility of no load and low-load funds on “speculators”, claiming “the speculator causes these high
fluctuations in cash flow.” At this point, the script first mentioned the 50% upfront sales load, asserting that
this fee was necessary to keep “speculators” from investing in the fund. The script falsely characterized
the load as “pre-paying the sales charges you would otherwise pay over the life of your investment” and
claims that the load serves as “a wall to keep out short-term speculators.” No mention is made of the effect
of early termination or loss of appreciation as a result of the loss of initial dollars to invest. The
accompanying instructions to the script state that this portion of the script was designed to "let the customer come to the conclusion that the only way to keep out speculators is the systematic plan load structure." The instructions also advised the agent:

Do not dance around the concept of charging a front-load. Be candid with the customer. Inform them of its purpose and stand behind the concept. It works, and is the only way that a fund manager can ensure that most of the shareholders are committed, long-term investors. Remember, the front-load creates the stable cash flow that the systematics enjoy. Help the customer understand and embrace the idea. Focus on the cost-effectiveness of a long-term investment.

41. The initial one-on-one sales meeting script uniformly concluded with a fraudulent discussion of "another significant benefit of the systematic plan"—the average length of time an investor dollar remains invested in a systematic plan. According to First Command's deceptive sales chart, uniformly used in the sales presentations, the average time an invested dollar remained in a systematic plan was 14.4 years, versus 2.6 years for no/low load funds and 3.1 years for load funds. The scripts instructions stated that "this section is where the investment is actually 'sold.' This is where you ask for commitment."

42. At this point in the script, the agent was required to ask what is referred to in the instructions as a "trial closing" question:

Agent: ...Would you prefer one of these funds that were designed exclusively for dollar cost averagers or some other type of mutual fund.

Ed: Definitely one of those five.

43. As set forth in the sales script, First Command sales representatives uniformly told prospective clients that "Systematic investment plans, because of the discipline they instill in the investor and the stable cash flow they provide the fund manager, are a product uniquely constructed for long term wealth accumulation." Before discussing the specifics of the SIP, including any mention of the plan's front sales load, the sales script for the initial meeting discussed the benefits of dollar-cost averaging but
deceptively claimed that "out of the thousands of funds" you can invest in, the firm's five SIPs are the "only five mutual funds that are designed to attract only dollar cost average investors." The script then introduced a continuing and false theme that no-load funds attract only "speculators," which prevents a no-load fund manager from having predictable cash flow and from making purchases for the fund at opportune times.

44. The initial sales meeting was clearly the most important step in the sales process. In fact, the accompanying instructions to the initial-meeting sales script proclaimed that "there is every reason to fully expect a vast majority of prospects to conclude the discussion by telling you, 'We want one of these systematic funds.' The real value of this discussion is the fact that it is completely conceptual—there is no need to discuss brokerage percentages, rates of return, etc." Thus the script instructs the First Command agent to exploit the customer's military training to obtain a sales commitment while concealing from the investor the true material facts concerning the investment.

Preparation of the FFP

(The Hook)

45. After the prospective customer expressed an interest in receiving a FFP, the agent completed a financial data form using First Command's proprietary planning software and electronically transmits the information, together with insurance, banking and specific systematic plan recommendations to the district and regional supervisors who passed the information to First Command. Unbeknownst to and concealed from the Class Members, First Command's written policies advised the agent to recommend systematic plans for every customer's FFP "when the customer has adequate monthly dollars to invest, there is no foreseeable interruption to regular investing, and a sufficient investment time horizon [at least 15 years] exists to achieve the desired objectives" which, of course, all the Class Members had. Once the agent's recommendation reached headquarters, the customer's information was reviewed and a detailed FFP was
prepared including a preordained SIP with a 50% sales commission. At the end of the process, a glossy FFP binder was sent back to the agent and presented to the customer.

**The FFP Presentation**

(The Close)

46. During the FFP Presentation, the agent provided the customer with the FFP personalized binder together with applications for the recommended SIP. A copy of the form papers of Plaintiff Michael McPhail's FFP, that except for the name is the same for every Class Member is attached hereto as Exhibit #11. The FFP presentation script contained many of the same statements as the initial meeting script, including the false statements that SIPs were the only investment designed to dollar cost averaging; that no-load funds attract “speculators;” and that “the first year load is a barrier...designed to keep out speculators.” The closing script also contained the following rejoinder should the prospective customer ask, “But couldn’t we dollar cost average into a no-load fund? The agent is prepared with the fraudulent scripted retort:

*Agent:* You could, but Ed, how long, on average, do assets remain in a no-load?

(Agent is instructed to point to Holding Period chart)

*Ed:* 2.6 years.

*Agent:* If the average no load investor withdraws their money from the fund after only 2.6 years, is the fund manager buying or selling stocks?

*Ed:* Selling.

47. The FFP presentation script contained other responses to objections and other trial closing questions. The prospective customers who do not ultimately purchase a SIP, citing a preference for a no-load fund, are referred to in the agent training materials as “no loaders.” Agents were warned not to allow...
these individuals to discuss First Command with any referrals they may generate as it would be “like voluntarily spreading a cancer in your market.”

Material Misstatements And Omissions

48. The First Command uniform and standardized sales scripts used to sell each Class Member made extensive use of false and fraudulent material statements about both no-load and non-systematic load funds. First by characterizing no-load funds as funds that “attract only speculators” and repeatedly referring to no-load funds as “popular” among “speculators”, and blaming “speculators” for the purported high cash volatility of no-load funds, the sales script gave the false and fraudulent impression that the no-load funds attract only “speculative investors” and that the transactions of these “speculative investors” prevent the no-load fund manager from making opportune investments. This message was reinforced by the scripts false characterization of First Command’s SIP’s as the only mutual funds that are designed for dollar cost averaging investors. In truth, a substantial number of no-load mutual funds successfully employ a dollar-cost averaging strategy and permit investors to make monthly periodic investments in relatively small amounts. While the First Command sales agents were instructed to acknowledge the availability of dollar-cost averaging in other mutual funds, if the investor first asks the question, they were instructed to conceal this fact if the prospect did not ask about it. If the customer did ask, the script required the sales agent to reply with the false statement that, because an average no-load fund investor withdraws his investment every 2.6 years, the fund manager is forced to sell stocks. In reality, no-load fund managers are not forced to sell stocks just because an investor redeems shares. They must do so only when there are net redemptions in the fund, and then only if the fund does not have sufficient uninvested cash on hand or cannot draw on a credit facility to meet the redemptions.

49. The initial meeting script also fraudulently stated that no-load funds “frequently have some
of the highest long-term costs.” In reality, the long term costs of owning no-load mutual funds are on average, substantially lower than the costs of owning load funds. Moreover, the no-load investment index funds offered by the TSP have even lower net expense ratios than the average no-load fund. Further, the claim that no-load funds frequently have some of the highest long-term costs was false because the statement failed to account for and concealed the impact of the 50% upfront sales load on the long-term costs of systematic plans, both in terms of the actual costs and the lost opportunity costs in terms of the overall return.

50. The initial meeting script also falsely stated that load funds are “generally used for large lump sum investments and are sold through investment professionals who manage many of the larger accounts in the country.” In truth, many conventional load funds and no-load funds offer incremental investment programs whereby investors can make monthly contributions as low as $50 per month. These mutual fund programs are known as “automatic investment programs,” “asset builders” or “account builders” and allow investors to purchase shares on a regular basis, including, for example, by electronically transferring money from a bank account or paycheck. Unlike the SIP’s at issue here, these funds allow investors to purchase directly from the mutual fund. Most mutual funds do not even charge a fee for setting up or terminating these payment plans.

51. The scripts and “cash-flow” and holding period charts also falsely conveyed the message that empirical data support the claim that no-load funds have nearly five times the cash-flow “volatility” as systemic plans and that an average no-load investor withdraws his cash from a no-load fund every 2.6 years. These statements, and the statement that no-load funds “have some of the highest long-term costs,” clearly implied that the SIP’s will perform better than other funds over the long term. That implied and intended message was false as there was no empirical evidence to support the assertion that SIP’s will outperform other funds due to low “cash-flow volatility.” Further, while the cash flow chart depicted a 15-year period,
the cash-flow volatility studies that were concealed from the Class Members showed a substantially smaller
variation in volatility amount the three categories of investors when shorter time periods are used, such as
five and ten years.

52. The cash flow and holding period charts also falsely stated that the source of the data for the
no-load funds and load funds was the Investment Company Institute ("ICI"). In truth, although First
Command obtained the cash flow and holding period data from the ICI, First Command – not the ICI –
produced the reports and made the calculations reflected in the charts. Moreover, the script referred to the
holding period chart as demonstrating that the average no-load investor withdraws his money after only 2.6
years. But the ICI data First Command used to prepare the chart warned that the data “cannot be used to
measure the holding period of a typical fund investor.” In fact, according to the ICI warning, “a small
number of shareholders can and likely do generate a disproportionate percentage of the total redemptions,
thereby masking the activity of the typical investor.”

53. First Command also falsely claimed that its “objective” recommendations in the FFP will
encompass not only investment products sold by First Command, but also “assets like 401(k) accounts....”
Moreover, as noted above in discussing the types of available investment funds, the script falsely stated there
are only three categories of funds - no load funds, load funds and systematic plans. In fact, the TSPs,
which are the equivalent to a 401(k) account, provides another category of investments funds available to
military personnel. The TSP investment funds are designed for long term investors and permit investors to
make periodic payments in a dollar-cost averaging strategy. However, unlike the SIPs, the TSPs do not
charge a sales load. Defendants failed to inform the Class Members about the TSPs, concealed their
advantages over SIPs, and made fraudulent and false statements about TSPs in order to steer investors away
from the more advantageous TSPs and sell SIPs.

54. Defendants’ script mischaracterized the 50% sales load as the only way a fund manager can
ensure that most of the shareholders are committed, long term investors. Indeed, First Command’s sales data reflect that the high upfront sales charge has not actually been effective in keeping the SIP investors committed to the plan for the full 15 year period, when in fact, over one third of the SIP investors dropped out before 15 years. Defendants fraudulently emphasized in their sales scripts that the 50% sales load would decrease to 3.33% upon completion of 180 investments and that the high front-end sales charges increased the likelihood that investors would finish the SIP plan. Of all the systematic plans sold from 1980 through 1987, however, only 43% had actually received payments totaling at least the original face amount of their plan (i.e., 180 monthly payments times the original monthly payment commitment) as of June 17, 2004. A full 35% of the plans had been terminated and only 22% remained open, including active and inactive accounts. Thus, those investors who terminated paid a higher effective sales charge depending on the number of investments made. For example, a customer who made a $50 investment each month for five years and then terminated his SIP paid a 10% effective sales charge, not including the additional fees and charges imposed during the second through fifth years.

55. First Command’s script also told clients that one of the purposes of the 50% sales load was to increase the likelihood that investors would finish the SIP plan and instill in the investor the necessary discipline to remain committed to the SIP plan and accumulate wealth. In addition, sales scripts used by First Command, falsely characterized the 50% load as benefiting the customer, not just by encouraging the customer to remain committed, but also by encouraging other fund investors to remain committed as well, thus creating stable cash flow into the fund, which would benefit all investors. Historically, however, as Defendants were well aware, a full one third of SIP investors had not remained committed to their SIP plan despite the high up-front sales load. First Command’s own internal studies which Defendants concealed from the Class, show that for SIP’s sold between 1980 and 1987 only 43% of the investors remained committed for the entire period by making all 180 payments. All of First Command’s statements regarding
the benefits of the 50% load were false and fraudulent in light of this high failure rate.

56. While telling the Class Members, as part of the script, that a benefit of the first year sales charge was to instill discipline, Defendants concealed the fact of the earnings lost by the investor from the cash that was not invested during the first year because of the loss of the compounding effect on the investment of these funds. An investor who made payments of $100 in his first 12 payments invested only $600 in the fund. The investor would be unable to earn any return on the remaining $600 for the life of the investment because this money was taken by First Command as a sales commission. While Defendants informed the Class Members that they were paying a 50% sales load, they failed to disclose the fact that an investor must make monthly contributions continually for at least 3½ years, with a hypothetical annual of return of at least 10% per annum during that period merely for the investor to break even. As the Defendants were well aware, this same investment in a no load fund would have yielded a 35% return in the same timeframe.

57. The typical FFP did not contain a recommendation that the customer invest in a TSP. This was true because First Command's "Statement of Policy" on the TSP states, "if the customer's income allows, Roth IRAs should generally be fully funded before any money is committed to the TSP." First Command’s stated reasons for the policy included, among other things, that military personnel do not receive employer-matching contributions and that large annual withdrawals from a TSP account in retirement may increase the investor’s income-tax liability. Investors were encouraged to invest in a SIP through a Roth IRA and to contribute the maximum amount allowable each year. Unlike a TSP investment which use pretax dollars and are not taxed until withdrawal, investment in a SIP through a Roth IRA are after tax dollars and contributions are not tax deductible. The Defendants concealed the investment advantage of the velocity of more dollars working for the investor and even contradicted their own mantra of the need for a disciplined long term investment plan.
58. First Command's sales script also made several misleading comparisons to both no-load and non-SIP load funds, as noted hereinabove. First, by characterizing no-load funds as funds that "attract only speculators," repeatedly referring to no-load funds as popular among "speculators", and blaming "speculators" for the purported high cash volatility in no-load funds, the sales scripts gave the false impression that no-load funds attract only speculative investors and that the transactions of these speculative investors prevent the no-load fund manager from making opportune investments. This message was reinforced by the scripts' characterization of First Command's SIPs as the "only mutual funds" that are designed to attract dollar cost averaging investors. Concealed from the Class Members was the fact that a substantial number of no-load mutual funds successfully employ a dollar-cost-averaging strategy and permit investors to make monthly periodic investments in relatively small amounts as dollar cost averaging investors.

59. While First Command sales agents were instructed to acknowledge the availability of dollar-cost averaging in other mutual funds—should the investor first ask the question—the rejoinder in the initial-meeting script stated incorrectly that, because an average no-load fund investor withdraws his investment every 2.6 years, the fund manager is forced to sell stocks. Concealed from the Class Members was the fact that no-load fund managers are not necessarily forced to sell stocks when investors redeem shares. They must do so only when there are net redemptions in the fund, and then only if the fund does not have sufficient cash on hand or cannot draw on a credit facility to meet redemptions.

60. The initial-meeting script also falsely stated that no-load funds "frequently have some of the highest long-term costs." Concealed from the Class Members was the fact that long-term costs of owning no-load funds are, on average, substantially lower than the costs of owning load funds. For example, the average total shareholder cost ratio for load funds between 1980 and 1997 ranged from a low of 2.11% to a high of 3.02%. In contrast, the total average shareholder cost ratio for no-load funds ranged from 0.78%
to 0.89%. [John D. Rea and Brian K. Reid, Trends in the Ownership Cost of Equity Mutual Funds, INVESTMENT COMPANY INSTITUTE PERSPECTIVE, November 1998, at 10]. Having won the trust of the Class Members through affinity marketing, there was no reason, however, that the agent’s scripted misrepresentations would be questioned by the Class Members.

61. Moreover, concealed from the Class Members was the fact that the no-load investment index funds offered by the TSP had substantially lower net expense ratios than the average no-load fund and the SIPs sold by First Command. For 2003, the net-expense ratio for each of the five TSP investment funds was 0.1%. According to Morningstar Inc., the average net-expense ratio in 2003 for the approximately 3000 no-load funds was 1.21%. The claim that no-load funds frequently have some of the highest long-term costs also failed to account for the impact of the 50% upfront sales load on the long-term costs of SIPs, both in terms of the actual costs and the lost opportunity costs in terms of the overall return from the loss of use of these funds.

62. The initial-meeting script also falsely stated that load funds are "generally used for large lump sum investments and are sold through investment professionals who manage many of the larger private accounts in the country." Concealed from the Class Members was the fact that many conventional load funds and no-load funds offer services in which investors may make monthly contributions as low as $50 per month. These services, known as "automatic investment programs," "asset builders," or "account builders," allow investors to purchase shares on a regular basis, including, for example, by electronically transferring money from a bank account or paycheck. Unlike the SIPs at issue here, these services allow investors to purchase shares directly from the mutual fund. Most mutual funds do not charge a fee for setting up or terminating these services.

63. The scripts and "cash-flow" and "holding-period" charts conveyed the message that empirical data supports the claim that no-load funds have nearly 5 times the cash-flow "volatility" as SIPs and that the
average no-load investor withdraws his cash from a no-load fund every 2.6 years. These statements, and the statement that no-load funds "have some of the highest long term costs," clearly implied that the SIPs would perform better than other funds over the long term. However, there was no empirical evidence to support the inference that SIPs will outperform other funds due to low "cash-flow volatility." Further, while the cash-flow chart depicted a 15-year period, internal cash-flow volatility studies concealed by First Command from the Class Members show a substantially smaller variation in volatility among the three categories of investments when shorter time periods are used, such as five and 10 years. One concealed internal study calculated that, in the five-year period from 1998 to 2003, cash-flow volatility of load funds and no-load funds was, respectively, 2.1 and 1.6 times (not 5 times) greater than that of SIPs. Another concealed internal study showed that, in the 10-year period from 1993 to 2003, cash-flow volatility of load funds and no-load funds was, respectively, 3.6 and 2.4 times (not 5 times) greater than that of SIPs. The Class Members were unaware of the true facts and had no reasonable means of discovering them until after December 15, 2004.

64. Finally, the cash-flow and holding-period charts noted that the source of the data for no-load funds and load funds is the Investment Company Institute ("ICI"). In fact, although First Command obtained the cash-flow and holding-period data from ICI, it was First Command, and not ICI, that produced the reports and made the calculations reflected in the charts. Moreover, the script referred to the holding-period chart as demonstrating that the average no-load investor withdraws his money after only 2.6 years. But the ICI data First Command used to prepare the chart warned that the data "cannot be used to measure the holding period for the typical fund investor." The Class Members were not told that according to the ICI warning, "a small number of shareholders can, and likely do, generate a disproportionate percentage of the total redemptions, thereby masking the activity of the typical investor."
RELIANCE ON THE MATERIAL FRAUDULENT
MISSTATEMENTS AND CONCEALED FACTS

65. Since at least January 1999, Defendants have used a standardized script and an affinity marketing program to sell the First Command SIPs to military personnel, which has included uniform, false and misleading marketing materials and the uniform concealment of material facts from the Class Members. Defendants knew that each of these representations were false and that their omissions were misleading and intended for Plaintiffs and the Class Members to rely on them. Plaintiffs and each of the Class Members did in fact rely on Defendants’ false representations and Defendants’ fraudulent concealment of the true facts in agreeing to invest with First Command and would not have invested with First Command had they known the true facts. Indeed, because there is, in truth, no objective financial advantage to the SIP over any other mutual fund investments that do not charge the exorbitant and unconscionable 50% commission, the SIP is objectively not a sound or suitable investment alternative for anyone and no reasonable investor would objectively purchase an SIP unless they had been deceived and the true facts about the SIP and other available mutual fund investments had not been concealed from them which occurred for each and every class member.

66. Defendants used their uniform sales scheme and standardized script to persuade each of the plaintiffs to invest with First Command. Defendants made the same fraudulent misrepresentations to each of Plaintiff as they made to each of the other Class Members and concealed from Plaintiffs the same material facts they concealed from each of the other Class Members. Each of the Plaintiffs in fact relied on Defendants’ fraudulent representations and concealments in deciding to invest with First Command and would not have invested in First Command if the misrepresentations had not been made to them and had the material facts been disclosed to them.

67. Each of the Plaintiffs and the members of the Class attended a one-on-one sales presentation
with their respective First Command sales representative and each of them completed a questionnaire which
was forwarded by the First Command sales agent to First Command’s headquarters where a FFP was
prepared for each Plaintiff and every member of the Class, each of which uniformly recommended purchase
of a First Command SIP. Each Plaintiff and Class Member also attended another meeting with the First
Command sales representative during which they were presented with the FFP and subsequently agreed to
purchase the First Command SIPS.

68. Consistent with the fraudulent scheme set forth herein, the First Command representative
with whom each of the Plaintiffs and Class Members met made the following false and fraudulent
representations to Plaintiffs and the Class at these meetings, in accordance with First Command’s
mandatory sales scripts upon which all Plaintiffs and Class Members relied to their detriment and had they
and the Class Members known the true facts, they would not have bought an SIP from First Command:

a. No-load funds are funds that “attract only speculators”;
b. First Command’s SIP’s First Command’s SIP’s are the only five mutual funds that are
designed to attract dollar cost averaging investors;
c. Because no-load funds attract speculators the no-load fund manager must sell stocks when
investors withdraw money from a no-load fund;
d. According to data provided by the Investment Company Institute, the average no-load
investor withdraws his money after only 2.6 years;
e. No-load funds have nearly five times the cash-flow “volatility” as systemic plans (implying
that First Command SIP’s will out-perform no-load funds);
f. No-load funds “frequently have some of the highest long-term costs”;
h. No-load funds are not suitable for long term investment or dollar-cost averaging investing;
i. Traditional load-funds are “generally used for large lump sum investments and are sold

CONSOLIDATED AMENDED COMPLAINT
through investment professionals who manage many of the larger accounts in the country." (implying that such funds are unsuitable for small periodic investments for a dollar-cost averaging investment strategy);

j. First Command made “objective” recommendations in the FFPs which are custom tailored to the specific individual needs of each investor and encompass not only investment products sold by First Command, but also “assets like 401(k) accounts....”;

k. First Command’s SIP was “the best investment option for long term wealth accumulation” for each Plaintiff;

l. The 50% sales load was necessary to ensure and effectively ensured that most of shareholders would be committed long term investors;

m. The purpose and effect of the 50% sales load was to increase the likelihood that investors would finish the SIP plan and instill in the investor the necessary discipline to remain committed to the SIP plan and accumulate wealth; and,

n. The 50% sales upfront load was beneficial to the SIP investors.

69. Plaintiffs and each and every Class Member were unaware of the falsity of these material misrepresentations and relied upon these misrepresentations in deciding to invest in the First Command SIPs. If Plaintiffs and the Class Members had known that these representations were false, they would not have purchased the First Command SIPs.

70. Consistent with the fraudulent scheme set forth herein, the Defendants also knowingly and intentionally concealed the following material facts from each of the Plaintiffs and the Class Members that were never disclosed to Plaintiffs or any Class Members at any of the sales presentations or meetings with First Command representatives or in any of the written material provided to Plaintiffs and the Class Members by First Command and had they known the concealed material facts, would not have bought the
a. Despite their promise to provide objective "custom tailored" investment advice including advice about investment products not sold by First Command, Defendants actual intent was to induce every Class Member to purchase a First Command SIP;

b. First Command's written policies required its sales agents to recommend systematic plans for every customer's FFP "when the customer has adequate monthly dollars to invest, there is no foreseeable interruption to regular investing, and a sufficient investment time horizon [at least 15 years] exists to achieve the desired objectives."

c. The long-term costs of owning no-load funds are substantially lower than the costs of long term costs of owning a First Command SIP investment or a load fund;

d. The no-load investment funds offered by the TSP had substantially lower net expense ratios than the SIPS sold by First Command as well as substantial tax advantages First Command's SIPS did not have;

e. Many conventional load funds and no-load funds offer services in which investors may make monthly contributions as low as $50 per month as dollar-cost averaging investors. Unlike the SIPS at issue here, these services allow investors to purchase shares directly from the mutual fund. Most mutual funds do not charge a fee for setting up or terminating these services;

f. Mutual fund managers are not forced to sell stocks whenever investors redeem shares. They must do so only when there are net redemptions in the fund, and then only if the fund does not have sufficient cash on hand or cannot draw on a credit facility to meet redemptions;

g. The actual impact of the 50% upfront sales load on the long-term costs of the SIPS, both in terms of the actual costs and the lost opportunity costs in terms of the overall return;

h. Over one third of First Command SIP investors had not remained committed to their SIP
i. First Command's own internal studies showed that for SIP's sold between 1980 and 1987 only 43% of the investors remained committed for the entire period by making all 180 payments. Of the remaining 57%, 35% were terminated and 22% remained open, including active and inactive accounts;

j. Defendants internal studies showed that a SIP investor must make monthly contributions continually for at least 31/2 years, with a hypothetical annual of return of at least 10% during that period merely for the investor to break even;

k. The 50% load had a severe detrimental effect on the SIP investors long-term capital appreciation because of the lost investment opportunity on the funds taken by Defendants during the first year of the SIP, including the lost opportunity for compounded earnings on those funds;

l. The Investment Company Institute warned that their data that First Command used as the basis for its claim that the average investor in no load-funds withdrew his funds after only 2.6 years "cannot be used to measure the holding period of a typical fund investor." and,

m. The SIP is not a sound or suitable investment alternative for any investor in light of the 50% load and the more advantageous alternatives.

71. The Plaintiffs and the other Class Members had no knowledge of these true facts concealed by Defendants and relied upon these representations and their lack of knowledge of these concealed facts to invest in the First Command SIPS. If they were aware of the true facts, they would not have purchased
the First Command SIPs. Highlighted below in paragraphs 72 to 76 are but a few examples of the application of some of the aspects of Defendants' fraudulent script and uniform sales scheme to the named Plaintiffs.

72. Plaintiff Michael McPhail was contacted in October 2000 by First Command representative John Ball, who had obtained Mr. McPhail's name from an existing First Command investor. After an initial visit to First Command's Mission Valley offices and lunch at a nearby restaurant, Mr. McPhail agreed to attend a sales presentation at the Mission Valley office a few days later. A few days after this initial meeting, the First Command representative met him at the office in Mission Valley and presented the sales presentation as scripted by First Command and as set forth herein above.

   a. Mr. Ball's sales presentation included the PowerPoint presentation which explained investing basics followed by First Command's three pillars of investing (mutual funds, life insurance, and savings). The presentation covered "the advantages of dollar cost averaging" and Mr. Ball explained that no-load funds like the ones Mr. McPhail was interested in, and had previously invested in, were bad investments because they encourage "speculators" and make it very difficult for the fund managers to make opportune investments because investors in those funds were always selling their investments. The presentation also included charts which Mr. Ball explained were evidence that no-load funds had high cash volatility while systematic plans did not. Mr. Ball then proceeded to explain how a front loaded fund, like the one he recommended, was much better because the fund manager can rely on a steady flow of money when making decisions and does not have to worry about having to sell stocks when investors sell like the fund managers of no-load funds do because of speculators. Mr. Ball explained to Mr. McPhail that investing with the up-front sales load would insure that he stayed committed to the plan and would make sure that those investing in these plans would be committed, long term investors.

   b. The concepts presented by Mr. Ball seemed to make sense to Mr. McPhail at the time
of the presentation, and he believed he had previously made a very bad choice by investing in no-load funds.

Mr. Ball concluded by telling Mr. McPhail that he wanted to help him come up with a financial plan and wished someone had done the same for him when he was his age. Mr. McPhail agreed with Mr. Ball, and completed a worksheet to determine his current financial situation. Within a few days Mr. Ball called Mr. McPhail and said that he had a personal financial plan for him. Mr. McPhail visited the San Diego office, again, and was presented with a First Command financial plan. He was told that he should cash out his no-load IRA with USAA and roll it into the Destiny II fund. In addition, he was told that he needed to start a systematic investment plan in Destiny II. He was a little apprehensive about this plan but Mr. Ball assured him that the First Command SIP was by far the best possible thing that he could do with his investments and that he should trust him. Mr. McPhail specifically relied upon Mr. Ball’s representations in making the decisions he made. Mr. McPhail was never told that he would still continue to pay an administrative fee every year on top of the 50% charge in the first year. In addition, he was not told that the 50% charge was to be paid to First Command.

c. In early 2002, Mr. McPhail learned David Armstrong became his representative at First Command. In approximately July of 2002 he again visited the First Command office in Mission Valley/San Diego whereby David Armstrong, as a representative of First Command, convinced him to “restate” his account. Mr. Armstrong suggested Mr. McPhail increase his systematic investments and based upon this suggestion, he did so by increasing his systematic monthly contribution which was directly deducted from his pay. Mr. McPhail specifically inquired about whether or not the Thrift Savings Plan (TSP) would be a better option for his investment dollars, to which the First Command sales representative responded that the systematic investment plan he was currently invested in was a better option than the TSP and that he would be “better off” increasing his monthly investments in the systematic plan instead of investing through the TSP. Mr. McPhail specifically relied on these representations in making the decision
to restate the account, which resulted in another 12 month’s of commissions and fees totaling 50% of the additional amount of the investment.

d. In reliance on Defendants’ fraudulent misstatements and concealed facts, Mr. McPhail opened and maintained three SIP accounts with First Command. In each of these accounts, he made monthly contributions of which sales charges were paid monthly over the first 12 months of the account. With respect to Account 1, the monthly investment was $250.00. Of this monthly payment of $250.00, $125.00 was paid to First Command as a sales charge every month. In addition, upon rolling over an IRA account he held previously, he was charged $999.99 in fees. The total amount of sales charges and other fees paid on Account 1 was therefore $2499.99 over the first year. With respect to Account 2, the monthly investment was initially $150.00 per month and began on January 2nd, 2002. Relying on the representations from First Command, he then restated his monthly investment and increased his investment amount to $450.00 on or about August of 2002. Of his original monthly investment of $150.00, $75.00 was paid to First Command as a sales charge every month for seven months. After seven months, when his monthly investment was increased to $450.00, $225.00 was paid to First Command each month for the following six months. The total amount of sales charges paid on Account 2 was therefore $1875.00 over the first year and one month. With respect to Account 3, the monthly investment was initially $200.00 per month and began in August of 2002. Of this monthly payment of $200.00, $100.00 was paid to First Command as a sales charge every month. These charges were automatically withdrawn from his account beginning in August of 2002 and continuing until July of 2003. The total amount of sales charges paid on this account is therefore $1200.00 over the first year. In total Mr. McPhail paid First Command $5574.99 in SIP sales charges and other fees.

73. Mr. Kimnach first heard about First Command in late 1998 while attending Navy flight school in Pensacola, Florida at which time, a First Command sales representative, Mark Denunzio, began
I calling Mr. Kimnach regarding investment opportunities. Denunzio repeatedly left voice messages on his answering machine asking to take him to lunch to talk about some things. As a young Ensign in the Navy, freshly out of college, Mr. Kimnach knew he should start investing his money, but he did not know much about the market or where to start. When Mr. Denunzio contacted Mr. Kimnach he indicated that he was a retired Lieutenant Commander in the Navy. As a junior officer Mr. Kimnach had a great amount of respect and trust for higher-ranking officers and began to place his trust in Mr. Denunzio.

a. Mr. Kimnach met Mr. Denunzio at his office in Pensacola and they went across the street to a local bar and grill restaurant where Mr. Denunzio treated Mr. Kimnach to lunch. Mr. Kimnach told Mr. Denunzio he would have to think about the First Command investments. Mr. Denunzio continued to call Mr. Kimnach over the next couple weeks. After another lunch meeting, they went to First Command’s office and Mr. Denunzio showed him a series of tables and graphs. Mr Denunzio explained that the charts were evidence that no-load funds had high cash volatility while systematic plans did not. Mr. Denunzio then proceeded to explain how a front loaded fund, like the one he recommended, was much better because the fund manager can rely on a steady flow of money when making decisions. Mr. Denunzio explained that the fund managers did not have to worry about selling stocks when investors sell like the fund managers of no-load funds do because of speculators. After a couple of hours of discussion, and relying solely on Mr. Denunzio’s representations, Mr. Kimnach agreed to invest in First Command SIPs.

b. Over the next few months, Mr. Kimnach began to learn more about investing through magazines and other sources and began to question the 50% front-loaded mutual fund. Mr. Kimnach scheduled a meeting with Mr. Denunzio with the intent to cancel his SIP. Almost three hours after walking into Mr. Denuzio’s office, Mr. Kimnach left the First Command office with the First Command plan completely in tact. Mr. Denuzio had convinced him based upon the First Command script that the 50% loaded fund outperformed lower cost funds in the long run, and that he and First Command were going to...
take care of him for the rest of his life. Relying on these statements, Mr. Kimnach kept all his investments with First Command.

c. In the fall of 1999, Mr. Kimnach relocated to California, and First Command assigned a San Diego sales representative, Eric Wignes, to his account. In the spring of 2000, Mr. Wignes conducted an annual review. A year later, when the Roth IRA maximum contributions limit went up, Mr. Kimnach was again contacted by Mr. Wignes, and Mr. Kimnach restated and increased his SIP contribution after being told about the benefits of investing with First Command.

d. In reliance upon Defendants fraudulent misstatements and concealed facts, Mr. Kimnach opened and currently has two SIP accounts with First Command. In each of these accounts, he made monthly contributions of which sales charges were paid monthly over the first 12 months of the account. In Account 1, the monthly investment was $100.00. Of this monthly payment of $100.00, $50.75 was paid to First Command as a sales charge every month. The total amount of sales charges and other fees paid on this account was therefore $617.25 over the first year. In addition to these charges, Mr. Kimnach continued to pay 3.72% of my monthly contributions as a sales charge as well as a monthly custodian fee of $0.75. In Account 2, the monthly investment was initially $166.66 per month. Mr. Kimnach then restated the monthly investment and increased the investment amount to $250.00 on or about February 19, 2002 as discussed above. Of this original monthly investment of $166.66, $84.08 was paid to First Command as a sales charge every month for the first year. When the monthly investment was increased to $250.00, First Command charged a sales charge of $500.06. The total amount of sales charges paid on this account is therefore $1509.02. In addition to these charges, Mr. Kimnach paid and continues to pay 1.52% of my monthly contributions as a sales charge as well as a monthly custodian fee of $0.75. In total Mr. Kimnach paid First Command a total of $2126.27 in sales charges, not including the current monthly fees.

74. From approximately March 2004 until June 2004, Plaintiff Morrison, was approached by
Major Cornelius on several occasions while Cornelius was on base. Cornelius asked Morrison to meet with him about financial planning issues. Cornelius would approach Morrison during work hours and was given access to Morrison’s office on the base. After repeated contacts, Morrison and his wife agreed to meet with Cornelius.

a. Cornelius emphasized his military experience and career. He told the Morrisons that, as a Major, he understood the needs and challenges facing military families, having spent his career in the military. He relied on this military affinity to persuade the Morrisons to trust First Command. Cornelius told the Morrisons that systematic investment plans were the best long term investments. He said that the systematic investment plans were dollar cost averaging plans. He said that the fifty percent (50%) front end load on the first twelve (12) investments would make the Morrisons commit to completing the Plans.

Believing the Major, the Morrisons agreed to have a FFP prepared for their family.

b. The First Command FFP recommended that the Morrisons each invest in a Fidelity Destiny Plans II. The recommended monthly investment was the maximum allowed under the law for a Roth IRA. The FFP also recommended that the Morrisons each establish a Roth IRA and that the Plan be the principle asset of the Roth IRA. Cornelius told the Morrisons that they would only pay a fifty percent (50%) front load, but did not disclose that First Command would receive a this fee.

c. During meetings with Cornelius in May 2004, Jennifer Morrison asked about other investment options such as no-load funds. Cornelius said that no-load funds attract “speculators” and have higher long term costs than a SIP. Cornelius showed the Morrisons charts concerning the average holding period. Although representing that they were providing objective financial recommendations, neither the FFP nor Cornelius mentioned any other investment options. The only investment recommended was the systematic investment plans.

d. In reliance upon Defendants fraudulent misstatements and concealed facts, the
Morrison's followed First Command's advice and on or about July 12, 2004 purchased two Fidelity Destiny Plans at the recommended face values of $59,999.40. The Fidelity Destiny Plan II-N is a systematic investment plan.

75. Scott Wagner was invited to attend a First Command financial planning seminar in March 2004. He was treated to a dinner at First Command's expense for attending the financial planning seminar. During the seminar, the First Command representative presented charts discussing the principles of "dollar cost averaging" and discussed the financial strategy and philosophy of First Command with an emphasis on "disciplined" investments. The First Command representative emphasized the First Command's knowledge and understanding of military life. This statement of investment philosophy included the uniform claim that the First Command "assist[s] clients in specifically identifying their financial goals and then recommend appropriate investments to help meet these goals."

a. After the financial planning seminar, Scott Wagner and Krystin Wagner had a one-to-one meeting with Major Cornelius. In fact, the Wagners had several discussions with Cornelius prior to purchasing the insurance and investment products, including the Roth IRA, marketed by First Command. During a one-to-one meeting in May 2004, Cornelius emphasized that he understood the needs of military families since he had spent his career in the military. He utilized this military affinity to persuade the Wagners to purchase plans and insurance with a high costs and expenses. Cornelius told the Wagners that the best dollar cost averaging investment was the systematic investment plan. He said that fifty percent (50%) charge on the first twelve (12) investments benefitted the Wagners because the charge would force them to complete the Plan. He said that no-load funds had high long term costs and that they lacked stable cash flows. Cornelius showed the Wagners charts that described the "average holding period" in no-load funds. He also said that TSP was not a good investment.

b. In reliance upon Defendants fraudulent misstatements and concealed facts, the

CONSOLIDATED AMENDED COMPLAINT
Wagner purchased two Fidelity Destiny II Plans at the recommended face value. Scott Wagner asked Cornelius if there were other investment out there that they could get into and Cornelius said "no this is the only thing that fits." On or about June 10, 2004, the Wagners agreed to purchase two Fidelity Destiny II-N Plans at a face of $59,999.40.

76. In or about July 2003, Plaintiff Candace Hurley was approached at her place of work in the office of her commander, CPT James McPherson, who introduced her to Don Toscano and recommended Toscano's services and said that she should call him. At the time, plaintiff Candace Hurley was assigned to a military base near Killeen Texas. The Hurleys then met with Toscano for a one to one meeting. During the meeting, Toscano discussed "dollar cost averaging" and the advantages a disciplined approach to investment. The First Command representative emphasized the First Command's understanding of and affinity with military personnel.

    a. Toscano gave the Hurleys literature concerning financial planning. The brochure claimed that First Command offered nothing less than the best investment options. During one of the meetings between Toscano and the Hurley plaintiffs, Toscano mentioned the systematic investment plans and the need for whole life insurance. He explained that the systematic investment plans were superior to no-load funds. Toscano said that no-load funds attract speculators, had volatile cash flow and higher long term costs. Toscano persuaded the Hurley to agree to the preparation of a FFP.

    b. Consistent with the scheme described above, First Command prepared a FFP for the Hurleys which recommended, inter alia, the purchase of two systematic investment plans. Toscano explained that systematic investment plans were the best investment under the dollar cost averaging strategy. He also explained that the fifty percent (50%) commission on the first twelve (12) installments instilled discipline and would help them complete the plan. Toscano also showed the Hurleys a chart describing the holding period of the average investor in no-load funds. Toscano told the Hurleys that the chart demonstrated that
no-load funds had volatile cash flow. Finally, Toscano told the Hurleys that they would only have to pay the fifty percent (50%) commission during the first year and that they would never have to pay any other fees, expenses or commissions after that.

c. The First Command FFP did not make any mention of no-load funds and more specifically, the availability of TSP. Upon inquiry, Toscano acknowledged TSPs, but strongly discouraged the Hurleys from investing through the TSP. The FFP presented First Command's “recommendations” as an objective analysis of the Hurleys investment options. Based upon the FFP, on or about October 16 2003, the Hurleys purchased three systematic investment plans from First Command.

d. In reliance upon Defendants fraudulent misstatements and concealed facts, Candace Hurley purchased the Fidelity Destiny II-N Plan at a face value of $45,000 and a Pioneer Independence Plan at a face value of $18,000. The Plan sold to Neil Hurley was the Pioneer Independence Fund at a face value of $45,000. The Hurleys have paid the fifty percent (50%) commission on the first twelve (12) installments.

DEFENDANTS' SCIENTER AND JOINT AND SEVERAL LIABILITY

77. Each of these Defendants had access to material inside information which disclosed the truth about First Command SIPs, and were able to control the acts of the corporate defendants. The Defendants and each of them not only knew about the existence of this fraud, but also knowingly participated in the creation, design, direction and implementation of the standardized and fraudulent sales script, the training of the sales personnel, the affinity marketing structure, and the material misrepresentations and omissions of material facts, and therefore knew that they were participating as principals in the fraudulent scheme for which they had the power and control to continue or discontinue. The commission of this fraud could not have occurred without the clear and precise directions from the individuals defendants as to how and in what way to accomplish the fraudulent mission to victimize susceptible investors through target marketing.
directed towards newly commissioned military officers and young service personnel. In fact, when told by
the NASD of script deficiencies, the Defendants failed and refused to adequately correct the deficiencies
noted by the NASD.

78. This fraudulent scheme could not have occurred but for the joint participation of each and
every Defendant in the planning, devising, developing and implementing of the uniform and standardized
sales script using deliberate misstatements of material facts and intentional concealment of material facts
to prey upon Plaintiffs and the other members of the Class. As a result, all of the Defendants are principles
in the alleged violations and are jointly and severally liable for the losses as a willing and knowing
participant in the scheme to defraud. There exists, at all times mentioned herein, a fraudulent, unjust and
illegal unity of interest between defendants Lamar C. Smith, Howard M. Crump, James Peterson, Richard
Giles, and Martin Durbin and Defendants First Command Financial Services and First Command Financial
Planning, such that any individuality and separateness between defendants Lamar C. Smith, Howard M.
Crump, James Peterson, Richard Giles, and Martin Durbin and Defendants First Command Financial
Planning and First Command Financial Services have ceased. This is true because all Defendants worked
jointly and cooperatively to perpetrate the illegal and fraudulent SIP scheme described herein in the name
of the corporate defendants. In particular, Defendants Lamar C. Smith, Howard M. Crump, James Peterson,
Richard Giles, and Martin Durbin operated Defendants First Command Financial Planning and First
Command Financial Services as mere shams because the individual defendants dominated and controlled
the corporate defendants and directed the activities of these corporate defendants in such a manner so as to
perpetuate the fraud and illegal conduct described herein. Accordingly, each Defendant is jointly and
severally liable for the acts of all other Defendants. Each of these Defendants knew that the statements made
in the sales script were not based on principles of fair dealing, were not made in good faith, and did not
provide a sound basis for evaluating the Class Members financial needs. The Defendants also knew that the

CONSOLIDATED AMENDED COMPLAINT
sales script omitted material information, contained exaggerations, contained unwarranted and inaccurate claims and made inappropriate projections of past performance as herein enumerated, in violation of NASD Rules of Conduct 2110 and 2210. Defendants knew they must comply with these rules and cannot claim lack of knowledge of these rules of conduct that they violated.

79. Defendant First Command Financial Services (parent) and Defendant First Command Financial Planning (wholly owned subsidiary) are, and at all times herein mentioned were, the alter egos of each other and Defendants Lamar C. Smith, Howard M. Crump, James Peterson, Richard Giles, and Martin Durbin, and there exists, and at all relevant times mentioned has existed, a unity of interest and ownership between defendants such that any separateness between them has ceased to exist, in that defendants Lamar C. Smith, Howard M. Crump, James Peterson, Richard Giles, and Martin Durbin completely controlled, dominated, managed and operated both corporate defendants to perpetuate the fraud as herein alleged and thereby fraudulently allowed the Defendants to profit from the fraud. As a result of their joint and several participation in the fraudulent investment scheme set forth herein, the Defendants are jointly and severally liable for the losses of Plaintiffs and the Class. But for their knowing and intentional participation in this fraud, the Defendants could not have successfully defrauded the Plaintiffs and the Class.

80. Adherence to the fiction of the defendant corporations as separate entities and as entities distinct from defendants Lamar C. Smith, Howard M. Crump, James Peterson, Richard Giles, and Martin Durbin and each other would permit an abuse of the corporate privilege and would sanction the very fraud and injustice herein alleged.

**CLASS ACTION ALLEGATIONS**

81. The Class period is January 31, 2000 through December 31, 2004 ("Class Period"). Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of
all persons who, during the Class Period, purchased a SIP from First Command, or one of its predecessors in interest or made a SIP payment or increased their monthly SIP payments, and still owned their SIP as of December 15, 2004 ("Class Members"). Excluded from the Classes are the members of the federal judiciary sitting in judgment of this case, their immediate family members and their staff, defendants, the employees directors and officers of the corporate defendants and their families and affiliates.

82. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court.

83. Plaintiffs will fairly and adequately represent and protect the interests of the Class Members and have retained counsel competent and experienced in class action litigation. The interests of the Class coincide with, and are not antagonistic to, those of the Plaintiffs.

84. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

(a) Whether the 1934 Act was violated by Defendants;
(b) Whether Investment Advisers Act was violated by Defendants;
(c) Whether the Releases have a binding legal effect on the Defendants as the findings of an administrative agency;
(d) Whether Plaintiffs were damaged as a result of the Defendants violations; and,
(e) Whether Plaintiffs are entitled to judgment in their favor as a result of the administrative findings and rulings of the SEC.

85. A class action is superior to other methods for the fair and efficient adjudication of this controversy and will provide substantial benefit both to the parties and to the court system. Since the practices Defendants engaged in are uniform and common to all members of the Class, judicial economy
will be promoted by treating this case as a class action. It would not be economically practicable for Plaintiff or Class Members to maintain individual actions because of the relatively small amounts at issue in a given transaction.

86. The expenses and burdens of litigation would make it costly and inefficient for Class Members to seek redress on an individual basis for the wrongs done to them. When the liability of Defendants has been adjudicated, the claims of all Class Members can be administered efficiently and/or determined by the courts.

87. This action will promote an orderly and expeditious administration of Class claims; promote economies of time, effort and resources; and promote uniformity of decisions. A multitude of individual actions would work a hardship on the court system and would be impractical to coordinate by any means other than a class action. Further, the monies received and retained by Defendants can be quantified objectively by reference to Defendants' business records.

88. The claims of Plaintiffs are typical of the claim of the Class Members. Like each and every Class Member, the named Plaintiffs purchased SIPs and/or made payments to their SIPs based upon Defendants' standardized script containing misstatement and omissions of material facts, as set forth hereinabove.

FIRST CLAIM FOR RELIEF

(Violation of Section 10(b) of the 1934 Act and Rule 10-b5 by all Defendants)

89. Plaintiffs incorporate by reference the allegations set forth above.

90. During the Class Period, Defendants disseminated or approved the false statements specified above, which they knew or recklessly disregarded were materially false and misleading in that they
contained material misrepresentations and concealed and failed to disclose material facts necessary it order
to make the statements made, in light of the circumstances under which they were made, not misleading.

Defendants admitted this conduct as set forth in the Releases, and the violations of § 10(b) of the 1934 Act
and Rule 10b-5 should be found to have occurred as a matter of law as a result of the Defendants admissions
and the administrative findings of the SEC, as set forth in the SEC Proceedings. Exhibit #1, hereto.

91. Defendants violated § 10(b) of the 1934 Act and Rule 10b-5 in that they:

(a) Employed devices, schemes, and artifices to defraud;

(b) Made untrue statements of material facts, or omitted to state material facts necessary
in order to make statements made, in light of the circumstances under which they were made, not
misleading; and/or,

(c) Engaged in acts, practices, and a course of business that operated as a fraud or deceit
upon plaintiffs and others similarly situated in connection with the purchases of publicly traded securities
during the Class Period.

92. Plaintiffs and the Class have suffered damages in that, in reliance on these false and
misleading statements and concealment of material facts, paid excessive sales commissions and fees to
Defendants in connection with the purchase of publicly traded securities. Plaintiffs and the Class would
not have invested through First Command if they had been aware of the true facts that were not revealed

93. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and the other
members of the Class suffered damages in connection with their purchases of publicly traded securities
during the Class Period.
SECOND CLAIM FOR RELIEF

(Violation of Section 12(a)(2) of the 1933 Act by First Command)

94. Plaintiffs incorporate by reference the allegations set forth above.

95. Under Section 12(a)(2) of the Securities Act of 1933, First Command was a seller, offeror, and/or solicitor of the mutual fund investment plans. First Command solicited the sale of these securities to each of the Class Members for First Command's own financial benefit.

96. The statements referred to hereinabove were made in sales materials that constitute a Prospectus as that term is defined in Section 2(a)(10) of the 1933 Act, 15 U.S.C. § 77b(a)(10) ("the First Command Prospectus") and/or in scripted oral representations made by First Command to the Class Members. The First Command Prospectus and First Command's scripted oral representations to the Class Members contained untrue statements of material facts, omitted other facts necessary to make the statements made not misleading and failed to disclose material facts. First Command acted to sell the mutual fund investment plans by way of the First Command Prospectus and the scripted oral representations. Its actions included preparing the First Command Prospectus, the scripted oral presentations and other material used in the sale of the mutual fund investment plans which were false and misleading because they did not disclose the material adverse facts set forth above.

97. Plaintiffs and the other members of the Class purchased the mutual fund investment plans pursuant to the First Command Prospectus and the scripted oral representations. Plaintiffs and the other members of the Class did not know, and in the exercise of reasonable diligence could not have known, of the untruths and omissions contained in or made in connection with the First Command Prospectus and the scripted oral representations.

98. By reason of the conduct alleged herein, First Command violated Section 12(a)(2) of the 1933 Act. As a proximate result of First Command's violations Plaintiffs and each of the Class Members

CONSOLIDATED AMENDED COMPLAINT
have been damaged.

THIRD CLAIM FOR RELIEF

(Violation of The Investment Advisers Act, 15 U.S.C. § 80b-1 et seq.
against First Command)


100. First Command held itself out to be an investment adviser and provided financial planning
and investment advice services that were not merely incidental to the sale of securities as a securities
brokers. Defendants received compensation from Plaintiffs and the Class Members that was not limited
to commissions from the sale of securities.

and 17 C.F.R. 275.206(4)-1 which prohibits investment advisers from “engaging in any transaction,
practice, or course of business which operates as a fraud or deceit upon any client or prospective client.”
First Commands’ misrepresentations and failure to disclose material information constitutes “fraud or
deceit” under the Investment Advisers Act. As fiduciaries, investment advisers have an affirmative duty
of utmost good faith, and full and fair disclosure of all material facts and First Command violated that duty
through the acts and omissions alleged herein.

102. Pursuant to 15 U.S.C. § 80b-15, Plaintiffs and the Class Members are entitled to rescission
of their contracts with First Command and restitution to the Plaintiffs and the Class Members.

103. As set forth fully hereinabove, First Command’s conduct in the marketing and sale of indirect
securities in the form of SIPs to the Plaintiffs and the other members of the class was fraudulent and
deceitful as set forth above. As a result of Defendants conduct, Plaintiffs invested their money in securities
in the form of SIPs through First Command, and were injured thereby.

CONSOLIDATED AMENDED COMPLAINT
PRAYER FOR RELIEF

Plaintiffs pray for relief as follows;

1. For certification of the Class;
2. For damages on the First and Second Claims for Relief;
3. For recission and restitution on the Third Claim for Relief;
4. For attorney and paralegal fees;
5. For prejudgment interest as allowed by law;
6. For costs of suit incurred herein; and,
7. For such other relief as the Court deems just and proper.

DATED: July 22, 2005

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CONSOLIDATED AMENDED COMPLAINT
Plaintiffs demand a trial by jury.

DATED: July 22, 2005

JURY DEMAND

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Attorneys for Plaintiffs
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934
Release No. 50859 / December 15, 2004

Securities Act of 1933
Release No. 8513 / December 15, 2004

Admin. Proc. File No. 3-11770

In the Matter of
FIRST COMMAND FINANCIAL PLANNING, INC.,
Respondent.


I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against First Command Financial Planning, Inc. ("First Command" or "Respondent").

II.

In anticipation of the institution of these proceedings, First Command has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, First Command consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 ("Order"), as set forth below.

http://www.sec.gov/litigation/admin/34-50859.htm

EXHIBIT 1

2/7/2005
III.

On the basis of this Order and First Command's Offer, the Commission finds that:

RESPONDENT

1. First Command is a registered broker-dealer, with its principal offices in Fort Worth, Texas. It employs approximately 1,000 registered representatives/agents ("agents") through approximately 200 branch offices throughout the United States and in Germany, England, the Netherlands, Spain, Italy, Guam, and Japan. First Command claims to be "[t]he #1 independent provider of financial plans to the professional military family," and currently has over 297,000 "military families" as customers, including 40% of the current active-duty general officers, one-third of the commissioned officers, and 16% of the non-commissioned officers in the United States military. The great majority of the firm's agents are former commissioned or non-commissioned military officers.

SUMMARY

2. This matter involves violations of the federal securities laws by First Command in its use of sales materials to offer and sell mutual-fund investments through an installment method known as a "contractual" or "systematic investment plan" ("systematic plan"). The systematic plans allow investors to accumulate shares of a specified mutual fund indirectly by contributing fixed monthly payments—typically 180 payments ranging from $100 to $500—over a period of at least 15 years. Systematic plans, including the plans offered and sold by First Command, are subject to a sales charge unique to such plans, often referred to as a "sales and creation charge" or "front end load," that equals 50% of the plan's first 12 monthly payments. There is no front-end sales load after the first 12 payments. From January 1999 through March 2004, First Command received approximately $175 million in front-end sales-load revenue from the sale of systematic plans, which accounted for approximately 70% of its revenue.

3. Since at least January 1999, First Command, using a structured sales process, has offered and sold systematic plans by, in part, making misleading statements and omissions concerning, among other things: (a) comparisons between the systematic plan and other mutual fund investments; (b) the availability of the Thrift Savings Plan ("TSP"), which offers military investors many of the features of a systematic plan at lower costs; and (c) the efficacy of the front-end sales load in ensuring that investors remain committed to the systematic plan. As a result, First Command violated Section 17(a)(2) of the Securities Act.

FACTS

The Family Financial Plan

4. First Command markets a comprehensive package of financial services called a "Family Financial Plan" ("FFP") that includes investment products, banking, and insurance offered through First Command, its affiliated bank, and its affiliated insurance agency. The firm's website states that the FFP is

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"a personalized road map for your journey in pursuit of financial success, encompassing not only the products you have acquired through your First Command representative, but also assets like 401(k) accounts and military retirement income." The site further states that the company maintains a close, but independent, relationship with many "giants of the financial industry," which allows the firm "to provide [the customer] with an objective analysis of [the customer's] situation and to make an independent recommendation for specific products." First Command represents to its customers that the FFP is tailored to the specific needs of the customer based, in part, on a "Confidential Checklist" of personal financial information completed by the customer and the agent. In the usual case, First Command recommends that the customer purchase a life-insurance policy from one of several insurance companies through the firm's insurance agency, open an account at the firm's bank, and purchase mutual funds through one or more of First Command's systematic plans offered by four mutual funds groups.

The Systematic Plans

5. The sale of systematic plans to military personnel has historically constituted 70% of First Command's mutual-fund business. Since 1970, First Command customers have invested approximately $10.1 billion in mutual funds—of this amount, approximately $7.4 billion has been invested through systematic plans. First Command sells five systematic plans, which, in turn, make purchases from one of five different mutual funds. Under these systematic plans, the investor is to pay 180 fixed monthly installments (15 years), which may be extended to 300 payments (25 years) at the investor's option with no additional sales charge. First Command customers pay a front-end sales load equal to 50% of the first 12 payments, but thereafter pay no additional front-end sales load for the life of the plan. This sales load is received by First Command, which, in turn shares the commission with the selling agent. Assuming a fixed monthly payment of $100, a systematic-plan investor would pay a total of $1200 in the first 12 months. Of this amount, $600 would pay the 50% sales load and $600 would purchase an indirect interest in mutual-fund shares. As required by Section 27 of the Investment Company Act, the systematic plans also permit the purchaser to terminate within the first 45 days, with no sales charge, and within the first 18 months, with a maximum charge of 15%.

6. After an investor completes the first 12 payments, the effective sales load is reduced with each payment. If all 180 payments are made under the plan, the effective sales load on the total investment is 3.33%. If 300 payments are made, then the sales load on the total investment is 2%. Conversely, if the investor ceases making payments or terminates the plan before making all of the required payments under the plan, the effective total sales load may be higher than the average sales load charged by a conventional load mutual fund. According to Lipper Inc., the average load charged by a conventional load equity mutual fund in 2003 was approximately 5.2%.

7. The following chart illustrates the effective sales load on the total investment at various discontinuation points:

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<table>
<thead>
<tr>
<th>Contributions Discontinued after:</th>
<th>Sales Load as a Percentage of Amount Invested:</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 payments</td>
<td>50%</td>
</tr>
<tr>
<td>18 payments</td>
<td>31.6%</td>
</tr>
<tr>
<td>24 payments</td>
<td>25.0%</td>
</tr>
<tr>
<td>60 payments</td>
<td>10.0%</td>
</tr>
<tr>
<td>120 payments</td>
<td>5.0%</td>
</tr>
<tr>
<td>180 payments</td>
<td>3.33%</td>
</tr>
<tr>
<td>300 payments</td>
<td>2.0%</td>
</tr>
</tbody>
</table>

First Command's Systematic Plan Completion Rate

8. Historically, the majority of First Command customers have not completed the systematic plan within the 15-year period. For example, for all First Command systematic plans sold between 1980 through 1987, only 43% of the plans had actually received payments totaling at least the original face amount of the plan (i.e., 180 monthly payments times the original monthly payment commitment) as of June 17, 2004. Simply put, only 43% of the plans were completed during that time period.6

First Command's Sales Process For Systematic Plans

9. First Command sells systematic plans to commissioned and non-commissioned officers of the U.S. military who are of grade E-6 and above. A typical new customer of the firm is approximately 25 years old, has limited savings, and is an inexperienced investor. First Command markets its FFP and systematic plans through a structured sales process that utilizes sales scripts prepared by First Command. The sales scripts include hypothetical dialogues between a First Command agent and a military couple, "Ed and Geri Baker." In addition, the scripts contain instructions to the sales agents on how to present the plans, as well as illustrative sales charts. All First Command agents are required to follow the key points in the sales scripts and are evaluated on the degree to which they make these points in their presentation.

10. The sales process with prospective customers includes (i) an introduction seminar; (ii) a one-on-one initial meeting with a First Command agent; (iii) the preparation of the prospective customer's FFP; and (iv) the presentation of the FFP. One of the goals of the sales process is to present the systematic plan as the military customer's best investment option for long-term wealth accumulation.

The Introduction Seminar

11. The sales process begins at one of approximately 700 voluntary sales seminars conducted in proximity to military installations throughout the world each year. First Command relies heavily on "word-of-mouth" advertising and referrals to generate interest in the seminars. The seminar consists of a multi-media presentation with scripted live narration. The presentation includes testimonials from current customers and evokes themes of patriotism, loyalty, discipline, and duty. No specific investment

http://www.sec.gov/litigation/admin/34-50859.htm 2/7/2005
products, including the systematic plan, are offered at the seminars. Instead, the seminars are designed to introduce prospective customers to, among other things, the variety of services offered by First Command, certain investment concepts such as the need for a financial plan, the need for long-term financial and investment goals, and the benefits of dollar-cost averaging. Seminar attendees are encouraged to make an appointment with a First Command agent to develop their own personal "custom made" FFP.

Initial Sales Meeting with a First Command Agent

12. Before discussing the specifics of the systematic plan, including any mention of the plan’s upfront sales load, the sales script for the initial meeting discusses the benefits of dollar-cost averaging and claims that "out of the thousands of funds" you can invest in, the firm’s five systematic plans are the "only five mutual funds that are designed to attract only dollar cost average investors." The script then introduces a continuing theme that no-load funds attract only "speculators," which prevents a no-load fund manager from having predictable cash flow and from making purchases for the fund at opportune times. At this point in the script, the agent is required to ask what is referred to in the accompanying instructions as a "trial closing" question:

Agent: . . . Would you prefer one of these funds that were designed exclusively for dollar cost averagers or some other type of mutual fund?"

Ed: Definitely one of those five!

13. After attempting to obtain the prospective customer’s commitment to dollar cost average in a systematic plan, the script compares systematic plansto other mutual-fund investments in the following exchange:

Agent: . . . There are three categories of funds. First, there are the no-load funds which are popular among short-term traders and speculators. Ed, do you think "no-load" means "free"?

Ed: No.

Agent: Of course not. In fact, no-load funds frequently have some of the highest long-term costs. Next, there are load funds. These funds are generally used for large lump sum investments and are sold through investment professionals who manage many of the larger private accounts in the country. Finally, there are the systematic plans. These are designed for dollar cost averagers and used by dollar cost averagers exclusively.

14. The sales script also makes claims about the differences in "stable cash flow" among the three types of mutual funds. The agent is instructed to use a sales chart that, for the period December 1986 through December 2001, reflects the monthly net cash flow of "no/low-load" funds to be 4.7 times as volatile as that of a systematic plan. The same chart shows that the cash flow in load funds was 2.6 times as volatile as systematic plans during the same period. The script then lays the blame for the cash volatility of no-
load and load funds on speculators, claiming "the speculator causes these high fluctuations in cash flow." At this point, the script first mentions the 50% upfront sales load. The script characterizes the load as "pre-paying the sales charges you would otherwise pay over the life of your investment" and claims that the load serves as "a wall to keep out the short-term speculators." The accompanying instructions to the script state that this portion of the script is designed "to let the customer come to the conclusion that the only way to keep out speculators is the systematic plan load structure." (Emphasis added.) The instructions also advise the agent:

Do not dance around the concept of charging a front-load. Be candid with the customer. Inform them of its purpose and stand behind the concept. It works, and is the only way that a fund manager can ensure that most of the shareholders are committed, long-term investors. Remember, the front-load creates the stable cash flow that the systematics enjoy. Help the customer understand and embrace the idea. Focus on the cost-effectiveness of a long-term investment.

15. The initial meeting sales script concludes with a discussion of "another significant benefit of the systematic plan"—the average length of time an investor dollar remains invested in a systematic plan. According to a First Command sales chart used in the sales presentation, from December 1986 through December 2001, the average time an invested dollar remained in a systematic plan was 14.4 years, versus 2.6 years for no/low load funds and 3.1 years for load funds. The script’s instructions further claim "this section is where the investment is actually 'sold.' This is where you ask for commitment. Reinforce the advantages of the systematic plan and then ask the closing question: Ed and Geri, with these advantages, is this the type of investment plan you want for your family?"

Preparation of the FFP

16. After the prospective customer expresses an interest in receiving a FFP with a systematic plan, the agent completes a financial-data form using First Command’s proprietary planning software and electronically transmits the information, together with insurance, banking and specific systematic plan recommendations, to district and regional supervisors who pass the information on to First Command’s headquarters in Fort Worth. First Command’s written policies advise its agents to recommend systematic plans in every customer’s FFP "when the customer has adequate monthly dollars to invest, there is no foreseeable interruption to regular investing, and a sufficient investment time horizon [of at least 15 years] exists to achieve desired objectives." Further, most investors are encouraged to invest in a systematic plan through a Roth IRA and to contribute the maximum amount allowable each year. Once the agent’s recommendation reaches headquarters, the customer’s information is reviewed and a detailed FFP is prepared. At the end of the process, a glossy FFP is sent back to the agent to present to the customer and close the sale.

The FFP Presentation

17. During the FFP presentation, the agent provides the customer the FFP together with applications for the recommended systematic plans and briefly reviews the related underlying mutual-fund prospectuses, which are
also given to the customers. The FFP presentation script contains many of
the same statements in the initial meeting script, including: that systematic
plans are "designed exclusively for dollar cost averagers;" that no-load
funds attract "speculators;" and that the first year load is "a barrier...designed
to keep out speculators." The closing script also contains the
following exchange should a prospective customer ask, "But couldn't we
dollar cost average into a no-load fund?"

Agent: You could, but Ed, how long, on average, do assets remain in a
no-load?

(Agent is instructed to point to Holding Period chart)

Ed: 2.6 years

Agent: If the average no load investor withdraws their money from the
fund after only 2.6 years, is the fund manager buying or selling stock?

Ed: Selling.

18. The FFP presentation script contains other responses to objections and
other trial closing questions. The prospective customers who do not
ultimately purchase a systematic plan, citing a preference for no-load
funds, are referred to in the agent training materials as "no loaders."
Agents are warned not to allow these individuals to discuss First Command
with any referrals they may generate as it would be "like voluntarily
spreading a cancer in your market."

Misstatements and Omissions

Comparisons to Other Mutual-Fund Investments

19. The First Command sales scripts make several misleading comparisons
to both no-load and non-systematic plan load funds. First, by characterizing
no-load funds as funds that "attract only speculators," repeatedly referring
to no-load funds as "popular" among speculators, and blaming speculators
for the purported high cash volatility in no-load funds, the sales scripts give
the erroneous impression that no-load funds attract only speculative
investors and that the transactions of these speculative investors prevent
the no-load fund manager from making opportune investments. This
message is reinforced by the scripts' characterization of First Command's
systematic plans as the "only five mutual funds that are designed to attract
only dollar cost average investors." In fact, a substantial number of no-load
mutual funds successfully employ a dollar-cost-averaging strategy and
permit investors to make monthly periodic investments in relatively small
amounts. While the First Command sales agent is instructed to
acknowledge the availability of dollar-cost averaging in other mutual funds
should the investor first ask the question—the rejoinder in the initial-meeting
script states incorrectly that, because an average no-load fund investor
withdraws his investment every 2.6 years, the fund manager is forced to
sell stocks. In reality, fund managers are not necessarily forced to sell
stocks when investors redeem shares. They must do so only when there are
net redemptions in the fund, and then only if the fund does not have
sufficient cash on hand or cannot draw on a credit facility to meet
20. Moreover, the initial-meeting script states that no-load funds "frequently have some of the highest long-term costs." In reality, the long-term costs of owning no-load funds are, on average, substantially lower than the costs of owning load funds. Moreover, the no-load investment index funds offered by the TSP have substantially lower net expense ratios than the average no-load fund and the systematic plans sold by First Command. Further, the claim that no-load funds frequently have some of the highest long-term costs fails to account for the impact of the 50% upfront sales load on the long-term costs of systematic plans, both in terms of the actual costs and the lost opportunity costs in terms of the overall return.

21. The initial-meeting script also states that load funds are "generally used for large lump sum investments and are sold through investment professionals who manage many of the larger private accounts in the country." In fact, many conventional load funds and no-load funds offer services in which investors may make monthly contributions as low as $50 per month. These services, known as "automatic investment programs," "asset builders," or "account builders," allow investors to purchase shares on a regular basis, including, for example, by electronically transferring money from a bank account or paycheck. Unlike the systematic plans at issue here, these services allow investors to purchase shares directly from the mutual fund. Most mutual funds do not charge a fee for setting up or terminating these services.

22. The scripts and "cash-flow" and "holding-period" charts convey the message that empirical data support the claim that no-load funds have nearly five times the cash-flow "volatility" as systematic plans and that the average no-load investor withdraws his cash from a no-load fund every 2.6 years. These statements, and the statement that no-load funds "have some of the highest long-term costs," clearly imply that the systematic plans will perform better than other funds over the long term. However, there is no empirical evidence to support the inference that systematic plans will outperform other funds due to low "cash-flow volatility." Further, while the cash-flow chart depicts a 15-year period, internal First Command cash-flow volatility studies show a substantially smaller variation in volatility among the three categories of investments when shorter time periods are used, such as five and 10 years.

23. Finally, the cash-flow and holding-period charts note that the source of the data for no-load funds and load funds is the Investment Company Institute ("ICI"). In fact, although First Command obtained the cash-flow and holding-period data from the ICI, First Command—not the ICI—produced the reports and made the calculations reflected in the charts. Moreover, the script refers to the holding-period chart as demonstrating that the average no-load investor withdraws his money after only 2.6 years. But the ICI data First Command used to prepare the chart warned that the data "cannot be used to measure the holding period for the typical fund investor." (Emphasis added.) In fact, according to the ICI warning, "a small number of shareholders can and likely do generate a disproportionate percentage of the total redemptions, thereby masking the activity of the typical investor."
The Availability of the TSP to Military Investors

24. First Command claims its "objective" recommendations in the FFP will encompass not only investment products sold by First Command, but also "assets like 401(k) accounts . . ." Moreover, as noted above, in discussing the types of available investment funds, the script states there are only three categories of funds: no-load funds, load funds, and systematic plans. The script further characterizes no-load funds as popular among short-term traders and speculators. In fact, the TSP, which is the equivalent of a 401(k) account, provides another category of investment funds available to military personnel. The TSP investment funds have many of the same investment characteristics as no-load mutual funds and systematic plans. For example, the TSP funds are designed for long-term investors and each fund permits investors to make periodic payments in a dollar-cost-averaging strategy. However, unlike systematic plans, the TSP funds do not charge a sales load.

The Efficacy of the Up-Front Sales Load in Keeping Long-Term Investors Committed to the Systematic Plan

25. First Command mischaracterizes the upfront sales load as the only way a fund manager can ensure that most of the shareholders are committed, long-term investors. Indeed, First Command sales data reflect that the high upfront sales charge has not "worked" to keep most systematic plan investors committed to the plan for the full 180 payment (15-year) period. Of all systematic plans sold from 1980 through 1987, only 43% had actually received payments totaling at least the original face amount of the plan (i.e., 180 monthly payments times the original monthly payment commitment) as of June 17, 2004. As previously noted, 35% of the plans had been terminated and 22% were either active or inactive.

LEGAL ANALYSIS

Section 17(a)(2) of the Securities Act

26. Section 17(a)(2) of the Securities Act provides that it is "unlawful for any person in the offer or sale of any securities . . . by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they made, not misleading." A broker for non-discretionary accounts, such as First Command, "is obliged to give honest and complete information when recommending a purchase or sale." Dekwiatkowski v. Bear Stearns & Co., 306 F. 3d 1293, 1302 (2d Cir. 2002). The Commission does not have to show scienter to establish a violation of Section 17(a)(2) of the Securities Act. Aaron v. SEC, 446 U.S. 680, 697 (1980). "The Commission can establish a violation of Section 17(a)(2) . . . by showing merely that the [statement] was materially false and misleading and that defendants negligently caused those misrepresentations or omissions." SEC v. Solucorp Indus. Ltd., 274 F. Supp. 2d 379, 419 (S.D.N.Y. 2003) (quoting SEC v. Scott, 565 F. Supp. 1513, 1525-26 (S.D.N.Y. 1983)).

27. First Command violated Section 17(a)(2) of the Securities Act by
making materially misleading statements and omissions concerning, among other things, (a) comparisons between the systematic plan and other mutual fund investments; (b) the availability of the TSP to military investors; and (c) the efficacy of the upfront sales load in ensuring that investors remained committed to the systematic plan.

28. As a result of the conduct described above, First Command willfully violated Section 17(a)(2) of the Securities Act.19

UNDERTAKINGS

29. In anticipation of the institution of these proceedings and a related disciplinary action by the NASD alleging, among other things, misleading sales practices in connection with sales of systematic plans, First Command has submitted a Letter of Acceptance, Waiver, and Consent ("AWC") to the NASD to settle the related disciplinary action. First Command has agreed to undertake certain remedial and corrective measures, as follows:

a. First Command shall pay $12 million, which shall be used for customer restitution and for an investor-education program for members of the United States military and their families, as described below:

   i. **Restitution.** First Command shall pay restitution to all First Command customers who purchased and terminated a Systematic Investment Plan during the period specified in the AWC who paid an effective sales load greater than 5%. Restitution to these customers shall be the difference between the actual sales load paid and 5% and shall be paid, along with interest, in accordance with the terms of the AWC.

   ii. **Investor Education.** First Command shall pay $12 million, less restitution payments described above, for investor education. This amount shall be payable to the NASD Investor Education Foundation, a tax-exempt, non-profit grant administration organization, to be used for the investor-education needs of members of the United States military and their families. The payments for investor education shall be made to the NASD Investor Education Foundation in accordance with the terms of the AWC.

b. First Command shall retain an Independent Consultant, ("Consultant") not unacceptable to the staffs of the Commission and the NASD, for a period of two years, to (i) review, verify, and report in writing to the staffs of the Commission and the NASD on the restitution process described above and (ii) review and make recommendations concerning the adequacy of First Command's: (1) sales scripts; (2) training materials; (3) advertising; (4) sales literature; (5) sales training systems and procedures (written and otherwise); and (6) supervisory procedures and systems.

c. First Command shall provide to the staffs of the Commission and the NASD and the Independent Consultant, within 30 days of the date restitution is required to be completed in the AWC, a report detailing the payment of this restitution, including: (i) a detailed description of
the efforts made to locate customers identified as entitled to restitution; (ii) the results of the restitution program, including the number of customers identified as entitled to restitution, the dollar amount of restitution owed, the number of customers located and unable to be located, and dollars owed to customers located and not located; and (iii) satisfactory proof of payment of the restitution or of reasonable and documented efforts undertaken to effect restitution.

d. **Report on Independent Consultant Recommendations.** First Command shall require the Consultant to provide an initial report to First Command and to the staffs of the Commission and the NASD containing recommendations, if appropriate, for the adoption of revised sales scripts, advertising and sales material as well as revised procedures by First Command with respect to the matters described in Paragraph 29. b., Subpart (ii), above. Within 30 days after delivery of the Consultant's report, First Command shall either adopt all recommendations made by the Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure designed to achieve the same objective. First Command shall submit such proposed alternatives in writing to the Consultant and the staffs of the Commission and the NASD. Within thirty days of receipt of any proposed alternate procedure, the Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the consultant's original recommendation; and (ii) provide First Command with a written decision reflecting his or her determination. First Command will implement the Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt all recommendations deemed appropriate by the Consultant. Thereafter until the expiration of the two year engagement period, First Command shall require the Consultant periodically to review and report to First Command and the staffs of the Commission and the NASD concerning the adequacy of its sales scripts, advertising, sales material and procedures. First Command shall cooperate fully with the Consultant, and obtain the cooperation of its employees, contractors, and affiliates. First Command will place no restrictions on the Consultant's communications with the staffs of the Commission and the NASD. Upon request, First Command will provide the staffs of the Commission and the NASD with copies of any communications between the Consultant and it, and any documents that the Consultant reviewed or relied upon in connection with the engagement.

e. **Pre-Use Filing Requirement.** First Command shall file with the NASD Advertising Regulation Department all sales literature and advertisements (including all sales scripts) in accordance with the terms of the AWC. After filing, First Command shall use such material only in accordance with the terms of the AWC.

f. First Command shall require the Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with First Command, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also
provide that the Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Consultant in performance of his/her duties under this Order shall not, without prior written consent of the staffs of the Commission and the NASD, enter into any employment, consultant, attorney-client, auditing or other professional relationship with First Command, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

In determining whether to accept First Command's Offer, the Commission has considered the related NASD action and the remedial actions that First Command has agreed to undertake as described herein.

IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest to impose the sanctions agreed to in First Command’s Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. First Command is censured;

B. First Command cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act;

C. First Command shall pay disgorgement and prejudgment interest, which obligation shall be satisfied by compliance with the customer-restitution and investor-education program described in Paragraph 29. a., above, and more fully set forth in the AWC in the related NASD disciplinary action; and

D. Not later than six months after the date of the Order, unless otherwise extended by the staff of the Commission for good cause shown, First Command’s chief executive officer shall certify in writing to the staff of the Commission that First Command has made the payments for customer restitution and investor education described in Paragraph 29. a., above, and that it has taken all necessary and appropriate steps to adopt and implement all recommendations and proposals of the Independent Consultant.

By the Commission.

Jonathan G. Katz
Secretary

Endnotes

http://www.sec.gov/litigation/admin/34-50859.htm 2/7/2005
Systematic plans are legal investments referred to and regulated as "periodic payment plans" under Section 27 of the Investment Company Act of 1940. Periodic payment plans allow investors to accumulate shares of a specified mutual fund indirectly by contributing a fixed amount of money on a regular basis for a specified period. An investor in a periodic payment plan does not own shares of a mutual fund. Instead, he or she owns an interest in the plan trust. The plan trust invests the investor's regular payments, after deducting applicable fees, in shares of a mutual fund. An investor in a plan has a beneficial ownership interest in those shares.

The firm also sells conventional load mutual funds issued by various mutual-fund companies to customers who want to invest in such funds. For the load funds, the investor pays a commission ranging from 5% to 5.75%, or less, depending on the amount invested. First Command does not offer or sell no-load mutual funds.

The TSP is a Federal Government-sponsored retirement savings and investment plan, which was set up to provide retirement income for federal employees. The TSP offers the same type of savings and tax benefits that many private corporations offer their employees under so-called "401(k)" plans, but military personnel do not currently receive employer matching contributions. The TSP offers investments in five investment funds: Government Securities Investment (G) Fund, Fixed Income Index Investment (F) Fund, Common Stock Index Investment (C) Fund, Small Capitalization Stock Index Investment (S) Fund, and International Stock Index Investment (I) Fund. None of the investment funds offered by the TSP charges a sales load. Beginning in January 2002, members of the uniformed services were allowed to participate in the TSP by contributing up to 7% of their basic pay each pay period and 100% of any incentive pay or special pay received up to the dollar limits established by the Internal Revenue Code. The contribution limit increases by one percentage point each year through 2005, after which the participant's contributions will be limited only to the Internal Revenue Code's annual limits.

The mutual funds are: (1) the AIM Summit Investors Fund; (2) the Fidelity Destiny I Fund; (3) the Fidelity Destiny II Fund; (4) the Pioneer Independence Fund; and (5) the Franklin Templeton Capital Accumulation Fund. The Commission's findings herein are limited to First Command and do not reflect on the activities, operations, or merits of these mutual funds.

As indirect mutual-fund investors, systematic-plan investors also pay other expenses assessed at the fund level, which may include management fees, 12b-1 fees (covering distribution expenses and sometimes shareholder-service expenses), and other expenses.

Of the remaining 57%, 35% were terminated and 22% remained open, including active and inactive accounts. An inactive account is one in which no payment has been made for at least a year.

A commissioned officer generally receives a commission upon or shortly after graduating from college at 21-22 years of age. An "E-6" designation is a pay grade that usually denotes a mid-level non-commissioned officer (approximately 10 years of service) such as Staff Sergeant in the Army or Petty Officer First Class in the Navy.
The initial sales meeting is clearly the most important step in the sales process. In fact, the accompanying instructions to the initial-meeting sales script proclaim that "there is every reason to fully expect a vast majority of prospects to conclude the discussion by telling you, 'We want one of these systematic funds.' The real value of this discussion is the fact that it is completely conceptual—there is no need to discuss brokerage percentages, rates of return, etc."

For example, after pointing to a chart illustrating the decline of the stock market during 2000, the agent asks: "And when the market is doing poorly, are speculators more inclined to stay in the market or get out? Ed: They would get out." The agent then asks:

"Ed, if a fund manager had attracted only speculators to his fund, would that fund manager be able to purchase shares of stock or would he be forced to sell?"

Ed: "He would be forced to sell."

The initial meeting sales script makes no mention of the investment funds offered by the TSP, although the TSP is mentioned in the introductory seminar script. As discussed infra, the TSP funds also employ a dollar-cost-averaging strategy and are specifically structured for long-term investors.

In the event the prospect has sufficient assets to invest a lump-sum amount in a load fund, the instructions to the sales script advise the agent not to "speak negatively about load funds in the stable cash flow discussion. Just state that they are very appropriate for lump sum investments just as [the systematic plans] are for long-term monthly investing." As noted above, First Command also sells load funds to its customers.

For example, in 2003, the maximum contribution allowed in a Roth IRA was $3,000. Thus, the typical FFP would recommend that a customer invest $250 per month in his or her systematic plan.

The vast majority of FFPs do not contain a recommendation that the customer invest in the TSP. First Command's "Statement of Policy" on the TSP states, "if the customer's income allows, Roth IRAs should generally be fully funded before any money is committed to the TSP." The firm's stated reasons for the policy include, among other things, that military personnel do not receive employer-matching contributions and that large annual withdrawals from a TSP account in retirement may increase the investor's income-tax liability. In June 2002 First Command published an article in the firm's monthly agent newsletter that compared two hypothetical investment scenarios where a customer invested $250 monthly in a Roth IRA and in the TSP over 15 years. The scenarios assumed the same annual rate of return (12%) for both investments and assumed the customer's marginal tax rate (27%) remained constant during the investment period and the period the funds were withdrawn from the accounts. Both scenarios also assumed that the investor retired after 15 years and began a systematic withdrawal that would net him $1,200 per month after tax. The article concluded that the TSP account would run out of money in 10.25 years and that the Roth account would run out of money in 10.33 years. However, in calculating the overall return and the period of maximum withdrawal for
each account, no costs or loads for the investment products were considered. In the case of a systematic plan invested through a Roth IRA, the upfront load would reduce the total period of withdrawal in the Roth IRA account in the hypothetical scenario from 10.33 years to approximately 9 years.

14 For example, the average total shareholder cost ratio for load funds between 1980 and 1997 ranged from a low of 2.11% to a high of 3.02%. In contrast, the total average shareholder cost ratio for no-load funds ranged from 0.78% to 0.89%. John D. Rea and Brian K. Reid, Trends in the Ownership Cost of Equity Mutual Funds, INVESTMENT COMPANY INSTITUTE PERSPECTIVE, November 1998, at 10.

15 The latest available expense figures for the TSP funds reflect that for 2003, the net-expense ratio for each of the five investment funds was .10%. By contrast, the non-load-adjusted net-expense ratios for the First Command systematic plan funds for 2003 ranged from .46% to 1.50%. According to Morningstar Inc., the average net-expense ratio in 2003 for the approximately 3000 no-load funds was 1.21%.

16 A First Command internal study calculated that, in the five-year period from 1998 to 2003, cash-flow volatility of load funds and no-load funds was, respectively, 2.1 and 1.6 times greater than that of systematic plans. Another internal study showed that, in the 10-year period from 1993 to 2003, cash-flow volatility of load funds and no-load funds was, respectively, 3.6 and 2.4 times greater than that of systematic plans.

17 The ICI is a national association of the U.S. investment-company industry. Its membership includes approximately 8,605 mutual funds, 630 closed-end funds, 135 exchange-traded funds, and five sponsors of unit investment trusts. Its mutual fund members represent 86.6 million individual shareholders with approximately $7.5 trillion in investor assets.


19 "Willfully" as used in this Order means intentionally committing the act which constitutes the violation, see Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.
NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. CAF040085

TO: Department of Enforcement
NASD

CRD No. 3641

Pursuant to Rule 9216 of NASD Code of Procedure, Respondent First Command Financial Planning, Inc. ("First Command" or "Respondent") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against Respondent alleging violations based on the same factual findings.

Respondent understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;

2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and

3. If accepted:
   a. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against Respondent;
   b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about the Respondent's disciplinary record;
   c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
   d. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this AWC or create the impression that the AWC is without factual basis.

Nothing in this provision affects Respondent's testimonial obligations or right to
take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

First Command also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

First Command has been a registered broker-dealer and NASD member since 1959. Its principal offices are located in Fort Worth, Texas. First Command engages in retail sales of Systematic Investment Plans, load mutual funds, 529 Plans and variable annuities products to current and former active duty military personnel through its more than 1000 registered representatives located in more than 200 branch offices located throughout the United States and in Germany, England, the Netherlands, Spain, Italy, Guam and Japan. First Command has no prior formal disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

A. To have a Formal Complaint issued specifying the allegations against it;

B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;

C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and

D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.
II.

ACCEPTANCE AND CONSENT

A. Respondent hereby accepts and consents, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NASD:

1. Summary

During the period January 1, 1999 to March 30, 2004 (the “relevant period”), First Command violated NASD rules in connection with its use of sales materials to offer and sell mutual fund investments through an installment method known as Systematic Investment Plans ("the Plans"). First Command, through its registered representatives located in over 200 branch offices, sold the Plans to its target market, United States military officers and noncommissioned officers. Systematic Investment Plans provide for periodic investments for a fixed number of monthly investment units typically 180 investments over a 15-year period\(^1\) and these amounts are invested in underlying mutual funds. The purchaser is required to pay a sales charge of 50% on his first 12 monthly investment units. Payments made over the remainder of the term are made with no sales charge.\(^2\) As the purchaser makes additional investments into the Plan, he will pay a decreasing effective sales charge relative to the number of investments made. Purchasers are not required to complete the Plan during a specific time period. However, if the purchaser prematurely terminates the Plan, he will pay a higher effective sales charge of up to 50% of the amount invested.\(^3\) First Command has more than 300,000 client families and 566,000 Plans currently in force. First Command recommended the Plans to the great majority of its customers, many of whom were relatively young with a median age of 25 and often not experienced in financial matters.

First Command, using a scripted sales process, offered and sold Systematic Plans in

\(^1\) The Systematic Plans marketed by First Command are investments referred to and regulated as “periodic payment plans” under Section 27 of the Investment Company Act of 1940, 15 U.S.C. § 80a-27. Periodic payment plans allow investors to accumulate shares of a mutual fund indirectly by contributing a fixed amount of money on a regular basis for a specified period. An investor in a periodic payment plan does not directly own shares of a mutual fund, but owns an interest in the plan trust. The plan trust invests the investor's regular payments, after deducting applicable fees, in shares of a mutual fund. An investor in a plan has a beneficial ownership interest in those shares.

\(^2\) However, systematic-plan investors indirectly pay the operating expenses of the mutual fund shares held by the plan trust, which include management fees, 12b-1 fees (covering distribution expenses and sometimes shareholder-service expenses), and other expenses. Rule 12b-1 under the Investment Company Act of 1940 permits mutual funds, subject to certain restrictions, to pay for distribution expenses from fund assets.

\(^3\) The Plans also provide for sales charge refunds to the Purchaser who may terminate within the first 45 days with no sales charge and within the first 18 months with a maximum charge of 15%. These provisions were added in 1970, through amendments to Section 27 the Investment Company Act of 1940, 15 U.S.C. § 80a-27.
violation of NASD rules. The sales scripts and charts contained misleading statements and
omissions about the following:

• the effectiveness of the 50% first year sales load, claiming that this high upfront charge
increased the likelihood that an investor would complete the Plan, although Firm data showed
for the sales made between 1980 and 1987 only 43% of its customers completed 180 payments
or more within 15 years; and

• comparisons between the Systematic Plan and other mutual fund investments, including
telling investors that no-load mutual funds were primarily for speculators and had some of the
highest long-term costs; and,

• the availability of the Thrift Savings Plan ("TSP"), which offers military investors
many of the same features of a systematic plan at lower costs.8

First Command earned $175 million in front-end sales-load revenue, which accounted for
over 70% of its total revenue, from the sale of the Plans during the relevant period.7

In violation of NASD Rules, First Command, acting through a district supervisor,
inappropriately confronted a former customer when the customer sent an e-mail regarding his
dissatisfaction with the Plans. The Firm also filed a Form U-5 with the NASD that did not
accurately describe the reasons that a representative left the Firm. Finally, First Command failed
to retain all e-mail records as required and failed to appropriately supervise its sales force in the
matters noted above.

2. First Command’s Sales Approach

4 Forty-three percent of those purchasing from 1980-87 completed the 15-year Plan. Of the remaining 57%
of the plans, 35% were terminated and 22% remained open, including either active and inactive accounts. An
inactive account is one in which no payment has been made for at least a year.

5 A "load" fund imposes a fee on investors known as a "sales load" or "sales charge" which is paid to the
selling representatives. A "no-load" fund does not charge a sales load.

6 The TSP is a Federal Government-sponsored retirement savings and investment plan, which was set up to
provide retirement income for federal employees. The TSP offers the same type of savings and tax benefits that
many private corporations offer their employees under so-called "401(k)" plans, but it does not currently offer
employer matching contributions. The TSP offers investments in five investment funds: Government Securities
Investment (G) Fund, Fixed Income Index Investment (F) Fund, Common Stock Index Investment (C) Fund, Small
Capitalization Stock Index Investment (S) Fund, and International Stock Index Investment (S) Fund. None of the
investment funds offered by the TSP charges a sales load. Beginning in January 2002, members of the uniformed
services were allowed to participate in the TSP by contributing up to 7 percent of their basic pay each pay period
and 100 percent of any incentive pay or special pay received up to the dollar limits established by the Internal
Revenue Code. The contribution limit increases by one percentage point each year through 2005, after which the
participant's contributions will be limited only to the Internal Revenue Code's annual limits.

7 First Command has represented to NASD that it intends to restructure its business plan to eliminate the sale
of new contractual plans.
Systematic Plan Marketing

From its inception in 1958, First Command has primarily marketed its products to current and former military personnel, focusing on commissioned and noncommissioned officers at level E-6 and above. The Firm has over 200 branch offices located near military bases in the United States, Europe and the Pacific Rim. First Command's customer base includes more than 297,000 current and former military families. Forty percent of the current active duty general officers and one-third of the commissioned officers and 16 percent of the noncommissioned officers are current First Command clients. First Command's sales force consists primarily of former military personnel. Its executive officers, supervisors, managers, and Board of Advisors are primarily retired or separated military personnel.

In addition to Systematic Investment Plans, First Command also recommended and sold load funds to customers. First Command recommendation and sale of the Plans accounted for 70% of its gross revenue.

The Plans

During the relevant period, First Command recommended and sold five Plans sponsored by four fund companies. Each Plan allowed the Purchaser to make 180 monthly investments over 15-years (contract period). First Command primarily sold 15-year Plans to its clients. The Plans also permit the investor to extend the investment for up to 300 investments over 25 years.

Systematic Investment Plans, also known as periodic payment plans, are structured as Unit Investment Trusts under the Investment Company Act of 1940. Through monthly contributions, the purchaser buys interests in a series of unit investment trusts that have direct ownership of shares of a special class of Plan mutual funds. The Purchaser has a beneficial interest in the underlying mutual fund shares but does not have direct ownership.

Fifty percent of the customer's first 12 investments was paid to the Plan and the remaining 50% was paid as the up-front sales charge. For example, if a purchaser made investments of $100, at the end of 12 investments he contributed a total of $1,200. However, only $600 was invested in fund shares. The remaining $600 was paid in sales charges, 92.4% of which was paid to First Command. Fifty percent of the sales charge was paid to the selling First Command representative. There were no additional sales charges following the initial 12 investments; however, investors in the Plan incurred additional expenses including 12b-1 fees.

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8 A commissioned officer generally receives a commission upon or shortly after graduating from college. A non-commissioned officer or "NCO" is a supervisory enlisted member of the armed forces, such as a sergeant or petty officer. An "E-6" designation is a pay grade that usually denotes a mid-level enlisted rank (typically representing 10 years of service) such as Staff Sergeant in the Army or First Class Petty Officer in the Navy.

9 Fidelity Systematic Investment Plans: Destiny Plans 1/N & Destiny Plans II: N, AIM Summit Investors Plans II, Pioneer Independence Plans and Templeton Capital Accumulation Plans II. The findings herein are limited to First Command and do not reflect on the activities, operations or merits of the underlying mutual funds.
which, like the sales charges and other fees, were disclosed in the prospectus. The majority of the 12b-1 fees were paid to First Command.

If the purchaser continued to make monthly investments into the Plan, his effective sales charge as a percentage of the amount contributed was reduced as follows:

<table>
<thead>
<tr>
<th>Contributions Discontinued after:</th>
<th>Sales Load as a Percentage of Amount Invested:</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 payments</td>
<td>50.0%</td>
</tr>
<tr>
<td>18 payments</td>
<td>31.6%</td>
</tr>
<tr>
<td>24 payments</td>
<td>25.0%</td>
</tr>
<tr>
<td>60 payments</td>
<td>10.0%</td>
</tr>
<tr>
<td>120 payments</td>
<td>5.0%</td>
</tr>
<tr>
<td>180 payments</td>
<td>3.33%</td>
</tr>
<tr>
<td>300 payments</td>
<td>2.0%</td>
</tr>
</tbody>
</table>

As required by statute, a purchaser could terminate the Plan within the first 45 days with no sales charge, and could terminate within the first 18 months, with a maximum of sales charge of 15%.

Three Step Scripted Marketing

First Command required its representatives to use a three-step process in marketing the Plans. The first step was an introductory seminar, usually held near a military base and included a complementary dinner. At the seminar, First Command representatives spoke about life insurance, savings and investing.

The second step was a meeting between the prospect and the representative. There is a script that each representative used in this meeting to identify the prospect’s goals and assets. In this meeting, the prospect provided financial information to the First Command representative and the representative discussed life insurance, savings and investing (including the Plan) with the prospect. The representative forwarded this information to First Command headquarters and a Family Financial Plan (“FFP”) is developed for the customer. According to First Command policies, this FFP included suggestions such as paying off debts and establishing savings, insurance and usually recommended the purchase of the Plan. The FFP often recommended that the customer purchase a Plan registered as a Roth IRA. Finally, the third step was the Closing of the Sale. The First Command representative presented the FFP to the prospect, using a script to close the sale.

First Command trained its representatives through videotapes and training sessions. First Command required its representatives to memorize key points in sales scripts it provided and evaluated its representatives on the degree to which they covered the key, essential points in the meetings with the prospects. First Command also provided its representatives with certain visual aids, in the form of charts, for use with prospects. In addition to the sales scripts and charts used in the three-step process noted, First Command provided its representatives with a script to respond to frequently asked customer questions and concerns, including questions and concerns
about the Plan (Objections Guide). First Command also provided an Annual Financial Review script used in connection with an annual meeting held with the client. Finally, First Command communicates with its customers through newsletters and a magazine, called First Command Magazine, an online version of which is also available on its Web site.

The NASD advertising rule prohibits members from making misleading statements or omissions and prohibits false, exaggerated or unwarranted statements or claims. NASD rules require that communications with the public be based on principles of fair dealing and good faith, be fair and balanced and that members provide a sound basis for evaluating the facts. The rule further prohibits a prediction or projection of performance or unwarranted claim, opinion or forecast. Finally, the NASD advertising rule requires, among other things, that any comparison between investments or services must disclose all material differences including investment objectives, costs and expenses, liquidity, safety, guarantees or insurance, fluctuation of principal or return and tax features.

As described below, First Command’s scripts and accompanying charts, used in sales presentations, and training videos and parts of its newsletters and magazine articles, violated NASD rules in connection with its description of, among other things, the effectiveness of the first year sales charge, comparisons of the Plan with other products, and projections of return.
3. Misstatements and Omissions

a. Effectiveness and "Benefits" of the 50% First Year Sales Load

First Command emphasized in its sales to customers that the 50% up-front sales load would decrease to 3.33% upon completion of 180 investments and the high front-end sales charges increased the likelihood that investors would finish the Plan. However, the Firm had data showing that only 43% of First Command customers completed the Plans. As noted above, of the remaining 57% of the plans, 35% were terminated and 22% were either active or inactive. Thus, those investors who terminated paid a higher effective sales charge depending on the number of investments made. For example, a customer who made a $50 investment each month for five years and then terminated the Plan paid a 10% effective sales charge.

First Command also told clients that one of the purposes of the 50% sales load was to increase the likelihood that an investor would complete the Plan and instill in the investor the necessary discipline to remain committed to the Plan and accumulate wealth. For example, First Command's standard operating procedures in a chapter entitled "Investment Philosophy and Recommended Investments" stated:

"Systematic investment plans, because of the discipline they instill in the investor and the stable cash flow they provide the fund manager, are a product uniquely constructed for long-term wealth accumulation."

Also, in its training materials, the Firm's instructions to its representatives were:

"Do not dance around the concept of charging a front-load. Be candid with the client. Inform them of its purpose and stand behind the concept. It works, and is the only way that a fund manager can ensure that most of the shareholders are committed, long-term investors."

In addition, sales scripts used by First Command, characterized the 50% first-year load as benefiting the customer, not just by encouraging him to remain committed, but by encouraging

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10 If payments are made monthly, 180 investments would take 15 years to complete. Each Plan allows the account holder to start and stop payments, but the sponsor reserves the right to terminate dormant accounts.

11 Assuring customers that they were likely to finish the Plan, one of the sales scripts directs the agent to ask the prospect: "But [customer], are you going to stop investing 15 years from now? . . . But [customer], is this a cost-effective plan for long-term investors like yourselves?"

12 As noted above, forty-three percent of those purchasing from 1980-87 completed the 15-year Plan. Of the remaining 57% of the plans, 35% were terminated and 22% remained open, including active and inactive accounts.

13 Over five years, the client makes investments of $3,000 and paid a sales charge of $300. According to Lipper Inc., the average load charged by a non-systematic plan equity load mutual fund in 2003 was approximately 5.2%. 
other fund investors to remain committed as well, thus creating stable cash flow into the fund, which would benefit all investors. For example, the scripts suggested an agent ask the investor,

"And [customer], although we can't guarantee the cash flow will be stable, [w]ould you agree that investors who [had paid the 50% first-year load] would be encouraged to dollar-cost average persistently and thus increase the likelihood of giving the fund manager a stable cash flow?"

Historically, however, most First Command contractual-plan investors have not remained committed to the Systematic Investment Plans, despite the high up-front sales load. First Command's internal studies, focused on its narrow customer base of military personnel, reflect that of all Systematic Investment Plans initiated from 1980 through 1987, only 43% made 180 payments as of June 17, 2004. First Command's statements regarding the benefits of the first sales year charge to the individual, to all investors in the Fund, and to the Fund manager were overstated and unwarranted in light of this failure rate.

b. Opportunity Costs

While telling its clients that a benefit of the first year sales charge was to instill discipline, First Command failed to inform the customer of the lost earnings from the cash that was not invested in the funds during the first 12 payments. An investor who made payments of $100 in his first 12 payments had invested only $600 in the fund. The investor was unable to earn a return on the remaining $600 since it was allocated to the sales charge and lost the opportunity for earnings that could be compounded over time. While First Command informed a customer that he was paying a sales charge of 50% on the first 12 payments and that the sales charge is reduced over time through additional payments, the Firm did not disclose that he must make monthly contributions continually for at least 3 ½ years, with a hypothetical annual return of at least 10% during that period, for the investor to break-even. First Command's representatives used sales scripts that emphasized the benefits of Systematic Plans without similarly indicating the disadvantages, including its opportunity costs and consequent lower return.

c. Comparisons to Other Mutual Fund Investments

i. Statements Regarding No-Load Funds

First Command informed its customers that only speculators invest in no-load mutual funds and that no-load mutual funds had high costs. For example, in the sales scripts used to train representatives on how to explain the Plan to customers, the following statements were included:

"There are three categories of funds. First there are no-load funds which are popular among short term traders and speculators"

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14 First Command conducted internal studies showing this 3 ½ year "break even" point, assuming a 10% return on the fund.
"So, if you're a no-load fund manager and [sic] have attracted primarily speculators to your fund * * *"15

"No load funds frequently have some of the highest long term costs."16

Further, the initial-meeting script stated that load funds were "generally used for large lump sum investments and are sold through investment professionals who manage many of the larger private accounts in the country." In reality, many conventional load funds and the TSP offer "automatic investment plans" in which investors may make monthly contributions as low as $50 per month.

The statements noted above do not meet the NASD standards requiring that communications with the public be balanced, have a sound basis and not be misleading.

ii. Statements Regarding Dollar Cost Averaging

Dollar cost averaging is the process of investing a fixed amount on a periodic basis so that the investor purchases shares at different prices. First Command often noted the benefits to the customer of dollar cost averaging with a Systematic Investment Plan. The initial-meeting script also states that load funds are "generally used for large lump sum investments and are sold through investment professionals who manage many of the larger private accounts in the country." In fact, many conventional load funds and no-load funds offer services in which investors may make monthly contributions as low as $50 per month. These services, known as "automatic investment programs," "asset builders," or "account builders," allow investors to purchase shares on a regular basis, including, for example, by electronically transferring money from a bank account or paycheck. Unlike the systematic plans at issue here, these services allow investors to purchase shares directly from the mutual fund. Most mutual funds do not charge a fee for setting up or terminating these services.

First Command also suggested to its customers that dollar cost averaging was not effective when used to purchase shares of no load mutual funds. According to the script, required to be used by representatives, when a customer asked,

"* * * couldn't we dollar cost average into a no-load fund?"

15 Referring to a no-load investment manager, "If a fund manager had attracted only speculators to his fund, would that fund manager be able to purchase shares of stock or would he be forced to sell . . . . He would be forced to sell because the speculators would be 'bailing out.'"

16 No load funds attract many investors who are not speculators and the long-term costs of owning no load funds, are on average, lower than owning load funds. The total shareholder cost ratio for load funds between 1980 and 1997 ranged from a low of 2.11% to a high of 3.02%. In contrast, the total shareholder cost ratio for no-load funds ranged from 0.78% to 0.89%. John D. Rea and Brian K. Reid, Trends in the Ownership Cost of Equity Mutual Funds, INVESTMENT COMPANY INSTITUTE PERSPECTIVE, (November 1998), p.10. First Command scripts also compared the performance of a mutual fund with a bank Certificate of Deposit yet failed to disclose the significant differences, including risk of loss of principal, between those two investments.
The representative was directed to answer that while one "could" dollar cost average, dollars invested in no-load funds only stay in the fund for 2.6 years and the funds attract speculators.

First Command representatives also informed customers that dollar cost averaging provides a stable cash flow that was beneficial to the Plan's manager, permitting him to "buy shares on sale" and provide "stability." The client was not told that there can be no assurance that a manager will buy shares on sale or provide stability. Moreover, there is not adequate support for the position that, by virtue of dollar cost averaging, all of the Plans' mutual funds have performed or will perform better than industry similar benchmarks as well as no-load and load mutual funds.

4. Misleading Charts Used in Sales Presentations to Customers

First Command's representatives used two charts in marketing the Plans, the "Stable Cash Flow Chart," and "Holding Period Chart."17

a. The Stable Cash Flow Chart

The purpose of the Stable Cash Flow Chart was to persuade the customer that the Plans had less cash flow volatility than other comparable investments. The Stable Cash Flow Chart showed the cash flow volatility of the Plan as 1, load funds as 3.1 and no load funds as 4.7.

First Command prepared this chart by taking cash flows in and out of the Plans and the mutual funds, calculating a standard deviation and normalizing it to the Plans. The accompanying sales script, used by First Command representatives, suggested that the representative tell the customer: "This chart shows how much the cash flow of these funds fluctuates from month to month. Which has the largest variation in cash flow?" First Command asked the customer:

Representative: "Now looking at that chart, just the graph itself, which one of those funds is the most volatile?"

Customer: "The no load fund."

By showing a figure of 1.0, the Stable Cash Flow Chart implied that there was no volatility in the Plan as compared to other investments. Moreover, First Command used selective time periods to obtain the best result for the Plan. While the chart depicts a 15-year period, First Command calculated the cash flow rates for shorter time frames that it did not disclose to customers and these show a much smaller difference among the three categories of investments.18 Finally, First Command also stated that the source of the data for no-load and load mutual funds.

17 The two charts are attached as Exhibits A and B.

18 First Command calculated the following: 2.1 for no-load funds, to 1.6 for load funds, to 1 for Systematic plans for the five year period 1998 to 2003; and 3.6 to 2.4 to 1 for the ten year period 1993 to 2003.
load funds was the Investment Company Institute ("ICI"). While First Command obtained cash flow information from the ICI, the ICI does not produce any reports or make any calculations such as the ones created by First Command in its scripts and chart, and it was incorrect to claim that the source of the information is ICI. This lent credibility to an analysis where no such confidence was warranted.

When selling a Plan to an investor, First Command used the Stable Cash Flow chart indicating large cash flow volatility in load funds. On the other hand, if a customer had a sufficiently large amount to invest, First Command cautioned the representative as follows:

"In light of this, don't speak negatively about load funds in the stable cash flow discussion. Just state that they are very appropriate for lump sum investments just as [the Plans] are for long-term monthly investing."

The Firm also cautioned its representatives when looking for prospects as follows:

"Don't ask or suggest to a 'termite' or 'no loader' who refuses to accept our philosophy that he talk with the referrals. This is like voluntarily spreading a cancer in your market."

b. The Holding Period Chart

The purpose of the Holding Period Chart was to convince the customer that the average investor stays invested in the Plan for a significantly longer time than the average investor stays in other mutual fund types (load and no-load). First Command claimed that this was beneficial to the Plan manager. The Holding Period Chart shows a holding period for dollars invested of 14.4 years for the Plans, while showing holding periods of just 2.6 years and 3.1 years for no load and load funds, respectively.

First Command used data showing how long a dollar stays invested in each product, and again attributes that data for the chart to the ICI. However, while ICI compiles statistics on how long a dollar stays in the different investment vehicles, it specifically warned that this data should not be used to calculate investor "holding periods." For example, in connection with these statistics, ICI published a report, stating that this data can not be used to assess how long an individual investor remains in the product, and "a small number of shareholders can and likely do generate a disproportionate percentage of the total redemptions, thereby masking the activity of the typical investor."

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19 The Investment Company Institute ("ICI") is the national association of the U.S. investment company industry. Its membership includes approximately 8,605 mutual funds, 630 closed-end funds, 135 exchange-traded funds, and five sponsors of unit investment trusts. Its mutual fund members represent 86.6 million individual shareholders and manage approximately $7.5 trillion in investor assets.

20 A "termite" is a person who advocates the purchase of term insurance, investing the remainder in mutual funds. A "no-loader" is an individual who advocates the purchase of no load mutual funds.

Notwithstanding this specific warning from the ICI, First Command noted ICI as the source of data for its Holding Period Chart, and advised its representatives to inform their customers that the chart shows the holding period of a typical investor. For example, in the sales script, a representative is directed to respond as follows:

Customer: But couldn’t we dollar cost average into a no-load fund?
Representative: You could, but how long, on average, do assets remain in a no load?
Customer: (looking at the Holding Period Chart) 2.6 years
Representative: If the average no-load investor withdraws their money from the fund after only 2.6 years, is the fund manager buying or selling stock?
Customer: Selling
Representative: Suppose you are in a fund that attracts these speculators. * * *

The “Holding Period” chart is also contrary to NASD rules because, when used with the accompanying script, it implies that investors remain in the Plans for 14.4 years, when First Command’s data showed only 65% of its customers held the Plan for more than 14.4 years.

5. Projections in Violation of NASD Rules

First Command sales literature included projections of returns in violation of NASD advertising rules. For example, representatives showed their customers the historical performance of a mutual fund, noting a 10% return. The representative led the customer through a series of questions, projecting the amount the customer could make over a period of time in the future with that return. Representatives told their customers:

“That is amazing isn’t it? . . . That is a lot of money isn’t it? . . . (Customer), have you ever envisioned yourselves as having that much money?”

Such projections are prohibited under NASD Rules.

6. First Command’s Sales Material Filing History

During the relevant period, First Command filed certain scripts and charts with NASD’s Advertising Regulation Department and that Department noted certain deficiencies in these materials with respect to descriptions of the cost of the Plans, comparisons to other products, the risks and benefits of the Plans and language that could be construed as improper projections of returns. Although First Command addressed certain comments from NASD Advertising Regulation, it failed to adequately correct the deficiencies noted by NASD in the areas listed above.
7. First Command Did Not Comply with the E-mail Retention Rule

From at least 1999 to approximately March 2004, First Command failed to adequately preserve for three years and/or preserve in an accessible place for two years, e-mail communications relating to the business of the Firm. First Command only kept e-mail that was sent from the home office in Fort Worth and those were kept for less than the required time. For example, home office e-mail was maintained for 12 weeks. After twelve weeks or earlier, First Command erased the e-mail tape by recording over it. Other e-mail from the home office was only retained weekly or even for just twenty-four hours. First Command branch office e-mail was also deleted after 12 weeks or earlier.

First Command was aware as early as 2001 that its e-mail retention and access did not meet the regulatory requirements, but failed to take adequate steps to comply.22

8. First Command Failed to Supervise

First Command failed to have a supervisory systems and procedures reasonably designed to ensure compliance with the federal securities laws and NASD rules regarding sales practices, sales scripts, sales literature and the retention of email.

9. First Command Inappropriately Confronted a Former Customer

In August, 2003, a former First Command customer ("Customer"), an Air Force officer, sent an e-mail commenting on a negative article published in the Air Force TJAG23 On-Line News about First Command’s sales practices. The Customer described his “total dissatisfaction” with First Command, claimed he suffered losses and recommended that others do not invest with First Command.24 This e-mail was eventually forwarded to a First Command district supervisor.

First Command directed the district supervisor to respond to the Customer to determine if he had a complaint. On September 1, 2003, the district supervisor made a call to the Customer. The district supervisor then described the call to First Command management as follows:

When the Customer, concerned about the reaction from the district supervisor, attempted to deflect the matter, stating that, “he had no complaint” and “wanted to put it behind him,” the district supervisor responded:

22 First Command represented to NASD that it has entered into a contract in March 2004 with an e-mail storage vendor to correct its document retention deficiencies.

23 "TJAG" is an acronym for The Judge Advocate General, which is legal arm of each military branch.

24 The customer, when responding to the e-mail, apparently hit “reply all” and thus his complaint was sent to 45 other individuals.
“I explained how, unfortunately, he had not put it behind him . . . and in fact had put it squarely in front of him.”

When the Customer requested that he be afforded an opportunity to speak with his commander the district supervisor made it clear that in his view, the Customer probably needed an attorney:

“I agreed and suggested that we, in fact, meet with JAG present for his benefit.”

Rather than listen to the customer and respond appropriately, the district supervisor informed the Customer that the highest level of Air Force commanders were being contacted and suggested that the Customer’s previously approved military TDY (temporary duty) might be delayed until this was resolved. The district supervisor described the conversation as follows:

“[The Customer’s] voice was cracking and it was clear that he was scared. He asked, ‘Just where is this going?”

The district supervisor responded:

“I explained I wasn’t sure yet. Right now we are just gathering facts . . . but that we are taking this very seriously. Our Home Office is working this at the highest levels of the Air Force, and I was working this from my level. We are taking this VERY seriously, and if there is a legitimate concern on our part we want to fix it, and we want to remedy any false accusations or Command influence against us, especially if made on an official Air Force E-mail, on Air Force time.”

He again asked where this was going, and I said I wasn’t sure...it could be simple, or it could be very complicated. We are still exploring our options. He indicated that he would be going TDY [temporary duty] soon....

And I replied...

“We’ll see, that may change.” * **

In addition to making this call to the Customer, the district supervisor arranged a meeting with the Air Force’s legal assistance office, questioning whether the Customer had violated Air Force regulations by using e-mail to send his message. Further, the district supervisor called the Customer’s squadron commander and informed her that First Command may have a grievance against a member of her squadron.

After the district supervisor explained to First Command management his conduct,
described above, First Command wrote a letter of apology to the former client, but otherwise took no steps to discipline the district supervisor.

10. First Command Filed an Inaccurate Form U-5

In early 2003, First Command filed a Form U-5, disclosing that a representative voluntarily resigned from the Firm. The Firm informed NASD in this filing that it had conducted an internal review for possible violations of rules or industry standards of conduct and that it completed this review, and found no violations.

First Command had conducted an internal investigation about the representative’s conduct, concluded that the representative engaged in improper transactions and failed to disclose material information. First Command then terminated the representative for this conduct. First Command filed a Form U-5 that did not accurately reflect the conclusions reached in its internal investigation.

11. Violations

a. First Command Violated NASD Sales Practice and Advertising Rules

As described above, First Command made misstatements and omissions in violation of NASD’s Rule 2110.26

First Command also made statements that were not based on principles of fair dealing and good faith, not fair and balanced, did not provide a sound basis for evaluating facts, omitted material information, contained, exaggerated, unwarranted and inaccurate claims and made inappropriate projections of past performance. First Command violated NASD Conduct Rules 221027 and 2110.

b. First Command Failed to Keep and Maintain E-mails

26 NASD Conduct Rule 2110 requires that a member, in the conduct of its business, observe high standards of commercial honor and just and equitable principles of trade.

27 NASD Conduct Rule 2210(d)(1) requires that member communications with the public be based on principles of fair dealing and good faith, be fair and balanced and that members provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry or service offered. The rule prohibits members, in the issuance of communications with the public, to omit any material facts if the omission, in the light of the context of the material presented, would cause the communication to be misleading. The rule further prohibits members from using false, exaggerated, unwarranted or misleading statements or claims in all public communications. No member shall, directly or indirectly, publish, circulate or distribute any public communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading. The rule further prohibits a prediction or projection of performance or the implication that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.

NASD Conduct Rule 2210(d)(2) requires, among other things, that any comparison between investments or services must disclose all material differences including investment objectives, costs and expenses, liquidity, safety, guarantees or insurance, fluctuation of principal or return and tax features.
As described above, First Command failed to maintain books and records in connection with the retention and accessibility of certain e-mail communications. By reason of the foregoing, First Command violated Section 17(a) of the Exchange Act and Rule 17a-4 thereunder, and NASD Conduct Rules 2110 and 3110.

c. First Command Failed to Supervise

During the relevant period, First Command failed to establish and maintain adequate procedures and systems to ensure that its sales practices, sales literature, advertising and retention of e-mail were in compliance with the federal securities laws and NASD rules. As a result, First Command violated NASD Conduct Rules 2110 and 3010.

d. First Command Violated NASD Conduct Rule 2110

As described above, First Command inappropriately confronted a former customer. Such conduct was inconsistent with high standards of commercial honor and just and equitable principles of trade. As a result, First Command violated NASD Conduct Rule 2110.

e. First Command Filed an Inaccurate Form U-5, Violating NASD Conduct Rule 2110 and IM-1000-1

As described above, First Command filed an inaccurate Form U-5 with respect to the termination of a sales representative. As a result, First Command violated NASD Conduct Rule 2110 and IM-1000-1.

B. Respondent also consents to the imposition, at a maximum, of the following sanctions:

1. a censure; and

2. a fine of $12 million which shall be paid in restitution and for investor

---

28 NASD Conduct Rule 3110 requires each member to make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated thereunder and with the Rules of this Association and as prescribed by SEC Rule 17a-3. The rule also provides that the record keeping format, medium and retention period shall comply with SEC Rule 17a-4.

29 NASD Conduct Rule 3010 requires that each member establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the Rules of this Association.

30 NASD IM-1000-1 provides that "[t]he filing with the Association of information with respect to membership or registration as a Registered Representative which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause to appropriate disciplinary action."
education as described below:

a. Restitution. First Command shall pay restitution to all First Command customers who purchased a Systematic Investment Plan between January 1, 1999 and the date of the notice of acceptance of this AWC and terminated between January 1, 1999 and the date of the notice of acceptance of this AWC, who paid an effective sales charge greater than 5%. First Command shall pay restitution to these customers which shall be the difference between the actual sales load paid and 5%, plus interest at the rate set forth according to 28 U.S.C. § 1961 from the date of the termination of the account by the customer to the date of the notice of acceptance of this AWC.

First Command shall work with the Independent Consultant described below to provide restitution to customers. First Command shall send a letter, approved by the Independent Consultant and NASD staff, to each customer identified above explaining the nature of this disciplinary action and the reason for the restitution payment. Unless otherwise agreed to by the staff, such restitution shall be made promptly and, in any event, no later than 90 days after the notice of acceptance of this AWC.

If for any reason First Command cannot locate a customer owed restitution as outlined above after reasonable and documented efforts within such period, or such additional period, agreed to by the NASD staff, First Command shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided.

b. Fine and Investor Education. First Command shall pay $12 million for investor education, less any restitution payments paid pursuant Section 2.a above. This amount shall be payable to the NASD Investor Education Foundation, a tax-exempt, non-profit grant administration organization, to be used for the investor education needs of members of the United States military and their families. The NASD Investor Education Foundation will use the funds to support educational programs, materials, and research to equip members of the United States military and their families with the knowledge and skills necessary to make informed investment decisions. First Command shall pay the payments for Investor Education as provided herein to the NASD Investor Education Foundation as soon as possible after quantification of amounts calculated for restitution as required herein and in any event no later than 90 days after the notice of acceptance of this AWC, unless
otherwise agreed to by the staff.

3. **Independent Consultant.**

First Command agrees to retain an independent Consultant, ("Consultant") not unacceptable to NASD, for a period of 2 years, to (1) oversee and supervise restitution to customers described above; (2) review, verify and report in writing to NASD staff on the restitution process described in 2, above and (3) review and make recommendations concerning the adequacy of First Command's (i) sales scripts, (ii) training materials; (iii) advertising, (iv) sales literature (v) sales training systems and procedures (written and otherwise), and (vi) supervisory procedures and systems. Neither First Command, nor any of its principals, agents, officers, directors or employees acting in their capacities as such, may employ or otherwise hire the Consultant in any other capacity. The Consultant must obtain written consent of NASD staff before entering into any employment, consulting or other professional relationship with First Command, or any of its directors, officers, employees, or agents in their capacity as such. These restrictions shall apply for the period of the engagement and for a period of two years after the conclusion of the Consultant's work. These restrictions shall apply to any firm with which the Consultant is employed, affiliated or is a member, and any person or firm engaged to assist the Consultant in the performance of his or her duties.

**Report on Restitution.** First Command and the Independent Consultant shall provide to NASD staff, within 30 days of the date restitution is required to be completed, a report detailing the payment of this restitution, including: (1) a detailed description of the efforts made to locate customers identified as entitled to restitution; (2) the results of the restitution program, including the number of customers identified as entitled to restitution, the dollar amount of restitution owed, the number of customers located and unable to be located, and dollars owed to customers located and not located; and (3) satisfactory proof of payment of the restitution or of reasonable and documented efforts undertaken to effect restitution.

**Report on Independent Consultant Recommendations.** The Consultant will provide an initial report to First Command and to NASD staff containing recommendations, if appropriate, for the adoption of revised sales scripts, advertising and sales material as well as revised procedures by First Command with respect to the matters described in this AWC. Within 30 days after delivery of the Consultant's report, First Command shall either adopt all recommendations made by the Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure designed to achieve the same objective. First Command shall submit such proposed alternatives in writing to the Consultant and the NASD staff. Within thirty days of receipt of any proposed alternate procedure, the Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the consultant's original recommendation; and (ii) provide First Command with a written decision reflecting his or her determination. First Command will implement the Consultant's ultimate
determination with respect to any proposed alternative procedure and must adopt all recommendations deemed appropriate by the Consultant. Thereafter until the expiration of the two year engagement period, the Consultant shall periodically review and report to First Command and NASD staff concerning the adequacy of its sales scripts, advertising, sales material and procedures. First Command must cooperate fully with the Consultant, and obtain the cooperation of its employees, contractors and affiliates. First Command will place no restrictions on the Consultant's communications with NASD staff. Upon request, First Command will provide NASD staff with copies of any communications between the Consultant and it, and any documents that the Consultant reviewed or relied upon in connection with the engagement.

4. **Pre-Use Filing Requirement.** First Command shall file with the NASD Advertising Regulation Department all sales literature and advertisements (including all sales scripts) at least ten days prior to their first use, unless otherwise permitted by the NASD, for one year from the date of notice of acceptance of this AWC by NASD. The ten-day period shall commence on the date of transmission with respect to advertisements or sales literature that First Command sends by facsimile and on the day following shipment with respect to advertisements or sales literature that First Command sends by overnight delivery. After ten days, these advertisements or sales literature may be used in the absence of comments from NASD. However, at any time, upon receipt of comments from NASD on the advertisements or sales literature filed prior to use, unless notified otherwise by NASD, First Command shall take all reasonable steps to withhold or cause to be withheld the material from further publication until the changes specified by NASD have been made, and such material will be revised and re-filed ten days prior to any use, unless otherwise agreed to by NASD staff at its sole discretion.

5. **CEO Certification.** Not later than six months after the date of notice of acceptance of this AWC, unless otherwise extended by the staff of the NASD for good cause shown, First Command's chief executive officer shall certify in writing to the staff of the NASD that First Command has made the payments for customer restitution and investor education described above, and that it has taken all necessary and appropriate steps to adopt and implement all recommendations and proposals of the Independent Consultant.

6. The sanctions imposed herein shall be effective on the dates set forth above or on such other dates as may be set by NASD staff.

7. Failure to comply with any provision of this AWC may result in further disciplinary action against Respondent.

III.

Page 20 of 24
OTHER MATTERS

A. Respondent understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.

B. Respondent agrees to pay any monetary sanctions imposed on it within the timeframes specified above.

C. Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Respondent certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce Respondent to submit it.

Date

First Command Financial Planning, Inc., Respondent

By: _______________________
[Name and title]

Reviewed by:

Counsel for Respondent
Honorable Stanley Sporkin
Weil, Gotshal & Manges LLP
1501 K Street NW, Suite 100
Washington, DC 20005

Accepted by NASD:

Date

Katherine A. Malfa, Vice-President
Signed on behalf of the Director of ODA, by delegated authority
DOLLAR COST AVERAGING

OBJECTIVE:
To purchase shares at an average cost below the average price.

<table>
<thead>
<tr>
<th>Price Per Share</th>
<th>Price Per Share</th>
<th>Price Per Share</th>
<th>Price Per Share</th>
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MONTHS: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11

- DCA Strategy
- Opportunity
- Speculation
- Investors
- Fund Manager
- Quality Stocks
- Systematic Plans

Dollar cost averaging does not involve profit, or gain, or gain and capital gains, or any profit, or gain, or gain and capital gains, or any profit, or gain. Therefore, the diagram does not show the effect of earnings and appreciation in value of the investor.

STABLE CASH FLOW

VOLATILITY

- No/Low-Load Funds: 4.7
- Load Funds: 3.1
- Systematic Plans: 2.0

- No/Low-Load Funds
- Load Funds
- Systematic Plans

- Fund Manager
- Investors
- Speculators
- Valuation

Source: FirstCommand International, Inc.

Exhibit A
SALES CHARGES OVER TIME

<table>
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<th>Year(s)</th>
<th>Percent of total investment</th>
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HOLDING PERIOD

How Long Does a Dollar Stay?

December 1986 Thru December 2001

<table>
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<th>YEARS</th>
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<td></td>
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</table>

<table>
<thead>
<tr>
<th>PERIOD</th>
<th>2.6 Years</th>
<th>3.1 Years</th>
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<tbody>
<tr>
<td>No/Load Funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Load Funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Systematic Plans</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Holding period is the average amount of time one dollar remained in the fund. It measures the flow of money out of the fund (redemption and exchanges) and makes that the average net assets will change.

SOURCE: First Command Securities Corporation.
Open Letter From the Chairman

It's not hard to count the decisions in your life that truly make a difference. Choosing a spouse comes quickly to mind. Choosing a career is a close second. And surely, also near the top, must be choosing the steps you'll take toward financial security for you and your family.

At First Command Financial Planning, we're in our fifth decade of helping current and former professional military families take those crucial steps. But in a world full of "new and improved" insurance products and get-rich-fast investment plans, it's fair to ask: What makes First Command different, and what accounts for the success of our clients, agents and companies?

Our Plans Really Work
First Command clients don't learn about the Family Financial Plans we recommend through high-pressure sales techniques. Confident in the quality of our service, we rely on low-key, informational seminars or in-office briefings.

Our principles are sound. We rely on proven fundamentals rather than current fads. These fundamentals might not be consistently popular, but they work and serve our client families well.

Our Plans are individually tailored. We carefully consider each family's circumstances, desires, goals and guidance. Annual reviews and updates are provided and - like the Plan - are without fee.

We take a disciplined, long-term approach. Here is where we deliberately part company with the "what's-hottest-in-the-market-today" crowd. Our approach is often targeted for criticism; however, it is the criticized features of our Plans that are most responsible for our clients' financial successes.

Here are two prime examples:
1. Permanent, guaranteed-premium life insurance. Claimed by some to be outdated and expensive, this product has proven over time to be both highly reliable and very cost-effective.
2. Systematic investment plans. A large portion of the total sales charges are paid the first year, making them an excellent vehicle for encouraging long-term investing.

While we offer many other options, these two superb products are suited exclusively to a long-term plan, and therefore run counter to today's themes of instant gratification and the search for short-term solutions.

We know your needs. We don't hire professional salespeople. The majority of our agents are former military professionals. All are clients and have benefited from the Plans themselves.

Earned Client Confidence
Today, we serve more than 274,000 client families with over $11.3 billion invested in First Command-recommended mutual funds and over $41 billion of quality, guaranteed insurance. Through our Plans, literally thousands of families have taken steps to achieve financial independence. Our clients also are the best source we have for developing new relationships as they recommend us to friends and co-workers.

Long-Term Commitment
First Command clients are among the fortunate few who learn early in life that everything of real value - especially personal finances - requires commitment. The "shortcuts to success" simply won't take most Americans where they want to be financially over the long term. Patience, discipline and persistence are necessary to follow that road to its end. Our commitment is to point the way to that good road and walk it with you toward financial success.

A financial plan, by itself, can not assure that all retirement or other financial goals will be met.

Lamar Smith
Chairman & CEO
First Command Financial Planning
For more than forty-five years First Command has focused on its mission of helping clients define and pursue their financial goals. As with most companies, First Command has faced many challenges over the years, meeting each one guided by the primary objective of serving you. Recently, one of our core products, the contractual investment plan, has received considerable attention in the media and even in Congress. Concerns have been expressed by the media, Congress and the regulators which have been a significant distraction from our primary goal of serving you. In light of the increasing resources and time being expended in dealing with these concerns, we have made a difficult decision.

We wish to inform you that we are ceasing sales of new contractual plan accounts. That decision does not come easily as we believe the contractual plan approach is one of the fundamental reasons so many of our clients have developed sound, long-range investing and saving habits. However, given the distractions, the cost to client service is likely to be too great. This decision does not affect your ability to continue to make payments to complete your existing plan, nor does it change the rights and privileges of participants, as stated in the plan and fund prospectuses. This information is for the account named above and other systematic accounts you own, if any, placed through First Command, which are listed on the reverse.

Experience has taught us that a changing environment creates opportunities. To that end we are in dialogue with each of the investment groups which sponsor the plans we have sold and are exploring options. We are encouraged with the possibilities and anticipate being able to provide more details as they become available. We do pledge to keep you informed.

I want to assure you that all of us at First Command remain committed to assisting you in the pursuit of your financial objectives. We urge you to remain committed to your future and your investment habit. We look forward to making even more services and benefits available to you.

Sincerely,

LAMAR C. SMITH
First Command Financial Planning clients may have questions regarding our decision to cease new sales of systematic investment plans, also called contractual plans. Your First Command agent is standing by to address your questions, or you may call our Client Services Department at (800) 443-2104. Alternatively, you can e-mail Client Services at: clientservices@firstcommand.com. Additionally, the following Q&A may provide useful information.

1. **Q:** First Command has been recommending contractual investment plans for more than 30 years. Is this a change in philosophy?

   **A:** No. First Command’s core investment philosophy has always focused on the value of investing on a regular, systematic basis. We continue to believe that investors who will take a long-term view will benefit from our planning and other lifetime services, and that investing in a long-term systematic pattern can be an effective approach for pursuing long-term financial goals. We plan to continue offering existing and new clients a full range of services oriented toward those goals.

2. **Q:** Why is First Command taking this action now?

   **A:** We believe that for most people the best hope of achieving important financial goals is to establish a consistent savings and investment pattern and then stick with it. We are committed to encouraging as many American families as possible to take that approach. However, recent national media attention on contractual investment plans led Congress to consider banning new sales of the plans. On Oct. 5, the House of Representatives passed a bill containing such a ban and it was referred to the Senate. A separate, but very similar bill was also introduced in the Senate at the same time. The NASD and SEC have also been examining our business operations and sales practices. All of this served to create additional media coverage. We continue to believe in the value of regular investing and we don’t want anything to interfere with our ability to assist our clients’ focus on that concept.

3. **Q:** Have the fund companies given up on contractual plans?

   **A:** The fund companies who sponsor the plans are among the best-known names in the industry – Fidelity, Pioneer, AIM, Franklin-Templeton. They are currently exploring a variety of options with the key goal of protecting investors’ rights inherent in their contractual investment plans. They, along with First Command, remain committed to offering the benefits of consistent investing over the long term.

4. **Q:** What protections are being considered for my contractual account?

   **A:** The legislation passed by the House and sent to the Senate for consideration specifically states that current contractual plan holders are to retain all rights and privileges of the plans. Additionally, the fund companies that sponsor the specific contractual plans are currently exploring a variety of options with the key goals of protecting investors’ rights and interests inherent in their contractual investment plans. First Command and the fund companies are committed to offering the benefits of consistent investing over the long term.
5. **Q:** Will I continue to enjoy my plan features? Can I still invest in my existing contractual plan?

**A:** Yes. We believe the investment companies will continue offering all rights and privileges of the plans. Also, language in proposed legislation concerning contractual plans specifically states that the rights of current investors are to be maintained. Once you make your first 12 investments, you have the right to invest to the full 300 investments without additional charges or expenses other than the management fees and 12b-1 fees set forth in your plan prospectus. Additionally, you will continue to receive all of the services you have come to expect from First Command and your First Command agent.

6. **Q:** What will be the effect of no new accounts being established in my systematic plan?

**A:** While we have ceased new sales of contractual plans, each of the contractual plans currently has a large number of active investors with the right to complete their plans pursuant to the plan’s prospectus. The plans you have bought consist of offerings by Fidelity Investment Management, Ltd., AIM Investment Management Group, Pioneer Investment Management, Inc. and Franklin-Templeton Investment Corporation, four well known companies. Additionally, we are in active consultation with all plan sponsors to explore a variety of options at the plan and the portfolio levels with the key objective of protecting investors’ rights inherent in their contractual investment plans. We pledge to keep you informed.

7. **Q:** What is the status of First Command and regulatory organizations?

**A:** As has been reported, our regulators, the NASD, formerly National Association of Securities Dealers, and the Securities and Exchange Commission, have been investigating First Command’s business operations and sales practices. Although we continue to cooperate with both organizations and look forward to resolving all issues under review in the near future, it is likely that some regulatory action toward First Command will occur.

8. **Q:** I have heard that First Command has expanded the market it serves. Is this true?

**A:** Yes. Our mission has always been to assist American families. Throughout the first 45 years of our existence, our concentration has been on serving military families in the leadership ranks. Over the years, a significant number of our clients have left the service either through retirement or separation and now the majority of our current clients are no longer in the military. Further, many clients we now serve are children and grandchildren of military clients but were never in the military themselves. Over the years we have received referrals to civilian friends, relatives and associates of clients, but traditionally we have discouraged these referrals to focus our agents’ time on serving military clients. However, the growth in our agent force in recent years has allowed us to begin accepting civilian referrals from our clients. Additionally, corporate plans call for an expansion in the type of financial services provided to our clients, a strategy that is best undertaken with an expansion in market.
9. **Q: What investment alternatives will you now offer?**

**A:** The mutual fund and brokerage industries offer a very wide variety of choices of products and services. At First Command 30% of our investment business has been in mutual funds other than contractual plans. We are ready and able to offer investment recommendations taking many factors into consideration for clients at every stage of the wealth accumulation and management process using products and services other than contractual plans.
A Gold Mine in Low Fund Fees

Hey there, fans of mutual funds. How would you like to make 2 percent more on your money each year, compounding into tens of thousands of dollars when you retire? No muss, no fuss, no extra risk. The gains slip automatically into your account. I'll tell you the secret for only the price of your NEWSWEEK subscription. Buy funds that are low in cost.

I wish I had a nickel for all the investors who think that fees aren't worth talking about. They've fallen for Wall Street's cunning sales ploy: "What do you care about costs as long as you make money?"

If you agree with that dumb idea, you're finished. An easy mark. The Securities and Exchange Commission (SEC), which regulates brokerage firms, sees a ton of deceptive mutual-fund sales. They can happen, especially when customers don't know how much their funds actually cost. (Note that these problems affect only funds sold by stockbrokers and financial planners who take sales commissions, not the funds sold directly to customers by companies, such as Vanguard, Fidelity and T. Rowe Price.)

The main reason people overlook costs is that they sound so small. But tiny percentages—and percentage differences—add up. Say you put $10,000 into a fund earning 7 percent a year for 15 years. With annual costs of 2 percent, you'd wind up with $20,641. If you cut your costs to 1.3 percent, you'd have $22,870—an extra $2,229, without even trying. A true low-cost fund with annual expenses of just 0.3 percent (from Vanguard, for example) would yield $26,452—that's 28 percent more than you'd get from the high-cost fund. After 30 years of parsimonious investing, you'd retire with 64 percent more. All because you were smart enough to save on fees.

Mutual funds are so common—a $5.9 trillion business today—you'd think that investors would know what they've paid. But on questionnaires, it turns out they don't. They don't even know if their fund's fees are high or low. Broker-sold funds offer at least three kinds of shares—each one a different way of paying the sales commission. Ask yourself which type you have and whether it's a sensible choice:

"A" shares—You pay a one-time sales charge averaging 5.1 percent on U.S. diversified stock funds. The broker deducts that fee upfront, then invests the remainder in your fund shares. There's also an annual fee, of perhaps 0.27 percentage points a year. On large investments—maybe $25,000 or $100,000—the sales charge drops. (Data comes from the fund-research firm Morningstar.)

"B" shares—All the money you invest goes into fund shares right away. You might think that there's no sales commission, but you'd be wrong. The broker receives an immediate payment, averaging 4.7 percent. You cover that cost by paying a high fee every year (average: 0.94 percent) for the first six to 10 years. If you sell earlier, you'll pay yet another fee. Your annual cost will drop, however, if you hang in.

"C" shares—Payment schedules vary. Usually, there's no charge upfront and no charge for selling after just 12 months. Your annual fee averages 0.95 percent, and you'll pay it as long as you hold the fund. Brokers dislike C shares because they have to collect their commission quarterly instead of all at once. Neither C nor B shares offers discounts for large investments.

What's best for you, if you're a brokerage customer? On average, A shares yield more for people who hold for at least eight years. They're also best buys if you're investing a large sum—say, from a pension rollover. C shares suit people who expect to sell within a shorter period.

As for B shares ... well, B stands for "broker," which says it all. They're usually your poorest choice. Buyers think (wrongly) that they've skipped the sales charge. B shares lock them in because of the fee they'd pay by selling the fund too soon.

One more thing to know: brokerage firms maintain "preferred lists" of funds they like to sell. How do funds make the list? They pay. Brokers can often earn higher commissions by selling you one of the poor performers. Fair-dealing salespeople won't do that. But you don't want to pay for "advice" that profits them at your expense.

To put a dent in abusive selling, the SEC is developing a disclosure form that brokers would have to give you when you buy. You'd see any upfront sales charge, the first year's annual fee and whether the fund paid the broker extra to make the sale. You'd also see how expensive the fund is, compared with industry averages. That's a killer disclosure. If you knew, why would you pay the highest fees? The SEC should add one item more: the compounding cost of high fees as the years go by. It's huge, and will really open your eyes.

Luckily for all of us, the proposed (lawyer-written) disclosures were road-tested in advance. The legalese went right over people's heads, says Susan Wyderko, the SEC's head of investor education. Siegel & Gale, specialists in "plain English," designed new forms that could really work.

Now the lobbying starts, with brokers, naturally, opposed. That's because costs are the best predictor of your investment returns, says Mercer Bullard, of the advocacy group, Fund Democracy. If you buy low-fee funds, you'll retire richer by 64 percent.

If you're smart enough to save on broker fees for your mutual funds, you can retire after 30 years of low-cost investing with 64 percent more.

I'll tell you the secret for only the price of your NEWSWEEK subscription. Buy funds that are low in cost.
CERTIFICATION OF PLAINTIFF PURSUANT TO FEDERAL SECURITIES LAWS

1. Michael McPhail ("Plaintiff") declare, as to the claims asserted under federal securities laws, that:
   1. Plaintiff has reviewed the complaint prepared by counsel and has authorized its filing.
   2. Plaintiff did not purchase the security that is the subject matter of the complaint at the direction of Plaintiffs' counsel or in order to participate in any private action arising under the federal securities laws.
   3. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
   4. On December 15, 2004, Plaintiff still owned a First Command Systematic Investment Plan ("SIP"), and before December 15, 2004, Plaintiff executed the following SIP transactions:

<table>
<thead>
<tr>
<th>SIP Account Number</th>
<th>Date Account Established</th>
<th>Amount Invested into SIP before December 15, 2004</th>
<th>Monthly Investment</th>
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   (List additional transactions or information on a separate sheet of paper if necessary)

   5. In the past three years, Plaintiff has not sought to serve as a class representative party on behalf of a class in the following action filed under federal securities laws.

   6. Plaintiff will not accept any payment for serving as a class representative party on behalf of a class beyond Plaintiff's pro-rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

   The foregoing are, to the best of my knowledge and belief, true and correct statements.

   Executed this 17 day of March, 2005

   Michael A. McPhail
   Plaintiff signature

   Michael A. McPhail
   Print name

   7638 Palmilla Dr #118
   Address

   San Diego CA 92122
   City, State, Zip

   (858) 642-0843
   Telephone number

   michaelmcphail@hotmail.com
   E-mail Address

   EXHIBIT_6
CERTIFICATION OF PLAINTIFF PURSUANT TO FEDERAL SECURITIES LAWS

I, Robert Barr Kimnach III ("Plaintiff") declare, as to the claims asserted under federal securities laws, that:

1. Plaintiff has reviewed the complaint prepared by counsel and has authorized its filing.
2. Plaintiff did not purchase the security that is the subject matter of the complaint at the direction of Plaintiffs' counsel or in order to participate in any private action arising under the federal securities laws.
3. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
4. On December 15, 2004, Plaintiff still owned a First Command Systematic Investment Plan ("SIP"), and before December 15, 2004, Plaintiff executed the following SIP transactions:

<table>
<thead>
<tr>
<th>SIP Account Number</th>
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(List additional transactions or information on a separate sheet of paper if necessary)

6. In the past three years, Plaintiff has not sought to serve as a class representative party on behalf of a class in the following action filed under federal securities laws.

7. Plaintiff will not accept any payment for serving as a class representative party on behalf of a class beyond Plaintiff's pro-rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

The foregoing are, to the best of my knowledge and belief, true and correct statements.

Executed this 16th day of March, 2005

Plaintiff signature

Robert B. Kimnach III

Print name

1636 Catalina Blvd.

Address

San Diego CA 92107

City, State, Zip

(619) 788 - 8554

Telephone number

E-mail Address

EXHIBIT 7
CERTIFICATION OF PLAINTIFF PURSUANT TO FEDERAL SECURITIES LAWS

I, (print name) Jennifer Morrison ("Plaintiff") declare, as to the claims asserted under federal securities laws, that:

1. Plaintiff has reviewed the complaint prepared by counsel and has authorized its filing.

2. Plaintiff did not purchase the security that is the subject matter of the complaint at the direction of Plaintiffs' counsel or in order to participate in any private action arising under the federal securities laws.

3. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.

4. On December 15, 2004, Plaintiff still owned a First Command Systematic Investment Plan ("SIP"), and before December 15, 2004, Plaintiff executed the following SIP transactions:

<table>
<thead>
<tr>
<th>SIP Account Number</th>
<th>Date Account Established</th>
<th>Amount Invested into SIP before December 15, 2004</th>
<th>Monthly Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>7033932134</td>
<td>$666.66</td>
<td>$333.33</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

(List additional transactions or information on a separate sheet of paper if necessary)

6. In the past three years, Plaintiff has not sought to serve as a class representative party on behalf of a class in the following action filed under federal securities laws.

7. Plaintiff will not accept any payment for serving as a class representative party on behalf of a class beyond Plaintiff's pro-rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

The foregoing are, to the best of my knowledge and belief, true and correct statements.

Executed this 23rd day of March, 2005

Plaintiff signature

Jennifer Morrison

Print name

7313 Nathan Healy Way Louisville KY 40272

Address City, State, Zip

(502) 937-9757

Telephone number

kimorrison95@yahoo.com

E-mail Address

EXHIBIT 8
CERTIFICATION OF PLAINTIFF PURSUANT TO FEDERAL SECURITIES LAWS

I, (print name) Kevin L Morrison ("Plaintiff") declare, as to the claims asserted under federal securities laws, that:

1. Plaintiff has reviewed the complaint prepared by counsel and has authorized its filing.
2. Plaintiff did not purchase the security that is the subject matter of the complaint at the direction of Plaintiff's counsel or in order to participate in any private action arising under the federal securities laws.
3. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
4. On December 15, 2004, Plaintiff still owned a First Command Systematic Investment Plan ("SIP"), and before December 15, 2004, Plaintiff executed the following SIP transactions:

<table>
<thead>
<tr>
<th>SIP Account Number</th>
<th>Date Account Established</th>
<th>Amount Invested into SIP before December 15, 2004</th>
<th>Monthly Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>7033932135</td>
<td></td>
<td>$666.66</td>
<td>$333.33</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

(List additional transactions or information on a separate sheet of paper if necessary)

5. In the past three years, Plaintiff has not sought to serve as a class representative party on behalf of a class in the following action filed under federal securities laws.
6. Plaintiff will not accept any payment for serving as a class representative party on behalf of a class beyond Plaintiff's pro-rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

The foregoing are, to the best of my knowledge and belief, true and correct statements.

Executed this 25 day of March, 2005

Plaintiff signature

Kevin L Morrison

Print name

2313 Nathan Hale Way

Address

LaRiviere, KY 40212

City, State, Zip

(602) 437-9757

Telephone number

kjmorison95@yahoo.com

E-mail Address
CERTIFICATION OF PLAINTIFF PURSUANT TO FEDERAL SECURITIES LAWS

I, (print name) CANDACE AND NEIL HURLEY ("Plaintiff") declare, as to the claims asserted under federal securities laws, that:

1. Plaintiff has reviewed the complaint prepared by counsel and has authorized its filing.
2. Plaintiff did not purchase the security that is the subject matter of the complaint at the direction of Plaintiff's counsel or in order to participate in any private action arising under the federal securities laws.
3. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
4. On December 15, 2004, Plaintiff still owned a First Command Systematic Investment Plan ("SIP"), and before December 15, 2004, Plaintiff executed the following SIP transactions:

<table>
<thead>
<tr>
<th>SIP Account Number</th>
<th>Date Account Established</th>
<th>Amount Invested into SIP before December 15, 2004</th>
<th>Monthly Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>7044021723</td>
<td></td>
<td>$5,250.00</td>
<td>$250.00</td>
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<tr>
<td>7022105674</td>
<td></td>
<td>$2,100.00</td>
<td>$100.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

(List additional transactions or information on a separate sheet of paper if necessary)

5. In the past three years, Plaintiff has not sought to serve as a class representative party on behalf of a class in the following action filed under federal securities laws.
6. Plaintiff will not accept any payment for serving as a class representative party on behalf of a class beyond Plaintiff's pro-rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

The foregoing are, to the best of my knowledge and belief, true and correct statements.

Executed this 21 day of MARCH, 2005

[Signature]

CANDACE B. HURLEY & NEIL E. HURLEY
Print name

114 CARLTON CT
City, State, Zip

270 828 5881
Telephone number

VINE GROVE KY 40175
E-mail Address

candace.hurley@us.army.mil

EXHIBIT 9
CERTIFICATION OF PLAINTIFF PURSUANT TO FEDERAL SECURITIES LAWS

I, (print name) **CANDACE B. HURLEY** ("Plaintiff") declare, as to the claims asserted under federal securities laws, that:

1. Plaintiff has reviewed the complaint prepared by counsel and has authorized its filing.
2. Plaintiff did not purchase the security that is the subject matter of the complaint at the direction of Plaintiffs' counsel or in order to participate in any private action arising under the federal securities laws.
3. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
4. On December 15, 2004, Plaintiff still owned a First Command Systematic Investment Plan ("SIP"), and before December 15, 2004, Plaintiff executed the following SIP transactions:

<table>
<thead>
<tr>
<th>SIP Account Number</th>
<th>Date Account Established</th>
<th>Amount Invested into SIP before December 15, 2004</th>
<th>Monthly Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>7022105673</td>
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<td>$5,250.00</td>
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</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(List additional transactions or information on a separate sheet of paper if necessary)

6. In the past three years, Plaintiff has not sought to serve as a class representative party on behalf of a class in the following action filed under federal securities laws.
7. Plaintiff will not accept any payment for serving as a class representative party on behalf of a class beyond Plaintiff's pro-rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

The foregoing are, to the best of my knowledge and belief, true and correct statements.

Executed this 21 day of MARCH, 2005

Plaintiff signature

CANDACE B. HURLEY

Print name

CANDACE B. HURLEY

Address

114 CARLTON CT

City, State, Zip

VINE GROVE KY 40175

Telephone number

270-828-5881

E-mail Address

candace.hurley@us.army.mil
CERTIFICATION OF PLAINTIFF PURSUANT TO FEDERAL SECURITIES LAWS

I, (print name) Scott Wagner ("Plaintiff") declare, as to the claims asserted under federal securities laws, that:

1. Plaintiff has reviewed the complaint prepared by counsel and has authorized its filing.
2. Plaintiff did not purchase the security that is the subject matter of the complaint at the direction of Plaintiff's counsel or in order to participate in any private action arising under the federal securities laws.
3. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
4. On December 15, 2004, Plaintiff still owned a First Command Systematic Investment Plan ("SIP"), and before December 15, 2004, Plaintiff executed the following SIP transactions:

<table>
<thead>
<tr>
<th>SIP Account Number</th>
<th>Date Account Established</th>
<th>Amount Invested into SIP before December 15, 2004</th>
<th>Monthly Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>7033927743</td>
<td>$1,000.02</td>
<td>$333.33</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td></td>
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<td></td>
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<td>$</td>
<td></td>
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<tr>
<td></td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

(List additional transactions or information on a separate sheet of paper if necessary)

5. In the past three years, Plaintiff has not sought to serve as a class representative party on behalf of a class in the following action filed under federal securities laws.

6. Plaintiff will not accept any payment for serving as a class representative party on behalf of a class beyond Plaintiff's pro-rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

The foregoing are, to the best of my knowledge and belief, true and correct statements.

Executed this 21 day of March, 2005

[Signature]

Print name

516 Adams Mill Lane

Address

Evans, GA 30809

City, State, Zip

(706) 364 5508

Telephone number

scott.d.wagner@us.army.mil

E-mail Address

EXHIBIT 10
CERTIFICATION OF PLAINTIFF PURSUANT TO FEDERAL SECURITIES LAWS

1. (print name) Kryshin Wagner (“Plaintiff”) declare, as to the claims asserted under federal securities laws, that:

1. Plaintiff has reviewed the complaint prepared by counsel and has authorized its filing.

2. Plaintiff did not purchase the security that is the subject matter of the complaint at the direction of Plaintiff’s counsel or in order to participate in any private action arising under the federal securities laws.

3. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.

4. On December 15, 2004, Plaintiff still owned a First Command Systematic Investment Plan (“SIP”), and before December 15, 2004, Plaintiff executed the following SIP transactions:

<table>
<thead>
<tr>
<th>SIP Account Number</th>
<th>Date Account Established</th>
<th>Amount Invested into SIP before December 15, 2004</th>
<th>Monthly Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>7033060520</td>
<td>$ 999.99</td>
<td>$ 333.33</td>
<td></td>
</tr>
</tbody>
</table>

(List additional transactions or information on a separate sheet of paper if necessary)

6. In the past three years, Plaintiff has not sought to serve as a class representative party on behalf of a class in the following action filed under federal securities laws.

7. Plaintiff will not accept any payment for serving as a class representative party on behalf of a class beyond Plaintiff’s pro-rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

The foregoing are, to the best of my knowledge and belief, true and correct statements.

Executed this 21st day of March, 2005

Kryshin Wagner
Plaintiff signature

Kryshin Wagner
Print name

516 Adams Mill Lane
Address

Evans, GA 30809
City, State, Zip

(706) 364-5508
Telephone number

Kryshin.Wagner@us.army.mil
E-mail Address
MISSION STATEMENT

We are committed to improve significantly the long term financial security and success of deserving American families. Financial success requires careful planning and disciplined execution over one's lifetime.

Our clients confront the present and control their futures with their USPA&IRA Family Financial Programs. These programs are based on client realistic needs and goals, as well as proven financial philosophies and products. We recommend the best and own it ourselves. We do not offer less than the best.

We will remain independent and endure so as to serve our clients. Their success assures our success. We operate with courage and attack obstacles to our clients' well being. We tell the truth. We believe in capitalism and will grow to offer our service to more clients by continuing to attract, develop, and retain high quality people.

By example we will influence our industry to consider client benefit first, improve ethics, and increase effectiveness.

Motto

"Providing the opportunity for every professional military family to achieve financial independence."
PHILOSOPHY OF UNITED SERVICES PLANNING ASSOCIATION

We assist clients in specifically identifying their financial goals and then recommend appropriate investments to help meet these goals.

We encourage the accumulation of adequate savings to meet emergency and short-range requirements.

We recommend that long-range investment dollars be placed in carefully selected, professionally managed, equity investments where they will have an opportunity to grow and overcome the hazards of inflation.

We recommend investments which:

- are registered with the Securities and Exchange Commission and state securities commissioners,
- are managed by highly qualified and experienced professionals,
- have a sound investment concept and philosophy,
- are broadly diversified over many industries to reduce risk,
- are highly liquid and continuously marketable, and
- offer tax advantages, consistent with the law, without sacrificing the intrinsic or economic value of the investment.

We do not recommend complicated "get rich quick" schemes. We are strong advocates of dollar cost averaging for those who wish to invest on a monthly basis.
SAVINGS PHILOSOPHY

We encourage the accumulation of adequate savings as a critical element of a comprehensive Family Financial Plan.

We believe that an appropriate savings level will:

• provide for emergencies and short term necessities,

• provide a "pay cash" account for large planned purchases, thereby avoiding overextension of credit,

• prevent early withdrawal of dollars from a long-term investment account, thereby allowing the investor to build an estate through uninterrupted systematic investing over an extended period of time, and

• protect the investor from having to make a withdrawal from an investment account during an occasional down period in the market.

We recommend that savings dollars be accumulated in an FDIC insured financial institution.
PHILOSOPHY OF INDEPENDENT RESEARCH AGENCY

We recommend life insurance to fulfill specifically identified needs. Selection of life insurance products is based on individual family situations.

We encourage policyholders to accumulate investments, in addition to their life insurance coverage, as a vital part of their overall financial plan.

We offer life insurance through regularly licensed insurance agents who are also registered to sell investments.

We offer life insurance through strong companies (only those companies which are rated SUPERIOR by BEST's Insurance Reports are considered), at rates more economical than those normally encountered in the life insurance industry. This is possible because of the general educational level and preferred risk status of our clients, as well as careful selectivity by knowledgeable and efficient underwriters who understand and appreciate IRA's philosophy, high-quality business, and specialized requirements.

We do not recommend complicated policies, nor encourage expensive devices. We simply endeavor to cover insurance requirements at economical premiums.
Annual Financial Reviews

Maintain Balance • Adjust for Change • Measure Achievement
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL MCPHAIL, et al.,  
Plaintiffs

v.  
FIRST COMMAND FINANCIAL PLANNING, INC., et al.,  
Defendants.

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California 92037.

On July 22, 2005, I served the document(s) described as:

(1) CONSOLIDATED AMENDED COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934, THE SECURITIES ACT OF 1933 AND THE INVESTMENT ADVISERS ACT

05 CV 0179 IEG (JMA)
(BY MAIL): I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at San Diego, California. I am readily familiar with this firm’s business practice for collection and processing of correspondence for mailing with the U.S. Postal Service pursuant to which practice the correspondence will be deposited with the U.S. Postal Service this same day in the ordinary course of business (C.C.P. Section 10139a; 2015.5):

T. Ray Guy  
Robert Summerhays  
Weil Gotshal & Manges  
200 Crescent Court, Suite 300  
Dallas, TX 75201  
(214) 746-7700  
Fax: (214) 746-7777  
Attorney for Defendants

David Keltner  
JOSE, HENRY, BRANTLY & KELTNER  
675 North Henderson St.  
Fort Worth, TX 76107  
(817) 877-3303  
Fax: (817) 338-9109  
Attorney for Defendants

Noel Hensley  
David Dodds  
HAYNES AND BOONE, LLP  
901 Main Street, Suite 3100  
Dallas, TX 75202  
(214) 263-2310  
Fax: (214) 651-5940  
Attorney for Defendants

Cooley Godward  
William Grauer  
Koji Fukumura  
4401 Eastgate Mall  
San Diego, CA 92121-1909  
(858) 550-6000  
Fax: (858) 550-6420  
Attorney for Defendants

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

Executed on July 22, 2005, at San Diego, California.

Kyle R. Nordrehaug