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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JANICE SCHMIDT and JUDY A.
VANN-EUBANKS, on behalf of
themselves and all others similarly
situated.

Plaintiffs,

v.

STANDARD INSURANCE
COMPANY, PROTECTIVE LIFE
INSURANCE COMPANY, and DOES
1 TO 50, inclusive,

Defendants.

No. 1:21-cv-01784-JLT-SAB

**FIRST AMENDED CLASS ACTION
COMPLAINT AND DEMAND FOR
JURY TRIAL**

1. **BREACH OF CONTRACTUAL
DUTY TO PAY A COVERED
CLAIM**
2. **BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING**

JANICE SCHMIDT (“Mrs. Schmidt”) and Judy A. Vann-Eubanks (“Ms. Eubanks”)(collectively “Plaintiffs”), brings this action on behalf of themselves and all others similarly situated, against Defendants Standard Insurance Company (“Standard”) and Protective Life Insurance Company (“Protective Life”)(together, “Defendants”). Plaintiffs, by and through their attorneys, based on their individual experiences, the investigation of counsel, and information and belief, alleges as follows in support of the claims herein.

I. NATURE OF THE CASE

1. Plaintiffs have filed this class action lawsuit because Defendants knowingly and repeatedly violated California law by failing to provide statutorily mandated annual notices to life insurance policyholders as required by California law. Due to Defendants’ failure, the policies did not lapse and remained in force at the time of the insureds’ death, and Defendants then breached their life insurance contracts by refusing to pay the death benefits to the beneficiaries.

2. Under Sections 10113.71 and 10113.72 of the California Insurance Code (“Statutes”), which became effective January 1, 2013, life insurance companies such as Defendants are required to, among other obligations, a) give their policyholders an opportunity to designate a third party to receive notice of a potential termination of benefits for non-payment of a premium (“Designation Notice Requirement”); and b) provide notice to a policyholder designee of any non-payment of a premium prior to terminating any policy (“Third Party Notice Requirement”).

3. The public policy undergirding these requirements—which were publicly supported by California’s Governor, Insurance Commissioner and Department of Insurance—is to provide consumer safeguards from which people who have purchased life insurance coverage, especially seniors, would

1 benefit, specifically, to protect consumers from losing insurance coverage due
2 to an uninformed choice about their insurance options or a missed premium
3 payment.

4 4. According to the author of the legislation: “Individuals can easily
5 lose the critical protection of life insurance if a single premium is accidentally
6 missed. If an insured individual loses coverage and wants it reinstated, he or
7 she may have to undergo a new physical exam and be underwritten again,
8 risking a significantly more expensive, possibly unaffordable premium if his or
9 her health has changed in the years since purchasing the policy. Therefore, the
10 protections provided by [the Requirements] are intended to make sure that
11 policyholders have sufficient warning that their premium may lapse due to
12 nonpayment.”

13 5. This is not a mere hypothetical concern. When one is elderly, ill,
14 or in the final stages of life, it is not uncommon for a life insurance holder to
15 miss a premium payment or make an uninformed decision as a result of their
16 condition. The consumer protections of the Statutes were put in place to protect
17 policyholders and their families.

18 6. Defendants have repeatedly and intentionally failed to adhere to
19 the Designation Notice Requirements which means that the policies could not
20 have and did not lapse, and Defendants have failed to honor those life insurance
21 policies by refusing to pay beneficiaries the proceeds. Protective Life’s conduct
22 has been particularly egregious as it has had notice that the California Supreme
23 Court (in a case in which it was the named defendant), the Ninth Circuit Court
24 of Appeals and numerous district courts in the Ninth Circuit have enforced the
25 Designation Notice Requirements against life insurance companies in nearly
26 identical circumstances.

1 7. The California Supreme Court has unequivocally held—in
2 *McHugh v. Protective Life Ins. Co.*, Cal. Supreme Court Case Number S259215
3 (Aug. 30, 2021)—that the Statutes apply to all policies that were in force as of
4 January 1, 2013:

5 “‘We conclude that sections 10113.71 and 10113.72 apply to all
6 life insurance policies in force when these two sections went into
7 effect, regardless of when the policies were originally issued.
8 This interpretation fits the provisions’ language, legislative
9 history, and uniform notice scheme, and it protects policy owners
10 — including elderly, hospitalized, or incapacitated ones who
11 may be particularly vulnerable to missing a premium payment —
12 from losing coverage, consistent with the provisions’ purpose.”

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14 8. The *McHugh* decision followed multiple rulings from other courts,
15 one dating as far back as 2016, which have likewise applied the Statutes to
16 policies in force as of the Statutes’ effective date. *See Bentley v. United of*
17 *Omaha Life Insurance Co.*, 2:15-CV-07870 (C.D. Cal. Feb. 21, 2019), Dkt. No.
18 174 at 24-25 (“Jennifer Bentley, as the class representative, has successfully
19 demonstrated that United breached its contractual duty to pay life insurance
20 benefits because: (1) United issued the life insurance policy to Eric Bentley,
21 and Jennifer Bentley is that policy’s beneficiary, Jt. Stip. ¶ 15; (2) the Bentley
22 policy was issued, delivered, or renewed in California by United, *id.* ¶¶ 16–17;
23 (3) the Bentley policy renewed after the Effective Date, *id.* ¶¶ 17, 20; (4) United
24 did not provide Eric Bentley with the Offer to Designate or provide Jennifer
25 Bentley with the Designee/30-Day Notice required by the Statutes, *id.* ¶¶ 22–
26 24; (5) the Bentley policy lapsed for non-payment of premium after the
27 Effective Date, *id.* ¶¶ 4–5, 35–36; and (6) to date, United has not paid death
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benefits on the Bentley policy. *Id.* ¶ 32. Thus, there is no dispute of material fact that United breached its contractual duty to pay Jennifer Bentley’s life insurance claim.”); *accord Moriarty v. American General Life Ins. Co.*, 3:17-cv-1709 (S. D. Cal. Oct. 1, 2020); *Siino v. Foresters Life Ins. & Annuity Co.*, 2020 U.S. Dist. Lexis 178709, *14–19 (N.D. Cal. Sep. 1, 2020); *Thomas v. State Farm Insurance Company*, Case No 18-cv-00728 (S.D. Cal. Dec. 10, 2019); *Bentley v. United of Omaha Life Insurance Co* 2016 U.S. Dist. LEXIS 195183 (C.D. Cal. June 22, 2016).

9. More recently, the Ninth Circuit followed and expanded on the holding in *McHugh*. In *Thomas v. State Farm Life Ins.*, 2021 U.S. App. LEXIS 30035, *30035 (9th Cir. Oct. 6, 2021), the court, relying on *McHugh*, held that an insurer breaches an insurance policy by lapsing it without providing the statutory notices and then failing to pay the policy proceeds when the policy owner passes away. 2021 U.S. App. LEXIS 30035 at 3-4 (“... State Farm failed to comply with sections 10113.71 and 10113.72, which prevented the policies from lapsing. [citation omitted] Therefore, State Farm breached its contractual obligations by failing to pay benefits to [the beneficiary] under the policies after [the policyholder’s] death.”).

10. Despite this longstanding, clear and overwhelming authority, for life insurance policies originally issued prior to January 1, 2013, Defendants have wrongfully terminated policies and refused to pay benefits despite failing to adhere to the Designation Notice Requirements mandated by law with respect to such policies.

11. Plaintiffs are one of many beneficiaries that have been damaged by Defendants’ unlawful conduct.

12. Defendants improperly terminated and refused to pay the benefits of a policy issued by Standard to Arthur James Schmidt (“Mr. Schmidt”)—Mrs.

1 Schmidt's husband—who died on January 30, 2018. Protective Life Insurance
2 Company has refused to pay the benefits of a life insurance policy issued by
3 Protective Life Insurance Company to Robert L. Eubanks ("Mr. Eubanks") –
4 Judy Vann-Eubanks father – who died on August 1, 2014.

5 13. Plaintiffs bring this suit as a class action to hold Defendants
6 accountable for its violations of the law and subsequent breaches of their
7 insurance contracts, which have severely harmed, and will continue to severely
8 harm if not stopped, numerous families such as Mrs. Schmidt's and Ms.
9 Eubanks.

10 II. JURISDICTION AND VENUE

11 14. This action is a civil matter of which this Court has jurisdiction
12 under the provisions of 28 U.S.C. § 1332.

13 15. Mrs. Schmidt is a citizen and domiciliary of the state of California
14 residing in Chatsworth, California. Ms. Eubanks is a citizen and domiciliary of
15 the State of Washington, residing in Seattle, Washington.

16 16. Protective Life Insurance Company has its corporate headquarters
17 in Birmingham, Alabama and is incorporated in the state of Tennessee,
18 Standard Life is an Oregon corporation with its principal place of business in
19 Portland, Oregon.

20 17. Upon information and belief, Standard entered into an agreement
21 with Protective Life under which Protective Life assumed the servicing of all
22 individual life insurance policies issued by Standard. This agreement, on
23 information and belief, made Protective Life and Standard mutual obligors of
24 life insurance policies issued by Standard, including, without limitation, the
25 Mrs. Schmidt's husband's policy.

26 18. The amount in controversy well exceeds the jurisdictional
27 minimum under 28 U.S.C. § 1332.

1 19. Venue is appropriate in this district under 28 U.S.C. § 1391
2 because a substantial part of the events giving rise to claims at issue occurred
3 in this district. Plaintiff Mrs. Schmidt resides in this district and the life
4 insurance policy at issue was issued in this district. Protective Life and Standard
5 have transacted business in this district including the issuance of life insurance
6 policies and was found or had agents in this district.

7 20. This Court has personal jurisdiction over Protective Life and
8 Standard because, among other facts, they: a) transacted business in this district;
9 b) issued insurance policies in this district; c) had substantial contacts with this
10 district; and/or d) were engaged in the illegal conduct alleged herein which was
11 directed at and had the intended effect of causing injury to persons residing or
12 located in this district.

13 **III. THE PARTIES**

14 21. Mrs. Schmidt is the sole beneficiary of the insurance policy issued
15 by Standard (and later taken over by Protective Life) to her late-husband Arthur
16 James Schmidt in 1987 that was entered into in Fresno, California. Mrs.
17 Schmidt is a resident of Fresno, California. Ms. Eubanks is a 50% beneficiary
18 of the life insurance policy issued by Protective Life to her late-father Robert
19 L. Eubanks in 1999 in California. Ms. Eubanks is a resident of Seattle,
20 Washington.

21 22. Standard Insurance Company is an Oregon insurance company
22 based in Portland, Oregon which, on information and belief, entered into an
23 agreement with Protective Life in or around July 2001 under which Protective
24 Life assumed the servicing of all individual life insurance policies issued by
25 Standard Life.

26 23. Protective Life is an insurance company licensed to conduct the
27 business of insurance in California. Protective Life is a Tennessee corporation
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1 and is a unit of Dai-ichi Life Holdings Inc., NAIC Group #0458, a publicly
2 traded corporation headquartered in Tokyo, Japan and listed on the Tokyo Stock
3 Exchange.

4 IV. FACTUAL ALLEGATIONS

5 24. In 2012, Assembly Bill 1747 was enacted and created Sections
6 10113.71 and 10113.72 of the California Insurance Code (the “Statutes”).

7 25. The Statutes went into effect on January 1, 2013 (the “Effective
8 Date”) and established, among other things, notice and designation
9 requirements for life insurance policies.

10 26. The mandates of the Statutes included, among other requirements,
11 the Designation Notice Requirement and Third-Party Notice Requirement,
12 which required insurers to give their policyholders an annual opportunity to
13 designate a third party to receive notice of a potential termination of benefits
14 for non-payment of a premium and provide notice to a third party designated
15 by the policyholder of any non-payment of a premium prior to terminating any
16 policy. The Statutes read in pertinent part:

17 **Section 10113.71:**

18 (b)(1):A notice of pending lapse and termination of a life
19 insurance policy shall not be effective unless mailed by the insurer
20 to the named policy owner, a designee named pursuant to Section
21 10113.72 for an individual life insurance policy, and a known
22 assignee or other person having an interest in the individual life
23 insurance policy, at least 30 days prior to the effective date of
24 termination if termination is for nonpayment of premium.

25 *****

26 (3) Notice shall be given to the policy owner and to the designee
27 by first-class United States mail within 30 days after a premium is
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1 due and unpaid. However, notices made to assignees pursuant to
2 this section may be done electronically with the consent of the
3 assignee.

4 ***

5 **Section 10113.72:**

6 (a) An individual life insurance policy shall not be issued or
7 delivered in this state until the applicant has been given the right
8 to designate at least one person, in addition to the applicant, to
9 receive notice of lapse or termination of a policy for nonpayment
10 of premium. The insurer shall provide each applicant with a form
11 to make the designation. That form shall provide the opportunity
12 for the applicant to submit the name, address, and telephone
13 number of at least one person, in addition to the applicant, who is
14 to receive notice of lapse or termination of the policy for
15 nonpayment of premium.

16
17 (b) The insurer shall notify the policy owner annually of the right
18 to change the written designation or designate one or more
19 persons. The policy owner may change the designation more often
20 if he or she chooses to do so.

21
22 (c) No individual life insurance policy shall lapse or be terminated
23 for nonpayment of premium unless the insurer, at least 30 days
24 prior to the effective date of the lapse or termination, gives notice
25 to the policy owner and to the person or persons designated
26 pursuant to subdivision (a), at the address provided by the policy
27 owner for purposes of receiving notice of lapse or termination.
28

1 Notice shall be given by first-class United States mail within 30
2 days after a premium is due and unpaid.

3 Cal. Ins. Code § 10113.71-72. (emphasis added)

4 27. Defendants have chosen to disregard the Statutes with respect to
5 life insurance policies issued or delivered in California prior to January 1, 2013.
6 Upon information and belief, Defendants have adhered to the Statutes for new
7 life insurance policies they issued and delivered in California after January 1,
8 2013 but not those issued and delivered before January 1, 2013. In other words,
9 Defendants have set up two separate regulatory schemes to administer their life
10 insurance policies.

11 28. In particular, Defendants have disregarded the Designation Notice
12 Requirement for insurance policies issued or delivered in California prior to the
13 Effective Date of the Statutes—January 1, 2013—even if the policies were
14 renewed after the Effective Date. Upon information and belief, after January 1,
15 2013 Defendants did start issuing the Designation Notice Requirements for new
16 life insurance policies. Upon information and belief, as to these new life
17 insurance policies, neither Standard nor Protective Life engaged in any analysis
18 as to whether or not an insured would benefit from the notice—the notices were
19 issued annually to all new life insurance policyholders.

20 29. As a result of Defendants' disregard of the Designation
21 Requirement of the Statutes, Defendants have improperly terminated policies
22 in violation of the law.

23 30. Subsequently, Defendants then refused to pay out proceeds that
24 are due and owing to the beneficiaries of such improperly terminated policies,
25 breaching those insurance contracts by their failure to pay.
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1 31. The policies issued by Standard and serviced by Protective Life
2 insuring Mr. Schmidt—for which Mrs. Schmidt is the sole beneficiary— and
3 the policy issued by Protective Life insuring Mr. Eubanks are two examples.

4 32. On March 16, 1987, Standard issued a \$250,000 “Whole Life
5 Insurance” policy to Mr. Schmidt (Policy No. SDO530951) (the “Schmidt
6 Policy”). Upon information and belief, in or around July 2001, Protective Life
7 assumed the servicing of the Policy from Standard and thereafter became jointly
8 responsible with Standard for the administration of the policy and payment of
9 death benefits. On or around May 25, 1999, Protective Life issued a \$100,000
10 term life insurance policy to Robert L. Eubanks (Policy No. PL 0647591)(the
11 “Eubanks Policy)(collectively the “Policies”).

12 33. Pursuant to the Schmidt Policy, Mr. Schmidt was able to and had
13 the option to renew the Policy for successive one-year periods by paying the
14 annual renewal premium identified in the Policy on or prior to the anniversary
15 date of March 16th of each year. Pursuant to the Eubanks Policy, Mr. Eubanks
16 was to and the option to renew the Policy for successive one-year periods by
17 paying the annual renewal premium identified in the Policy on or prior to the
18 anniversary date of May 25th of each year.

19 34. Protective Life purportedly attempted to lapse the Schmidt Policy
20 for non-payment of premium on or around April 20, 2014. Protective Life
21 purportedly attempted to lapse the Eubanks Policy for non-payment of premium
22 on or around May 25, 2014.

23 35. Mr. Schmidt died on January 30, 2018. Mr. Eubanks died on
24 August 1, 2014.

25 36. At no time prior to the termination of the Policies did Protective
26 Life or Standard provide Mr. or Mrs. Schmidt or Mr. Eubanks with the
27 opportunity to designate a third party to receive notification of a pending
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1 termination as mandated by the Designation Notice Requirement of the
2 Statutes.

3 37. Having failed to satisfy the Designation Notice Requirement,
4 Protective Life and Standard , by extension, also failed to notify a third-party
5 designee of the pending termination in violation of the Third-Party Notice
6 Requirement of the Statutes.

7 38. After Mr. Schmidt's death, Mrs. Schmidt (the named beneficiary
8 under the Policy and Mr. Schmidt's widow) through counsel contacted
9 Protective Life and submitted a claim for benefits. Mrs. Eubanks also contacted
10 Protective Life after her husband's death and made a claim for benefits.

11 39. Protective Life refused to pay the death benefits payable on the
12 Policies.

13 40. Moreover, on information belief, at the time Protective Life
14 refused to pay Mrs. Schmidt's claim, Protective Life was aware of the district
15 court rulings in *Bentley* and *Thomas*, which had definitively ruled that the
16 Statutes apply to all policies renewed after the Effective Date.

17 41. Protective Life has direct knowledge of the California Supreme
18 Court's ruling in *McHugh* as the named defendant in that case and has
19 knowledge of the Ninth Circuit's ruling in *Thomas*, holdings which undeniably
20 establish that the Statutes apply to all policies in-force as of the Effective Date
21 and that to deny claims based on the purported inapplicability of the Statutes to
22 policies issued before the Effective Date is a breach of contract.

23 42. Despite the clear and overwhelming precedent that the Statutes
24 apply to *all* policies, Mrs. Schmidt, Ms. Eubanks and those similarly situated
25 have still not received the insurance proceeds they are rightly owed; this breach
26 has caused Mrs. Schmidt, Ms. Eubanks and those like them to suffer
27 considerable harm in an amount to be proven at the time of trial.

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1 Protective Life's and Standard's legal representatives, successors, and assigns;
2 e) governmental entities; and f) the Court to which this case is assigned.

3 45. Members of the Class are so numerous and geographically
4 dispersed, throughout California and likely the United States, that joinder of all
5 members is impracticable. On information and belief, the Class is readily
6 identifiable from information and records in Defendants' possession.

7 46. Plaintiffs' claims are typical of the claims of the members of the
8 Class. The Plaintiffs and all members of the Class were damaged by the same
9 wrongful conduct of Defendants, that is, *inter alia*, their failure to satisfy the
10 Designation Notice Requirement and their breach of their insurance policies
11 through the wrongful termination and non-payment of proceeds.

12 47. The Plaintiffs will fairly and adequately protect and represent the
13 interests of the Class. Having suffered the same injury from the same conduct
14 of Defendants, Plaintiffs' interests are coincident with, and not antagonistic to,
15 those of the other members of the Class.

16 48. Plaintiffs' counsel in this matter are experienced in the prosecution
17 of complex commercial class actions such as this one.

18 49. Questions of law and fact common to members of the Class
19 predominate over questions that may affect only individual class members
20 because, among other things, Defendants have acted on grounds generally
21 applicable to the entire Class, thereby making damages with respect to the Class
22 as a whole appropriate. Such generally applicable conduct is inherent in
23 Defendants' wrongful conduct.

24 50. Questions of law and fact common to the Class include, but are not
25 limited to:

- 26 • Whether Defendants have failed to satisfy the Designation Notice
27 Requirement;

- Whether beneficiaries of those life insurance policies in which Defendants' failed to satisfy the Designation Notice Requirement have unpaid death benefits ;
- Whether Defendants breached their life insurance policies by not paying death benefits to beneficiaries despite not satisfying the Designation Notice Requirement;
- Whether Defendants' continued refusal to pay the death benefits under their life insurance policies constitute bad faith given Defendants' actual notice of the California Supreme Court's ruling in *McHugh, Bentley, and Thomas*; and
- The quantum of damages sustained by the Class in the aggregate.

51. Treatment of this dispute as a class action is a superior method for the fair and efficient adjudication of this matter over individual actions. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, or expense that numerous individual actions would require. In addition, class treatment will avoid the risk of inconsistency and varying adjudications.

52. The many benefits of proceeding through the class mechanism, including providing injured persons or entities a method for obtaining redress on claims that could not practicably or cost effectively be pursued individually, substantially outweighs potential difficulties—which Plaintiffs do not anticipate—in management of this case as a class action.

VI. CAUSES OF ACTION
FIRST CAUSE OF ACTION
BREACH OF CONTRACTUAL DUTY TO PAY A COVERED CLAIM
(ON BEHALF OF THE CLASS)

1 53. Plaintiffs refers to all preceding paragraphs and incorporates them
2 as though set forth in full in this cause of action.

3 54. Defendants issued, delivered, administered and controlled
4 payments on life insurance policies, which were binding contracts, to the
5 policyholders identified in the Class.

6 55. Defendants failed to timely invite the policyholders identified in
7 the Class—including Mr. and Mrs. Schmidt and Mr. Eubanks—to designate a
8 third party to receive termination notices for non-payment of a premium as
9 required by the Designation Notice Requirement of the Statutes and because of
10 this failure the policies did not lapse;

11 56. The policies—including the policy Mr. Schmidt purchased and
12 Plaintiff Mrs. Schmidt, as beneficiary, and the policy Mr. Eubanks purchased
13 and Plaintiff Ms. Eubanks, as beneficiary, has the right to enforce—were still
14 in effect at the time the beneficiaries made their claim or would have been
15 eligible to make a claim. Defendants breached by their contractual duty under
16 the policies by refusing to pay benefits to the Class members—including
17 Plaintiffs—despite not satisfying the Designation Notice Requirements of the
18 Statutes.

19 57. As a result of Defendants' violations of the law and breaches of
20 their life insurance policies, the Class—including Plaintiffs—have sustained
21 direct damages, as well as other foreseeable and incidental damages, in an
22 amount to be determined according to proof at the time of trial, plus interest.

23 **SECOND CAUSE OF ACTION –**
24 **BAD FAITH BREACH OF THE IMPLIED COVENANT OF GOOD**
25 **FAITH AND FAIR DEALING IN INSURANCE POLICY**
 (ON BEHALF OF THE CLASS)

26 58. Plaintiffs refers to all preceding paragraphs and incorporates them
27 as if set forth in full in this cause of action.

1 59. In every insurance policy there exists an implied duty of good faith
2 and fair dealing that the insurance company will not do anything to injure the
3 right of the insured to receive the full benefit of the policy.

4 60. Defendants breached the duty of good faith and fair dealing they
5 owed to the policyholders identified in the Class, including their policy with
6 Mr. and Mrs. Schmidt and Mr. Eubanks, which Plaintiffs have the right to
7 enforce.

8 61. Defendants breached their duty of good faith and fair dealing and
9 engaged in bad faith by, *inter alia*, the following acts and/or omissions:

- 10 a. Failing to timely invite the policyholders identified in the
11 Class—including Mr. and Mrs. Schmidt and Mr. Eubanks—
12 to designate a third party to receive termination notices for
13 non-payment of a premium as required by the Designation
14 Requirement of the Statutes;
- 15 b. Failing to abide by the Statutes at all times after the
16 Effective Date;
- 17 c. Failing to abide by the Statutes and resolve life insurance
18 claims after becoming aware of the precedential rulings in
19 California state and federal courts;
- 20 d. Failing to fulfill their ongoing duty to pay claims once
21 liability became clear; and
- 22 e. Improperly terminating or lapsing the respective policies
23 and unreasonably refusing, without proper cause, to pay
24 benefits to the Class members—including Plaintiffs—
25 despite not satisfying the Designation and Third-Party
26 Notice Requirements of the Statutes.

1 62. As a direct and proximate result of Defendants' breaches of their
2 duty of good faith and fair dealing, Plaintiffs and the Class have sustained direct
3 damages, as well as other foreseeable and incidental damages, in an amount to
4 be determined according to proof at the time of trial, plus interest.

5 63. As a further direct and proximate result of the unreasonable, bad
6 faith conduct of Defendants, Plaintiffs were compelled to retain legal counsel
7 to institute litigation to obtain the full and fair benefit of the insurance of which
8 they and their fellow putative class members are beneficiaries, making
9 Defendants liable for those attorney fees, witness fees and litigation costs
10 reasonably incurred in order to obtain the full benefit.

11 64. In addition, Defendants' conduct described herein was intended to
12 and did cause injury and/or was conduct carried out with a willful and conscious
13 disregard of the rights of the Class, including Plaintiffs, to delay and deny
14 benefits.

15 65. Defendants' conduct constitutes malice, oppression or fraud and
16 was unreasonable under California Civil Code section 3294 and/or California
17 Insurance Code Unfair Practices Act section 790.03 because Defendants'
18 continued unwillingness to fully satisfy its contractual and statutory
19 obligations was done and is being done with full knowledge that the courts,
20 including the California Supreme court, based on, *inter alia*, the language and
21 purpose of the Statutes, the legislative history and/or long-standing Renewal
22 Principle, have ruled that the Statutes cover all policies in force as of the
23 Effective Date.

24 66. Defendants' decision to deny coverage and continued
25 unwillingness to fully satisfy its contractual and statutory obligations was done
26 with full knowledge that the courts, based on, *inter alia*, the language and
27 purpose of the Statutes, the legislative history and long-standing Renewal
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1 Principle, had ruled that its legal position was not a justification to deny
2 payment, thereby entitling the Class, including Plaintiffs, to punitive damages
3 in an amount appropriate to punish Defendants and deter this type of knowingly
4 wrongful conduct.

5 67. As the California Supreme Court has held, "...the Legislature
6 enacted the [the Statutes] not only to provide protections to people in the future,
7 but also to ensure that existing policy owners don't lose the life insurance
8 coverage that they may have spent years paying for and on which their loved
9 ones depend". The Designation and Third-Party Notice Requirements of the
10 Statutes are very important consumer protections that provided policy owners
11 the ability to make an informed choice about whether to lapse or cancel or
12 renew important life insurance benefits. When insurance companies fail to
13 provide these notices they deprive the consumer of the opportunity to make
14 informed decisions.

15 **PRAYER FOR RELIEF**

16 Plaintiffs, on behalf of themselves and each Class member, prays for
17 relief and judgment as follows:

- 18 A. For certification of this matter as a Class Action pursuant to
19 Federal Rule of Civil Procedure 23, and appointment of Plaintiffs
20 as a Class Representative and their counsel of record as Class
21 Counsel;
- 22 B. For economic and foreseeable consequential damages, plus
23 prejudgment interest, against Defendants for breach of contract
24 and bad faith;
- 25 C. For punitive damages based on Defendants' ongoing bad faith;
- 26 D. For an award of attorneys' fees and costs of suit pursuant to, *inter*
27 *alia*, the Public Benefit Doctrine and California Code of Civil
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1 Procedure Section 1021.5 on the basis that private enforcement of
2 these rights is necessary, and the interests Plaintiff seeks to protect
3 significantly benefit the general public and/or pursuant to
4 California Civil Code section 3294;

5 E. Prejudgment pursuant to § 3289(b) of the California Insurance
6 Code at a rate of 10% and applicable post judgment interest; and

7 F. All other and further relief as this Honorable court deems just and
8 proper.

9 **JURY DEMAND**

10 Plaintiffs, on behalf of the Class, hereby demand a jury trial on all causes
11 of action that can be heard by a jury

12 Respectfully submitted,

13
14 September 28, 2022

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9 *themselves and all others similarly situated*
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