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Attorneys for Plaintiff JULIE GRUNDSTROM, and on Behalf of the Class

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JULIE GRUNDSTROM, Individually, and as successor-in-interest to DR. RICHARD I. APPLETON and on Behalf of the Class;

Plaintiff,

vs.

WILCAC LIFE INSURANCE COMPANY, an Illinois corporation; TEXAS LIFE INSURANCE COMPANY, a Texas corporation; and WILTON REASSURANCE LIFE COMPANY OF NEW YORK, a New York corporation,

Defendants.

Case No.: 3:20-cv-03445-MMC

SECOND AMENDED CLASS ACTION COMPLAINT FOR:

(1) DECLARATORY RELIEF OR JUDGMENT (CAL. CIV. CODE §§ 1060, *ET SEQ.*);

(2) DECLARATORY RELIEF OR JUDGMENT (28 U.S.C. 2201, *ET SEQ.*);

(3) BREACH OF CONTRACT; and

(4) UNFAIR COMPETITION (BUSINESS AND PROFESSIONS CODE §§ 17200, *ET SEQ.*)

DEMAND FOR JURY TRIAL

Plaintiff JULIE GRUNDSTROM, individually and on behalf of DR. RICHARD I. APPLETON, and on Behalf of the class defined below, against Defendants WILCAC LIFE INSURANCE COMPANY, TEXAS LIFE INSURANCE COMPANY, a Texas Corporation, and WILTON REASSURANCE LIFE COMPANY OF NEW YORK, a New Yortk Corporation. (hereinafter known collectively as "Wilcac") as follows:

I. NATURE OF THE CASE

1. Wilcac refuses to comply with mandatory provisions of the California Insurance Code as well as California common law regulating the lapse and termination of life insurance policies.

2. Since January 1, 2013, Wilcac and other related entities have systematically and purposely failed to provide certain classes of policy owners, insureds, assignees and others, proper notices of pending lapse or termination. Wilcac has failed to notify thousands of policy owners of their right to designate someone to receive critical notices and information regarding life insurance, despite being required to do so on an annual basis. All of these important safeguards are required by, among other sources, California Insurance Code Sections 10113.71 and 10113.72.[1] California law requires compliance with these safeguards, and failure to comply with these safeguards requires payment of the policy proceeds, and Wilcac refuses to comply.

3. As a result, Wilcac has failed to properly administer policies, evaluate the status of payments due under policies and pay claims to beneficiary for policies improperly lapsed or terminated. Indeed, thousands of policy owners and beneficiaries have lost, and continue to lose, the benefit, value and security of their life insurance; have been, and continue to be, forced into unnecessary reinstatements; and in many instances have lost all reasonable access to any insurance at all. Ultimately, Defendants have robbed thousands of their customers and beneficiaries of the investment in such policies, policy benefits as well as the security intended to be provided from such insurance.

4. The injury to Wilcac's customers and beneficiaries continues today, with

[1] Unless otherwise stated, all references to "Section 10113.71" and/or "10113.72" refer to California Insurance Code Sections 10113.71 and/or 10113.72. Sometimes these will be collectively referred to as "The Statutes."

policyholders currently paying unnecessary or inflated premiums, or unknowingly suffering under improper forced "reinstatements" which diminish the value or conditions of the policies. And there are numerous policyholders whom Wilcac told have no insurance, but whose policies are, unbeknownst to them, actually still in force and in some situations with benefits being owed and unpaid.

5. The Statutes were enacted to protect Californians and others, primarily seniors and the ill, as well as the intended beneficiary of such individuals. The Statutes were designed to prevent or lessen the possibility of unintended or uninformed loss of valuable and necessary life insurance for just one missed payment or resulting from policyholders' physical or mental infirmity. The Statutes were written to codify existing law regarding lapse and termination of life insurance, which required compliance with applicable law and policy provisions before termination takes effect. The Statutes were also intended to standardize the procedures used in all life insurance when a policyholder misses a premium payment and when an insurer attempts to apply provisions of the policy that allow for lapse and termination. These rules are also consistent with the strong public policy to give all policy owners and insureds mechanisms to allow for secondary notices of lapse and termination and overall to prevent unintended forfeitures.

6. The Statutes were also designed specifically to deal with the unique nature of life insurance. When a potential claim for benefits arises, the policy owner and party responsible for payment of premiums is often the insured, and due to their death, is no longer available to explain the circumstances related to any potential lapse or termination of coverage. The Legislature also recognized that the beneficiary is often unaware of the circumstances related to any lapse of coverage. Rather, the insurer is fully in control of the documentation and requirements for termination of coverage. As such, California requires compliance with all statutory and contractual provisions governing termination of an otherwise in-force policy regardless of the nonpayment of premium. In other words, no lapse or termination for failure to pay a premium is effective, and the policy remains in force even if premiums are unpaid, unless and until all statutory and contractual provisions are satisfied.

7. Plaintiff and Dr. Richard I. Appleton are victims of Wilcac's failures. Plaintiff, as

successor-in-interest to. DR. RICHARD I. APPLETON, and on behalf of herself and others similarly situated brings this action to recover for the injuries and damages resulting from these violations.

II. PARTIES

8. Plaintiff Julie Grundstrom is an individual and daughter of the insured: Dr. Richard I. Appleton. Plaintiff was and has been a resident and citizen of California at all relevant times. At all relevant times, Plaintiff has been the primary beneficiary of the life insurance policies insuring her father, Dr. Richard I. Appleton.

9. Dr. Richard I. Appleton was Julie Grundstrom's father. He died in California, as a California resident and citizen, on September 27, 2018. Dr. Appleton was a California resident and citizen at all times relevant. Dr. Appleton was the policy owner and the sole named insured under the terms of the policy.

10. Plaintiff pursues these claims and causes of action individually, on her own behalf as the primary beneficiary the subject Policy, as Executor of the Estate of Dr. Richard Appleton pursuant to California Code of Civil Procedure Sections 377.30, et. seq; as Decedent's successor-in-interest in compliance with California Code of Civil Procedure Section 377.32; and as a class representative. Filed herewith as Exhibit "A" and incorporated herein by reference is Plaintiff's Declaration pursuant to California Code of Civil Procedure Section 377.32. Plaintiff pursues these claims to the extent they are not held by Dr. Appleton. For purposes of this litigation, the Estate of Dr. Richard I Appleton is considered a citizen of the state of California. In each of these capacities, Ms. Grundstrom also pursues these claims on behalf of all others similarly situated. The Estate of Dr. Richard I. Appleton retains legal and/or equitable rights relative to the existence of the subject Policy.

11. Defendant Wilcac Life Insurance Company, is an Illinois Company doing business in California. It is registered to do business in California and is licensed by the California Department of Insurance to sell life insurance here in California. From 2013 until the present Wilcac was the insurer responsible for administering and honoring the subject policy.

12. Wilton Reassurance Life Company of New York, is a New York Company doing business in California. It is registered to do business in California and is licensed by the California

Department of Insurance to sell life insurance here in California.

13. Texas Life Insurance Company is a Texas Company doing business in California. It is registered to do business in California and is licensed by the California Department of Insurance to sell life insurance here in California.

14. Plaintiffs are also informed and believe that Wilcac, or corporations that it controls, acts as an administrator for other life insurers doing business in the state. Plaintiffs are informed and believe that, pursuant to individual contractual agreements with other licensed insurers, Wilcac acts and controls the administration of life insurance products beyond those owned by Wilcac, including, but not limited to, those which are part of NAIC Group #4213. Plaintiffs are thus informed and believe that Wilcac has at various times from 2013 until the present also derived profit and income from management and/or administration of other life insurers doing business in the state. As further explained below, Plaintiffs are informed and believe that Wilcac's administration of other insurance companies mirrors Wilcacs's own administration of Wilcac's policies with no discernable difference. Plaintiffs are informed and believe that the administration of these policies in the state of California is coordinated by agents and managers residing and/or operating out of the San Francisco and Sacramento regions.

15. Various forms of insurance companies, agents, insurance brokers or other licensed insurance entities or individuals transacting the business of insurance in this state at all relevant times and engaged in and operating in conjunction with Wilcac in a manner unknown to Plaintiff at this time to cause and/or contribute to the injuries and allegations herein described.

16. Other forms of business and/or businesses and various forms of national and/or state trade unions, lobbyist organizations, law firms, and other organizations and/or individuals involved in the business of insurance in the state of California, at relevant times, which provided counsel, advice, funds, and other forms of assistance in the planning and execution of Wilcac's common scheme and plan to commit fraud and concealment to avoid compliance with California law, as described herein, and avoid payment of claims similar to Plaintiff's claims.

III. JURISDICTION AND VENUE

17. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332, including under the

Class Action Fairness Act. The matter in controversy, exclusive of interest and costs, exceeds the sum or value of $75,000, and is between citizens of different States. Also, the matter or controversy is a putative class action with over 100 class members and with over $5 million in controversy.

18. Venue is proper in the Northern District of California pursuant to 28 U.S.C. Section 1391(b) through (d), because Defendant is authorized to conduct business in this District and has intentionally availed itself of the laws and markets within this District; does substantial business in this District; and is subject to personal jurisdiction in this District. Plaintiff and Dr. Richard I. Appleton also resided in this District at all times relevant.

IV. INSURANCE CODE SECTIONS 10113.71 AND 10113.72

19. In 2012, after extensive and open hearings and public consideration, including with Wilcac all other major insurance companies doing business in California, the California Legislature enacted Insurance Code Sections 10113.71 and 10113.72, which instituted procedural requirements for the termination and lapse of life insurance policies. The Statutes were written to avoid unintended forfeitures of life insurance policies primarily being suffered by the elderly and the ill. The Legislature found that there was a significant problem in California with the elderly abruptly losing insurance because they happened to miss a premium payment despite having faithfully and timely paid for many years.

20. Section 10113.71 reads as follows:

> **§ 10113.71 Grace Period; Notice of pending lapse and termination of policy; Mailing requirement**
>
> (a) Every life insurance policy issued or delivered in this state shall contain a provision for a grace period of not less than 60 days from the premium due date. The 60-day grace period shall not run concurrently with the period of paid coverage. The provision shall provide that the policy shall remain in force during the grace period.
>
> (b) (1) A notice of pending lapse and termination of a life insurance policy shall not be effective unless mailed by the insurer to the named policy owner, a designee named pursuant to Section 10113.72 for an individual life insurance policy, and a known assignee or other person having an interest in the individual life insurance policy, at least 30 days prior to the effective date of termination if termination is for nonpayment of premium.
>
> (2) This subdivision shall not apply to nonrenewal.
>
> (3) Notice shall be given to the policy owner and to the designee by

> first-class United Sates mail within 30 days after a premium is due and unpaid. However, notices made to assignees pursuant to this section may be done electronically with the consent of the assignee.
>
> (c) For purposes of this section, a life insurance policy includes, but is not limited to, an individual life insurance policy and a group life insurance policy, except where otherwise provided.

Next, Section 10113.72 says:

> **§ 10113.72 Right to designate person to receive notice of lapse or termination of policy for nonpayment of premium; Right to change designation; Notice of lapse or termination**
>
> (a) An individual life insurance policy shall not be issued or delivered in this state until the applicant has been given the right to designate at least one person, in addition to the applicant, to receive notice of lapse or termination of a policy for nonpayment of premium. The insurer shall provide each applicant with a form to make the designation. That form shall provide the opportunity for the applicant to submit the name, address, and telephone number of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy for nonpayment of premium.
>
> (b) The insurer shall notify the policy owner annually of the right to change the written designation or designate one or more persons. The policy owner may change the designation more often if he or she chooses to do so.
>
> (c) No individual life insurance policy shall lapse or be terminated for nonpayment of premium unless the insurer, at least 30 days prior to the effective date of the lapse or termination, gives notice to the policy owner and to the person or persons designated pursuant to subdivision (a), at the address provided by the policy owner for purposes of receiving notice of lapse or termination. Notice shall be given by first-class United States mail within 30 days after a premium is due and unpaid.

21. These Statutes apply to all policies still *in existence* as of January 1, 2013.

V. WILCAC'S VIOLATIONS OF LAW

22. In 2012, Defendant was made fully aware of the drafting and enactment of these provisions. And through its own lobbying groups and regulatory advisors, Defendant understood how and in what fashion The Statutes would apply.

23. Despite early knowledge of the Statutes and their mandates, since January 1, 2013, Defendants have failed to comply with the Statutes.

24. Wilcac's failure to comply with these provisions has resulted in, amongst other

impacts, the improper lapse, termination, and/or forced reinstatement of policies, the loss of the capacity of policyholders to be insured, the denial of actual claims, and the loss of millions, or perhaps billions, in insurance benefits that Defendants have now illegally retained. Plaintiff and her family have suffered and continue to suffer various forms of injury and loss including injury from an improper lapse, improper requirement of reinstatement and termination, and from Defendants' failure to reinstate coverage or otherwise pay the benefits due.

25. Plaintiff is informed and believes that the failure of Defendant to comply with The Statutes as well as the resulting injuries and damages continue to this day for many Californians.

VI. PLAINTIFF'S POLICY, LAPSE TERMINATION, AND DENIAL OF REINSTATEMENT

26. In or before 1991, Dr. Richard I. Appleton purchased, from or in California, a flexible premium adjustable life insurance policy (the "Policy" or "Subject Policy") from United Presidential Life Insurance Company, which was later fully acquired and subsumed by Conseco Life Insurance Company, along with the Subject Policy and all of its obligations (Policy No.010336622). In 2017, Conseco Life Insurance Company changed their name to Wilco Life Insurance Company. In 2020, Wilco Life Insurance Company merged with Wilcac Life Insurance Company. Following the merger, Wilcac is the remaining entity. As of January 1st, 2013, and at all times thereafter, Defendant was responsible for all contractual and statutory obligations associated with the Policy.

27. The copy of the Subject Policy, Policy No. 010336622, attached as Exhibit "B" to this complaint is an incomplete copy of the policy. A full and complete copy of the Policy is in the possession of Defendant. The Policy was purchased in California, was issued and delivered in California, and premiums were all paid from California such that it was and continues to be governed by the laws of the State of California including but not limited to The Statutes. The purpose of this policy was to protect Dr. Richard I. Appleton and his family. From January of 2013 the Policy named Plaintiff as the beneficiary.

28. The value of the policy is $500,000 or more and names Plaintiff as the primary beneficiary. The terms of the Policy state, "The beneficiary named in the application will receive the proceeds upon death of the insured." (*See* Exhibit "B.") The Policy had a flexible premium, and

at the time of lapse was approximately $21,000 per quarter. The Policy provides a 61-day grace period and states the insurer will provide written notice "31 days prior to the end of the grace period" to the owner's last address and to any assignee of record. (Exhibit "B.")

29. Despite the application of California law, and the express terms of the Policy, Defendant did not provide a sufficient 30 day notice to Plaintiff Julie Grundstrom or to Dr. Richard I. Appleton prior to termination of the policy. Plaintiff is informed and believes that these failures were part of a general business practice of Wilcac of ignoring and misapplying Sections 10113.71 and 10113.72, and the express language of its policies.

30. Dr. Appleton made his quarterly premium every quarter for over 25 years. In the years preceding termination, and especially in the few months beforehand, Dr. Richard I. Appleton became very ill. Despite this illness, Dr. Appleton took great care to pay his premiums, even as they dramatically increased. At all times Dr. Richard I. Appleton was financially capable of paying all premiums due and was desirous of maintaining the policy.

31. Sometime in or around May 2018, Plaintiff, with the permission of Dr. Appleton, called Wilcac to confirm the next premium due date and amount. Wilcac informed Plaintiff that the next premium was due on August 8, 2018 and told her the premium amount. Several weeks later, Plaintiff called Wilcac again, and confirmed, through the automated system, that the next premium was due on August 8, 2018. However, on July 17, 2018, Wilcac sent Dr. Appleton a letter indicating his policy had lapsed as of July 14, 2018. In response, Dr. Appleton sent a check dated July 22, 2018 for the indicated amount, which was cashed by Wilcac. On August 6, 2018, Dr. Appleton again contacted Wilcac to confirm the check had been cashed and that his policy was still in force. In response, Wilcac refunded Dr. Appleton's premium. The July 16, 2018 termination letter from Wilcac invited Dr. Appleton to apply for reinstatement, however, at this time Dr. Appleton was terminally ill with stage four prostate cancer, and incapable of qualifying for reinstated coverage. Dr. Appleton passed away on September 27, 2018. The attempted termination of the Policy in 2018 was legally ineffective leaving the policy in force at the time of Dr. Appleton's death.

32. At no point relevant to this matter has Defendant, in any fashion, complied with or attempted to comply with the provisions of Sections 10113.71 or 10113.72 regarding the subject

policy. No notice to the insured, or the designee was provided for the alleged lapse or termination of the policy in 2018.

33. Defendant also violated Section 10113.72 by failing to provide notice of a right to designate an alternative notice recipient. As such, termination of the policy was ineffective, and the policy remained in force at the time of Dr. Appleton's death. This termination not only violated the terms of the California Insurance Code, but also constituted a material breach of the contract. As described below, these breaches left Dr. Appleton purportedly uninsured, without access to the ongoing benefits of the Policy he had diligently paid for. Plaintiff, as the primary beneficiary has also suffered injury and loss resulting from this improper and ongoing repudiation of the policy, in the form of lost proceeds.

VII. CLASS ACTION ALLEGATIONS

34. Plaintiff is informed and believes that Defendants have not, since at least January 1, 2013, properly complied with the provisions of Insurance Code Sections 10113.71 and/or 10113.72. Since that time, Defendants have failed and continue to fail to provide these protections to policy owners, assignees and, where applicable, to their beneficiaries.

35. Plaintiff brings this action on behalf of all members of the following proposed class:

The Class:

> All owners and beneficiaries (where the insured has died) of individual life insurance policies issued or delivered in California or issued or delivered outside of California where the policy owner resided in California at the time of lapse, by Defendants, their predecessor insurers, or which were later acquired by or became the responsibility of Defendants, and which, on or after January 1, 2013, lapsed or terminated for nonpayment of premium without Defendants, or their predecessor insurers, first providing all the protections required by Insurance Code sections 10113.71 and 10113.72, and where the policies were not affirmatively cancelled in writing by the policy owner.

36. Defendants'Subject to additional information obtained through further investigation and discovery, the foregoing class definition may be expanded or narrowed by amendment or amended complaint or at the time of moving for class certification. Specifically excluded from the proposed Class is the Judge assigned to this action, and any member of the Judge's immediate family.

37. Defendants' conduct has imposed a common injury and/or harm on all class members. Defendants have acted, and has refused to act, on grounds generally applicable to the class members, which makes final injunctive relief with respect to each claim as a whole appropriate.

38. Plaintiff will and does faithfully represent, and is a member, in her representative capacity and as an individual, of the Class.

39. ***Numerosity.*** The members of the Class are so numerous that their individual joinder is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed Class contain thousands and perhaps tens-of-thousands of members. The precise number of members is unknown to Plaintiff. The true number of members is known or ascertainable by Defendants, as are their identities. Thus, Class members may likely be notified of the pendency of this action by first class mail, electronic mail, and/or by published notice.

40. ***Existence and Predominance of Common Questions and Answers of Law and Fact***. There is a well-defined community of interest in the questions and answers of law and fact involved affecting class members. The questions and answers of law and fact common to the Class predominate over questions and answers affecting only individual class members, including, but not limited to, the following:

a. Whether Sections 10113.71 and 10113.72, in whole or in part, apply to Defendants' life insurance policies.

b. Have Defendants violated and does it continue to violate the provisions of Sections 10113.71 and 10113.72?

c. Whether Defendants' life insurance policies have been ineffectively lapsed or terminated or subsequently been unnecessarily modified through reinstatement.

d. Whether Defendants are required to provide grace periods, timely and proper written notices of pending lapse or pending termination, and to provide policyholders a right to designate as set forth in Section 10113.72.

e. Should the Court invalidate improper lapses, terminations, and/or reinstatements of policies that resulted from Defendants' failure to comply with the Insurance Code?

f. Should Defendants be required to make payments to beneficiaries of Policies where the insured has died and the policy was lapsed or terminated in violation of Sections 10113.71 or 10113.72?

g. Whether Defendantsknew or should have known that their conduct was directed to one or more persons aged 65 or older.

41. ***Typicality.*** Plaintiff's claims are typical of the claims of the members of the Class because Plaintiff and each member of the Class were victims of the same statutory violations. Further, Plaintiff's claims are typical of the claims of her fellow Class members, which all arise from the same operative facts involving the Defendants' unlawful violations of Sections 10113.71 and 10113.72.

42. ***Adequacy of Representation.*** Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has retained counsel highly experienced in handling class action litigation, including that which involves consumer protection from unfair insurance business practices, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no interest adverse or antagonistic to that of the Class.

43. ***Superiority***. A class action is a superior method for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members are relatively small compared to the burden and expense that would be expended by individual litigation of their claims against Defendants. It would thus be virtually impossible for Class members, on an individual basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. The class action device provides the benefit of adjudication of these issues in a single proceeding, economies of scale,

and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances. Moreover, many Class members remain unaware of their rights and without this Class action, would remain unaware of their rights and benefits.

44. In the alternative, the Class may also be certified because:

a. The prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudication with respect to individual Class members that would establish incompatible standards of conduct for the Defendants;

b. The prosecution of separate actions by individual class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests; and/or

c. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final declaratory and/or injunctive relief with respect to the members of the Class as a whole.

45. Unless the Class is certified, Defendants will retain monies received because of its conduct taken against the class members and Plaintiff. Unless a Class-wide injunction is issued, Defendants will continue to commit the violations alleged and members of the Class will continue to be harmed.

46. Plaintiff knows of no difficulty likely to be encountered in the management of this litigation that would preclude its maintenance as a Class Action. Because the action is brought as a Class Action, the Court need only apply a single set of California laws as they relate to Defendants' violation of Sections 10113.71 and 10113.72.

47. Plaintiff has incurred, and will incur, expenses for attorney's fees and costs in bringing this action. These attorney's fees and costs are necessary for the prosecution of this action and will result in a benefit to each of the members of the class.

VIII. FIRST CAUSE OF ACTION

FOR DECLARATORY JUDGMENT OR RELIEF (CAL CIV. CODE § 1060 *ET SEQ.*)

(By Plaintiff, individually and as successor-in-interest to DR. RICHARD I. APPLETON and on Behalf of the Class)

48. Plaintiff incorporates by reference each and every allegation contained above.

49. Under California law, "[a]ny person interested under a written instrument…or under a contract, or who desires a declaration of his or her rights or duties with respect to another…may, in cases of an actual controversy relating to the legal rights and duties of the respective parties," may maintain a complaint or cross complaint "for a declaration of his or her rights and duties." Furthermore, he or she "may ask for a declaration of rights or duties, either alone, or with other relief, and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time." (Cal. Civ. Code § 1060.)

A. Basis for Relief

50. On January 1, 2013, the California Insurance Code was amended by Sections 10113.71 and 10113.72. The provisions of The Statutes were immediately, and thereafter, read into all in-force policies regardless of the date of issuance.

51. These statutes and amendments to the California Insurance Code were intended to and do regulate the lapse and termination procedures arising from the nonpayment of premiums which may occur from the date of enactment and thereafter.

52. The amendments were not intended to relieve or waive a policyholder's continuing obligation to pay premiums but operated to keep the policy in force until the policy was properly lapsed or terminated consistent with the statutory provisions which were incorporated into the terms of the policy by law. Each of these statutory requirements were intended to stand alone.

53. Forfeiture provisions for nonpayment of premium for life insurance policies are strictly construed against lapse or termination and California law disfavors forfeiture of insurance. Forfeitures "are often the means of great oppression and injustice" and "the courts should be liberal in construing the transaction in favor of avoiding a forfeiture." (*Ins. Co. v. Norton* (1978) 96 U.S. 234, 242.) "Forfeiture of a policy will be avoided on any reasonable showing." *Klotz v. Old Line*

Life Ins. Co. of Amer., 955 F.Supp. 1183, 1188 (N.D. Cal. 1996).

B. There is an Actual Controversy Requiring a Declaration of Rights and Duties

54. An actual controversy has arisen and now exists between Plaintiff and Defendants concerning their respective rights and duties under the California Insurance Code and the Policy. Plaintiff contends Sections 10113.71 and 10113.72 apply to the Subject Policy as well as all of Defendants' California life insurance policies in force as of or after January 1, 2013, including any policies that were renewed in California on or after January 1, 2013. Plaintiff also contends these Statutes govern the manner and procedure in which life insurance policies can legally be lapsed or terminated as of January 1, 2013, and thereafter. Defendants contend and act as if the Statutes do not apply to these policies, or do not apply in the manner stated in their plain language, or as interpreted by Plaintiff.

55. Plaintiff thus desires a judicial determination of rights and duties, precise resolution of, and a declaration or judgment stating the following:

a. that because Defendants did not comply with Sections 10113.71 and 10113.72, including by not providing the requisite option to designate a secondary designee, any subsequent terminations Defendants attempted for nonpayment of premium, including as to the Subject Policy, were not legally effective, and therefore those policies remained in force despite the nonpayment of premium. Defendants dispute this contention.

b. The Statutes and Defendants' policies, including the Subject Policy, required compliance with The Statutes before any termination for nonpayment of premium could have legal effect. Defendants contend that it could and can *substantially* comply and still be allowed to effectively lapse or terminate policies after January 1st, 2013.

c. Defendants' attempted termination of the Subject Policy was legally ineffective, and the policy was still in-force at the time of Dr. Appleton's death. Defendants dispute this contention.

d. Indeed, *all* of Defendants' lapses or terminations of California policies for

nonpayment of premium after January 1, 2013 – of which there were many, were illegal and ineffective because Defendants failed to comply with The Statutes before the attempted terminations. All those policies where the insured is still alive are still in-force today despite any nonpayment of premium. For all those policies where the insured subsequently died – of which there are many, policy benefits are owed despite any nonpayment of premium. Defendants dispute these contentions.

e. Plaintiff also contends that Defendants must treat all policies lapsed or terminated after January 1st, 2013 without first complying with The Statutes as in-force and eligible for payment of benefits *without further proof or showings by the owners or beneficiaries*. Defendants, on the other hand, maintains that policy owners and vested beneficiaries, despite Defendants' noncompliance with The Statutes, and even if policy terminations were never legally effective, must nonetheless demonstrate some special connection between the violation and noncompliance with the Statutes' and the nonpayment of premium which is not mentioned in The Statutes, such as that the policy owner subjectively wanted or could afford to continue with coverage into the future. Defendants further contend that in some fashion, Defendants are excused from compliance and/or may treat a policy as effectively terminated based on alleged Plaintiff's negligence and misfeasance. Plaintiff disputes the contentions of Defendants that compliance can be excused or a termination consummated due to any purported special causal determinations or subjective intent element.

f. Plaintiff also contends that, per Section 10113.71, all of Defendants' policies in force on or after January 1, 2013 must contain an express 60-day (or more) grace period, including by way of issuing amended policies or written endorsements as necessary. Defendants contend, on the other hand, that regardless of what its policies actually say or contain, Defendants have met

all of its obligations in this regard by maintaining an internal – even if secret – policy to provide owners with 60+ day grace periods *in practice*.

g. Plaintiff also contends that where no death of the named insured has occurred, Defendants are not entitled to premium payments for periods of time where Defendants have declared a policy terminated in violation of Sections 10113.71 and/or 10113.72. Defendants contend, on the other hand, that if it is forced to revive policies due to its failure to comply with The Statutes, then it is entitled to collect unpaid back premiums during all times it had considered the policy terminated.

h. Defendants owe Plaintiff the proceeds of the Subject Policy, despite any nonpayment of premium, and without any further showing or proof, causation, or of entitlement to the proceeds whatsoever. Defendants deny this contention.

56. A judicial declaration would advise insureds and their beneficiaries like Plaintiff of their rights, and would advise Defendants of their duties to Plaintiff and to Class members concerning policyholders' rights to designate individuals to receive notices of pending lapse and termination and the right to receive notice of, and the ability to properly utilize, the legally required grace period. A judicial declaration is also necessary to determine the validity of any unnecessary reinstatements obtained, to determine whether policies were legally in force at the times of deaths of insureds, and to determine whether beneficiaries were wrongfully denied payment of benefits under their policies.

IX. SECOND CAUSE OF ACTION

FOR DECLARATORY JUDGMENT OR RELIEF (FEDERAL DECLARATORY JUDGMENT ACT – 28 U.S.C. §§ 2201, *ET SEQ.*)

(By Plaintiff, individually and as successor-in-interest to DR. RICHARD I. APPLETON and on Behalf of the Class)

57. Plaintiff incorporates by reference each and every allegation contained above.

58. Under federal law, "[i]n a case of actual controversy within its jurisdiction, … any court of the United States … may declare the rights and other legal relations of any interested party

seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment and shall be reviewable as such." (28 U.S.C. 2201; Fed. R. Civ. P., Rule 57).

59. An actual controversy has arisen and now exists between Plaintiff and Defendants concerning their respective rights and duties under the California Insurance Code and the Policy. Plaintiff contends Sections 10113.71 and 10113.72 apply to the Subject Policy as well as all of Defendants' California life insurance policies in force as of or after January 1, 2013, including any policies that were renewed in California on or after January 1, 2013. Plaintiff also contends these Statutes govern the manner and procedure in which life insurance policies can legally be lapsed or terminated as of January 1, 2013, and thereafter. Defendants contend and act as if the Statutes do not apply to these policies, or do not apply in the manner stated in their plain language, or as interpreted by Plaintiff.

60. Plaintiff thus desires a judicial determination of rights and duties, precise resolution of, and a declaration or judgment stating the following:

a. that because Defendants did not comply with Sections 10113.71 and 10113.72, including by not providing the requisite option to designate a secondary designee, any subsequent terminations Defendants attempted for nonpayment of premium, including as to the Subject Policy, were not legally effective, and therefore those policies remained in force despite the nonpayment of premium. Defendants dispute this contention.

b. The Statutes and Defendants' policies, including the Subject Policy, required compliance with The Statutes before any termination for nonpayment of premium could have legal effect. Defendants contend that it could and can *substantially* comply and still be allowed to effectively lapse or terminate policies after January 1st, 2013.

c. Defendants' attempted termination of the Subject Policy was legally ineffective, and the policy was still in-force at the time of Dr. Appleton's

death. Defendants dispute this contention.

d. Indeed, *all* of Defendants' lapses or terminations of California policies for nonpayment of premium after January 1, 2013 – of which there were many, were illegal and ineffective because Defendants failed to comply with The Statutes before the attempted terminations. All those policies where the insured is still alive are still in-force today despite any nonpayment of premium. For all those policies where the insured subsequently died – of which there are many, policy benefits are owed despite any nonpayment of premium. Defendants dispute these contentions.

e. Plaintiff also contends that Defendants must treat all policies lapsed or terminated after January 1st, 2013 without first complying with The Statutes as in-force and eligible for payment of benefits *without further proof or showings by the owners or beneficiaries*. Defendants, on the other hand, maintains that policy owners and vested beneficiaries, despite Defendants' noncompliance with The Statutes, and even if policy terminations were never legally effective, must nonetheless demonstrate some special connection between the violation and noncompliance with the Statutes' and the nonpayment of premium which is not mentioned in The Statutes, such as that the policy owner subjectively wanted or could afford to continue with coverage into the future. Defendants further contend that in some fashion, Defendants are excused from compliance and/or may treat a policy as effectively terminated based on alleged Plaintiff's negligence and misfeasance. Plaintiff disputes the contentions of Defendants that compliance can be excused or a termination consummated due to any purported special causal determinations or subjective intent element.

f. Plaintiff also contends that, per Section 10113.71, all of Defendants' policies in force on or after January 1, 2013 must contain an express 60-day (or more) grace period, including by way of issuing amended policies or written

endorsements as necessary. Defendants contend, on the other hand, that regardless of what its policies actually say or contain, Defendants have met all of its obligations in this regard by maintaining an internal – even if secret – policy to provide owners with 60+ day grace periods *in practice*.

g. Plaintiff also contends that where no death of the named insured has occurred, Defendants are not entitled to premium payments for periods of time where Defendants have declared a policy terminated in violation of Sections 10113.71 and/or 10113.72. Defendants contend, on the other hand, that if it is forced to revive policies due to its failure to comply with The Statutes, then it is entitled to collect unpaid back premiums during all times it had considered the policy terminated.

h. Defendants owe Plaintiff the proceeds of the Subject Policy, despite any nonpayment of premium, and without any further showing or proof, causation, or of entitlement to the proceeds whatsoever. Defendants deny this contention.

61. A judicial declaration would advise insureds and their beneficiaries like Plaintiff of their rights, and would advise Defendants of its duties to Plaintiff and to Class members concerning policyholders' rights to designate individuals to receive notices of pending lapse and termination and the right to receive notice of, and the ability to properly utilize, the legally required grace period. A judicial declaration is also necessary to determine the validity of any unnecessary reinstatements obtained, to determine whether policies were legally in force at the times of deaths of insureds, and to determine whether beneficiaries were wrongfully denied payment of benefits under their policies.

X. THIRD CAUSE OF ACTION

BREACH OF CONTRACT

(By Plaintiff, Individually and as successor-in-interest to DR. RICHARD I. APPLETON and on Behalf of the Class)

62. Plaintiff incorporates by reference each and every allegation contained above.

63. Defendants breached and continue to breach the express terms of their life insurance

policies, including Plaintiff's Policy, as well as the statutory mandates regarding such policies, by, amongst other things:

a. Failing to include in such policies and failing to provide accurate 30-day written notice of pending lapse or termination;

b. Failing to provide proper notice to policyholders on an annual basis of the policyholders' right to designate individuals to receive notices of pending lapse or termination;

c. Lapsing or terminating policies without complying with the terms of the policies;

d. Refusing to pay benefits to beneficiaries, despite knowledge and information that Defendants had not complied with the terms of the policies;

e. Improperly requiring reinstatement of policies that had not lapsed or terminated and which were not required or were not subject to reinstatement;

f. By failing to pay benefits or claims;

g. By failing to provide the notices required by the policy; and

h. By failing to apply the applicable law to the insurance contract.

64. Under the terms of this Policy and consistent with laws of California, Plaintiff was entitled to sufficient written notice prior to the effectuation of any lapse or termination for non-payment. Wilcac sent no such notice and, thus, breached the insurance contract by failing to provide the mandatory protection.

65. All of the aforementioned conduct, individually and collectively, constitutes material unexcused breaches of the policies. To the extent any contractual obligations, duties, or conditions are imposed on policyholders or on beneficiaries, those obligations, duties, and conditions have been waived and/or have been excused due to Defendants' material breaches. After each material breach, each policy owner was thus excused from the further tendering of premiums and from any further performance under the terms of the policy, including but not limited to the acceptance of any offer by Wilcac of any reinstatement or modification to the policy.

66. Defendants' conduct caused injury upon the false, wrongful and inadequate

termination of coverage devaluing the policy and subsequently caused injury in fact through the further denial of an ability to resume coverage, and ultimately in refusing to pay the claim. Plaintiff and their fellow class members suffered harm through the loss of coverage, the loss of peace of mind related to the existence of coverage, and the capacity to utilize the years of investment in the wrongfully lapsed and terminated policy.

67. To the extent any policyholders and/or beneficiaries have failed to comply with any payment conditions or other conditions for the continuation of insurance, Defendants are estopped to assert such conditions due to their conduct and material breaches. Yet, Defendants have done so with respect to Plaintiff and members of the Class.

68. In California, the measure of damage for material breach of a life insurance policy is set as the "sum or sums payable in the manner and at the times as provided in the policy to person entitled thereto." Cal. Ins. Code § 10111.

69. As a legal and proximate result of the conduct described herein, the Class have suffered direct and foreseeable economic damages, including loss of policy benefits, and allowed interest under the terms of the policy and the law, in a nature and amount to be proven at the time of trial.

XI. FOURTH CAUSE OF ACTION

UNFAIR COMPETITION
(CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, *ET SEQ.*)

(By Plaintiff, individually and as successor-in-interest to DR. RICHARD I. APPLETON and on Behalf of the Class)

70. Plaintiff incorporate by reference each and every allegation contained above.

71. California Business and Professions Code Sections 17200, *et. seq.* ("UCL") prohibit any unlawful, unfair, deceptive, or fraudulent business practice.

72. Defendants committed "unlawful" acts under the UCL by violating and continuing to violate Sections 10113.71 and 10113.72, including by failing to provide Dr. Appleton an annual notice of his right to designate a third party to receive notices of pending lapse or termination of coverage.

73. Plaintiff's policy as well as Policies which have allegedly been lapsed and/or

terminated are still in force and are payable or subject to continuation of insurance. Because of Wilcac's violations of the California Insurance Code, Wilcac's attempted terminations or lapses of policies like the Subject Policy were illegal and ineffective. The policies, in other words, remain in force and subject to payment of the benefit. Wilcac's failure to comply with the statutory terms has not effectively terminated any policy, and Plaintiff and their fellow class members all remain in an ongoing valid contractual relationship with Wilcac.

74. Wilcac's unlawful practices also included and continue to include Defendants' ongoing concealment that Sections 10113.71 and 10113.72 apply to a class or classes of life insurance in force on or after January 1st, 2013.

75. The unlawful and unfair business practices described above have caused harm and injuries to Plaintiff, the class, and to the general public in the form of lost money and property. The money lost by the class includes the policy benefits that Wilcac is withholding as well as the premiums that it wrongfully collected.

76. Pursuant to California's UCL, Plaintiff, the general public, and the members of the Class are entitled to restitution of the money or property acquired by Defendants by means of such business practices, in amounts yet unknown, but to be ascertained at trial. Examples of this lost money acquired illegally by Defendants include un-refunded premiums, withheld benefits, and diminution of value of policies.

77. Plaintiff and members of the class are entitled to a refund of premiums, at a minimum. Defendants have obtained policy premiums from policy owners to which it was not entitled. When a consumer pays a premium, she is necessarily paying something toward ongoing coverage in the future. Defendants here took money from the insured and class members for periods and risks that may arise in the future, with every premium. At bottom, when Defendants unilaterally terminated its risk by illegally cancelling this insurance contract, it had already collected money for a future risk it attempted to unlawfully avoid when they terminated the coverage, requiring Plaintiff to hire counsel and file suit. Defendants prematurely terminated a bet that it had promised to pay, even though Defendants had already been paid, at least in part, to keep honoring that bet in the future. Plaintiff and class members are, thus, entitled to at least a partial refund of these unearned premiums,

including Defendants' portions of each premium that constituted Defendants' profits.

78. Plaintiff and members of the class are entitled to, either in addition to or in the alternative, restitution in the form of compensation for the diminution in value of the insurance coverage they suffered because of Defendants' acts and noncompliance. In short, Defendants actually provided a policy that was worth less than what the policy contracts and The Statutes guaranteed. Dr. Appleton and the Class received lesser policies, with fewer protections, than what the policy language and The Statutes provided.

79. Plaintiff, the general public, and the members of the Class have no plain, speedy, and adequate remedy at law, or an insufficient remedy at law. Potential breach of contract damages, alone, will not fully and fairly compensate Plaintiff for Defendants' noncompliance and acts of unfair competition. Moreover, Defendants contend that Plaintiff's breach of contract claim fails, including for failure to prove proximate causation defined as a subjective intent to keep the policy or ability to afford it. Plaintiff disagrees, but should the court, hypothetically and in any respect agree with Defendants, then it would necessarily mean that the breach of contract claim is inadequate, and that this unfair competition claim is, potentially, the only avenue of recovery (including because there is no such subjective causation requirement under the UCL). In that instance, this unfair competition claim is an appropriate alternative claim or theory of recovery under Fed. R. Civ. P., Rule 8(a)(3).

80. Plaintiff's success in this action will result in the enforcement of important rights affecting the public interest by conferring a significant benefit upon the general public.

81. Private enforcement of these rights is necessary as no public agency has pursued enforcement and the interests Plaintiff seek to protect are for the benefit of the general public. Plaintiff is therefore entitled to an award of attorneys' fees and costs of suit pursuant to, among others, California's UCL, the Common Fund doctrine, the Public Benefit Doctrine, and California Code of Civil Procedure Section 1021.5.

XII. PRAYER FOR RELIEF

Plaintiff pray for relief against Defendants as follows:

1. For certification of this action as a Class Action;

2. A declaration of Plaintiff's and the Class' rights pursuant to the insurance policies issued by Defendant and a declaration that Defendants have violated The Statutes as more particularly described above;

3. For economic damages according to proof where available;

4. For restitution where available;

5. For interest where available;

6. For attorneys' fees and all litigation costs and expenses where available; and

7. For such other and further relief as this Court deems just and proper.

XIII. DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury.

Respectfully submitted:

DATED: September 23, 2025

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