

on Forms 94030/A94030, and 94080/A94080 in excess of amounts authorized by the express terms of their policies. Plaintiffs' claims and those of the proposed class members are exclusively supported by the explicit provisions of their life insurance policies and are not derived from any alleged conversations had, or documents reviewed, at the time of sale.

2. Plaintiffs, individually and on behalf of the proposed class, seek to recover amounts they allege Defendants have wrongfully taken from policy owners.

3. Forms 94030/A94030 and 94080/A94080 are "universal life" insurance policies, the terms of which provide for an "Account Value" consisting of monies held in trust by Defendants for Plaintiffs and members of the proposed class. Plaintiffs allege Defendants are contractually bound to deduct from the Account Value only those charges that are explicitly identified and authorized by the terms of their life insurance policies, which are fully integrated agreements.

4. Defendants, however, include undisclosed "loads" in the "Monthly Cost of Insurance Rates" they use to calculate the monthly "Cost of Insurance Charges" taken from policy owner Account Values. As a result, Defendants deduct charges from the Account Values of Plaintiffs and the proposed class in excess of amounts specifically permitted by their policies. For decades, Defendants has systematically deducted monies from the Account Values of their Form 94030/A94030 and 94080/A94080 policy owners in breach of the policy's terms.

5. Defendants' conduct has caused, and continues to cause, material harm to Plaintiffs and the proposed class by wrongfully draining monies they have accumulated in the Account Values of their policies. Every unauthorized dollar taken from policy owners is one less dollar that can be used to: invest through the policy; pay future premiums; increase the death benefit; use as collateral for policy loans; or withdraw as cash. And because each Form 94030/A94030 and 94080/A94080 policy can stay in-force only so long as the Account Value is sufficient to cover future monthly Cost of Insurance Charges, Defendants' conduct of impermissibly loading Monthly Cost of Insurance Rates causes the premature lapse of policies or forces policy owners to make substantial additional payments to retain their policies.

PARTIES

6. Plaintiff David M. Rogowski is an individual and resident of the State of Missouri whose Form 94030 policy was issued by Defendant State Farm Life Insurance Company in Missouri.

7. Plaintiff Elizabeth A. Bally is an individual and resident of the State of California whose Form 94030 policy was issued by Defendant State Farm Life Insurance Company in California.

8. Plaintiff Kathy Bauer is an individual and resident of the State of Georgia whose Form 94030 policy was issued by Defendant State Farm Life Insurance Company in Georgia.

9. Plaintiff Kim Botte is an individual and resident of the state of New York whose Form A94030 policy was issued by Defendant State Farm Life and Accident Assurance Company in New York.

10. Plaintiff John E. Jaunich is an individual and resident of the State of Minnesota whose Form 94030 policy was issued by Defendant State Farm Life Insurance Company in Minnesota.

11. Plaintiff the Estate of Earl E. McClure, as represented by Mylene McClure, was an individual and resident of the State of Arizona whose Form 94030 policy was issued by Defendant State Farm Life Insurance Company in Arizona.

12. Plaintiff Ronald K. Page is an individual and resident of the State of Texas whose Form 94030 policy was issued by Defendant State Farm Life Insurance Company in Texas.

13. Plaintiff Chandra B. Singh is an individual and resident of the State of Oregon whose Form 94030 policy was issued by Defendant State Farm Life Insurance Company in Oregon.

14. Plaintiff Joyce Thomas is an individual and resident of the State of Missouri whose Form 94030 policy was issued by Defendant State Farm Life Insurance Company in Missouri.

15. Plaintiff David Toms is an individual and resident of the State of Florida whose Form 94030 policy was issued by Defendant State Farm Life Insurance Company in Florida.

16. Plaintiff William T. Whitman is an individual and resident of the State of New Hampshire whose Form 94030 policy was issued by Defendant State Farm Life Insurance Company in Washington.

17. Defendant State Farm Life and Accident Assurance Company is a life insurance company organized and existing under the laws of the State of Illinois, with its principal place of business in Bloomington, Illinois, and is registered to do business in the State of New York and the State of Wisconsin. Defendant sold thousands of Form A94030 and A94080 policies in the State of New York and the State of Wisconsin.

18. Defendant State Farm Life Insurance Company is a life insurance company organized and existing under the laws of the State of Illinois, and maintains its principal place of business in Bloomington, Illinois. Defendant is registered to do business in the State of Missouri and has a registered office located at 221 Bolivar Street, Jefferson City, MO 65101. Over the years Defendant sold tens of thousands of Form 94030 and 94080 policies nationwide.

19. Plaintiffs bring this case as a class action under Fed. R. Civ. P. 23, on behalf of themselves and as representatives of a class of similarly situated persons who own or owned life insurance policies issued by Defendants on their Form 94030/A94030 and 94080/A94080 as more fully defined below.

JURISDICTION AND VENUE

20. This Court has jurisdiction over all causes of action asserted herein pursuant to 28 U.S.C. § 1332(d) because this is a class action with diversity of citizenship between parties and the matter in controversy exceeds \$5,000,000, exclusive of interest and costs, and the proposed Class contains more than 100 members.

21. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial portion of the events giving rise to Plaintiffs' causes of action occurred in this District. Likewise, venue is proper in this Division pursuant to L.R. 3.2(b)(2) because Defendant State Farm Life Insurance Co. has a registered office located at 221 Bolivar Street, Jefferson City, MO 65101.

GENERAL ALLEGATIONS

22. Plaintiff Rogowski purchased from Defendant State Farm Life Insurance Company a flexible premium adjustable whole life insurance Form 94030 policy bearing the policy number LF-2135-4466, and a policy date of February 17, 2004, with a basic amount of \$50,000. Plaintiff Rogowski has always been the owner of this policy.

23. Plaintiff Thomas purchased from Defendant State Farm Life Insurance Company a flexible premium adjustable whole life insurance Form 94030 policy bearing the policy number LF-2083-6867, and a policy date of June 7, 2003, with a basic amount of \$50,000. Plaintiff Thomas has always been the owner of this policy.

24. The remaining Plaintiffs also purchased from one of the Defendants a flexible premium adjustable whole life insurance Form 94030/Form A94030 policy. Plaintiffs have always been owners of their policies. An exemplar copy of the Policy is attached hereto as Exhibit A.

25. Defendants have administered and currently administer all aspects of Plaintiffs' policies, and the policies meeting the class definition set forth below (collectively, the "Policies"), including collecting premiums, and setting, assessing, and deducting policy charges.

26. Defendants are the effective and liable insurers of the respective Policies they each issued.

27. The Policies are valid and enforceable contracts between Plaintiffs and the proposed class members, on the one hand, and Defendants, on the other.

28. Each of the Policies provide: "The [P]olicy is the entire contract," and it consists of "the Basic Plan, any amendments, endorsements, and riders, and a copy of the application." Ex. A at p. 11.

29. The terms of the Policies are not subject to individual negotiation and are materially the same for all policyholders. They cannot be altered by an agent's representations at the time of sale.

30. “Only an officer has the right to change this policy. No agent has the authority to change the policy or to waive any of its terms. All endorsements, amendments, and riders must be signed by an officer to be valid.” Ex. A at p. 11.

31. In addition to a death benefit, the Policies provide policy owners a savings, or interest-bearing, component that is identified in the Policies as the “Account Value.”

32. Generally speaking, premium dollars are deposited into the Account Value, from which Defendants deduct those monthly charges authorized by the terms of the Policies. The Account Value earns interest as provided by the Policies.

33. The money that makes up the Account Value is the property of the policy owner and is held in trust by Defendants.

34. Defendants may access and withdraw funds from the Account Value only as expressly authorized by the Policies.

35. The Policies expressly define the specific charges that Defendants may assess and deduct from a given policy owner’s premium payments and the accumulated Account Value. Defendants may deduct only those charges allowed by the Policies.

36. Under the express terms of the Policies, a “premium expense charge” is taken from each premium payment in the amount of 5% of each premium paid. Ex. A at p. 3.

37. The Account Value is equal to 95% of the initial premium less the monthly deduction for the first policy month, and thereafter:

The account value on any deduction date after the policy date is the account value on the prior deduction date:

- (1) plus 95% of any premiums received since the prior deduction date,
- (2) less the deduction for the cost of insurance for any increase in Basic Amount and the monthly charges for any riders that became effective since the prior deduction date,
- (3) less any withdrawals since the prior deduction date,
- (4) less the current monthly deduction,
- (5) plus any dividend paid and added to the account value on the current deduction date, and
- (6) plus any interest accrued since the prior deduction date.

The account value on any other date is the account value on the prior deduction date:

- (1) plus 95% of any premiums received since the prior deduction date,
- (2) less the deduction for the cost of insurance for any increase in Basic Amount and the monthly charges for any riders that became effective since the prior deduction date,
- (3) less any withdrawals since the prior deduction date, and
- (4) plus any interest accrued since the prior deduction date.

Ex. A at p. 9.

38. The “Policy Date” is “[t]he effective date of this Policy,” and the “Deduction Date” is “[t]he policy date and each monthly anniversary of the policy date.” Ex. A at p. 5.

39. The Policies authorize Defendants to take a “Monthly Deduction” from each policy owner’s Account Value each month. Ex. A at p. 9.

40. The Policies expressly define the Monthly Deduction as follows:

Monthly Deduction. This deduction is made each month, whether or not premiums are paid, as long as the cash surrender value is enough to cover that monthly deduction. Each deduction includes:

- (1) the cost of insurance,
- (2) the monthly charges for any riders, and
- (3) the monthly expense charge.

Ex. A at p. 9.

41. The Policies state that the monthly expense charge (“Expense Charge”) is \$5.00.

Ex. A at p. 3.

42. The Policies also expressly define how the charge for the Policy’s “Cost of Insurance” (“Cost of Insurance Charge”) is determined and calculated:

Cost of Insurance. This cost is calculated each month. The cost is determined separately for the Initial Basic Amount and each increase in Basic Amount.

The cost of insurance is the monthly cost of insurance rate times the difference between (1) and (2), where:

- (1) is the amount of insurance on the deduction date at the start of the month divided by 1.0032737, and
- (2) is the account value on the deduction date at the start of the month before the cost of insurance and the monthly charge for any waiver of monthly deduction benefit rider are deducted.

Until the account value exceeds the Initial Basic Amount, the account value is part of the Initial Basic Amount. Once the account value exceeds that amount, if there have been any increases in Basic Amount, the excess will be part of the increases in order in which the increases occurred.

Ex. A at p. 10.

43. The Policies specify the factors Defendants may use to determine “Monthly Cost of Insurance Rates,” which are used to calculate the Cost of Insurance Charges that are deducted from the Account Value each month:

Monthly Cost of Insurance Rates. These rates for each policy year are based on the Insured’s age on the policy anniversary, sex, and applicable rate class. A rate class will be determined for the Initial Basic Amount and for each increase. The rates shown on page 4 are the maximum monthly cost of insurance rates for the Initial Basic Amount. Maximum monthly cost of insurance rates will be provided for each increase in the Basic Amount. We can charge rates lower than those shown. Such rates can be adjusted for projected changes in mortality but cannot exceed the maximum monthly cost of insurance rates. Such adjustments cannot be made more than once a calendar year.

Ex. A at p. 10. Policies issued on Form 94080/A94080 have an identical Monthly Cost of Insurance Rates provision except it omits the reference to “sex.”

44. Defendants admit that a rate “based on” factors explicitly identified in the Policies must be determined using only those identified factors. *See Alleman v. State Farm Life Ins. Co.*, 334 Fed. Appx. 470, 472 (3rd Cir. 2009) (affirming summary judgment in State Farm’s favor, and rejecting plaintiff insured’s argument that provision in life insurance policy stating charge would be “based on the Insured’s age last birthday and sex” should be read to include other undisclosed factors, because “[b]y the plain language of these policies, it is clear that the insureds’ age and sex are the only mortality factors relevant to the rate” (emphasis added)).

45. Thus, under the explicit terms of the Policies, Defendants are authorized to determine Monthly Cost of Insurance Rates for each policy year using only the specified factors and projected changes in mortality. Ex. A. at p. 10.

46. The listed factors are factors commonly understood as mortality factors used to determine the mortality expectations of an insured or group or class of insureds. *See Vogt*, 963 F.3d 753, 760 (8th Cir. 2020), *cert. denied*, 209 L. Ed. 2d 577 (Apr. 19, 2021) (“These enumerated

factors are so-called ‘mortality factors’ because they relate to a policyholder’s mortality risk, which allows the insurer to determine the projected mortality estimate of a policyholder based on his specific circumstances.”).

47. By specifically identifying Monthly Cost of Insurance Rates for each policy year as based on mortality factors, Defendants agree that mortality expectations determine the Monthly Cost of Insurance Rates under the Policies, as confirmed by the additional provision that “[s]uch rates can be adjusted for projected changes in mortality.” Ex. A at p. 10.

48. Given the language of the Monthly Cost of Insurance Rates provision in the Policies, and its context in the Policies as a whole, no reasonable layperson would expect that the Policies permitted Defendants to use any factor they wanted to determine Monthly Cost of Insurance Rates for the Policies. A reasonable layperson would instead read the specified mortality factors, in combination with the contractual limitation that rates can only be adjusted for “projected changes in mortality,” to mean that only mortality expectations are used to determine Monthly Cost of Insurance Rates for the Policies. *See Vogt*, No. 2:16-cv-04170-NKL, 2018 WL 1747336, at *4 (“Given the COI language in the Vogt policy and its context in the policy as a whole, the Court believes no reasonable lay person would expect that State Farm was permitted to use any factor it wanted to calculate the cost of insurance.”), *aff’d*, 963 F.3d at 763-64 (concluding “a person of ordinary intelligence purchasing an insurance policy would not read the provision and understand that where the policy states that the COI fees will be calculated ‘based on’ listed mortality factors that the insurer would also be free to incorporate other, unlisted factors into this calculation.”).

49. Thus, the Policies authorize Defendants to make periodic deductions from policy owners’ Account Values including, specifically, Cost of Insurance Charges that are calculated using rates that Defendants must determine based on specified factors, and that can be adjusted for projected changes in mortality.

50. The Policies also disclose a premium expense charge set at a fixed percentage of five percent of each premium payment made. The Policies further disclose a separate, monthly

Expense Charge within the Monthly Deduction that Defendants set at a fixed amount of \$5.00 per month.

51. Although the Policies authorize Defendants to use only certain, specified factors in determining Monthly Cost of Insurance Rates, Defendants uses other factors, not authorized by the Policies, when determining those rates, including, without limitation, profit and expenses.

52. By loading these factors into Monthly Cost of Insurance Rates, Defendants knowingly cause those rates to be higher than what is explicitly authorized by the Policies and, as a result, withdraw Cost of Insurance Charges from policy owner Account Values in amounts greater than what is permitted by the Policies.

53. By loading unauthorized factors in Monthly Cost of Insurance Rates, Defendants repeatedly breach and continue to breach the Policies and impermissibly inflates those rates. As a direct and proximate result of Defendants' breaches, Plaintiffs and the Class have been damaged, and those damages are continuing in nature in that Defendants deducted and will continue to deduct unauthorized Cost of Insurance Charges from policy owners' Account Values.

54. By loading expense factors in Monthly Cost of Insurance Rates, Defendants repeatedly and continuously breach the Policies by impermissibly deducting from the Account Values of Plaintiffs and the Class amounts in excess of the fixed Expense Charges expressly authorized by the Policies.

55. As a direct and proximate result of Defendants' breaches, Plaintiffs and the Class have been damaged and those damages are continuing in nature in that Defendants have deducted and will continue to deduct expenses, including without limitation, maintenance, administrative, and other expenses, from the Account Values of Plaintiffs and the Class in amounts not authorized by the Policies.

56. The nature of Defendants' conduct is such that Plaintiffs and each member of the Class would be unaware that Defendants were engaging in wrongdoing by taking inflated charges and improper amounts from their Account Values. Defendants possess the actuarial information and equations underlying the computation of rates and charges for the Policies. The Monthly Cost

of Insurance Rates used to calculate the monthly Cost of Insurance Charges are not disclosed to policy owners, nor are the components or factors that comprise those rates. Even if they were, Plaintiffs and the Class would lack the knowledge, experience, and training to reasonably ascertain how Defendants calculated the rates and charges.

57. Defendants were aware that Plaintiffs and each member of the Class did not know about the improper deductions because of Defendants' superior knowledge of the aforementioned computations. Defendants sent Plaintiffs and each member of the Class annual statements that identified each month's Cost of Insurance Charge while affirmatively concealing the factors Defendants used to calculate the Cost of Insurance Rates. Despite reasonable diligence on their part, Plaintiffs were kept ignorant by Defendants of the factual bases for these claims for relief. Defendants' withholding of material facts concealed these claims and tolled all applicable statutes of limitation.

58. Plaintiffs reasonably relied to their detriment on Defendants' fraudulent concealment of its misconduct and material omission of the factors actually used to calculate the deductions from their Account Values. As a result of such concealment, Plaintiffs did not believe they had suffered any injury or that it was necessary to file a lawsuit. Plaintiffs did not discover, and exercising reasonable diligence could not have discovered, the facts establishing Defendants' repeated breaches or the harm caused thereby. Plaintiffs did not learn of Defendants' repeated breaches supporting their claims until after the *Vogt* verdict in June 2018.

59. Defendants are estopped from asserting a statute of limitations defense. Defendants' conduct in failing to disclose the true factors they used—and continue to use—to calculate the Cost of Insurance Rates misled Plaintiffs and prevented them from learning the factual bases for these claims for relief. Plaintiffs proceeded diligently to file suit once they discovered the need to proceed. Defendants' continuing breaches are ongoing. Defendants are not authorized to load the Monthly Cost of Insurance Rates with non-mortality factors. Nonetheless, Defendants continue to load the Monthly Cost of Insurance Rates for Forms 94030/A94030 and

94080/A94080 with non-mortality factors, not authorized by the Policies, including, without limitation, expenses and profit assumptions.

60. By loading the Monthly Cost of Insurance Rates in excess of rates determined using the Policy-identified factors, Defendants are causing Monthly Cost of Insurance Rates for the Policies to be greater than the Policies explicitly authorize. As a result, Defendants continue to withdraw Cost of Insurance Charges from policy owner Account Values in amounts greater than what is permitted by the Policies, and this Court's prior judgment.

61. As a direct and proximate result of Defendants' conduct, Plaintiffs and the Class have been damaged, and those damages are continuing in nature in that Defendants deducted and will continue to deduct unauthorized Cost of Insurance Charges from policy owners' Account Values.

62. Defendants' conduct is intentional and willful. Defendants have not taken any steps to remove non-mortality loads from Plaintiffs' Monthly Cost of Insurance Rates and Monthly Cost of Insurance Charges. Plaintiffs are therefore forced to continue suffering the unlawful deductions or lose the life insurance they have been paying for. Defendants' conversions justify punitive damages.

CLASS ALLEGATIONS

63. Plaintiffs bring this case as a class action under Fed. R. Civ. P. 23, on behalf of themselves and as representatives of the following Class:

All persons or entities who own or owned one of approximately 760,000 Form 94030/A94030 universal life insurance policies or Form 94080/A94080 universal life insurance policies in the United States that were issued and administered by one or more Defendant or their predecessors in interest, including all applications, schedules, riders, and other forms specifically made a part of the policies at the time of their issue, plus all riders and amendments issued later, or otherwise part of "The Contract," as defined in the Policy or Policies.

Excluded from the Class are the Defendants, any entity in which the Defendants has a controlling interest, any of the officers or board of directors of the Defendants, the legal representatives, heirs, successors, and assigns of the Defendants, anyone employed with Plaintiffs' counsel's law firms,

and any Judge to whom this case is assigned, and his or her immediate family. The Class satisfies the numerosity, commonality, typicality, adequacy, and superiority requirements of a class action under Rule 23, as set forth more fully herein.

64. The persons who fall within the Class number in the hundreds of thousands, and thus the numerosity standard is satisfied. Because Class members are geographically dispersed across the United States, joinder of all Class members in a single action is impracticable. Class members may be informed of the pendency of this class action through direct mail.

65. There are questions of fact and law common to the Class that predominate over any questions affecting only individual members. The questions of law and fact common to the Class arising from Defendants' actions include, without limitation:

- a. Whether Defendants are permitted by the Policies to determine their Monthly Cost of Insurance Rates using factors other than those specified in the Policies;
- b. Whether Defendants added, included, used, or relied on factors not specified in the Policies when determining the Monthly Cost of Insurance Rates used to calculate Cost of Insurance Charges for the Policies;
- c. Whether Defendants added, included, used, or relied on factors unrelated to their mortality expectations in determining Monthly Cost of Insurance Rates that the Policies provide are determined using specified mortality factors and no other specified factors;
- d. Whether Defendants are permitted by the Policies to deduct expense amounts from policy owners' Account Values in excess of the amounts disclosed in the Policies;
- e. Whether Defendants charged amounts in excess of those specifically authorized by the Policies;
- f. Whether Defendants breached the terms of the Policies;
- g. Whether Defendants converted Class members' property;
- h. Whether the Class was injured and sustained damages as a result of Defendants' wrongful conduct;
- i. Whether the Class is entitled to damages, restitution, and/or other relief as a remedy for Defendants' conduct;

- j. Whether the Class is entitled to declaratory relief stating the proper construction and/or interpretation of the Policies; and
- k. Whether the Class is entitled to injunctive relief to prohibit Defendants from continuing to deduct Cost of Insurance Charges containing undisclosed, non-mortality factors in the future.

66. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the claims asserted herein.

67. Plaintiffs' claims are typical of those of the Class in that Class members purchased policies containing the same limitations on the amounts that Defendants could charge their policy owners under the express terms of the Policies.

68. A class action is the appropriate method for the fair and efficient adjudication of this controversy. Defendants have acted or refused to act on grounds generally applicable to the Class. The presentation of separate actions by individual Class members would create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendants, and/or substantially impair or impede the ability of Class members to protect their interests.

69. Plaintiffs are adequate representatives of the Class because they are members of the Class and their interests do not conflict with the interests of those they seek to represent. The interests of the Class members will be fairly and adequately protected by Plaintiffs and their counsel, who have extensive experience prosecuting complex class litigation.

70. Maintenance of this action as a class action is a fair and efficient method for adjudicating this controversy. It would be impracticable and undesirable for each member of the Class who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Class members.

COUNT I: BREACH OF CONTRACT
(Cost of Insurance Charge)

71. Plaintiffs incorporate and restate by reference Paragraphs 1 through 70 as though fully set forth herein.

72. Plaintiffs and the Class purchased life insurance policies—the Policies—from Defendants.

73. The Policies are valid and enforceable contracts between Plaintiffs and the Class, and Defendants.

74. Plaintiffs and the Class substantially performed their obligations under the terms of the Policies.

75. By loading unauthorized factors into Monthly Cost of Insurance Rates, Defendants knowingly cause those rates to be higher than what is explicitly authorized by the Policies.

76. Because Defendants calculate Cost of Insurance Charges using loaded Monthly Cost of Insurance Rates, Defendants have deducted, and continue to deduct, Cost of Insurance Charges from the Account Values of Plaintiffs and the Class in amounts greater than those authorized by their Policies.

77. Defendants' practice of deducting charges in amounts not authorized by the Policies constitutes repeated breaches of the Policies.

78. As a direct and proximate result of Defendants' breaches, Plaintiffs and the Class have been damaged.

COUNT II: BREACH OF CONTRACT
(Expense Charge)

79. Plaintiffs incorporate and restate Paragraphs 1 through 78 as though fully set forth herein.

80. By loading Monthly Cost of Insurance Rates with undisclosed and unauthorized expenses, Defendants impermissibly deduct expenses from the Account Values of Plaintiffs and the Class in amounts in excess of the fixed Expense Charges expressly authorized by the Policies.

81. By deducting unauthorized expense charges from the Account Values of Plaintiffs and the Class, Defendants have breached the Policies.

82. As direct and proximate result of Defendants' repeated and ongoing breaches, Plaintiffs and the Class have sustained damages that are continuing in nature in an amount to be determined at trial.

COUNT III: CONVERSION

83. Plaintiffs incorporate and restate Paragraphs 1 through 82 as though fully set forth herein.

84. Plaintiffs and the Class have a property interest in the funds in their Account Values.

85. By deducting charges in unauthorized amounts from the Account Values of Plaintiffs and the Class, Defendants misappropriate or misapply specific funds placed in the custody of Defendants for the benefit of Plaintiffs and the Class for use consistent with the terms of the Policies, without authorization or consent, and divert those funds for their own use.

86. As a direct and proximate result of Defendants' conduct, Plaintiffs and the Class have been damaged and continue to be damaged.

87. Although requiring expert testimony, the amounts of unauthorized charges Defendants take from Plaintiffs and the Class are capable of determination, to an identified sum, by comparing Plaintiffs' actual Cost of Insurance Charge each month to a Cost of Insurance Charge computed using a Monthly Cost of Insurance Rate determined using the mortality factors disclosed in the Policies.

88. On behalf of themselves and the Class, Plaintiffs seek all damages and consequential damages proximately caused by Defendants' conduct.

89. Defendants intended to cause damage to the Plaintiffs and the Class by deducting more than they were authorized to deduct from their Account Values. Their conduct is, therefore, malicious and Defendants are also guilty of oppression in that their systematic acts of conversion subject Plaintiffs and the Class to cruel and unjust hardship in conscious disregard of their rights. Plaintiffs and the Class are therefore entitled to punitive or exemplary damages.

COUNT IV: DECLARATORY AND INJUNCTIVE RELIEF

90. Plaintiffs incorporate and restate Paragraphs 1 through 89 as though fully set forth herein.

91. An actual controversy has arisen and now exists between Plaintiffs and the Class, on the one hand, and Defendants, on the other, concerning the respective rights and duties of the parties under the Policies.

92. Plaintiffs contend that Defendants breached and continue to breach the Policies in the following respects:

- a. By using unauthorized and undisclosed factors to compute the Monthly Cost of Insurance Rates under the Policies, Defendants impermissibly increased Monthly Cost of Insurance Rates for the Policies and, as a result, withdraw Cost of Insurance Charges from the Account Values of Plaintiff and the Class in amounts greater than those authorized by the Policies; and
- b. By inflating Monthly Cost of Insurance Rates under the Policies with expense factors that are not disclosed as being used to determine those rates, Defendants impermissibly deducted expense charges from the Account Values of Plaintiffs and the Class in amounts in excess of the fixed Expense Charges expressly authorized by the Policies.

93. Plaintiffs therefore seek a declaration of the parties' respective rights and duties under the Policies and request the Court to declare the aforementioned conduct of Defendants as unlawful and in material breach of the Policies so that future controversies may be avoided.

94. Pursuant to a declaration of the parties' respective rights and duties under the Policies, Plaintiffs further seek an injunction permanently enjoining Defendants from continuing to collect unlawfully inflated charges in violation of the Policies.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, request relief as follows:

- a. That the Court enter an order certifying the class, appointing Plaintiffs as representatives of the Class, appointing Plaintiffs' counsel as Class counsel; and directing that reasonable notice of this action, as provided by Federal Rule of Civil Procedure 23(c)(2), be given to the Class;
- b. For a judgment against Defendants for the causes of action alleged against them;
- c. For compensatory damages;
- d. For punitive and exemplary damages;
- e. For a declaration that Defendants' conduct as alleged herein is unlawful and in material breach of the Policies;
- f. For appropriate injunctive relief, enjoining Defendants from continuing to collect unlawfully inflated charges in violation of the Policies;
- g. For pre-judgment and post-judgment interest at the maximum rate permitted by law;
- h. For Plaintiffs' attorneys' fees;
- i. For Plaintiffs' costs and litigation expenses incurred; and
- j. For such other relief in law or equity as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby request a trial by jury of all issues so triable.

DATED this 22nd day of November 2022.

Respectfully submitted,

/s/ John J. Schirger

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