



contains thousands of policyholders and seeks damages on behalf of the Class in an amount exceeding \$5,000,000.00, exclusive of interest, costs, and fees.

#### GENERAL ALLEGATIONS

6. Defendant sold Plaintiff and the Class variable universal life and variable whole life insurance policies, as well as non-variable universal life insurance policies.

7. Plaintiff purchased from Defendant a “Variable Whole Life Insurance Policy” bearing Policy Number 7 945 810 (“Policy”) dated May 10, 1999 (“Policy Date”), with an initial face amount of \$200,000. A true and accurate copy of Plaintiff’s Policy is attached hereto as Exhibit A, and incorporated herein by reference.

8. The Policy is a contract between Plaintiff and Defendant.

9. Defendant sold Plaintiff, and the Class defined herein, life insurance policies containing a death benefit, certain charges, and an investment, interest-bearing, or savings component.

10. Under the terms of such policies, after applicable charges are assessed, net premium payments are eventually allocated to accounts within the Policy.

11. The Policy identifies the following “monthly charges” due each policy month as follows:

- an administrative charge;
- a mortality charge; and
- a rider charge.

12. The Policy’s “mortality charge” is a charge to cover the expected mortality of the insured which is dictated by the Defendant’s internal mortality tables.

13. The Policy specifically identifies the charges that Defendant may deduct each month from the Policy's account value, and Defendant may deduct only those identified charges.

14. Beginning at or after the commencement of the Policy term, Defendant began breaching the terms of the Policy on a monthly basis by deducting as mortality charges, amounts unrelated to mortality. Defendant's mortality charges are inconsistent with its internal mortality tables which dictate these charges.

15. During the years Plaintiff's Policy was in force, the majority of Plaintiff's total mortality charges were comprised of charges unrelated to mortality.

16. Defendant's misconduct subjected Plaintiff and the Class to excessive charges that reduced policy values and in some cases caused premature lapsing of policies. As a result, Defendant has damaged Plaintiff and the Class, and these damages are continuing in nature.

#### CLASS ALLEGATIONS

17. Plaintiff brings this case as a class action under Fed.R.Civ.P. 23, on behalf of himself and as a representative of the following persons (the "Class"):

All persons who purchased a life insurance policy from Defendant during the applicable statute of limitations that contains: 1) a mortality charge; 2) additional but separate policy charges or expenses; 3) any investment, interest-bearing, or savings component; and (4) a death benefit.

Excluded from the Class is Defendant, any entity in which Defendant has a controlling interest, any of the officers, directors, or employees of Defendant, the legal representatives, heirs, successors, and assigns of Defendant, anyone employed with Plaintiff's Counsel's firms, and any Judge to whom this case is assigned, and his or her immediate family.

18. Plaintiff's claim satisfies the numerosity, commonality, typicality, adequacy, and superiority requirements of a class action under Rule 23, as set forth more fully herein.

19. On information and belief, the number of persons who fall within the Class is at least in the thousands, and thus the numerosity standard is satisfied. Because class members are geographically dispersed across the country, 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.

20. 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 Defendant's actions include, without limitation, the following:

- (i) Whether Defendant deducted as mortality charges, amounts unrelated to mortality;
- (ii) Whether Defendant breached the express and/or implied terms of its policies when it deducted as mortality charges, amounts unrelated to mortality;
- (iii) Whether the Plaintiff Class sustained damages as a result of Defendant's breach of contract; and
- (iv) Whether the Plaintiff Class is entitled to damages, restitution, and/or other equitable relief as a remedy for Defendant's breach of contract.

21. 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.

22. Plaintiff's claims are typical of those of the Class in that Class members purchased policies containing the same or similar limitations on the amount that Defendant could deduct as mortality charges.

23. Plaintiff is an adequate representative of the Class because he is a member of the Class and his interests do not conflict with the interests of those he seeks to represent. The

interests of the class members will be fairly and adequately protected by Plaintiff and his counsel, who have extensive experience prosecuting complex class litigation.

24. Maintenance of this action as a class action is superior to other available methods for the fair and efficient adjudication of 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**

25. Plaintiff incorporates herein by reference the above allegations.

26. Plaintiff and the Class purchased life insurance policies from Defendant.

27. Plaintiff and the Class substantially performed their obligations under the terms of the policies.

28. The life insurance policies provided that the “monthly charges” would consist of: an administrative charge; a mortality charge; and a rider charge.

29. Defendant has deducted as mortality charges, amounts unrelated to mortality in breach of the terms of the policies.

30. Plaintiff and the Class were damaged by this breach.

#### **COUNT II: UNJUST ENRICHMENT**

31. Plaintiff incorporates by reference the preceding allegations.

32. Defendant has received a benefit from Plaintiff and the Class in the form of improper charges as alleged herein.

33. Defendant is aware that it received these benefits from Plaintiff and the Class.

34. Defendant continues to retain the benefits conferred by Plaintiff and the Class to the detriment of Plaintiff and the Class.

35. Under the circumstances, it would be inequitable and unjust for Defendant to retain these benefits.

36. Plaintiff and the Class are entitled to restitution and seek full disgorgement of Defendant's unjust enrichment acquired through the conduct complained of herein.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of all others similarly situated, requests relief as follows: an order certifying this case as a class action under Rule 23; compensatory damages and restitution as appropriate and available in an amount to be proven at trial based on, *inter alia*, mortality charges that exceed the amounts permitted by the terms of the Policies; costs; pre- and post-judgment interest; attorney fees; and such other relief as the Court deems proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby respectfully requests a jury trial.

Dated at Hartford, Connecticut this 14<sup>th</sup> day of January, 2010

Respectfully submitted, Monte K. Freeman, on  
behalf of himself and all other similarly situated



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