



CLERK OF THE COURT

COMP

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*Attorneys for Plaintiff, individually, and
others similarly situated*

DISTRICT COURT

CLARK COUNTY, NEVADA

LEODIEGARIO YABUT; ROWENA
YABUT; and ROWENA SANTOS,
individually and on behalf others similarly
situated,

Plaintiffs,

vs.

MODERN WOODMEN OF AMERICA;
NARCISA DOLLY FLORES; DOES I – X
and ROES I – X, inclusive;

Defendants.

Case No. A-10-611258-C

Dept. XXI

**COMPLAINT FOR COMPENSATORY
AND PUNITIVE DAMAGES**

1. Violation of NRS 695A *et seq.*
2. Violation of Nevada's Deceptive Trade Practices Act
3. Fraud (Intentional Misrepresentation)
4. Civil Conspiracy
5. Unjust Enrichment
6. Declaratory Relief
7. Attorney Fees/Special Damages

(DEMAND FOR JURY TRIAL)

Exempt from Arbitration
Class Action-NAR 3(A)

NOTICE TO ALL POTENTIAL CLASS MEMBERS

Should you be contacted, either in person, telephone, or letter, by Modern Woodmen of America, Narcisa Dolly Flores, and/or their representatives, employees, managers, investigators, or

1 anyone else acting on their behalf, including their attorneys, in relation to Life Insurance Policies
2 sold and issued in the State of Nevada by Defendants and such persons seek to settle your claims that
3 are asserted in this Complaint, you are strongly advised to immediately contact either the attorneys
4 for Plaintiffs in this case, (who are identified on page one (1) of this Complaint), or your own
5 attorney before settling your potential claim. Failure to do so could seriously prejudice your rights.

6 COMES NOW Plaintiffs LEODIEGARIO YABUT ("Mr. Yabut"); ROWENA YABUT ("Mrs.
7 Yabut"); and ROWENA SANTOS ("Mrs. Santos") (collectively "Plaintiffs"), by and through their
8 attorneys of record, Jesse Sbaih & Associates, Ltd., and hereby complain, aver and allege on behalf of
9 themselves and all persons similarly situated as follows:
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11 **I.**

12 **IDENTIFICATION OF THE PARTIES**

13 1. At all times relevant herein, Plaintiffs Mr. Yabut, Mrs. Yabut, and Mrs. Santos were
14 residents of the County of Clark, State of Nevada.

15 2. Based on information and belief, Defendant MODERN WOODMEN OF AMERICA
16 ("Modern Woodmen") is and was an Illinois corporation engaged in the business of selling life insurance,
17 which was unlawfully doing business in the State of Nevada at all times relevant hereto.

18 3. Based on information and belief, Defendant NARCISA DOLLY FLORES ("Ms. Flores")
19 is and was a California resident engaged in the business of selling life insurance, who was unlawfully
20 doing business in the State of Nevada at all relevant times hereto.

21 4. The true names and capacities, whether individual, corporate, associate, or otherwise, of
22 Doe Defendants I through X, are unknown to Plaintiffs who, therefore, sue said defendants by such
23 fictitious names. Plaintiffs are informed and believe and thereupon allege that each of the defendants
24 designated as a Doe Defendant is responsible in some manner for the events and happenings described
25 herein. As such, Plaintiffs will seek leave of the Court to amend this Complaint to insert the true names
26 and capacities of said defendants as they become identified and known to Plaintiffs.

27 5. The true names and capacities, whether individual, corporate, associate, or otherwise, of
28 Roe Defendants I through X, are unknown to Plaintiffs who, therefore, sue said defendants by such

1 fictitious names. Plaintiffs are informed and believe and thereupon allege that each of the defendants
2 designated as a Roe Defendant is responsible in some manner for the events and happenings described
3 herein. As such, Plaintiffs will seek leave of the Court to amend this Complaint to insert the true names
4 and capacities of said defendants as they become identified and known to Plaintiffs.

5 **II.**

6 **AUTHORITY OF PARTNERSHIP DEFENDANTS, AGENTS, SERVANTS, EMPLOYEES,**
7 **AND REPRESENTATIVES**

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9 6. Whenever it is alleged in this Complaint that a Defendant did any act or thing, it is meant
10 that such Defendant's officers, agents, servants, employees, or representatives did such act or thing and
11 at the time such act or thing was done, it was done with full authorization or ratification of such
12 Defendant or was done in the normal and routine course and scope of business, or with the actual,
13 apparent and/or implied authority of such Defendant's officers, agents, servants, employees, or
14 representatives. Specifically, Defendants are liable for the actions of their officers, agents, servants,
15 employees, and representatives.

16 **III.**

17 **JOINT AND SEVERAL LIABILITY**

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19 7. All of the Defendants as named herein are jointly and severally liable to Plaintiff for his
20 damages. Plaintiffs are informed and believe and thereupon alleges that Defendants, and each of them,
21 jointly and in concert undertook to perform the acts as alleged herein, that Defendants and each of them
22 had full knowledge of the acts of each Co-Defendant as alleged herein, and that each Defendant
23 authorized or subsequently ratified the acts of each Co-Defendant as alleged herein, making each Co-
24 Defendant an agent of the other Defendants and making each Defendant jointly responsible and liable
25 for the acts and omissions of each Co-Defendant as alleged herein.

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IV.

GENERAL ALLEGATIONS

8. Based on information and belief, from 2004 through the present, Defendant Modern Woodmen and Ms. Flores, a life insurance agent of Modern Woodmen (collectively "Defendants") sold several thousand life insurance policies in the State of Nevada.

9. Based on information and belief, from 2004 through the present, Defendants were not licensed and/or authorized to transact and/or sell life insurance products in Nevada.

10. Based on information and belief, from 2004 through the present, despite Defendants' knowledge of their lack of legal authority to sell life insurance in Nevada, Defendants unlawfully advised Mr. Yabut, Mrs. Yabut, Mrs. Santos, and several thousand other Nevada residents that Defendants are licensed and authorized to sell them life insurance policies in the State of Nevada.

11. Based on information and belief, from 2004 through the present, despite Defendants' knowledge of their lack of legal authority to sell life insurance in Nevada, Defendants induced Mr. Yabut, Mrs. Yabut, Mrs. Santos and several thousand other Nevada residents to purchase life insurance from Defendants.

12. Based on information and belief, from 2004 through the present, despite Defendants' knowledge of their lack of legal authority to sell life insurance in Nevada, Defendants unlawfully sold Mr. Yabut, Mrs. Yabut, Mrs. Santos, and several thousands other Nevada residents life insurance policies.

13. Based on information and belief, from 2004 through the present, despite Defendants' knowledge of their lack of legal authority to sell life insurance in Nevada, Defendants unlawfully collected from Mr. Yabut, Mrs. Yabut, Mrs. Santos, and several thousand other Nevada residents millions of dollars in premiums for life insurance coverage that was unlawfully marketed to Nevada residents, unlawfully sold to Nevada residents, ineffective, and invalid as a matter of law.

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COMMONALITY

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20. There is a well defined commonality of interest in the questions of law and fact involving the members of the putative class in that members of the class, as defined above, are consumers who (1) in the past six (6) years were unlawfully induced to enter into a life insurance contract with Defendants; and (2) were fraudulently induced to pay millions of dollars in annual life insurance premiums to Defendants for life insurance coverage that was unlawfully marketed to Nevada residents, unlawfully sold to Nevada residents, ineffective, and invalid as a matter of law.

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21. Based on information and belief, Defendants misled thousands of Nevada consumers from 2004 to the present, the same way Plaintiffs were misled by Defendants.

PREDOMINANCE

22. Common questions of fact and law predominate over any questions that affect only the representative class members, if there is any differentiation at all.

TYPICALITY

23. The claims of the representative Plaintiffs are also typical of those of the putative class members in that Plaintiffs are informed and believe that each class member was unlawfully induced to purchase a life insurance policy by Defendants and fraudulently induced to pay premiums to Defendants for life insurance coverage that was unlawfully marketed to Nevada residents, unlawfully sold to Nevada residents, ineffective, and invalid as a matter of law.

ADEQUACY

24. Plaintiffs are willing to devote the time necessary to serve as representative of the class and work with class counsel, their attorneys are experienced and knowledgeable litigators in Nevada, will fairly and adequately represent the interests of the class, and have no interest antagonistic to the class.

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SUPERIORITY

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2 25. There is no plain, speedy or adequate remedy other than maintenance of this class action
3 since Plaintiffs are informed and believe that the prosecution of individual remedies by members of the
4 class would tend to establish inconsistent standards of conduct for the Defendants, would lead to
5 inconsistent legal and factual adjudications, and would result in impairment of class members' rights
6 and the disposition of their interest in actions to which they were not parties. Class action treatment is
7 superior to any other means of handling these claims.

MANAGEABILITY

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9 26. Plaintiffs do not foresee any difficulties in management of this action as a class action.
10 Plaintiffs are not aware of any interest expressed by any class members in managing or controlling the
11 litigation. The class, if certified, will proceed as an opt-out class, and any class member not wanting to
12 be bound may opt-out should he or she choose to do so.

FIRST CLAIM FOR RELIEF

(Violation of NRS 695A *et seq.*)

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16 27. Plaintiffs repeat and reallege each of the allegations contained in the preceding and
17 subsequent paragraphs of this Complaint as fully set forth herein.

18 28. Based on information and belief, at all times relevant herein, Defendants were not in
19 compliance with NRS 695A *et seq.*, which required Defendants to, among other things, be licensed in
20 the State of Nevada,, post a bond with the Nevada Insurance Commissioner, and obtain a Certificate of
21 Authority from the Nevada Insurance Commissioner in order to legally sell life insurance products in
22 the State of Nevada.

23 29. As a direct and proximate result of Defendants' willful violation of NRS 695A *et seq.*,
24 Plaintiffs sustained general, special and compensatory damages in excess of \$10,000.00.

25 30. It was necessary for Plaintiffs to retain the services of an attorney to file this action.
26 Therefore, Plaintiffs are entitled to an award of reasonable attorney's fees and costs of suit.

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1 **SECOND CLAIM FOR RELIEF**

2 (Violation of Nevada's Deceptive Trade Practices Act)

3 31. Plaintiffs repeat and reallege each of the allegations contained in the preceding and
4 subsequent paragraphs of this Complaint as fully set forth herein.

5 32. Based on information and belief, at all times relevant herein, Defendants were not
6 authorized to sell life insurance products in the State of Nevada because they lacked the required
7 Nevada license and qualifications to do so.

8 33. Nevada's Deceptive Trade Practices Act prohibited Defendants from, among other
9 things, conducting business without all required state, county or city licenses. *See* NRS 598.0923.

10 34. As a direct and proximate result of Defendants' willful violation of Nevada's Deceptive
11 Trade Practices Act, Plaintiffs sustained general, special and compensatory damages in excess of
12 \$10,000.00.

13 35. It was necessary for Plaintiffs to retain the services of an attorney to file this action.
14 Therefore, Plaintiffs are entitled to an award of reasonable attorney's fees and costs of suit.

15 **THIRD CLAIM FOR RELIEF**

16 (Fraud-Intentional Misrepresentation)

17 36. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1
18 through 35 as though fully set forth herein.

19 37. Based on information and belief, from 2004 through the present, Defendants sold
20 thousands of life insurance policies in the State of Nevada.

21 38. Based on information and belief, from 2004 through the present, Defendants were not
22 licensed and/or authorized to sell life insurance products in Nevada.

23 39. Based on information and belief, from 2004 through the present, despite Defendants'
24 knowledge of their lack of legal authority to sell life insurance products in Nevada, Defendants
25 unlawfully advised Plaintiffs and other Nevada residents that Defendants are licensed and authorized to
26 sell them life insurance products in the State of Nevada, which Plaintiffs justifiably relied upon.

27 40. Based on information and belief, from 2004 through the present, despite Defendants'
28 knowledge of their lack of legal authority to sell life insurance products in Nevada, Defendants induced

1 Plaintiffs and other Nevada residents to purchase life insurance from Defendants.

2 41. At all times relevant herein, Defendants knew that their representations to Plaintiffs and
3 other Nevada residents regarding Defendants' ability to sell life insurance in Nevada were false, illegal,
4 fraudulent, and improper.

5 42. Based on information and belief, from 2004 through the present, despite Defendants'
6 knowledge of their lack of legal authority to sell life insurance in Nevada, Defendants unlawfully sold
7 Plaintiffs and other Nevada residents life insurance products.

8 43. Based on information and belief, from 2004 through the present, despite Defendants'
9 knowledge of their lack of legal authority to sell life insurance products in Nevada, Defendants
10 unlawfully collected from Plaintiffs and other Nevada residents millions of dollars in premiums for life
11 insurance coverage that was unlawfully marketed to Nevada residents, unlawfully sold to Nevada
12 residents, ineffective, and invalid as a matter of law.

13 44. Plaintiffs have repeatedly requested that Defendants return the insurance premiums
14 unlawfully collected by Defendants.

15 45. However, despite acknowledging that they lacked the legal authority and licensing to
16 transact business and sell life insurance products in Nevada, Defendants have refused and continue to
17 refuse to return the unlawfully and fraudulently collected life insurance premiums to Plaintiffs and other
18 Nevada residents.

19 46. As the direct and proximate result of Defendants' conduct, Plaintiffs suffered actual,
20 special, and consequential damages in excess of \$10,000.00.

21 47. The conduct by Defendants, as described herein, was fraudulent, malicious, and
22 oppressive under NRS 42.005, entitling Plaintiffs to an award of punitive damages.

23 48. As a further direct and proximate result of Defendants' conduct, Plaintiffs have been
24 compelled to retain attorneys to litigate this action.

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1 **FOURTH CLAIM FOR RELIEF**

2 (Civil Conspiracy)

3 49. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 48 above
4 as if fully incorporated herein.

5 50. Defendants and each of them, for their own financial gain, by acting in concert, intended
6 to accomplish an unlawful objective for the purposes of harming Plaintiffs.

7 51. As a direct and proximate result of Defendants' misconduct, Plaintiffs has suffered
8 actual, special, and consequential damages in excess of \$10,000.00.

9 52. The conduct by Defendants, as described herein, was fraudulent, malicious, and
10 oppressive under NRS 42.005, entitling Plaintiffs to an award of punitive damages.

11 53. As a further, direct, and proximate result of Defendants' conduct, Plaintiffs have been
12 compelled to retain attorneys to prosecute this action. Therefore, Plaintiffs are entitled to an award of
13 attorney fees.

14 **FIFTH CLAIM FOR RELIEF**

15 (Unjust Enrichment)

16 54. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 53 above
17 as if fully incorporated herein.

18 55. Based on information and belief, from 2004 through the present, Defendants sold
19 thousands of life insurance policies in the State of Nevada.

20 56. Based on information and belief, from 2004 through the present, Defendants were not
21 licensed and/or authorized to sell life insurance products in Nevada.

22 57. Based on information and belief, from 2004 through the present, despite Defendants'
23 knowledge of their lack of legal authority to sell life insurance products in Nevada, Defendants
24 unlawfully advised Plaintiffs and other Nevada residents that Defendants are licensed and authorized to
25 sell them life insurance products in the State of Nevada, which Plaintiffs justifiably relied upon.

26 58. Based on information and belief, from 2004 through the present, despite Defendants'
27 knowledge of their lack of legal authority to sell life insurance products in Nevada, Defendants induced
28 Plaintiffs and other Nevada residents to purchase life insurance from Defendants.

1 59. At all times relevant herein, Defendants knew that their representations to Plaintiffs and
2 other Nevada residents regarding Defendants' ability to sell life insurance in Nevada were false, illegal,
3 fraudulent, and improper.

4 60. Based on information and belief, from 2004 through the present, despite Defendants'
5 knowledge of their lack of legal authority to sell life insurance in Nevada, Defendants unlawfully sold
6 Plaintiffs and other Nevada residents life insurance products.

7 61. Based on information and belief, from 2004 through the present, despite Defendants'
8 knowledge of their lack of legal authority to sell life insurance products in Nevada, Defendants
9 unlawfully collected from Plaintiffs and other Nevada residents millions of dollars in premiums for life
10 insurance coverage that was unlawfully marketed to Nevada residents, unlawfully sold to Nevada
11 residents, ineffective, and invalid as a matter of law.

12 62. Plaintiffs have repeatedly requested that Defendants return the insurance premiums
13 unlawfully collected by Defendants.

14 63. However, despite acknowledging that they lacked the legal authority and licensing to
15 transact business and sell life insurance products in Nevada and against fundamental principles of
16 justice, equity, and good conscience, Defendants have refused and continue to refuse to return the
17 unlawfully and fraudulently collected life insurance premiums to Plaintiffs and other Nevada residents.

18 64. As a result, Defendants presently retain monies owed to Nevada consumers valued at
19 millions of dollars, which rightly and justly belongs to Nevada consumers and have deprived said
20 consumers of its possession, use, and enjoyment.

21 65. As a direct and proximate result of Defendants' misconduct, Plaintiffs has sustained
22 actual, special, and consequential damages in excess of \$10,000.00.

23 66. As a further, direct, and proximate result of Defendants' misconduct, Plaintiffs have been
24 compelled to retain attorneys to prosecute this action. Therefore, Plaintiffs are entitled to an award of
25 attorney fees.

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1 **SEVENTH CLAIM FOR RELIEF**

2 (Declaratory Relief)

3 67. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1
4 through 66 as though fully set forth herein.

5 68. Plaintiffs and other class members are entitled to a declaration from this Court that life
6 insurance policies sold to Plaintiffs and Nevada consumers, from 2004 through the present, are void as a
7 matter of law, that Defendants must return all insurance premiums unlawfully collected by Defendants
8 from Plaintiffs and other Nevada consumers during that time period, and that Defendants are liable for
9 all damages inflicted by their wrongful conduct.
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11 69. Plaintiffs have been compelled to engage the services of an attorney to prosecute this
12 action and, as special damages, are entitled to an award of attorney's fees and costs incurred herein.

13 **EIGHTH CAUSE OF ACTION**

14 (Attorney Fees/Special Damages)

15 70. Plaintiffs repeat and reallege each of the allegations contained in the preceding and
16 subsequent paragraphs of this Complaint as fully set forth herein.

17 71. As a result of the conduct of Defendants, Plaintiffs has sustained damages including, but
18 not limited to, attorney fees and costs for the prosecution, legal advice, and representation herein.

19 72. Plaintiffs were forced to retain the services of attorneys to prosecute this matter.

20 73. Plaintiffs seek recovery of her attorney fees, costs, and expenses.

21 **WHEREFORE**, Plaintiffs, individually and on behalf of all others similarly situated, pray for
22 judgment against Defendants, jointly and/or severally, where applicable as follows:

- 23 a. For compensatory damages in a sum according to proof at trial;
24 b. For special damages in a sum according to proof at trial;
25 c. For punitive damages in a sum according to proof at trial;
26 d. For a declaration that that life insurance policies sold to Plaintiffs and Nevada
27 consumers, from 2004 through the present, are void as a matter of law, that Defendants must return all
28 insurance premiums unlawfully collected by Defendants from Plaintiffs and other Nevada consumers

1 during that time period, and that Defendants are liable for all damages inflicted by their wrongful
2 conduct;

3 e. For interest and pre-judgment interest at the statutory rate until the amount of
4 judgment is paid in full;

5 f. For attorney's fees and costs of suit incurred; and

6 g. For such other and further relief as the Court may deem appropriate.

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8 DATED this 1st day of March, 2010.

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JESSE SBAIH & ASSOCIATES, LTD.

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By: /s/ Jesse Sbaih

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Jesse M. Sbaih (#7898)

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The District at Green Valley Ranch

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170 South Green Valley Parkway, Suite 280

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Henderson, Nevada 89012

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*Attorneys for Plaintiffs, individually, and all others
similarly situated*

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PLAINTIFFS' DEMAND FOR JURY TRIAL

Plaintiffs LEODIEGARIO YABUT; ROWENA YABUT; and ROWENA SANTOS, individually, and all others similarly situated, by and through the law firm of Jesse Sbaih & Associates, Ltd., hereby demand a jury trial of all issues in the above-captioned matter.

DATED this 1st day of March, 2010.

JESSE SBAIH & ASSOCIATES, LTD.

By: /s/ Jesse Sbaih
Jesse M. Sbaih (#7898)
The District at Green Valley Ranch
170 South Green Valley Parkway, Suite 280
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