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Attorneys for Plaintiff PATRICK S. BUMPUS,
and on Behalf of the Class

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PATRICK S. BUMPUS, Individually,
and on Behalf of the Class;

Plaintiff,

vs.

U.S. FINANCIAL LIFE INSURANCE
COMPANY, an Ohio Corporation.

Defendant.

Case No.:

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

DEMAND FOR JURY TRIAL

1 Plaintiff PATRICK S. BUMPUS, individually and on behalf of the class
2 defined below, against Defendant U.S. FINANCIAL LIFE INSURANCE
3 COMPANY (“U.S. Financial”) as follows:

4 **I. NATURE OF THE CASE**

5 1. U.S. Financial refuses to comply with mandatory provisions of the
6 California Insurance Code as well as California common law regulating the lapse and
7 termination of life insurance policies.

8 2. Since January 1, 2013, U.S. Financial and other related entities have
9 systematically and purposely failed to provide certain classes of policy owners,
10 insureds, assignees and others, proper notices of pending lapse or termination. U.S.
11 Financial has failed to notify thousands of policy owners of their right to designate
12 someone to receive critical notices and information regarding life insurance, despite
13 being required to do so on an annual basis. All of these important safeguards are
14 required by, among other sources, California Insurance Code Sections 10113.71 and
15 10113.72.¹ California law requires strict compliance with these safeguards and U.S.
16 Financial refuses to comply. [Thomas v. State Farm Ins. Co., No. 18-cv-00728-BAS-](#)
17 [BGS, 2019 U.S. Dist. LEXIS 213860, at *24 \(S.D. Cal. Dec. 10, 2019\)](#) (Judge
18 Cynthia Bashant); [Bentley v. United of Omaha Life Ins. Co., 371 F. Supp. 3d 723](#)
19 [\(C.D. Cal. 2019\)](#) (Judge Dolly M. Gee).

20 3. As a result, U.S. Financial has failed to properly administer policies,
21 evaluate the status of payments due under policies and pay claims to beneficiary for
22 policies improperly lapsed or terminated. Indeed, thousands of policy owners and
23 beneficiary have lost, and continue to lose, the benefit, value and security of their life
24 insurance; has been, and continue to be, forced into unnecessary reinstatements; and
25 in many instances have lost all reasonable access to any insurance at all. Ultimately,

26
27 ¹ Unless otherwise stated, all references to “Section 10113.71” and/or “10113.72”
28 refer to California Insurance Code Sections 10113.71 and/or 10113.72. Sometimes
these will be collectively referred to as “The Statutes.”

1 Defendant has robbed thousands of their customers and beneficiary of the investment
2 in such policies, policy benefits as well as the security intended to be provided from
3 such insurance.

4 4. The injury to U.S. Financial's customers and beneficiaries continues
5 today, with policyholders currently paying unnecessary or inflated premiums, or
6 unknowingly suffering under improper forced "reinstatements" which diminish the
7 value or conditions of the policies. And there are numerous policyholders whom U.S.
8 Financial told have no insurance, but whose policies are, unbeknownst to them,
9 actually still in force and in some situations with benefits being owed and unpaid.

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

23 6. The Statutes were also designed specifically to deal with the unique
24 nature of life insurance. When a potential claim for benefits arises, the policy owner
25 and party responsible for payment of premiums is often the insured, and due to their
26 death, is no longer available to explain the circumstances related to any potential
27 lapse or termination of coverage. The Legislature also recognized that the beneficiary
28 is often unaware of the circumstances related to any lapse of coverage. Rather, the

1 insurer is fully in control of the documentation and requirements for termination of
2 coverage. As such, California requires strict compliance with all statutory and
3 contractual provisions governing termination of an otherwise in-force policy
4 regardless of the nonpayment of premium. In other words, no lapse or termination
5 for failure to pay a premium is effective, and the policy remains in force even if
6 premiums are unpaid, unless and until all statutory and contractual provisions are
7 satisfied.

8 7. Plaintiff is a victim of U.S. Financial's failures. Plaintiff, on behalf of
9 himself and others similarly situated, brings this action to recover for the injuries and
10 damages resulting from these violations. Plaintiff also requests injunctive relief
11 intended to ensure U.S. Financial's future compliance with these important consumer
12 safeguards and to prevent the ongoing violation of these important statutes.

13 **II. PARTIES**

14 8. Plaintiff Patrick S. Bumpus is an individual and the policy owner and
15 insured for the Subject Policy. Plaintiff was and has been a resident and citizen of
16 California at all relevant times.

17 9. Defendant U.S. Financial Life Insurance Company is an Ohio Company
18 doing business in California. It is registered to do business in California and is
19 licensed by the California Department of Insurance to sell life insurance here in
20 California. From 2013 until the present U.S. Financial was the insurer responsible
21 for administering and honoring the subject policy.

22 **III. JURISDICTION AND VENUE**

23 10. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332,
24 including under the Class Action Fairness Act. The matter in controversy, exclusive
25 of interest and costs, exceeds the sum or value of \$75,000, and is between citizens of
26 different States. Also, the matter or controversy is a putative class action with over
27 100 class members and with over \$5 million in controversy.

28

1 11. Venue is proper in the Eastern District of California pursuant to 28
2 U.S.C. Section 1391(b) through (d), because Defendant is authorized to conduct
3 business in this District and has intentionally availed itself of the laws and markets
4 within this District; does substantial business in this District; and is subject to
5 personal jurisdiction in this District. Plaintiff resides and has resided in Shingle
6 Springs, California at all times relevant.

7 **IV. THE ENACTMENT AND APPLICABILITY OF**
8 **INSURANCE CODE SECTIONS 10113.71 AND 10113.72**

9 12. In 2012, after extensive and open hearings and public consideration,
10 including with U.S. Financial all other major insurance companies doing business in
11 California, the California Legislature enacted Insurance Code Sections 10113.71 and
12 10113.72, which instituted procedural requirements for the termination and lapse of
13 life insurance policies. The Statutes were written to avoid unintended forfeitures of
14 life insurance policies primarily being suffered by the elderly and the ill. The
15 Legislature found that there was a significant problem in California with the elderly
16 abruptly losing insurance because they happened to miss a premium payment despite
17 having faithfully and timely paid for many years.

18 13. Sections 10113.71 and 10113.72, in addition to other statutory
19 provisions and laws in effect as of January 1, 2013, mandate that every life insurance
20 policy in or governed by California law, including policies that have issued, been
21 delivered, renewed, reinstated, converted or otherwise become subject to the
22 jurisdiction of California, shall contain a 60-day grace period and that the policy shall
23 remain in force during the grace period. Cal. Ins. Code § 10113.71(a).

24 14. The provisions further require that before an individual life insurance
25 policy governed by California law is lapsed or terminated for nonpayment of
26 premium, a 30-day written notice of pending lapse or termination must be mailed not
27 only to the policyholder, but also to any additional person who had been designated
28

1 to receive such notice, as well as any person having any interest in the policy. Cal.
2 Ins. Code § 10113.72(c).

3 15. The provisions also mandate that the insurer, on an annual basis, as well
4 as during any application process, notify the policy owner of his or her right to
5 designate additional notice recipients.

6 16. Finally, the statutes mandate that no lapse or termination is effective
7 unless all of the provisions are strictly complied with.

8 17. The provisions are applicable individually and severally to all life
9 insurance policies governed by California law.

10 18. More specifically, Section 10113.71 reads as follows:

11 **§ 10113.71 Grace Period; Notice of pending lapse and**
12 **termination of policy; Mailing requirement**

13 (a) Every life insurance policy issued or delivered in this
14 state shall contain a provision for a grace period of not less than
15 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.

16 (b) (1) A notice of pending lapse and termination of a life
17 insurance policy shall not be effective unless mailed by the
18 insurer to the named policy owner, a designee named pursuant to
19 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.

20 (2) This subdivision shall not apply to nonrenewal.

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

25 (c) For purposes of this section, a life insurance policy
26 includes, but is not limited to, an individual life insurance
policy and a group life insurance policy, except where
otherwise provided.

1 Next, Section 10113.72 says:

2 **§ 10113.72 Right to designate person to receive notice of**
3 **lapse or termination of policy for nonpayment of premium;**
4 **Right to change designation; Notice of lapse or termination**

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

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

19 (c) No individual life insurance policy shall lapse or be
20 terminated for nonpayment of premium unless the insurer, at
21 least 30 days prior to the effective date of the lapse or
22 termination, gives notice to the policy owner and to the person or
23 persons designated pursuant to subdivision (a), at the address
24 provided by the policy owner for purposes of receiving notice of
25 lapse or termination. Notice shall be given by first-class United
26 States mail within 30 days after a premium is due and unpaid.

27 19. These Statutes are regulatory in nature and contain no grandfather
28 provisions limiting their application only to policies first issued or delivered after
January 1, 2013. Rather, they apply to all policies still *in existence* as of January 1,
2013.

21 20. These provisions were intended to standardize the procedures and
22 notices used by life insurers to terminate policies. The Statutes further codified long-
23 standing California law and policy regarding the State's desire to protect
24 policyholders and beneficiaries from loss of insurance resulting from the failure, e.g.,
25 to pay a single premium after years of timely payments. These provisions,
26 individually and collectively, were intended to apply to policies in force as of January
27 1, 2013 and thereafter, including those policies that would come within the
28 jurisdiction of the state and regardless of the date of any original issuance.

1 21. The principal supporters of the legislation were groups representing the
2 elderly and the retired as well as constituents dealing with health concerns. There was
3 no substantive opposition to the legislation during its drafting. Rather, the insurance
4 industry supported these new provisions and accepted that the goal and purpose of
5 the legislation was legitimate and in the best interest of their policyholders and
6 beneficiaries. Prior to enactment, there was never a public or private dispute that the
7 enactment of provisions codifying a contractual right to a 30-day written notice, a 60-
8 day grace period, and an annual right to designate was within the proper exercise of
9 California's regulatory authority. Furthermore, after repeated review, it was
10 determined that enactment of these provisions would have no substantial fiscal or
11 economic ill effect. It was determined that these Statutes support a strong public
12 policy to safeguard consumers' investment in life insurance, and the safety blanket
13 that insurance provides.

14 **V. U.S. FINANCIAL'S VIOLATIONS OF LAW**

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

18 23. Despite early knowledge of the Statutes and their mandates, since
19 January 1, 2013, Defendant has failed to comply with the Statutes.

20 24. U.S. Financial's failure to comply with these provisions has resulted in,
21 amongst other impacts, the improper lapse, termination, and/or forced reinstatement
22 of policies, the loss of the capacity of policyholders to be insured, the denial of actual
23 claims, and the loss of millions, or perhaps billions, in insurance benefits that
24 Defendant has no illegally retained. Plaintiff and his family have suffered, and
25 continue to suffer various forms of injury and loss including injury from an improper
26 lapse, improper requirement of reinstatement and termination, and from Defendant's
27 failure to reinstate or continue coverage.

28

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

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

6 26. In or before 2004, Plaintiff Patrick S. Bumpus purchased, from or in
7 California, a term life insurance policy (the "Policy" or "Subject Policy") from U.S.
8 Financial (Policy No. 000315719). As of January 1, 2013, and at all times thereafter,
9 Defendant was responsible for all contractual and statutory obligations associated
10 with the Policy.

11 27. Plaintiff is informed and believes that a full and complete copy of the
12 Subject Policy, Policy No. 0003157192, is attached as Exhibit "A". The Policy was
13 purchased in California, was issued and delivered in California, and premiums were
14 all paid from California such that it was and continues to be governed by the laws of
15 the State of California including but not limited to The Statutes. The purpose of this
16 policy was to protect Plaintiff and his family.

17 28. The value of the policy is \$500,000 or more and names Plaintiff as the
18 policy owner and insured. The terms of the Policy state, "We will pay the death
19 benefit if the Insured dies while this policy is in force." See Exhibit "A". The
20 premiums on the policy were paid quarterly, and at the time of lapse were \$338.53.
21 The Policy provides a 31 day grace period and states "If any due premium is not paid
22 by the end of the grace period, the policy will terminate..." Exhibit "A".

23 29. Despite the application of California law, Defendant did not provide a
24 60 day grace period, a 30 day notice, or the right to designate a third party to receive
25 such notice to Plaintiff prior to termination of the policy. Plaintiff is informed and
26 believes that these failures were part of a general business practice of U.S. Financial
27 of ignoring and misapplying Sections 10113.71 and 10113.72, and the express
28 language of its policies.

1 30. Plaintiff made his quarterly premium every quarter for nearly 15 years.
2 At all times, Plaintiff was financially capable of paying all premiums due and was
3 desirous of maintaining the policy.

4 31. Sometime in or around October 2019 Plaintiff's wife's grandmother
5 became ill and eventually passed away. At the time, Plaintiff's wife, Ms. Sarah
6 Bumpus, was in charge of paying their household bills, including the premium on the
7 Policy. In the chaos and stress of dealing with her grandmother's illness and eventual
8 death, Ms. Bumpus inadvertently failed to pay the premium due on October 18, 2019.
9 However, Ms. Bumpus quickly realized she had not paid the premium, and sent a
10 check for the full amount, through her online banking system on November 15, 2019.
11 This payment was received by U.S. Financial by November 22, 2019 at the latest.
12 On November 19, 2019, U.S. Financial sent a lapse notice to Plaintiff informing him
13 that his policy had lapsed for non-payment, 31 days after the premium was due.
14 Following the notification of lapse, U.S. Financial required Plaintiff to apply for
15 reinstatement and demonstrate evidence of insurability, which Plaintiff promptly did
16 in December 2019. In February 2020, Defendant requested additional information,
17 which Plaintiff again promptly provided. To date, Plaintiff has not received a
18 response to his application for reinstatement despite requesting one on several
19 occasions, effectively constituting a refusal of reinstatement. The attempted
20 termination of the Policy in 2019 was legally ineffective leaving the policy in force.

21 32. At no point relevant to this matter has Defendant, in any fashion,
22 complied with or attempted to comply with the provisions of Sections 10113.71 or
23 10113.72 regarding the subject Policy. No 60 day grace period was provided, and no
24 notice to the insured, or the designee was provided for the alleged lapse or termination
25 of the Policy.

26 33. Defendant also violated Section 10113.72 by failing to provide notice of
27 a right to designate an alternative notice recipient. As such, termination of the policy
28 was ineffective and the policy remains in force. This purported termination not only

1 violated the terms of the California Insurance Code, but also constituted a material
2 breach of the contract. These breaches left Plaintiff purportedly uninsured, without
3 access to the ongoing benefits of the Policy he had diligently paid for nearly fifteen
4 years.

5 34. Due to each and every violation of these Statutes, the lapse and
6 termination of the Policy was void and ineffective. Defendant failed to substantially,
7 let alone strictly, comply with any of the mandates of Sections 10113.71 or 10113.72.
8 As such, the Policy was not legally terminated. The failure to comply with these
9 provisions was, and remains, a material breach of the Policy.

10 **VII. CLASS ACTION ALLEGATIONS**

11 35. Plaintiff is informed and believes that Defendant has not, since at least
12 January 1, 2013, properly complied with the provisions of Insurance Code Sections
13 10113.71 and/or 10113.72. Since that time, Defendant has failed and continues to fail
14 to provide these protections to policy owners, assignees and, where applicable, to
15 their beneficiaries.

16 36. Plaintiff contends that the handling of the Policy is and was consistent
17 with Defendant's standardized policies and procedures which consists of Defendant's
18 systematic and intentional failure to provide a class of policy owners the protections
19 afforded by Sections 10113.71 and 10113.72.

20 37. As a matter of standard policy or standard operating procedure,
21 Defendant has not, since at least January 1, 2013, provided a 60 day grace period or
22 utilized compliant notices of pending lapse and or termination consistent with the
23 provisions of California law and in particular Sections 10113.71 and 10113.72 for
24 many insureds.

25 38. Since at least January 1, 2013, Defendant has not utilized the provisions
26 of Ins. Code Sections 10113.71 and 1003.72 to determine the effectiveness of any
27 attempted termination of the policy and as such Defendant has caused, and continues
28 to cause injury and damage to policy owners, beneficiaries, and persons of interest

1 intended to be protected by Sections 10113.71 and 10113.72 or has otherwise harmed
2 same and will continue to do so into the future unless enjoined or prohibited in some
3 fashion.

4 39. Plaintiff brings this action on behalf of all members of the following
5 proposed class:

6 **The Class:**

7 All past, present, and future owners or beneficiaries of Defendant's
8 individual life insurance policies in force on or after January 1, 2013
9 and governed by Sections 10113.71 and/or 10113.72, where the
10 policies underwent or will undergo lapse, termination, and/or
11 reinstatement without Defendant first providing written notice of and
an actual 60-day grace period, a 30-day notice of pending lapse and
termination, and/or an annual notice of a right to designate at least one
other person to receive notice of lapse or termination of a policy for
nonpayment of premium.

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

17 41. Defendant's conduct has imposed a common injury and/or harm on all
18 class members. Defendant has acted, and has refused to act, on grounds generally
19 applicable to the class members, which makes final injunctive relief with respect to
20 each claim as a whole appropriate.

21 42. Plaintiff will and do faithfully represent, and are members, in their
22 representative capacity and as individuals, of the Class.

23 43. ***Numerosity.*** The members of the Class are so numerous that their
24 individual joinder is impracticable. Plaintiff is informed and believes, and on that
25 basis alleges, that the proposed Class contains thousands and perhaps tens-of-
26 thousands of members. The precise number of members is unknown to Plaintiff. The
27 true number of members is known or ascertainable by Defendant, as are their
28

1 identities. Thus, Class members may likely be notified of the pendency of this action
2 by first class mail, electronic mail, and/or by published notice.

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

9 a. Whether Sections 10113.71 and 10113.72, in whole or in
10 part, apply to Defendant's life insurance policies.

11 b. Has Defendant violated and does it continue to violate the
12 provisions of Sections 10113.71 and 10113.72?

13 c. Whether Defendant's life insurance policies has been
14 ineffectively lapsed or terminated or subsequently been unnecessarily
15 modified through reinstatement.

16 d. Whether Defendant is required to provide grace periods,
17 timely and proper written notices of pending lapse or pending
18 termination, and to provide policyholders a right to designate as set forth
19 in Section 10113.72.

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

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

26 g. Whether Defendant knew or should have known that their
27 conduct was directed to one or more persons aged 65 or older.
28

1 45. **Typicality.** Plaintiff’ claims are typical of the claims of the members of
2 the Class because Plaintiff and each member of the Class were victims of the same
3 statutory violations. Further, Plaintiff’s claims are typical of the claims of her fellow
4 Class members, which all arise from the same operative facts involving the
5 Defendant’s unlawful violations of Sections 10113.71 and 10113.72.

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

11 47. **Superiority.** A class action is a superior method for the fair and efficient
12 adjudication of this controversy. The damages or other financial detriment suffered
13 by individual Class members are relatively small compared to the burden and expense
14 that would be expended by individual litigation of their claims against Defendant. It
15 would thus be virtually impossible for Class members, on an individual basis, to
16 obtain effective redress for the wrongs done to them. Furthermore, even if Class
17 members could afford such individualized litigation, the court system could not.
18 Individualized litigation would create the danger of inconsistent or contradictory
19 judgments arising from the same set of facts. Individualized litigation would also
20 increase the delay and expense to all parties and the court system from the issues
21 raised by this action. The class action device provides the benefit of adjudication of
22 these issues in a single proceeding, economies of scale, and comprehensive
23 supervision by a single court, and presents no unusual management difficulties under
24 the circumstances. Moreover, many Class members remain unaware of their rights
25 and without this Class action, would remain unaware of their rights and benefits.

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

27 (a) The prosecution of separate actions by individual Class members
28 would create a risk of inconsistent or varying adjudication with respect to

1 individual Class members that would establish incompatible standards of
2 conduct for the Defendant;

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

8 (c) Defendant has acted or refused to act on grounds generally
9 applicable to the Class, thereby making appropriate final declaratory and/or
10 injunctive relief with respect to the members of the Class as a whole.

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

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

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

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25 *[Rest of page intentionally left blank.]*
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VIII. FIRST CAUSE OF ACTION

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

(By Plaintiff, individually and on Behalf of the Class)

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

53. 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

54. 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.

55. 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.

56. 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.

1 57. Forfeiture provisions for nonpayment of premium for life insurance
2 policies are strictly construed against lapse or termination and California law
3 disfavors forfeiture of insurance. Forfeitures “are often the means of great oppression
4 and injustice” and “the courts should be liberal in construing the transaction in favor
5 of avoiding a forfeiture.” (*Ins. Co. v. Norton* (1978) 96 U.S. 234, 242.) “Forfeiture
6 of a policy will be avoided on any reasonable showing.” *Klotz v. Old Line Life Ins.*
7 *Co. of Amer.*, 955 F.Supp. 1183, 1188 (N.D. Cal. 1996).

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

10 58. An actual controversy has arisen and now exists between Plaintiff and
11 Defendant concerning their respective rights and duties under the California
12 Insurance Code and the Policy. Plaintiff contends Sections 10113.71 and 10113.72
13 apply to the Subject Policy as well as all of Defendant’s California life insurance
14 policies in force as of or after January 1, 2013, including any policies that were
15 renewed in California on or after January 1, 2013. Plaintiff also contends these
16 Statutes govern the manner and procedure in which life insurance policies can legally
17 be lapsed or terminated as of January 1, 2013, and thereafter. Defendant contends
18 and acts as if the Statutes do not apply to these policies.

19 59. Plaintiff desires a judicial determination of rights and duties, and a
20 declaration or judgment that Sections 10113.71 and 10113.72 applied as of January
21 1, 2013, to Defendant’s California policies in force as of or at any time after January
22 1, 2013, including the Subject Policy.

23 60. A judicial declaration would advise insureds and their beneficiaries like
24 Plaintiff of their rights, and would advise Defendant of its duties to Plaintiff and to
25 Class members concerning policyholders' rights to designate individuals to receive
26 notices of pending lapse and termination and the right to receive notice of, and the
27 ability to properly utilize, the legally required grace period. A judicial declaration is
28 also necessary to determine the validity of any unnecessary reinstatements obtained,

1 to determine whether policies were legally in force at the times of deaths of insureds,
2 and to determine whether beneficiaries were wrongfully denied payment of benefits
3 under their policies.

4 **IX. SECOND CAUSE OF ACTION**

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

7 **(By Plaintiff, individually and on Behalf of the Class)**

8 61. Plaintiff incorporates by reference each and every allegation contained
9 above.

10 62. Under federal law, “[i]n a case of actual controversy within its
11 jurisdiction, ... any court of the United States ... may declare the rights and other
12 legal relations of any interested party seeking such declaration, whether or not further
13 relief is or could be sought. Any such declaration shall have the force and effect of a
14 final judgment and shall be reviewable as such.” (28 U.S.C. 2201; Fed. Rule Civ.
15 Proc., Rule 57).

16 63. Here, an actual controversy has arisen and now exists between Plaintiff
17 and Defendant within this Court’s jurisdiction concerning the parties’ respective
18 rights, duties, and legal relations under the California Insurance Code and the Policy.
19 Plaintiff contend Sections 10113.71 and 10113.72 apply to the Subject Policy and all
20 of Defendant’s California life insurance policies in force as of or after January 1,
21 2013, including any policies that were renewed in California on or after January 1,
22 2013. Plaintiff also contend these Statutes govern the manner and procedure in which
23 life insurance policies can legally be lapsed or terminated as of January 1, 2013, and
24 thereafter. Defendant contends and acts as if Sections 10113.71 and 10113.72 do not
25 apply to many categories of their policies, such as Plaintiff’s Policy.

26 64. Plaintiff hereby seek a judicial determination of rights and duties, and a
27 declaration or judgment that Sections 10113.71 and 10113.72 applied as of January
28

1 1, 2013, to Defendant's California policies in force as of or at any time after January
2 1, 2013, including Plaintiff's Policy.

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

12 **X. THIRD CAUSE OF ACTION**

13 **BREACH OF CONTRACT**

14 **(By Plaintiff, Individually and on Behalf of the Class)**

15 66. Plaintiff incorporates by reference each and every allegation contained
16 above.

17 67. Defendant breached and continue to breach the express terms of their
18 life insurance policies, including Plaintiff's Policy, as well as the statutory mandates
19 regarding such policies, by, amongst other things:

20 (a) Failing to include in such policies and failing to provide accurate
21 30-day written notice of pending lapse or termination;

22 (b) Failing to provide a 60 day grace period;

23 (c) Failing to provide proper notice to policyholders on an annual
24 basis of the policyholders' right to designate individuals to receive notices of
25 pending lapse or termination;

26 (d) Lapsing or terminating policies without strictly complying with
27 the terms of the policies;
28

1 (e) Refusing to pay benefits to beneficiaries, despite knowledge and
2 information that Defendant had not strictly complied with the terms of the
3 policies;

4 (f) Improperly requiring reinstatement of policies that had not lapsed
5 or terminated and which were not required or were not subject to reinstatement;

6 (g) By failing to pay benefits or claims;

7 (h) By failing to provide the notices required by the policy; and

8 (i) By failing to apply the applicable law to the insurance contract.

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

13 69. All of the aforementioned conduct, individually and collectively,
14 constitutes material unexcused breaches of the policies. To the extent any contractual
15 obligations, duties, or conditions are imposed on policyholders or on beneficiaries,
16 those obligations, duties, and conditions have been waived and/or have been excused
17 due to Defendant's material breaches. After each material breach, each policy owner
18 was thus excused from the further tendering of premiums and from any further
19 performance under the terms of the policy, including but not limited to the acceptance
20 of any offer by U.S. Financial of any reinstatement or modification to the policy.

21 70. Defendant's conduct caused injury upon the false, wrongful and
22 inadequate termination of coverage devaluing the policy and subsequently caused
23 injury in fact through the further denial of an ability to resume coverage, and
24 ultimately in refusing to pay the claim. Plaintiff and their fellow class members
25 suffered harm through the loss of coverage, the loss of peace of mind related to the
26 existence of coverage, and the capacity to utilize the years of investment in the
27 wrongfully lapsed and terminated policy.

28

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

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

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

13 **XI. FOURTH CAUSE OF ACTION**

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

15 **(By Plaintiff, individually and on Behalf of the Class)**

16
17 74. Plaintiff incorporates by reference each and every allegation contained
18 above.

19 75. California Business and Professions Code Sections 17200, *et. seq.*
20 (“UCL”) prohibits any unlawful, unfair, deceptive, or fraudulent business practice.

21 76. Defendant committed “unlawful” acts under the UCL by violating and
22 continuing to violate Sections 10113.71 and 10113.72, including by failing to provide
23 Plaintiff a 60 day grace period, a 30 day notice of lapse, and an annual notice of his
24 right to designate a third party to receive notices of pending lapse or termination of
25 coverage.

26 77. Plaintiff’s policy as well as Policies which have allegedly been lapsed
27 and/or terminated are still in force and are payable or subject to continuation of
28 insurance. Because of U.S. Financial’s violations of the California Insurance Code,

1 U.S. Financial's attempted terminations or lapses of policies like the Subject Policy
2 were illegal and ineffective. The policies, in other words, remain in force and subject
3 to payment of the benefit. U.S. Financial's failure to comply with the statutory terms
4 has not effectively terminated any policy, and Plaintiff and their fellow class
5 members all remain in an ongoing valid contractual relationship with U.S. Financial.

6 78. U.S. Financial's unlawful practices also included and continue to
7 include Defendant's ongoing concealment that Sections 10113.71 and 10113.72
8 apply to a class or classes of life insurance in force on or after January 1st, 2013.

9 79. The unlawful and unfair business practices described above have
10 proximately caused harm and injuries to Plaintiff, the class, and to the general public
11 in the form of lost money and property. The money lost by the class includes the
12 policy benefits that U.S. Financial is withholding as well as the premiums that it
13 wrongfully collected.

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

20 81. Defendant continues to this day to ignore or otherwise violate The
21 Statutes, continuing to rob owners and beneficiaries, like Plaintiff, of their lawfully-
22 owned policies and benefits. As such, and pursuant to California's UCL, Plaintiff
23 and the members of the Class and the general public are also entitled to injunctive
24 relief, including public injunctive relief, against Defendant's ongoing business
25 practices.

26 82. If Defendant is not enjoined from engaging in the unlawful business
27 practices described above, Plaintiff, the Class, and the general public will be
28 irreparably injured.

1 83. Plaintiff, the general public, and the members of the Class have no plain,
2 speedy, and adequate remedy at law.

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

6 85. Private enforcement of these rights is necessary as no public agency has
7 pursued enforcement and the interests Plaintiff seek to protect are for the benefit of
8 the general public. Plaintiff is therefore entitled to an award of attorneys' fees and
9 costs of suit pursuant to, among others, California's UCL, the Common Fund
10 doctrine, the Public Benefit Doctrine, and California Code of Civil Procedure Section
11 1021.5.

12 **XII. PRAYER FOR RELIEF**

13 Plaintiff prays for relief against Defendant as follows:

- 14 1. For certification of this action as a Class Action;
- 15 2. A declaration of Plaintiff's and the Class' rights pursuant to the insurance
16 policies issued by Defendant and a declaration that Defendant has violated
17 The Statutes;
- 18 3. For an injunction to issue against Defendant stopping and remedying the
19 ongoing violation of The Statutes, including public injunctive relief;
- 20 4. For economic damages according to proof where available;
- 21 5. For restitution where available;
- 22 6. For interest where available;
- 23 7. For attorneys' fees and all litigation costs and expenses where available;
- 24 and
- 25 8. For such other and further relief as this Court deems just and proper.

26 ///

27 ///

28 ///

XIII. DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury.

Respectfully submitted:

DATED: May 5, 2020

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