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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MICHAEL DON, EXECUTOR OF  
THE ESTATE OF RUBEN DON,  
LEROY LITTLE, by and through his  
Guardian ad Litem TAMARA PELHAM,  
and CAROLYN JAN LITTLE,  
Individually, and as the Class  
Representatives on behalf of those insureds  
similarly situated,

Plaintiff,

vs.

UNUM GROUP, a Delaware Corporation;  
and UNUM LIFE INSURANCE COMPANY  
OF AMERICA, a Maine Corporation,

Defendants.

**CASE NO.: CV 13-4502-DSF (VBK)**

Assigned to: Hon. Dale S. Fischer

Courtroom: 840

**CLASS ACTION**

**THIRD AMENDED COMPLAINT  
for:**

- 1. Breach of Insurance Contract;**
- 2. Insurance Bad Faith;**
- 3. Fraud & Deceit;**
- 4. Unfair Business Practices In Violation Of California Business & Professions Code, Section 17200 et seq.; and**
- 5. Declaratory Relief Seeking Declaration and Injunction**

**DEMAND FOR JURY TRIAL**

Plaintiffs MICHAEL DON, EXECUTOR OF THE ESTATE OF RUBEN

1 DON, LEROY LITTLE, by and through TAMARA PELHAM (who has  
2 contemporaneously petitioned this Court for an order to be appointed as LEROY  
3 LITTLE’s Guardian ad Litem), and CAROLYN JAN LITTLE, individually, and as  
4 the Class Representatives on behalf of those insureds similarly situated, complain of  
5 Defendants UNUM GROUP and UNUM LIFE INSURANCE COMPANY OF  
6 AMERICA (hereinafter, collectively “Unum”), demand a trial by jury on all of  
7 Plaintiffs’ claims except for the equitable and Unfair Competition Law (“UCL”)  
8 claims, and on information and belief allege as follows:  
9  
10  
11

12 **Jurisdiction & Venue**

13 1. On June 21, 2013, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453,  
14 Unum removed this case from state court based on the Class Action Fairness Act of  
15 2005 (“CAFA”), 28 U.S.C. § 1332(d)(2). This case was initially filed in Los Angeles  
16 Superior Court. Venue is proper in any county in California because Unum has not  
17 currently filed a statement with the California Secretary of State designating a  
18 principal office in California. At all material times, including the present, Unum  
19 conducts business in Los Angeles County, California and Unum’s primary operating  
20 center on the west coast is located in the City of Glendale, Los Angeles County,  
21 California.  
22  
23  
24

25 **The Parties**

26 2. Plaintiff MICHAEL DON is the EXECUTOR OF THE ESTATE OF  
27 RUBEN DON (“MICHAEL DON”). On December 17, 2009, Ruben Don executed  
28

1 an 18-page Immediate Durable Power of Attorney of Ruben Don, appointing his son  
2 Michael Don as his Agent which stated:

3  
4 **“Section 5.01 Power to Commence Court Proceedings**

5 My Agent may commence any court proceedings necessary to protect  
6 my legal rights and interests under this power of attorney including, but  
7 not limited to:

8 Actions for declaratory judgments from any court of competent  
9 jurisdiction interpreting the validity of this power of attorney and any of  
10 the acts sanctioned by this power of attorney; provided, however, that  
11 my Agent need not seek a declaratory judgment to perform any act  
sanctioned by this power of attorney;

12 Actions for mandatory injunctions requiring any person or entity to  
13 comply with my Agent’s directions as authorized by this power of  
attorney;

14 Actions for actual and punitive damages and the recovery of costs and  
15 expenses of such litigation against any person or entity who negligently  
16 or willfully fails or refuses to follow my Agent’s directions as  
17 authorized by this power of attorney.”

18 3. MICHAEL DON commenced this lawsuit on Ruben Don’s behalf (in  
19 part) pursuant to this Power of Attorney, and after Unum regularly and routinely  
20 acknowledged throughout the handling of Ruben Don’s claim that Plaintiff was  
21 Ruben Don’s authorized and legally designated representative. MICHAEL DON has  
22 been formally appointed Executor of Ruben Don’s Estate. (See Exhibit H). On  
23 August 28, 2014, this Court issued an Order on the parties’ joint stipulation to  
24 substitute Ruben Don with MICHAEL DON, EXECUTOR OF THE ESTATE OF  
25 RUBEN DON, as Plaintiff pursuant to Federal Rule of Civil Procedure 25(a).  
26  
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28

1 (Exhibit I).

2 4. Plaintiff LEROY LITTLE brings this lawsuit by and through TAMARA  
3 PELHAM, formerly known as Tamara Jo Niles and Tamara J. Little (who is  
4 contemporaneously petitioning this Court for an Order to be appointed as LEROY  
5 LITTLE's Guardian ad Litem for purposes of pursuing and prosecuting this  
6 litigation). LEROY LITTLE and Plaintiff CAROLYN JAN LITTLE are husband  
7 and wife, and TAMARA PELHAM is their daughter.  
8

9  
10 5. TAMARA PELHAM is the proposed class representative for the "in  
11 claim" Subclass Members, which consists of those insureds, like her Father LEROY  
12 LITTLE, who have claimed benefits under Unum's Long Term Care Policies but are  
13 still entitled to future policy benefits (the "in claim" Subclass Members).  
14

15  
16 6. CAROLYN JAN LITTLE has yet to make an insurance claim with  
17 Unum and is the proposed class representative for the "future claim" Subclass  
18 Members which consists of those insureds who have yet to file an insurance claim  
19 (the "future claim" Subclass Members).  
20

21 7. MICHAEL DON is the proposed class representative for the "accrued  
22 damages" Subclass Members which consists of insureds who have an accrued cause  
23 of action for breach of contract against Unum (i.e., if and when all accrued damages  
24 are paid, the insureds will have received all benefits owed under the policy) (the  
25 "accrued damages" Subclass Members).  
26  
27

28 8. Defendant Unum Life Insurance Company of America is a Maine

1 corporation, headquartered in Portland, Maine, and does business as a life and  
2 disability insurance company. Defendant Unum Life Insurance Company of America  
3  
4 is an admitted disability and life insurer in the States in which it issues policies and is  
5 subject to those State’s rules, regulations, statutes and laws governing admitted  
6 insurers. Defendant Unum Life Insurance Company of America is the insurer of  
7  
8 Unum’s long term care insurance policies.

9           9. On December 30, 2014, this Court issued an Order stating Unum Life  
10 Insurance Company of America “may be treated as the agent and/or alter ego of  
11 Unum Group.” (Exhibit J). Defendant Unum Group is the parent corporation of  
12 Defendant Unum Life Insurance Company of America. Ronald L. Lucas, Unum  
13 Group’s Vice President and actuary of Unum Group’s Finance Team, and an  
14 employee of Unum Group, filed a declaration with this Court acknowledging that his  
15 responsibilities, as an employee of Unum Group, were to price Unum Life’s long  
16 term care policies that are the subject of this action and perform analysis of premiums  
17 paid for those products, and that he uses Defendant Unum Life Insurance Company of  
18 America’s database of long term care products to assist him “in administering these  
19 products.” As such, Defendant Unum Group exercises such control over Unum Life  
20 that Unum Life may be treated as the agent of Unum Group, or Unum Group acted as  
21 the actual, or ostensible authorized agent, or agent by ratification, or principal,  
22 servant, master, partner, alter ego, or joint venture of Defendant Unum Life Insurance  
23 Company of America, and in doing the things alleged, was acting within the course  
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1 and scope of such agency, employment, partnership or other relationship. Each of the  
2 Defendants acted under the authority or control of the other, and each Defendant  
3 ratified the acts of the other. Together, Unum Group and Unum Life Insurance  
4 Company of America are referred to as “Unum.”  
5

6 10. In Unum’s promotional materials given to Ruben Don, Unum stated:

7  
8 “You or your designated representative should fully complete the  
9 claim form . . . The claim form must be signed by you, or by a  
10 legally designated representative (such as someone to whom you  
11 have granted Power of Attorney) . . .”

11 Exh. C, Don 0034.

12 11. On September 24, 1996, Ruben Don executed a durable power of  
13 attorney for health care which stated:  
14

15 “If a conservator of the person is to be appointed for me, I nominate the  
16 following individual to serve as conservator of the person: Lita Don  
17 [address redacted].”

18 Exh. F, Unum 0004807.

19 12. That same document stated:

20 “If Lita Don is not available or becomes ineligible to act as my agent to  
21 make health care decisions for me . . ., then I designate the following  
22 person to serve as my agent to make my health care decision for me as  
23 authorized in this document: 1. Michael Howard Don [address  
24 redacted]...”

25 Exh. F, Unum 0004809.

26 13. Ruben Don was born in 1930 and insured under Unum’s Policy attached  
27 as Exhibit A (“Unum’s Policy” or “the Policy”) for seventeen years, and Unum  
28

1 continues to owe further obligations under Unum’s Policy. To date, Ruben Don is  
2 owed very substantial benefits under Unum’s Policy notwithstanding Unum’s  
3 position in its March 24, 2014 Motion to Dismiss (“Motion to Dismiss”) that Ruben  
4 Don has no existing contractual relationship with Unum because, in Unum’s view,  
5 Unum’s Policy terminated the day after the Lifetime Maximum Benefit Amount was  
6 purportedly paid. Put another way, MICHAEL DON contends the maximum benefit  
7 amount (frequently referred to as the Lifetime Maximum Benefit Amount) is owed  
8 under Unum’s Policy but has not yet been paid, Unum continues to not pay it, and  
9 Unum refuses to pay it even though Plaintiff demanded Unum do so.  
10  
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12

13 14. On October 6, 1995, LEROY LITTLE executed a durable power of  
14 attorney for health care which stated:

15 “If it becomes necessary to appoint a conservatorship of my person, I  
16 nominate the following persons in the following order to act as my  
17 conservator of my person:  
18  
19

20 FIRST NOMINEE: CAROLYN JAN LITTLE

21 \*\*\*\*

22 FIRST ALTERNATE NOMINEE: TAMARA JO NILES.”  
23

24 (Exhibit K, p. 5 of 8).

25 15. Since March 9, 1998, LEROY LITTLE and CAROLYN LITTLE have  
26 been insured under Unum Long Term Care Policy numbers LAC603718 and  
27 LAC603716, respectfully (“the Littles’ policies”), which are attached as Exhibits N  
28

1 and O, respectively. When CAROLYN JAN and LEROY LITTLE received the  
2 Littles' policies, they read them.  
3

4 16. The Littles' policies derive from Unum Long Term Care Policy Form  
5 number LTC7392. LEROY LITTLE is "in claim" with Unum, having submitted a  
6 claim on November 25, 2014. LEROY LITTLE has yet to claim from Unum all of  
7 the benefits to which he is entitled under his Unum Long Term Care Policy.  
8

### 9 **The Class**

10 17. The subject matter of this class action lawsuit is Unum's institutional,  
11 systematic, uniform, computerized and nationwide improper interpretation and  
12 calculation of the amount of policy benefits owed to insureds under Unum's long  
13 term care insurance policies. The specific inflation protection Plaintiffs purchased  
14 expressly states that the annual inflation increase will be calculated on the "Policy  
15 Date" and that the annual inflation increase will be applied to the "Monthly Benefit"  
16 and "Lifetime Maximum Benefit Amount" (i.e., maximum benefit amount) in effect  
17 on each Policy Anniversary. Contrary to the Policy's express language, (1) Unum  
18 calculates the Policy Anniversary from the wrong date, and/or (2) Unum applies the  
19 annual inflation increase to the *original* Monthly Benefit and the *original* Lifetime  
20 Maximum Benefit Amount, and/or (3) after an insured or an insured's authorized  
21 representative submits a claim for a covered loss and begin receiving benefits, Unum  
22 applies the annual inflation increase to the *remaining* Lifetime Maximum Benefit  
23 Amount (i.e., maximum benefit amount) after deducting the amount of benefits  
24  
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1 already paid out.

2 18. All Subclass Members nationwide seek rescission based on Unum's  
3 illusory contract and damages that flow from Unum's conduct, including (at their  
4 election), return of all premiums paid for an illusory contract.  
5

6 19. The "accrued damages" and "in claim" Subclass Members nationwide  
7 seek breach of contract damages against Unum.  
8

9 20. In addition, Plaintiffs and the Subclass Members whose Unum Long  
10 Term Care Policies were issued in California allege causes of action and seek  
11 damages for insurance bad faith, fraud and unfair business practices in violation of  
12 California Business & Professions Code sections 17200 et seq. (the "UCL").  
13

14 21. Except for the "accrued damages" Subclass Members, all other Subclass  
15 Members (which includes insureds who have yet to file an insurance claim, such as  
16 CAROLYN JAN LITTLE and the other "future claim" Subclass Members, as well as  
17 insureds who have made an insurance claim under Unum's Long Term Care Policies  
18 but are still entitled to future policy benefits, such as LEROY LITTLE and the other  
19 "in claim" Subclass Members) also seek declaratory and injunctive relief to prevent  
20 Unum's conscious course of conduct, firmly grounded in established company policy  
21 and practice, which sacrifices the interests of vulnerable long term care insureds for  
22 Unum's financial gain.  
23  
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25

26 22. Unum's long term care insurance policies are standard form policies  
27 ("Form Policies") approved under the laws and regulations of the States in which  
28

1 they are issued. An exemplar Unum long term care insurance policy is Ruben Don's  
2 Unum Long Term Care Nursing Home And Professional Home Care Policy, Form  
3 No. LTC7392 ("Unum's Policy" or "the Policy"). A true and correct copy of  
4 Unum's Policy is attached as Exhibit A to this Complaint. Unum has confirmed the  
5 Policy has no page four. The Littles' policies are attached as Exhibits N and O to this  
6 complaint. The Unum long term care insurance policies at issue in this lawsuit  
7 contain either the same or similar language as the Policy ("Unum's Long Term Care  
8 Policies"). Although Unum's Long Term Care Policies have been revised from time  
9 to time, for purposes of this dispute, each of the policies Unum issued to insureds in  
10 the proposed Subclasses has either the same or similar relevant language as the  
11 Policy.

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16 23. Plaintiffs and the putative class members (the "Class" or "Class  
17 Members") are or were, at all relevant times, insured or authorized representatives of  
18 insureds under Unum's Long Term Care Policies as defined in the previous  
19 paragraph of this Complaint.

20  
21 24. This lawsuit pertains to Unum's specific, systematic, computerized, and  
22 institutional practices. Plaintiff and the Class Members were (or absent declaratory  
23 and injunctive relief, are and will be) denied and/or delayed payment of long term  
24 care benefits owed by Unum's Long Term Care Policies as a result of Unum's  
25 institutional misinterpretation of the language in those Form Policies' and Unum's  
26 institutional practice of miscalculating the amount of benefits owed to its insureds.  
27  
28

1 Unum has applied the same single and uniform interpretation of the same or similar  
2 language in Unum's Long Term Care Policies.

3  
4 25. In its Rule 26(f) Statement and Motions to Dismiss, Unum admitted the  
5 language in Unum's Policy is unambiguous and therefore Unum's institutional,  
6 company-wide policy interpretation and calculation of benefits owed under Unum's  
7 Policy is a legal issue for this Court to resolve. Unum's uniform and institutional  
8 misinterpretation of Unum's Long Term Care Policies and miscalculation of benefits  
9 owed violates the express and unambiguous language of these Form Policies.  
10

11  
12 **Unum's Institutional Practice Of Misinterpreting and Miscalculating**  
13 **The Amount of Benefits Owed Under Unum's Long Term Care**  
14 **Policies**  
15

16 26. The Policy and Unum's Long Term Care Policies at issue have an  
17 optional inflation protection provision. For example, the Policy provides (in relevant  
18 part):

19  
20 **“Your Monthly Benefit will increase each year on the Policy**  
21 **Anniversary by 5% of the Monthly Benefit in effect on that**  
22 **Policy Anniversary. Increases will be automatic and will occur**  
23 **regardless of your health and whether or not you have suffered a**  
24 **covered Loss . . . . Your premium will not increase due to automatic**  
25 **increases in your Monthly Benefit. In no event will the total**  
26 **Monthly Benefit be more than 200% of your original Monthly**  
27 **Benefit. Your Lifetime Maximum Benefit Amount will also**  
28 **increase by 5%.**

Exh. A, Don0009 (bold added).

27 27. The Policy Schedule informed the insured that both “[t]he Benefit

1 Amount and the Maximum Benefit Amount will **increase each policy anniversary**”  
2 but did not anywhere disclose that either of these amounts--the Benefit Amount (i.e.,  
3 Monthly Benefit) or the Maximum Benefit Amount (i.e., Lifetime Maximum Benefit  
4 Amount) would ever decrease, or if so, when, why, or how. Exh. A, Don0003 (bold  
5 added).  
6

7  
8 28. Unum’s Policy defined over thirty terms. “Lifetime Maximum Benefit  
9 Amount” was expressly defined to mean:

10 “the total dollar amount of benefits that will be paid under the  
11 Policy. The Lifetime Maximum Benefit Amount is shown in the  
12 Policy Schedule.”

13 Exh. A, Don0006.

14  
15 29. Once again, Unum’s Policy never said the Lifetime Maximum Benefit  
16 Amount would ever decrease, and if so, why, when, or how (e.g., Unum’s Policy did  
17 not state if covered benefits were paid out, then, on the subsequent policy  
18 anniversaries, the Lifetime Maximum Benefit Amount would be reduced by the  
19 amount of benefits already paid out). To the contrary, Unum’s Policy Schedule  
20 expressly specified this amount would “increase each policy anniversary.” Exh. A,  
21 Don0003.  
22

23  
24 30. Unum knew how to limit coverage. Unum’s Policy expressly limited  
25 the value of the Monthly Benefit in Ruben Don’s Policy: “In no event will the total  
26 Monthly Benefit be more than 200% of your original Monthly Benefit” (i.e., \$3,000  
27 X 2 = \$6,000). Exh. A, Don0009.  
28

1           31. Unum also knew how to limit the value of the Lifetime Maximum  
2 Benefit Amount because in Ruben Don's Policy Unum expressly limited the  
3 "Maximum Benefit Amount" to "increase each policy anniversary based on the  
4 Benefit Increase Provision" to a "2X Cap" of the "\$108,000" "Lifetime Maximum  
5 Benefit Amount" (i.e., \$108,000 X 2 = \$216,000). Exh. A, Don0003.  
6

7  
8           32. Under Unum's Policy definition, "Lifetime Maximum Benefit Amount"  
9 "means the total dollar amount of benefits that will be paid under the Policy." Exh.  
10 A, Don0006. Unum's Policy definition did not reduce this value by (or when)  
11 benefits are paid out. The term "Lifetime Maximum Benefit Amount" encompasses  
12 other similar maximum benefit amount terms in Unum's Long Term Care Policies  
13 that are defined to mean the total dollar amount of benefits that will be paid under  
14 Unum's Long Term Care Policies. This includes, for example, Form Policies with an  
15 inflation protection provision stating: "Your Nursing Home Benefit will increase  
16 each year on the Policy Anniversary by 5% of the Nursing Home Benefit in effect on  
17 that Policy Anniversary." Exh. G, Unum0000211. In this context, the terms "Lifetime  
18 Maximum Benefit Amount" and "Nursing Home Benefit" or any other similar  
19 maximum benefit amount terms have the same meaning: the total dollar amount of  
20 benefits that will be paid. Unum's Long Term Care Policies generically refer to these  
21 amounts as "the Maximum Benefit Amount." Exh. A, Don0003.  
22  
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27           33. Contrary to the express, unambiguous language in Unum's Long Term  
28 Care Policies, Unum refuses to correctly apply the annual inflation increase to either

1 the “Monthly Benefit Amount”--a capitalized term that Unum defined--or to the  
2 “Lifetime Maximum Benefit Amount”--another capitalized term that Unum defined.  
3  
4 Exh. A, Don0006 .

5 34. Unum takes the unreasonable and extra-contractual position, as it does  
6 with Plaintiffs, that neither the annual inflation increase of the Monthly Benefit nor  
7 the annual inflation increase of the Lifetime Maximum Benefit Amount “increase  
8 each year on the Policy Anniversary by 5% of the Monthly Benefit in effect on that  
9 Policy Anniversary” or “will increase each policy anniversary” even though those are  
10 the exact words expressly written into Unum’s policy. Exh. A, Don0003, 09. First,  
11 Unum refuses to apply the annual inflation increase to the “Monthly Benefit in effect  
12 on **that** Policy Anniversary” (bolded added), and instead applies the annual inflation  
13 increase to the *original* Monthly Benefit specified on the Policy Schedule. Second,  
14 Unum refuses to apply the annual inflation increase to the Lifetime Maximum  
15 Benefit Amount in effect on each Policy Anniversary, and instead Unum applies the  
16 annual inflation increase to the *original* Lifetime Maximum Benefit Amount  
17 specified on the Policy Schedule. Third, after a covered claim is made and benefits  
18 are paid, Unum refuses to apply the annual inflation increase to the Lifetime  
19 Maximum Benefit Amount in effect on each Policy Anniversary or to even the  
20 original Lifetime Maximum Benefit Amount, and instead Unum further reduces the  
21 Lifetime Maximum Benefit Amount by deducting the amount of benefits already  
22 paid out and then applying the annual inflation increase to the *remaining* Lifetime  
23  
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1 Maximum Benefit Amount.

2 35. Unum knew, when it wrote its Policy, how to limit coverage to the  
3 original Monthly Benefit, because Unum used precisely these very words in the  
4 second to last sentence of its Benefit Increase Provision in the Policy: “In no event  
5 will the total Monthly Benefit be more than 200% of your *original* Monthly Benefit.”  
6  
7 Exh. A, Don0009 (emphasis added). Unum chose not to use the word “original” in  
8 the first sentence of that same paragraph, but rather Unum deliberately agreed to a  
9 different base for calculating the annual inflation increase: “5% of the Monthly  
10 Benefit in effect on that Policy Anniversary.” Exh. A, Don0009. Unum’s use of  
11 these defined policy terms is entirely consistent with and flows from Unum’s  
12 language on the Policy Schedule: “The Benefit Amount and the Maximum Benefit  
13 Amount will increase each policy anniversary.” Exh. A, Don0003. The Policy  
14 Schedule does not envision any decrease on any policy anniversary.  
15  
16  
17

18 36. Unum’s systematic, nationwide institutional practice of interpreting and  
19 calculating the amount of benefits owed violates the same or similar express language  
20 in Unum’s Long Term Care Policies at issue. Because Unum applies the same  
21 systematic, uniform and institutional interpretation and calculation to each of Unum’s  
22 Long Term Care Policies with the same or similar language as the Policy, this class  
23 action is brought to remedy the wrongs created by Unum’s “across-the-board”  
24 misinterpretation and miscalculation.  
25  
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28 37. Significantly, Unum knows how to expressly write policy language to

1 warn insureds of Unum’s institutional practice of limiting coverage when it calculates  
2 the amount of benefits owed because Unum did so expressly in the Policy itself, by  
3 contrasting (in the same paragraph) the *original* value of Monthly Benefits to the  
4 value “in effect on [each] Policy Anniversary.” Exh. A, Don0009.

6 38. In its initial disclosures, Unum produced policy language in other Unum  
7 long term care policies which--in stark contrast to Unum’s Policy--expressly limit the  
8 base on which to calculate the annual inflation increase to the “original” monthly  
9 benefit and Lifetime Maximum Benefit Amount, and also identify a declining value  
10 of the Lifetime Maximum Benefit Amount after a claim is made and benefits are paid  
11 by expressly disclosing that the annual inflation increase will apply to the  
12 “remaining” Lifetime Maximum Benefit Amount:  
13  
14  
15

16 “Your Monthly Benefit will increase each year on the Policy  
17 Anniversary **by 5%** of the **original** Monthly Benefit. Your  
18 **remaining** Lifetime Maximum Benefit Amount will also increase.  
19 Increases will be automatic and will occur regardless of your health  
20 and whether or not you are disabled. Your premium will not  
21 increase due to automatic increases in your Monthly Benefit.”

22 Exh. B, Unum 0000078-79 (bold added).

23 39. In these other policies that are not the subject of this action, by adding  
24 the word “original” to qualify the phrase “Your Monthly Benefit will increase each  
25 year on the Policy Anniversary by 5% of the original Monthly Benefit” as found in  
26 the preceding paragraph (38) in this Complaint, Unum expressly limited the annual  
27 inflation increase to the dollar amount originally identified on the Schedule Page for  
28



1 the Monthly Benefit Amount and the Lifetime Maximum Benefit Amount, and not  
2 to the escalating amount that increased on each Policy Anniversary as Unum set  
3 forth in the Policy and in Unum’s Long Term Care Policies issued to members of  
4 subclasses II, III, IV, V, and VI. Similarly, in other policies that are not the subject  
5 of this action, by adding the word “**remaining**” to qualify and limit the phrase “Your  
6 remaining Lifetime Maximum Benefit Amount will also increase,” and by having  
7 this sentence immediately follow the previous sentence which established the base  
8 for the annual inflation increase would be the “original Monthly Benefit,” Unum, by  
9 its own choice of the structure and content of the paragraph recited in paragraph 38  
10 of this Complaint (i.e., in other policies that are not the subject of this action),  
11 expressly disclosed up front to these other insureds that once benefits begin to be  
12 paid the annual inflation increase will be applied to the “remaining” Lifetime  
13 Maximum Benefit Amount after deducting the amount of benefits already paid out.  
14 Unum did not do this for Plaintiffs or the Class Members.  
15  
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20 40. Plaintiffs, on their own behalf and on behalf of all Class Members,  
21 contend that at the time Unum issued Unum’s Long Term Care Policies containing  
22 the same or similar inflation protection provision language as the Policy, Unum  
23 knew that it would tell insureds, after Ruben Don and LEROY LITTLE and other  
24 similarly situated insureds suffered a covered loss and began receiving benefits, that  
25 the annual inflation increase applied to the *original* Monthly Benefit and Lifetime  
26  
27  
28

1 Maximum Benefit Amount as quantified on the Schedule Page and/or<sup>1</sup> that the  
2 annual inflation increase applied to the *remaining* Lifetime Maximum Benefit  
3 Amount after deducting all benefits already paid out in the prior year(s). Unum  
4 concealed this information from Plaintiff and those in Subclasses IV, V and VI when  
5 they purchased their policies. Plaintiffs actually and justifiably relied on Unum's  
6 representations and concealment by accepting, rather than cancelling, the Policy  
7 after Unum told Plaintiffs "you may cancel this Policy for any reason within 30 days  
8 after it is delivered to you or your representative." Exh. A., Don0001.

9  
10  
11  
12 **Unum Incorrectly And Unreasonably Calculates The Proper**  
13 **Anniversary Date**

14 41. Unum's Policy provides (in relevant part): "Coverage takes effect on  
15 the Effective Date . . ."

16 Exh. A, Don0005.  
17

18 <sup>1</sup> For some Form Policies, only the calculation of the maximum benefit amount is at  
19 issue. See, *e.g., supra*, paragraph 32 (explaining Lifetime Maximum Benefit Amount  
20 and Nursing Home Benefit have same meaning, i.e., the total dollar amount of  
21 benefits that will be paid).

22 For other Form Policies, only the calculation of the Monthly Benefits is at issue.

23 By way of example, in its initial disclosures, Unum produced Form Policies with the  
24 following inflation protection language: "Your Monthly Benefit will increase each  
25 year on January 1<sup>st</sup> by 5% of the Monthly Benefit in effect on that January 1<sup>st</sup>. Your  
26 remaining Lifetime Maximum Benefit Amount will also increase." Exh. F, Unum  
27 0000189. By adding the clarifying word "remaining" before the term "Lifetime  
28 Maximum Benefit Amount and omitting the word "original" before the term  
"Monthly Benefit," for these policies, only Unum's interpretation and calculation of  
monthly benefits is at issue. In other Form Policies, only Unum's calculation of the  
Policy Anniversary may be at issue.

1           42. Unum’s Policy, under **“GENERAL PROVISIONS The Contract”**  
2 states:

3  
4           “Unless we tell you something else,<sup>2</sup> years, months and  
5           **anniversaries** that we refer to **are calculated from the Policy**  
6           **Date shown on page 3.”**

7 Exh. A, Don0013 (bold added).

8           43. The Policy Date on Unum’s Policy Schedule Page is January 9, 1997.  
9 Exh. A, Don0003. Yet, Unum unreasonably and extra-contractually calculated each  
10 policy anniversary date based on the April 9, 1997 “Effective Date,” not the earlier  
11 January 9, 1997 “Policy Date.” See Exhibit D (Unum’s calculation given to  
12 MICHAEL DON).

13  
14           44. Unum’s institutional practice of calculating the incorrect policy  
15 anniversary (1) postpones each policy anniversary which is the trigger date for the  
16 annual inflation increase, and (2) delays the upticks in both the Monthly Benefit and  
17 the Lifetime Maximum Benefit Amount (i.e., maximum benefit amount) which are  
18 triggered each policy anniversary. By virtue of its improper conduct and reasons for  
19 its interpretation that Unum only disclosed in its 2014 Motions to Dismiss, Unum  
20 underpays and/or delays the payment of benefits owed to its insureds in the Class and  
21 created an illusory contract in which only Unum could change a central material term  
22 to the contract at any time for no return of consideration.  
23  
24  
25

26  
27  
28 <sup>2</sup> See, e.g., *supra*, fn.1 (“Your Monthly Benefit will increase each year on  
January 1<sup>st</sup> . . .”).

1           45. On July 18, 2012, Unum wrote MICHAEL DON and admitted the  
2 incorrect calculation of the policy anniversary was a company-wide practice, by  
3 stating Unum used the April 07, 1997 Effective Date, because “[t]he calculation is  
4 coming from our system.” *See* Exh. C, Don 0023.  
5

6  
7           46. Had Unum calculated the monthly and maximum benefit amounts based  
8 on the proper anniversary date, Ruben Don and the Class would have been (or will  
9 be) paid more monthly benefits on each policy anniversary after a claim was made.  
10

11           **Unum Incorrectly And Unreasonably Calculates Monthly Benefits**

12  
13           47. Although Ruben Don’s Monthly Benefit on the first anniversary  
14 correctly increased by 5% of the Monthly Benefit in effect (i.e., from \$3,000 to  
15 \$3,150), the Monthly Benefit on the second anniversary should have been \$3,308  
16 (i.e., 5% of \$3,150=\$157.5+\$3,150=\$3,308), not \$3,300 (i.e.,  
17 \$3,000+\$150+150=\$3,300) as Unum calculated (see Unum’s spreadsheet attached as  
18 Exhibit D) because Unum’s Policy explicitly required using as the base for  
19 calculating the 5% increase the “Monthly Benefit in effect on **that** Policy  
20 Anniversary.” (Bold added.) Similarly, on the third anniversary, the Monthly Benefit  
21 payable for each month during the next twelve months should not have been \$3,450  
22 as Unum calculated (see Exh. D), but rather \$3,473. Similarly on the fourth  
23 anniversary, the Monthly Benefit should not have been \$3,450, but \$3,647, and after  
24  
25  
26  
27  
28

1 the fifth anniversary the Monthly Benefit should have been \$3,647 and not \$3,600  
2 per month.

3  
4 48. Unum paid and continues to pay out Monthly Benefits slower than  
5 required, which reduced and delayed the use of these benefits. And, if an insured died  
6 before receiving all benefits, Unum benefitted by not paying out what it should have  
7 paid out earlier. Each and every delayed and/or underpaid payment accrues interest  
8 until paid.  
9

10  
11 **Unum Incorrectly And Unreasonably Calculates The Maximum Benefit**  
12 **Amount**

13 49. Unum miscalculated the increase in the Lifetime Maximum Benefit  
14 Amount (i.e., the maximum benefit amount) so there was less to disburse than was  
15 owed under Unum's Policy. The maximum benefit amount should have increased by  
16 5% of the Lifetime Maximum Benefit Amount "in effect on **that** Policy Anniversary"  
17 (bold added) on each Policy Anniversary, regardless of whether or how many  
18 benefits had been paid out in the previous year, and without any reduction of any  
19 benefits paid out. Exh. A, Don0009. In the very same paragraph (and not in a free-  
20 standing paragraph or separate section), Unum identified the procedure or  
21 methodology by which it was required to calculate the Monthly Benefit and  
22 announced: "Your Lifetime Maximum Benefit Amount will **also** increase by 5%."  
23 Exh. A, Don0009 (bold added). Had Unum intended to limit the annual inflation  
24 increase to the *original* Lifetime Maximum Benefit Amount (which was specified on  
25  
26  
27  
28

1 the Policy Schedule as \$108,000) instead of to the escalating amount of the Lifetime  
2 Maximum Benefit Amount *on each policy anniversary*, it was required to expressly  
3 do so. Unum knew how to say so in the immediate preceding sentence with regard to  
4 the 200% cap on the “*original Monthly Benefit.*” Exh. A, Don0009. Unum did not  
5 limit the annual inflation increase on the Lifetime Maximum Benefit Amount to 5%  
6 of the original \$108,000. Yet, Unum admitted to MICHAEL DON that Unum’s  
7 calculation applied the annual inflation increase each year to the *original* Lifetime  
8 Maximum Benefit Amount specified on the Schedule Page as \$108,000 (see Exh. D),  
9 and not to the amount in effect on each Policy Anniversary date. Worse, Unum  
10 further decreased the value of the maximum benefit amount, arbitrarily concluding  
11 Unum “does increase [Plaintiff’s] monthly/lifetime max, however **once [Ruben Don]**  
12 **started receiving benefits in 2009 the increase was on the remaining amount at**  
13 **that time not the original.**” Exh. C, Don 0027 (Unum’s August 7, 2012 position)  
14 (bold added); see also Exh. D (showing Unum’s own calculation on how it  
15 implemented its interpretation). In short, Unum *decreased* Ruben Don’s Lifetime  
16 Maximum Benefit Amount, without any basis or authority or language in Unum’s  
17 Policy supporting or otherwise authorizing Unum’s institutional practice.  
18  
19  
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23

24 50. Commencing with the second anniversary, a flat 5% of \$108,000 (i.e.  
25 \$5,400) should not have been added to the Lifetime Maximum Benefit Amount each  
26 year, as Unum did. Exh. D. (Unum’s calculations). As to annual inflation increase to  
27  
28

1 the maximum benefit amount (or in the precise terms of the Policy, “Lifetime  
2 Maximum Benefit Amount”), Plaintiffs are in agreement with Unum as to the first  
3 policy anniversary only, when the Lifetime Maximum Benefit Amount went from  
4 \$108,000 to \$113,400 ( $\$108,000 + [5\% \text{ of } 108,000 = \$5,400]$  which is \$113,400).  
5 For every single year since then, Unum undervalued the Lifetime Maximum Benefit  
6 Amount. For example, on the second policy anniversary, the Lifetime Maximum  
7 Benefit Amount should have increased from 5% of \$113,400--the value of the  
8 Lifetime Maximum Benefit Amount “on that Policy Anniversary”--instead of 5% of  
9 the \$108,000 which was 5% of the original Lifetime Maximum Benefit Amount.  
10 This meant the Lifetime Maximum Benefit Amount on the third anniversary was  
11 \$119,070 instead of \$118,800 as Unum calculated (see Exh. D), on the fourth policy  
12 anniversary it was \$125,024 instead of \$124,200, and on the fifth policy anniversary  
13 it was \$131,275 instead of \$129,600 which Unum calculated (see Exh. D). On  
14 information and belief, and subject to confirmation by an expert in due course,  
15 Unum’s miscalculation reduced Plaintiff’s benefits by \$36,430.91 (i.e., the \$216,000  
16 cap less the \$179,569.09 Unum paid).

17  
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22  
23 **Unum Unreasonably Contends That An Insured’s Selection of a Benefit**  
24 **Period Modified The Policy Terms, or Required Unum To Make Only a Fixed**  
25 **Number of Monthly Payments**  
26

27 51. Unum’s Policy’s “**Termination of Benefits**” Provision states:  
28

1 “Your benefits will cease on the earliest of:  
2 (a) the day after you cease to suffer a covered Loss . . . ;  
3 (b) the day after the Lifetime Maximum Benefit Amount has been paid;  
4 (c) the day after you die.”

5 Exh. A, Don0011.

6 52. There was no expectation that there would be only 36 months of  
7 benefits, or that benefits would only occur monthly during a three year period, even  
8 though on the Application to the Policy Ruben Don checked off item number “3” in  
9 response to Unum’s Question 2c entitled “Benefit Period (Years).” Exh. A, Don0017.  
10

11 53. The words “Benefit Period” on the Application is an undefined term,  
12 generically used, which Unum deliberately did not define in Unum’s Application or  
13 in Unum’s Policy--which defined at least 30 other terms. See Exh. A., Don0004-08.  
14 For example, the Policy defines the meaning of other benefit terms, such as “Nursing  
15 Home Benefit” and “Professional Home Care Benefit” (see Exh. A, Don 007) and  
16 “Monthly Benefit” and “Respite Care Benefit” all of which are capitalized and  
17 included under the bolded caption “**TERMS YOU SHOULD KNOW**” which  
18 warned insureds these benefit terms “have special meanings.” Exh. A, Don0004. But  
19 Unum never defined the words Benefit Period--which words appear on the  
20 Application to the Policy only. Nor did Unum intend the generic undefined words  
21 Benefit Period in its Application to define when benefits would terminate, because  
22 Unum’s Policy under the separate Heading “**Termination of Benefits**” has a specific  
23 provision that supersedes any general provision which addressed this issue. Exh. A.,  
24  
25  
26  
27  
28



1 Don0011. Unum’s “Termination of Benefits” provision expressly spelled out that  
2 benefits will terminate on “the day after” the earliest of three different but clearly  
3 specified events, and nowhere does Unum’s own “Termination of Benefits” provision  
4 say benefits will terminate on the last month of any period (such as 36 months) pre-  
5 selected as a guide by the insured on the Application before the insured has received  
6 Unum’s Policy. The last “day after” could be beyond any 36 month period, such as  
7 “(b) the *day* after the Lifetime Maximum Benefit Amount has been paid.” Exh. A,  
8 Don0011 (*italics added*).

11  
12 54. Moreover, Unum’s policy, in multiple places, acknowledges that there  
13 may be partial payments for a period of less than a month, confirming that Unum  
14 itself never expected payments to be made for a full month. For example, Unum  
15 says:  
16

17  
18 “We will send the benefit payments to you each month. **If you are**  
19 **eligible for benefits for a period that is less than one month, we**  
20 **will pay 1/30<sup>th</sup> of the net monthly payment for each day you**  
21 **suffer a covered Loss....** Benefit payments will cease as provided  
22 in the “Termination of Benefits” section of this policy. In no event  
will the benefits paid under this policy exceed the Maximum  
Benefit Amount shown in the Policy Schedule on Page 3.”

23 Exh. A, Don0009 (**bold added**).

24 55. Further down on the same page, in the “Respite Care Benefit”  
25 section, Unum’s policy says:  
26

27 “we will make payments to you for each day you receive Respite  
28 Care for **up to 15 days** each calendar year. The amount of **your**

1           **daily payment will equal 1/30<sup>th</sup> of your Monthly Professional**  
2           **Home Care Benefit Amount.”**

3           Exh. A., Don0009 (bold added).

4           56. Unum’s limitation on these payments for Respite Care Benefits is not  
5           that they must be paid out in 36 monthly payments or in a 36 month period, but rather  
6           they “will end when the Lifetime Maximum Benefit Amount has been reached.”

7  
8           Exh. A, Don0009.

9  
10          57. Under the heading “**When Claims are Paid,**” Unum again noted  
11          “benefits payable under the policy will be paid before the end of the month **for each**  
12          **day** for which you are entitled to benefits during the prior month.” Exh. A, Don 0010  
13          (bold added). While Unum created a finite date of each payment to occur per month,  
14          it expressly envisioned any payment, even the last payment, could be for only some  
15          days in the prior month (i.e., any payment would not necessarily be a full monthly  
16          amount for each and every month that benefits were paid).  
17  
18

19          58. In subsection (f) of the section entitled “**Plan Exclusions,**” Unum does  
20          not provide benefits if an insured leaves the United States “for longer than 30 days.”  
21          Exh. A, Don0011. This provision expressly stops and starts benefits, which only  
22          confirms the benefits could not have been understood by Unum to have been limited  
23          to any fixed period, such as only a 36 month period, or a fixed number of monthly  
24          payments.  
25  
26  
27  
28

1           59. Unum itself envisioned returning waived premium “on a pro rata basis.”  
2           Exh. A, Don0011: “The pro rata refund will be calculated **on the number of days** in  
3           your Elimination Period” (bold added), again confirming that the counting of periods  
4           is not by months, or a specific period such as 36 months, but can increase or decrease  
5           by days.  
6

7  
8           60. Consistent with Unum’s Policy terms, in a June 4, 2012 e-mail, Unum  
9           itself announced to Plaintiff who was his Father’s legally designated representative:  
10          “Normally, it stated that [Ruben Don] has a 3 year benefit period, however, it goes by  
11          the pool of money he has an[d] **because he has inflation it tends to be a little**  
12          **longer...**” Exh. C., Don0020 (bold added). Simply put, Unum knew all along that  
13          the number of monthly benefits could be greater than 36 months, and Unum even  
14          calculated how many more days of coverage remained, which is why Plaintiff who  
15          was his Father’s legally designated representative on June 4, 2012 acknowledged  
16          Unum’s communication that “your dad has about 59 days remaining.” Exh. C,  
17          Don0019.  
18  
19  
20  
21

22          61. If there was any doubt about Unum’s own awareness that the insured’s  
23          choice of the Benefit Period in the Application was merely a rough guide, not a  
24          Policy term, Unum’s July 17, 2012 letter told MICHAEL DON: “As you are aware,  
25          the amount of monthly benefits paid and the Lifetime Maximum Benefit Amount  
26  
27  
28

1 remaining may be impacted by changes in the... frequency of care and **periods of**  
2 **time** when covered care is not received.” Exh. C, Don0026 (bold added).  
3

4 **The Integration Clause Prevents Unum From Relying On What Brokers Or**  
5 **Agents Said, Or From Relying On Anything Outside Unum’s Policies**  
6

7 62. While the integration clause of Unum’s Policy expressly includes the  
8 attached Application as part of the entire contract, the same integration clause entitled  
9

10 **“GENERAL PROVISIONS The Contract”** states:

11  
12 “Only an executive officer of this Company can approve a change  
13 in this policy. The approval must be in writing and be endorsed on  
14 or attached to this policy. No one else can change this policy or  
waive any provisions.”

15 Exh. A, Don0013.

16 63. Unum cannot rely on the representations of brokers or agents or  
17 undercut Ruben Don’s or other Class Members’ claims by asking what they  
18 subjectively thought when purchasing Unum’s Policies, because Unum’s Policy, in  
19 the section entitled **“GENERAL PROVISIONS The Contract”** states: “Statements  
20 by agents or brokers are not part of our contract.” Exh. A, Don0013. Section V of  
21 the Application confirms: “No agent, broker, medical examiner or other person  
22 except an authorized employee of Unum may change ...” the Policy. Exh. A,  
23  
24 Don0018.  
25  
26  
27  
28

1                   **Unum’s Interpretation Cannot Trump the Terms Of Unum’s Policies**

2  
3           64.    Unum claims Ruben Don’s responses on the Application--which, by the  
4 integration clause are part of the Policy--trumps the defined terms of Unum’s Policy,  
5 but Unum’s Application does not place insureds, such as Ruben Don, on notice that  
6 their responses to general undefined questions on Unum’s Application trump the  
7 defined terms of Unum’s Policy, or that the Application’s answers will be treated as  
8 specific provisions that will override the defined terms and express provisions in  
9 Unum’s Policy, such that Unum can claim that the insured’s response to question 2c  
10 (the Benefits Period) modifies Unum’s Policy and confines benefits to only a 36  
11 month period.  
12  
13  
14

15                   **The Subclasses**

16  
17           65.    Proposed Subclass I consists of all current and former insureds  
18 nationwide whose Unum Long Term Care Policies state that anniversaries are  
19 calculated from a certain date (e.g., the “Policy Date”) and Unum takes the position it  
20 can calculate the policy anniversary based on a different date (e.g., the “Effective  
21 Date”). MICHAEL DON is a Class Representative for Subclass I.  
22

23           66.    Proposed Subclass II consists of all current and former insureds  
24 nationwide whose Unum Long Term Care Policies contain an optional provision for  
25 inflation protection which states the annual inflation increase will be applied to the  
26 monthly benefit in effect on the policy anniversary and Unum applied (or is applying)  
27  
28

1 the annual inflation increase to the original monthly benefit. MICHAEL DON and  
2 TAMARA PELHAM, as the Guardian ad Litem for LEROY LITTLE, are Class  
3  
4 Representatives for Subclass II.

5 67. Proposed Subclass III consists of all current and former insureds  
6 nationwide whose Unum Long Term Care Policies contain an optional provision for  
7 inflation protection which states the annual inflation increase will be applied to the  
8 maximum benefit amount (e.g., Lifetime Maximum Benefit Amount) in effect on the  
9 policy anniversary and Unum applied the annual inflation increase to the original  
10 maximum benefit amount. MICHAEL DON and TAMARA PELHAM, as the  
11 Guardian ad Litem for LEROY LITTLE, are Class Representatives for Subclass III.  
12  
13

14 68. Proposed Subclass IV consists of all current and former insureds  
15 nationwide whose Unum Long Term Care Policies contain an optional provision for  
16 inflation protection which states the annual inflation increase will be applied to the  
17 maximum benefit amount (e.g., Lifetime Maximum Benefit Amount) and Unum  
18 applied (or Unum is applying) the annual inflation increase to the **remaining**  
19 maximum benefit amount (e.g., Lifetime Maximum Benefit Amount) after an insured  
20 suffers a covered loss and begins receiving policy benefits. MICHAEL DON and  
21 TAMARA PELHAM, as the Guardian ad Litem for LEROY LITTLE, are Class  
22  
23  
24  
25 Representatives for Subclass IV.  
26

27 69. Proposed Subclass V consists of all members of Subclasses I, II, III and  
28 IV whose Unum Long Term Care Policies issued in the State of California.

1 MICHAEL DON and TAMARA PELHAM, as the Guardian ad Litem for LEROY  
2 LITTLE, are Class Representatives for Subclass V.

3  
4 70. Proposed Subclass VI consists of all current and former insureds under  
5 Unum's Long Term Care Policies nationwide who are entitled to declaratory and/or  
6 injunctive relief. The "accrued damages" Subclass members are excluded from  
7 Subclass VI. Subclass VI includes all insureds to which Unum will apply the  
8 practices identified in Subclasses II, III, or IV. CAROLYN JAN LITTLE and  
9 TAMARA PELHAM, as the Guardian ad Litem for LEROY LITTLE, are Class  
10 Representatives for Subclass VI.  
11  
12

13 71. Proposed Subclass VII consists of all current and former insureds under  
14 Unum's Long Term Care Policies nationwide, who were issued one policy at  
15 inception but then sent a materially different policy Unum represented was a  
16 duplicate of the original policy when they asked Unum for a duplicate copy of the  
17 policy. CAROLYN JAN LITTLE and TAMARA PELHAM as the Guardian ad  
18 Litem for LEROY LITTLE, are the class representatives for Subclass VII.  
19  
20

21 72. Plaintiffs and the putative members of the subclasses are collectively  
22 referred to as "Class Members" or "Insureds."  
23

#### 24 **Ruben Don's Insurance Claim**

25 73. After Ruben Don suffered a covered loss under Unum's Policy,  
26 MICHAEL DON as his Father's legally designated representative submitted a claim  
27 and his Father began receiving benefits in 2009.  
28

1           74. On May 14, 2009, MICHAEL DON, as his Father’s legally designated  
2 representative, completed Unum’s Long Term Care Claim Form on behalf of his  
3 father as his “son” and as his “legal representative” under a “power of attorney.”  
4 Exh. F, Unum 0004783. Unum accepted MICHAEL DON acting as his Father’s  
5 legally designated representative.  
6

7  
8           75. On May 18, 2009, MICHAEL DON as his Father’s legally designated  
9 representative listed himself as the primary contact for his Father’s claim as his  
10 “legal representative” under a “power of attorney.” Exh. F, Unum 0004784. Again,  
11 Unum accepted MICHAEL DON as his Father’s legally designated representative.  
12

13           76. On July 2, 2009, Unum wrote to MICHAEL DON, as his Father’s  
14 legally designated representative (in relevant part):  
15

16           “I am writing to confirm that we have approved the above referenced  
17 Long Term Care Claim . . . . [¶] [B]enefits will begin on July 23, 2009.  
18 The first payment will be issued August 23, 2009, for all care received  
19 from July 23, 2009 to August 1, 2009. An amount of 1/30<sup>th</sup> of the  
20 monthly benefit amount will be paid for each day covered services are  
21 received within each month. Because benefits are paid on an accrual  
22 basis; payments are processed after the month has been completed. All  
23 future payments will be processed on the closest business day to the 23<sup>rd</sup>  
24 of each month.”

25 Exh. C, Don 0035-37.

26           77. On December 17, 2009, Ruben Don executed an 18-page document  
27 entitled “Immediate Durable Power of Attorney of Ruben Don” which appointed his  
28 son (MICHAEL DON) as his agent and legally designated representative. Exh. F,  
Unum 0004788-806. Unum continued to accept MICHEL DON as his Father’s



1 authorized and legally designated representative.

2 78. On October 15, 2010, Unum summarized the conclusion of a telephone  
3 call with MICHAEL as follows:  
4

5 “Since his parents are moving [to Ohio] he would like to have their  
6 checks sent directly to him so that he can deposit it into their account.  
7 His address is [redacted]. He states he is the Power of Attorney. I told  
8 him if he is the power of attorney I can change the address to his  
address.”

9 Exh. F, Unum 0004972. Unum subsequently changed the address on the benefit  
10 checks to MICHAEL DON’s address.  
11

12 79. On October 19, 2010, MICHAEL DON sent Unum a copy of his  
13 Father’s Power of Attorney. Exh. F, Unum0004788.

14 80. Unum accepted this authorization and dealt with MICHAEL DON only  
15 regarding his Father’s claim.  
16

17 81. On April 5, 2011, MICHAEL DON completed an authorization to  
18 disclose information on behalf of Ruben Don as his “son” and under a “power of  
19 attorney.” Exh. F, Unum 0004785. Again, Unum accepted MICHAEL DON acting  
20 as his Father’s legally designated representative.  
21

22 82. On June 4, 2012, Unum wrote to MICHAEL DON: “Looks like your  
23 dad has about 59 days [of policy benefits] remaining.” Exh. C, Don 0019.  
24

25 83. In response, MICHAEL DON asked: “Can you please send me the  
26 calculations that result in Dad having 59 days remaining? I want to check it against  
27 the policy and see if I come up with the same calculation.” Exh. C, Don 0019.  
28

1           84. On June 4, 2012, Unum replied: “It’s based on the pool of money.  
2 Normally it stated that your father has a 3 year benefit period, however it goes by the  
3 pool of money he has an[d] because he has inflation it tends to be a little longer. He  
4 has [\$]10,309 remaining.” Exh. C, Don 0020.  
5

6           85. In response, MICHAEL DON stated:  
7

8           “I understand the process. Someone in your organization did a  
9 calculation for the total amount to be paid (calculated as the face  
10 amount of the policy plus an escalating %) and then compared that  
11 to what he has been paid. What I am asking for is (1) the  
12 calculation of the total amount that he is eligible to receive and (2)  
the amounts you show have been paid (hopefully by month). I can  
then check both to confirm I agree.”

13 Exh. C, Don 0020.  
14

15           86. On July 17, 2012, Unum sent MICHAEL DON a letter stating: “[T]he  
16 simple inflation option . . . increases the amount of his monthly benefits as well as the  
17 Lifetime Maximum Benefit Amount each year on April 07. As of today, the current  
18 monthly benefit amount is \$5,250.00 and we have paid \$174,510.00. [Your Father  
19 has] approximately \$5,059.09 in benefits [remaining] under this policy.” Exh. C,  
20 Don 0025.  
21

22           87. Once again, MICHAEL DON asked Unum how the benefits were  
23 calculated. Unum responded: “The calculation is coming from our system.” Exh. C,  
24 Don 0023.  
25

26           88. MICHAEL DON wrote to Unum again stating that Unum’s Policy:  
27

28           “language says, ‘Increases will be automatic and will occur regardless of

1 your health and whether or not you have suffered a covered loss . . . .’ It  
2 further states that, ‘your Lifetime Maximum Benefit Amount will **also**  
3 increase by 5%.’ Again, I see nothing that says it will not go up if you  
4 have a covered loss.”

5 Exh. C, Don 0027 (original emphasis).

6 89. Unum responded:

7 “Your math is correct if your father was never receiving benefits. Yes,  
8 it does increase . . . monthly/lifetime max, however once your father  
9 started receiving benefits in 2009 the increase was on the remaining  
10 amount at that time not the original.”

11 Exh. C, Don 0027.

12 90. On August 6, 2012, MICHAEL DON wrote to Unum:

13 “Since I have not seen anything after 2 months of asking, I am  
14 attaching a computation that I did. **As you can see, the maximum**  
15 **calculated is \$216,000.** Absent any information to the contrary,  
16 please continue payments until the maximum is reached. I remain  
17 willing to discuss the calculations, but I have not been provided  
18 anything, as you know, as to how you calculated the max of  
19 \$174,510.”

20 Exh. C, Don 0038 (bold added).

21 91. On August 7, 2012, Unum wrote to MICHAEL DON:

22 “I took a look at your calculations and discovered you are taking  
23 the max benefit and adding the 5% to that, that amount is based on  
24 if we did not pay benefits during the year. The inflation your father  
25 has is simple inflation which we take 5% and add to the monthly  
26 benefit with [sic] likely was increase of \$150 per month each year.  
27 Does this help at all?”

28 Exh. C, Don 0038-39.

92. Later that same day, Unum wrote:

1 “I will send you a copy of the contract. If your father did not have  
2 any benefits th[e]n your calculation would be true. It inflates at 5%  
3 on the remaining amount after benefits that we had paid out. So up  
4 until your father went on claim you[r] calc[ulation] is correct once  
5 he started receiving benefits it brought the remaining amount down  
6 and then the next year it inflated based on that remaining amount. I  
7 will email you the cont[r]act page maybe that will help.”

8 Exh. C, Don 0039.

9 93. On August 13, 2012, Unum sent MICHAEL DON a calculation from  
10 Unum’s financial specialist. Exh. C, Don 0030, 32-33.

11 94. MICHAEL DON responded:

12 “The provisions of the agreement say that the maximum will increase by  
13 5% per year. There are no provisions that say anything about an offset  
14 during pay out periods. As such, if the maximum was increased by 5%  
15 per year, the lowest that could be suggested for a maximum payout  
16 would be \$189,000 . . . . As you know, I can support a calculation that is  
17 even higher than that amount. [¶] Can you please have the person that is  
18 reading something more into the contract language of, ‘Your Lifetime  
19 Maximum Benefit Amount will also increase by 5%’ call me? It is now  
20 over two months and no one has been able to show me in the contract  
21 where an offset like you are suggesting is warranted.”

22 Exh. C, Don 0030.

23 95. Less than ten days later (on August 24, 2012), Unum denied the  
24 remaining benefits owed to his Father under Unum’s Policy and stated to MICHAEL  
25 DON that the “lifetime maximum you calculated is based off the full 36 month  
26 duration with inflation. However, [you] started [your Dad’s] benefits before the  
27 maximum inflation amount was reached. The calculation is based on the remaining  
28 months of duration.” Exh. C, Don 0040-42.

1           96. On September 11, 2012, MICHAEL DON wrote to Unum (in relevant  
2 part):  
3

4           “As you know, I have a power of attorney for all matters properly  
5 executed by my father . . . . I have asked you to show me where in  
6 the contract the lifetime maximum is not calculated as the  
7 agreement states. UNUM has not once referenced to a section in  
8 the agreement that modifies the specific language in the agreement.  
9 As we discussed, the ‘Lifetime Maximum Benefit Amount’ is a  
10 capitalized (defined) term in the agreement. I have asked where is  
11 this language modified to allow for a different calculation when  
12 benefits are being paid. UNUM has responded that, ‘this is the way  
13 we do it’ without one indication of where in the contract this is  
14 permitted.” [¶] When we spoke on the phone with your supervisor  
15 (I believe), John Noble, the Director of Long Term Claims was also  
16 on the line. You both stated that you had checked with all  
17 departments within the Company, including those people to whom  
18 an appeal would go, and that everyone was in agreement with your  
19 calculation. Accordingly, your supervisor suggested that an appeal  
20 based on the arguments I had made would likely not give rise to a  
21 different answer. Never the less, I would like you to appeal my  
22 request based on the facts above and the calculations I have  
23 previously provided.”

24 Exh. C, Don 0040; Exh. F, Unum 0005410.

25           97. Unum summarily denied the appeal by MICHAEL DON because an  
26 “Appeal cannot be sent via email.” Exh. F, Unum 0005411.

27           98. UNUM continues to refuse to pay the remaining benefits owed under  
28 Unum’s Policy.

          99. On May 17, 2013, this lawsuit was filed in state court and Unum  
subsequently removed it under CAFA. Throughout these proceedings, MICHAEL

1 DON has been actively involved with drafting the pleadings, responding to discovery  
2 and otherwise mediating and litigating this case.  
3

4 100. During the March 10, 2014 Scheduling Conference (which was the first  
5 court hearing held in this case), Plaintiffs' counsel explained that Ruben Don had  
6 "degenerated to the point where he doesn't recall much."  
7

8  
9 101. On April 11, 2014, the First Amended Complaint filed by and through  
10 MICHAEL DON as Ruben Don's Power of Attorney, Son and Authorized and  
11 Legally Designated Representative. MICHAEL DON subsequently retained a  
12 probate attorney to become his father's Guardian ad Litem (which, in Ohio, is the  
13 equivalent to a conservator in California). MICHAEL DON personally flew from  
14 California to Ohio for a background check as required by Ohio law to become a  
15 Guardian ad Litem.  
16  
17

18 102. On August 6, 2014, Ruben Don died. On August 11, 2014 (the day of  
19 decedent's funeral), MICHAEL DON's counsel alerted Unum's counsel that Ruben  
20 Don had passed away. The very next day, Unum filed with the Court a notice of  
21 Ruben Don's death. One week later (on August 18, 2014), MICHAEL DON was  
22 appointed the Executor of Ruben Don's Estate. (See Exhibit H).  
23  
24

25 103. On August 25, 2014, the parties filed a Joint Stipulation to substitute  
26 Ruben Don with Michael Don, Executor of the Estate of Ruben Don, as Plaintiff. On  
27  
28

1 August 28, 2014, this Court issued an Order on the parties' joint stipulation to  
2 substitute Ruben Don with MICHAEL DON, Executor of the Estate of Ruben Don,  
3  
4 as Plaintiff pursuant to Federal Rule of Civil Procedure 25(a). Exhibit I.

5 **LEROY LITTLE's Insurance Claim**

6 104. In 2012, LEROY LITTLE was diagnosed with Alzheimer's disease. On  
7  
8 October 7, 2014, LEROY LITTLE had a stroke. On November 25, 2014, LEROY  
9 LITTLE, by and through his authorized representative and power of attorney,  
10 CAROLYN JAN LITTLE, made an insurance claim under his Unum Long Term  
11 Care Policy and subsequently began receiving benefits. LEROY LITTLE has not yet  
12 claimed all of the benefits to which he is entitled under his policy, as he is still "in  
13 claim."  
14

15  
16 105. CAROLYN JAN LITTLE has never made an insurance claim under her  
17 Unum Long Term Care Policy.  
18

19 **UNUM Re-Writes the LITTLES' Insurance Policies**

20 106. Unable to find their original Unum Long Term Care policies, the  
21 LITTLES asked Unum to send duplicate copies. The benefit increase provisions  
22 contained in the purported duplicate copies Unum sent the LITTLES stated: "Your  
23 Nursing Home Benefit will increase each year on the Policy Anniversary by 5% of  
24 your **original** Nursing Home Benefit Amount." Exhibit L, p. 14 of 27; Exh. M, p. 14  
25 of 28, bold added. When the LITTLES subsequently located their original policies in  
26  
27 March 2015, they discovered their benefit increase provisions actually stated: "Your  
28

1 Monthly Benefit will increase each year on the Policy Anniversary by 5% of your  
2 Monthly Benefit.” Exh. N, p. 10 of 19; Exh. O, p. 10 of 19. Unbeknownst to the  
3  
4 LITTLES, Unum had deceived them by sending altered policies that added the word  
5 “original,” rather than calculating monthly and lifetime benefits based on the benefit  
6 amount in effect on each policy anniversary--as Unum had promised in the LITTLES’  
7  
8 actual policies, which did not include the word “original.”

### 9 **Class Allegations**

10 107. This action may be properly maintained as a class action under Federal  
11  
12 Rules of Civil Procedure 23 and Central District Local Rule 23-3 on the ground that  
13 this action satisfies all of the requirements under F.R.C.P. 23.

14 108. The primary purpose and thrust of Plaintiffs’ complaint seeks  
15  
16 declaratory and injunctive relief for all Subclass Members except the “accrued  
17  
18 damages” Subclass Members.

19 109. This lawsuit was commenced to make sure Unum was stopped forever  
20  
21 from misinterpreting and miscalculating Unum’s Long Term Care Policies provisions  
22  
23 governing the Policy Anniversary and inflation protection in such a way as to deny  
24  
25 (or will deny) insureds--like MICHAEL DON’s and TAMARA PELHAM’s Fathers,  
26  
27 or CAROLYN JAN LITTLE--benefits when they need them most (i.e., for long term  
28  
disability care expenses). The long-standing future impact of the declaratory and  
injunctive relief sought by the entire Class, except for the “accrued damages”  
Subclass Members, unquestionably overshadows the claim for monetary damages.



1 Certification is therefore appropriate under F.R.C.P. 23(b)(2)

2 110. Plaintiffs' action also satisfies all the requirement to be certified under  
3 F.R.C.P. 23(b)(3) as follows:  
4

- 5 ● F.R.C.P. 23 (a)'s numerosity requirement is satisfied because Unum admits  
6 that there are currently approximately 49,639 class members in the State of  
7 California alone.  
8
- 9 ● F.R.C.P. 23(a)'s commonality requirement is satisfied due to Unum's  
10 institutional, systematic, uniform and wrongful denial of benefits owed under  
11 Unum's Long Term Care insurance policies issued nationwide when Unum  
12 miscalculates the Policy Anniversary and/or Monthly Benefits and/or  
13 Maximum Benefit Amounts based on the express and unambiguous language  
14 of an optional provision for inflation protection. There is a common issue of  
15 law based on undisputed facts because the underlying legal issue for each  
16 cause of action involves a simple application of uniform contract law to  
17 interpret the same unambiguous insurance policy language and to Unum's  
18 systematic and institutional practice.  
19
- 20 ● F.R.C.P. 23(a)'s typicality requirement is satisfied. As the Executor of Ruben  
21 Don's Estate, Plaintiff is a real party in interest under Federal Rule of Civil  
22 Procedure 17(a). Under Federal and California law, MICHAEL DON is  
23 permitted to litigate claims for the protection of the Estate because MICHAEL  
24 DON steps into the shoes of his Father and because the claims of Ruben Don  
25  
26  
27  
28

1 and each class member are “so interrelated” as to eliminate any doubt that the  
2 interests of all subclasses will be fairly and adequately protected in their  
3 absence. MICHAEL DON’s claims (as Executor of the Estate of Ruben Don)  
4 are typical of the “accrued damages” Subclass Members. LEROY LITTLE’s  
5 claims are typical of the “in claim” Subclass Members. CAROLYN JAN  
6 LITTLE’s claims are typical of the “future claim” Subclass Members. The  
7  
8 single issue of law common to Ruben Don, LEROY LITTLE and CAROLYN  
9 JAN LITTLE and each class member arises from the same course of conduct  
10 because the claims of Plaintiffs and the Subclasses are based on the same  
11 institutional practice of Unum when interpreting the same or substantial similar  
12 language in Unum’s Long Term Care Policies. Because Unum utilizes the  
13 same institutional practice and the same or substantially similar language  
14 contained in the provisions governing calculation and interpretation of the  
15 Policy Anniversary and inflation protection provisions in Unum’s Long Term  
16 Care Policies, the declaration and injunction sought by the entire Class, except  
17 for the “accrued damages” Subclass Members, applies equally to all similarly  
18 situated persons.  
19  
20  
21  
22  
23

- 24 ● F.R.C.P. 23(a)’s adequacy of representation requirement is satisfied because  
25 MICHAEL DON has personally handled his Father’s insurance claim for  
26 long term care benefits and Unum has regularly dealt with MICHAEL DON  
27 throughout the claims handling process and accepted him at all times as  
28

1 authorized to act on behalf of his Father Ruben Don. MICHAEL DON and his  
2 Father's Estate (including all beneficiaries and the Administrator) have no  
3 interests that are antagonistic to--or are in conflict with--the members of the  
4 subclasses who have accrued damages for breach of contract against Unum.  
5 LEROY LITTLE and his Guardian ad Litem TAMARA PELHAM have no  
6 interests that are antagonistic to--or are in conflict with--the members of the  
7 subclasses who have made insurance claims under Unum's Long Term Care  
8 Policies and are entitled to future policy benefits. CAROLYN JAN LITTLE  
9 has no interests that are antagonistic to--or are in conflict with--the members  
10 who have yet to make an insurance claim under Unum's Long Term Care  
11 Policies. Plaintiffs' and the subclasses' interests are completely aligned, and  
12 each "future claim" and "in claim" Subclass Member will benefit from the  
13 declaratory and injunctive relief being sought on their behalf. Moreover,  
14 MICHAEL DON, as the Executor of his Father's Estate; TAMARA  
15 PELHAM, as her Father LEROY LITTLE's Guardian ad Litem; and  
16 CAROLYN JAN LITTLE are legally authorized to and are fully committed to  
17 prosecuting this class action on behalf of the subclasses. Plaintiffs and the  
18 Class Members are represented by experienced class action attorneys, who  
19 have both the experience and resources to prosecute this case on behalf of the  
20 Class.

- 21 ● F.R.C.P. 23(b)'s requirement that common questions of fact and law

1 predominate is satisfied because the relevant facts are common to Class  
2 Members in each of the Subclasses. Each class member in each of the  
3 subclasses is subjected to--and aggrieved by--Unum's universal practice of  
4 relying on language outside the Unum Long Term Care Policies to calculate  
5 the wrong Policy Anniversary date and/or to apply the annual inflation increase  
6 to the original Monthly Benefit and/or original Lifetime Maximum Benefit  
7 Amount and/or apply the annual inflation increase to the amount of benefits  
8 remaining after an insured suffers a covered loss and begins receiving benefits.  
9 Resolution of these issues is governed by uniform substantive law governing  
10 contract interpretation of Form Policies.  
11

- 12 ● F.R.C.P. 23(b)'s class superiority requirement is satisfied because this class  
13 action will not be difficult to manage. There are already discrete subclasses.  
14 The predominant issue can be easily adjudicated on a class wide and uniform  
15 basis, rather than by hundreds of individual actions across the Country and  
16 State of California.  
17

18 111. The members of the subclasses are ascertainable. Ruben Don, LEROY  
19 LITTLE, CAROLYN JAN LITTLE and each member of the subclasses, are or were  
20 insured under Unum's Long Term Care Policies. Unum's Long Term Care Policies  
21 and the identity of each member of the subclasses can be easily ascertained, and  
22 Unum has identified representative samples of Subclass I, IV and V already in  
23 discovery, and identified six members in Subclasses II and III from reviewing  
24  
25  
26  
27  
28

1 approximately 25 percent of Unum’s Long Term Care Policies. Plaintiff does not yet  
2 know the identity of all members in the subclasses because their names and addresses  
3 are in the sole possession of Unum. The identity of all members in the subclasses is  
4 readily ascertainable by reference to records which are maintained by Unum as  
5 reflected by the Lucas Declaration attached to Unum’s removal papers. In that June  
6 2013 declaration, Mr. Lucas testified he “was asked to review Unum’s business  
7 records and identify the total number of individuals likely meeting [the original]  
8 Complaint’s definition of Subclass I, Subclass II, and the putative Class” as alleged  
9 in the original complaint and “[i]n order to accomplish this task, [he] began by  
10 searching Unum’s proprietary database of all active or terminated insureds  
11 nationwide. [He] then narrowed that search to individuals that are or previously were  
12 covered by one or more of the Unum long term care products listed in ... plaintiff’s  
13 [original] Complaint where the product was situated to the State of California. Next,  
14 [he] excluded individuals who did not purchase inflation protection, as such  
15 individuals did not meet the [original] Complaint’s definition of the Class. [H]e then  
16 excluded individuals who purchased an unlimited benefit option, as such individuals  
17 would not have suffered any injury under plaintiff’s theory. Finally, [he] excluded  
18 individuals who reached their 2x Lifetime Maximum Benefit inflation growth cap as  
19 stated in their policy before suffering a covered loss or receiving benefits, as such  
20 individuals also would not have suffered an injury under plaintiff’s theory” and after  
21 completing other steps as set out in paragraphs 6 and 7 of his declaration, he  
22  
23  
24  
25  
26  
27  
28

1 “determined that there are approximately 104 individuals in Subclass I and  
2 approximately 49,535 individuals in Subclass II [of Plaintiff’s original complaint],  
3  
4 for a total of 49,639 individuals in the purported Class” in California alone. While  
5 Plaintiffs do not agree with Unum’s steps that Mr. Lucas took to arrive at his  
6 numbers, and those numbers reflected just insureds in California and not nationwide,  
7  
8 it is already clear from Unum’s discovery responses that each of Subclass I through V  
9 is numerous, is ascertainable from Unum’s own records, and members of Subclasses  
10 VI and VII are ascertainable by a review of Unum’s records.  
11

12 112. All causes of action involve the interpretation and calculation of benefits  
13 owed under standard form contracts and the questions of law and fact are common to  
14 Plaintiffs’ claims as well as the Class Members, to wit:  
15

16 a) The single, predominate and common question of law to be resolved  
17 involves the interpretation of certain language in Unum’s Long Term Care Policies,  
18 issued to all members of the subclasses, which is applicable to, and applied by Unum  
19 to all policies held by any insured in any of the subclasses. The interpretation of  
20 Unum’s Long Term Care Policies is governed by general rules of contract  
21 interpretation that do not materially differ from one jurisdiction to the next. As the  
22 Supreme Court stated, “contract law is not at its core diverse, nonuniform, and  
23 confusing.” *American Airlines v. Wolens*, 513 U.S. 219, 223 (1995).  
24  
25

26 b) The following factual questions to be resolved are common to Plaintiffs  
27 and the Class Members:  
28

- 1           1) For Subclass IV, the uniform manner in which Unum nationwide applies  
2           the annual inflation increase to the amount of benefits *remaining* and not  
3           to the Lifetime Maximum Benefit Amount after an insured suffers a  
4           covered loss and begins receiving benefits;
- 5           2) For Subclasses II and III, the uniform manner in which Unum  
6           nationwide applies the annual inflation increase to the amount of the  
7           **original** Monthly Benefit and/or **original** Lifetime Maximum Benefit  
8           Amount and not to the Monthly Benefit and/or Lifetime Maximum  
9           Benefit Amount **in effect on each Policy Anniversary**;
- 10          3) For Subclass I, the uniform manner in which Unum nationwide  
11          calculates the policy anniversary from the wrong date (e.g., Effective  
12          Date, not the Policy Date);
- 13          4) For members of all subclasses, whether said conduct breaches the  
14          insurance contract;
- 15          5) For Subclass V, whether said conduct breaches Unum's covenant of  
16          good faith and fair dealing;
- 17          6) For Subclass V, the uniform unfair business practice of Defendant  
18          Unum, as prohibited by California Business & Professions Code section  
19          17200 et seq., and the impact on the insured consumers in California;
- 20          7) For Subclass VI, declaratory and injunctive relief; and
- 21          8) For Subclasses V and VII, whether Unum's conduct constitutes fraud.

1           c) While the specific amount of Plaintiffs' damages and of each Class  
2 Member in the subclasses will differ somewhat, the specific amount of damages  
3 suffered by Plaintiffs and each Class Member can be calculated by a common  
4 formula and/or reference to existing documentation.  
5

6           113. The issues affecting the Class Members of the subclasses will be more  
7 advantageously tried jointly, which will result in advantages to the judicial process  
8 and to the litigants.  
9

10           114. Plaintiffs' claims are also typical of the claims of other similarly situated  
11 persons in the subclasses, and there is a well-defined community of interest in the  
12 questions of law and fact affecting Plaintiffs and all members of the proposed  
13 subclasses. Plaintiffs' claims are not only typical, but they are identical to all  
14 members of the subclasses because Plaintiffs' claims are that Unum misinterprets  
15 language in Unum's Long Term Care Policies issued which contain the identical or  
16 similar language relevant to this dispute over long term care benefits.  
17  
18

19           115. As the Class Representatives, Plaintiffs contend Unum applies the same  
20 misinterpretation to Unum's Long Term Care Policies at issue on a nationwide basis.  
21 Since the substantive law on contract interpretation throughout the nation is  
22 substantially similar--and contractually applies to the interpretation of the same or  
23 similar relevant policy language, regardless of the specific Unum Long Term Care  
24 Policy under which the insured is afforded insurance--the claims of each Class  
25 Member in each of the subclasses are typical of Plaintiffs' claims. Furthermore,  
26  
27  
28



1 MICHAEL DON and his Father's Estate (including all beneficiaries and the  
2 Administrator), TAMARA PELHAM, as the Guardian ad Litem for LEROY  
3 LITTLE, and CAROLYN JAN LITTLE have no conflicts with other Class Members  
4 that would disqualify Plaintiffs from adequately serving as Class Representatives and  
5 vigorously prosecuting this class action. Finally, Plaintiffs are represented by able  
6 attorneys who are experienced in prosecuting class actions.  
7  
8

9 **FIRST CAUSE OF ACTION: BREACH OF INSURANCE**  
10 **CONTRACT**  
11 **(By all Plaintiffs and all Subclass Members against all Defendants)**

12 116. Plaintiffs and all Subclass Members reallege and incorporate herein all  
13 other paragraphs of the complaint in their entirety as if set forth at length herein.

14 117. Unum's Long Term Care Policies constitute contracts that exist between  
15 Plaintiffs and the Subclass Members, on one hand, and Unum, on the other hand.  
16 Plaintiffs and the Subclass Members paid their premiums and complied with all terms  
17 necessary to obtain benefits under Unum's Long Term Care Policies and have  
18 performed all their obligations under the contracts of insurance, unless excused.  
19

20 118. While Unum's Long Term Care Policies were in full force and effect,  
21 MICHAEL DON's Father, and LEROY LITTLE, and the "accrued damages" and "in  
22 claim" Subclass Members suffered a covered loss as defined in Unum's Long Term  
23 Care Policies.  
24

25 119. Pursuant to, and consistent with, the terms and conditions set forth in  
26 Unum's Long Term Care Policies, MICHAEL Don's Father, LEROY LITTLE, and  
27  
28

1 the “accrued damages” and “in claim” Subclass Members submitted claims for  
2 benefits.

3  
4 120. Unum breached the Form Policies by failing to pay to MICHAEL  
5 DON’s Father, LEROY LITTLE, and the “accrued damages” and “in claim” Subclass  
6 Members benefits to which they were or are entitled, and by adopting an  
7 interpretation of the contract’s provisions that renders its contracts illusory to all  
8 Plaintiffs and all Subclass Members.

9  
10 121. As a direct result of Unum’s breaches of its Form Contracts, MICHAEL  
11 DON’s Father, LEROY LITTLE, and the “accrued damages” and “in claim”  
12 Subclass Members have been damaged in an amount not yet fully ascertained, but  
13 which damages include the loss of the contractual benefits under Unum’s Long Term  
14 Care Policies, and due to Unum’s interpretation of the Form Contracts, all Plaintiffs  
15 and all Subclass Members have the right (at their election) to rescind the contracts on  
16 the ground no contract came into being, and (at their election) obtain a refund of all  
17 premiums paid.  
18  
19  
20

21 **SECOND CAUSE OF ACTION: INSURANCE BAD FAITH**  
22 **(By Plaintiffs MICHAEL DON, TAMARA PELHAM, as the Guardian ad**  
23 **Litem of LEROY LITTLE, Subclass V, and the members of Subclass VII whose**  
24 **policies were mailed to them in California by Unum, against all Defendants)**

25 122. MICHAEL DON, TAMARA PELHAM, as the Guardian ad Litem of  
26 LEROY LITTLE, Subclass V, and the members of Subclass VII whose policies were  
27 mailed to them in California by Unum reallege and incorporate herein all other  
28

1 paragraphs of the complaint in their entirety as if set forth at length herein.

2 123. Included in Unum's Long Term Care Policies between Unum, on the  
3 one hand, and MICHAEL DON's Father, and LEROY LITTLE, Subclass V, and the  
4 members of Subclass VII whose policies were mailed to them in California by Unum,  
5 on the other hand, are covenants of good faith and fair dealing. The manner in which  
6 Unum calculated benefits under Unum's Long Term Care Policies constituted more  
7 than just a breach of contract. It was also an unreasonable interpretation that  
8 constituted a breach of the covenant of good faith and fair dealing.  
9  
10

11 124. Unum breached the covenant of good faith and fair dealing in the  
12 following particulars:  
13

14 a) Delivering a policy of insurance with express terms and then,  
15 upon presentation of a covered claim, taking an unreasonable and improper position  
16 with respect to the interpretation knowing that the position it was taking would deny  
17 MICHAEL DON's Father, and LEROY LITTLE, and members of Subclass V  
18 benefits purchased under Unum's Long Term Care Policies;  
19  
20

21 b) Delivering a policy of insurance with express terms and then,  
22 upon presentation of a covered claim, taking a position contrary to Unum's Policy's  
23 terms and contrary to well settled law of California, the state in which Unum's Long  
24 Term Care Policies were issued to the members of Subclass V, with respect to the  
25 calculation of the Policy Anniversary and/or interpretation of the inflation protection  
26 provision. At the time Unum took its unreasonable position, Unum knew it would  
27  
28

1 deny MICHAEL DON's Father, and LEROY LITTLE, and the members of Subclass  
2 V (Unum's insureds) benefits purchased under Unum's Long Term Care Policies;

3  
4 c) Engaging in a continuous course of wrongful conduct, even after  
5 being informed by MICHAEL DON of the impropriety of its interpretation of the  
6 policy language, by denying and refusing to pay benefits according to the terms of  
7 Unum's Long Term Care Policies;

8  
9 d) Knowing that if it took an unreasonable and unlawful position  
10 regarding the inflation protection provision and/or Policy Anniversary as used to  
11 determine the amount of benefits owed under Unum's Long Term Care Policies, it  
12 would undercut the very purpose of the insurance that was purchased by MICHAEL  
13 DON's Father, and LEROY LITTLE, and the members of Subclass V;

14  
15 e) Continually denying the full amount owed under Unum's Long  
16 Term Care Policies knowing that if it held fast to its position, the insureds would rely  
17 on, and place their trust in, the accuracy and truthfulness of Unum's representations  
18 as to the extent of coverage, and the basis for denial;

19  
20  
21 f) Engaging in the practice of taking an unreasonable and unlawful  
22 position with respect to the calculation of benefits owed under Unum's Long Term  
23 Care Policies, knowing that the only way it would properly calculate benefits was if it  
24 was ordered to do so by a court, thereby foreseeing the damages that would flow to  
25 MICHAEL DON's Father, and LEROY LITTLE, and the members of Subclass V in  
26 having to retain counsel to obtain benefits owed; and  
27  
28

1 g) Issuing members of Subclass VII one policy at inception  
2 but then sending a materially different policy represented as a “duplicate” copy of the  
3 original  
4

5 125. As a direct result of the repetitive and intentional wrongful conduct,  
6 which Unum knew would deprive (1) MICHAEL DON’s Father, (2) LEROY  
7 LITTLE, (3) Subclass V, and (4) the members of Subclass VII whose policies were  
8 mailed to them in California by Unum, of the full amount of benefits owed under  
9 Unum’s Long Term Care Policies, these Plaintiffs and these members of Subclasses  
10 V and VII are entitled to receive not only contractual damages but also consequential  
11 damages in order to make them whole and to insure they receive the full amount of  
12 benefits to which they are entitled. These consequential damages include, but are not  
13 limited to, attorneys’ fees and costs, all of which are and were foreseeable in light of  
14 Unum’s unreasonable breach of the contract.  
15  
16  
17

18 126. Unum’s conduct was not simply the unfortunate result of poor business  
19 judgment. With full knowledge of the consequences and damages to MICHAEL  
20 DON’s Father, LEROY LITTLE, and the Class Members in Subclass V, Unum  
21 continues to (1) improperly calculate the Policy Anniversary under Unum’s Long  
22 Term Care Policies issued to MICHAEL DON’s Father, and the members of  
23 Subclass I who are in Subclass V; and/or (2) misrepresent to MICHAEL DON,  
24 LEROY LITTLE, and the members of Subclasses II and III who are in Subclass V  
25 that the annual inflation increase applies to the original Monthly Benefit and/or the  
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1 original Lifetime Maximum Benefit Amount even though Unum's Policy express  
2 states it applies to "the Monthly Benefit [and/or Lifetime Maximum Benefit Amount]  
3 in effect on [each] Policy Anniversary;" and/or (3) misrepresent to insureds or the  
4 authorized representatives of insureds who are in Subclass V that, after benefits  
5 begin to be paid, the annual inflation increase applies to the amount of benefits  
6 remaining even though Unum's Policy expressly states it applies to the "Lifetime  
7 Maximum Benefit Amount," and/or deliberately fool insureds in Subclass VII into  
8 thinking a materially different policy is a duplicate of the original policy that the  
9 insured purchased. Accordingly, an award of punitive damages is warranted and  
10 appropriate in order to punish Unum for engaging in this conduct and to deter it from  
11 engaging in this practice and continuing to engage in this practice of depriving  
12 insureds of benefits owed under the express terms of Unum's Long Term Care  
13 Policies.  
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19 **THIRD CAUSE OF ACTION:**  
20 **FRAUD BY INTENTIONAL MISREPRESENTATION**  
21 **(By all Plaintiffs, Subclass V, and the members of Subclass VII whose**  
22 **policies were mailed to them in California by Unum, against all Defendants)**

23 127. Plaintiffs, Subclass V, and the members of Subclass VII whose policies  
24 were mailed to them in California by Unum, reallege and incorporate herein all other  
25 paragraphs of the complaint in their entirety as if set forth at length herein.

26 128. At the time Unum's Long Term Care Policies were issued to MICHAEL  
27 DON's Father, LEROY LITTLE, and CAROLYN JAN LITTLE, Subclass V, and the  
28

1 members of Subclass VII whose policies were mailed to them in California by Unum,  
2 Unum explicitly represented that Unum would calculate policy anniversaries from a  
3 specific date (e.g., the “Policy Date”); and/or Unum would apply the annual inflation  
4 increase to the Monthly Benefit and/or to the Lifetime Maximum Benefit Amount in  
5 effect on the Policy Anniversary; and/or Unum would apply the annual inflation  
6 increase to the Lifetime Maximum Benefit Amount regardless of whether or not the  
7 insured suffered a covered loss.  
8

9  
10 129. Each and every time Unum made these written representations in  
11 Unum’s Long Term Care Policies that Unum issued to Plaintiffs, Subclass V, and the  
12 members of Subclass VII whose policies were mailed to them in California by Unum,  
13 they were known to be false by Unum because Unum knew it would calculate policy  
14 anniversaries from a different date (e.g., the “Effective Date”); and/or Unum knew it  
15 would apply the annual inflation increase to the *original* Monthly Benefit and/or to  
16 the *original* Lifetime Maximum Benefit Amount as quantified on the Schedule Page;  
17 and/or Unum knew that--after an insured suffered a covered loss and began receiving  
18 benefits--Unum would apply the annual inflation increase to the *remaining* Lifetime  
19 Maximum Benefit Amount after deducting all benefits already paid out in the prior  
20 year(s), and/or Unum knew it was fooling insureds that the duplicate copy it mailed  
21 them was the same as the original policy. Unum did not disclose this highly material  
22 information to MICHAEL DON’s Father, LEROY LITTLE, CAROLYN JAN  
23 LITTLE, Subclass V, and the members of Subclass VII whose policies were mailed  
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1 to them in California by Unum, when Unum issued Unum’s Long Term Care Policies  
2 to them, but instead concealed this critical information from these Plaintiffs and these  
3 Members of Subclasses V and VII when they purchased Unum’s Long Term Care  
4 Policies.  
5

6 130. At the time Unum issued Unum’s Long Term Care Policies containing  
7 the same or similar inflation protection provision language as the Policy, Unum  
8 intended to defraud Plaintiffs, Subclass V, and the members of Subclass VII whose  
9 policies were mailed to them in California by Unum, for the purpose of inducing them  
10 to rely and to act or refrain from acting because Unum’s insureds would place their  
11 trust in the accuracy and truthfulness of Unum’s representations as to the extent of  
12 coverage, and the amount Unum would owe under Unum’s Long Term Care Policies  
13  
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16 131. Unum intended to defraud because Plaintiffs and other similarly situated  
17 insureds were less likely and less able to pursue remedies on their own because they  
18 would not discover Unum’s fraud and deceit until after they had become seriously  
19 disabled, were no longer about to care for themselves, and likely entered into  
20 commitments with care providers based on the express terms of the policies.  
21  
22

23 132. On January 9, 1997, Unum issued the Policy to MICHAEL DON’s  
24 Father, which stated “you may cancel this Policy for any reason within 30 days after  
25 it is delivered to you or your representative.” Exh. A., Don0001. On March 9, 1998,  
26 Unum issued two Unum Long Term Care Policies to LEROY LITTLE and  
27  
28



1 CAROLYN JAN LITTLE which stated: “You may cancel this Policy for any reason  
2 within 30 days after it is delivered to you or your representative.” Exh. N, p. 1 of 19;  
3 Exh. O, p. 1 of 19. Plaintiffs and the members of Subclass V, actually, detrimentally  
4 and justifiably relied on Unum’s concealments and representations as set forth in  
5 Unum’s Long Term Care Policies because Plaintiffs, Subclass V, and the members of  
6 Subclass VII whose policies were mailed to them in California by Unum did not  
7 cancel Unum’s Policies but rather accepted them and relied on Unum to honor the  
8 express terms of in Unum’s Policies.  
9  
10

11  
12 133. The true facts--which Unum deliberately concealed from Plaintiffs,  
13 Subclass V, and the members of Subclass VII whose policies were mailed to them in  
14 California by Unum, at the time Unum sent each of them Unum’s Long Term Care  
15 Policies for acceptance--are that in the event a covered loss occurred (1) Unum did  
16 not calculate the Policy Anniversary from the specific date identified in the Policy;  
17 and/or (2) Unum did not apply the annual inflation increase to the Monthly Benefit or  
18 to the Lifetime Maximum Benefit Amount in effect on each Policy Anniversary;  
19 and/or (3) after an insured suffered a covered loss and began receiving policy  
20 benefits, Unum did not apply the annual inflation increase to the Lifetime Maximum  
21 Benefit Amount. Rather, at the time each of Unum’s Long Term Care Policies issued  
22 to Plaintiffs and to the members of Subclass V, Unum had a company-wide system in  
23 place to calculate the Policy Anniversary from a different date (e.g., the Effective  
24 Date), and/or to apply the annual inflation increase to the original Monthly Benefit  
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1 and/or to the original maximum benefit amount (e.g., the original Lifetime Maximum  
2 Benefit Amount), and/or (after an insured suffered a covered loss and began  
3 receiving policy benefits) Unum applied the annual inflation increase to the  
4 remaining Lifetime Maximum Benefit Amount after deducting for benefits already  
5 paid out.  
6

7  
8 134. The actual reliance of Plaintiffs Subclass V, and the members of  
9 Subclass VII whose policies were mailed to them in California by Unum--in  
10 accepting and not cancelling Unum's Policies after Unum gave each of these insureds  
11 a right to examine their Policies, and Unum agreed if they did not cancel their  
12 Policies within a designated amount of time that both the insured and Unum would be  
13 bound by the express terms therein--was reasonable in light of the fact that Unum  
14 expressly stated in Unum's Long Term Care Policies that (1) the Policy Anniversary  
15 would be calculated from a specific date (e.g., the "Policy Date," not the "Effective  
16 Date"); and/or (2) the annual inflation increase would apply to the Monthly Benefit  
17 and/or to the Lifetime Maximum Benefit Amount in effect on each Policy  
18 Anniversary (not the original Monthly Benefit and/or the original Lifetime Maximum  
19 Benefit Amount); and/or (3) the annual inflation increase would continue to occur  
20 regardless of the insured's health and whether or not the insured suffered a covered  
21 loss, and/or (4) issuing members of Subclass VII one policy at inception but then  
22 sending a materially different policy represented as a "duplicate" copy of the original  
23 policy when those Subclass members asked Unum for a duplicate copy of the policy  
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1           135. Reliance by Plaintiffs Subclass V, and the members of Subclass VII  
2 whose policies were mailed to them in California by Unum is further justified in light  
3  
4 of the special relationship between an insurer and an insured, and furthermore,  
5 because Plaintiffs Subclass V, and the members of Subclass VII whose policies were  
6 mailed to them in California by Unum, each a contracting party, did not anticipate as  
7  
8 a risk of the contracting process or of the contract itself that Unum, the other  
9 contracting party, will lie and make intentional misrepresentations and concealments  
10 of material facts.

11  
12           136. MICHAEL DON's Father, who was insured with Unum since 1997, did  
13 not learn of Unum's misrepresentations until around August 2012 when Unum  
14 advised MICHAEL DON, who was his Father's authorized and legally designated  
15 representative, that (1) the Policy Anniversary was being calculated from a different  
16 date (i.e., the Effective Date) contrary to the express language stating it would be  
17 calculated from a specific date (i.e., the Policy Date); (2) the annual inflation increase  
18 was being applied to the original Monthly Benefit and to the original Lifetime  
19 Maximum Benefit Amount, contrary to the express language stating it would be  
20 applied to the Monthly Benefit and to the Lifetime Maximum Benefit Amount in  
21 effect on each Policy Anniversary; and (3) after an insured suffers a covered loss and  
22 begins receiving benefits, the annual inflation increase applies to the amount of  
23 benefits remaining, contrary to the express language stating it would be applied to the  
24 Lifetime Maximum Benefit Amount. LEROY LITTLE and CAROLYN JAN

1 LITTLE did not learn of Unum's misrepresentations until March 2015.

2 137. Plaintiffs, Subclass V, and the members of Subclass VII whose policies  
3 were mailed to them in California by Unum have been and will continue to be  
4 damaged because Unum's misrepresentations continue to reduce the benefits due  
5 and/or make the insurance contracts illusory. Plaintiffs, Subclass V, and the members  
6 of Subclass VII whose policies were mailed to them in California by Unum are  
7 entitled a choice to rescind Unum's Policies and receive a full repayment of their past  
8 paid premiums, plus interest.  
9  
10

11 138. Unum's continuing conduct constitutes malice, fraud or oppression as  
12 those terms are defined in California Civil Code § 3294.  
13

14 139. Unum knows that the specific benefit purchased is for the annual  
15 inflation increase to be calculated on a specific date (e.g., the Policy Date) and to be  
16 applied to the Monthly Benefit and Lifetime Maximum Benefit Amount in effect on  
17 each Policy Anniversary and to occur regardless of the insured's health and whether  
18 or not the insured has suffered a covered loss. Moreover, by calculating the Policy  
19 Anniversary from the incorrect date (e.g., Effective Date) and/or applying the annual  
20 inflation increase to the original Monthly Benefit and/or to the original Lifetime  
21 Maximum Benefit Amount and/or applying the annual inflation increase to the  
22 amount of benefits remaining after an insured suffers a covered loss and begins  
23 receiving benefits, Unum causes foreseeable hardship to Unum's insureds,  
24 particularly given Unum knows that the insurance benefits are for insureds to  
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1 purchase necessary, long-term care benefits which are immediately needed at the  
2 time of the covered loss for the well-being, health and care of its insureds.  
3

4 140. Knowing the purpose of the benefits only highlights Unum's conduct as  
5 constituting malice, fraud or oppression as those terms are defined in California Civil  
6 Code § 3294, since Unum has knowledge of the California law which governs its  
7 insurance policies issued to Subclass V and the members of Subclass VII whose  
8 policies were mailed to them in California by Unum, and Unum knew and knows that  
9 its interpretation of Unum's Long Term Care Policies in the manner set forth above is  
10 in violation of the express terms of Unum's Policies and settled California law.  
11  
12 Nonetheless, Unum misled and continues to mislead its insureds about Unum's Long  
13 Term Care Policies' language in order to deprive its insureds of desperately needed  
14 benefits owed to them.  
15  
16

17 141. With full knowledge of the severe consequences and predictable  
18 damages to the health and well-being of Plaintiffs, Subclass V, and the members of  
19 Subclass VII whose policies were mailed to them in California by Unum, Unum  
20 continues to represent to Plaintiffs, Subclass V, and the members of Subclass VII  
21 whose policies were mailed to them in California by Unum that the Policy  
22 Anniversary is calculated from a different date (e.g., the Effective Date, not the  
23 Policy Date) and/or that the annual inflation increase applies to the original Monthly  
24 Benefit and/or to the original Lifetime Maximum Benefit Amount and/or to the  
25 amount of benefits remaining after an insured suffers a covered loss, and/or issuing  
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1 members of Subclass VII one policy at inception but then sending a materially  
2 different policy represented as a “duplicate” copy of the original policy when those  
3 Subclass members asked Unum for a duplicate copy of the policy. Accordingly, an  
4 award of punitive damages is warranted and appropriate in order to punish Unum for  
5 engaging in this conduct and to deter it from continuing to engage in this practice of  
6 depriving insureds of long term care benefits owed under the express terms of  
7 Unum’s Long Term Care Policies.  
8

9  
10 **FOURTH CAUSE OF ACTION:**  
11 **UNFAIR BUSINESS PRACTICES IN VIOLATION OF CALIFORNIA**  
12 **BUSINESS AND PROFESSIONS CODE SECTIONS 17200 ET SEQ.**  
13 **(By all Plaintiffs, Subclass V, and the members of Subclass VII whose policies**  
14 **were mailed to them in California by Unum, Against all Defendants)**

15 142. Plaintiffs, Subclass V, and the members of Subclass VII whose policies  
16 were mailed to them in California by Unum, reallege and incorporate herein all other  
17 paragraphs of the complaint in their entirety as if set forth at length herein.

18 143. Unum’s institutional practice violated California’s Unfair Competition  
19 Law, Business and Professions Code section 17200 et seq. (the “UCL”) by engaging  
20 in unlawful, unfair and fraudulent conduct. The UCL provides that “unfair  
21 competition shall mean and include any unlawful, unfair or fraudulent business act or  
22 practice,” including acts of intentional misrepresentation or concealment of material  
23 facts.  
24

25  
26 144. Unum’s conduct violated the unlawful prong of the UCL because  
27 Unum’s conduct violated California Civil Code sections 1709, 2223, 2224  
28

1 (California's Fraudulent Business Practices Statute, California Civil Code, Section  
2 1710 (same)); California Penal Code, Section 484 (Same). Unum also engaged in the  
3 fraudulent and unfair practices by issuing to insureds coverage under Unum's Long  
4 Term Care Policies that provided for benefits after each insured suffers a covered  
5 loss, yet Unum knew when it issued these Policies that it would be paying a different  
6 set of benefits under a different set of rules and calculations of which only Unum  
7 knew.  
8  
9

10 145. As a result, Plaintiffs, others similarly situated in Subclass V, and the  
11 members of Subclass VII whose policies were mailed to them in California by Unum  
12 were and will be denied vested Property rights by Unum. Each of the Defendants  
13 generated--and continues to generate--gains as a direct result of its aforementioned  
14 unfair, unlawful and/or fraudulent business practices.  
15  
16

17 146. Plaintiffs, others similarly situated in Subclass V, and the members of  
18 Subclass VII whose policies were mailed to them in California by Unum are entitled  
19 to: (1) restitution and/or restitutionary disgorgement of any ill-gotten gains obtained  
20 by each of the Defendants as a result of their UCL violations, and (2) reasonable  
21 attorneys' fees under Code of Civil Procedure section 1021.5 and any other  
22 applicable statutory provision.  
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1                   **FIFTH CAUSE OF ACTION: DECLARATORY RELIEF**  
2                   **SEEKING A DECLARATION AND INJUNCTION**  
3                   **(By Plaintiffs TAMARA PELHAM, as the Guardian ad Litem for**  
4                   **LEROY LITTLE, CAROLYN JAN LITTLE, and all members of Subclass**  
5                   **VI and VII, except “accrued damages” Subclass Members, against all**  
6                   **Defendants)**

7                   147. Plaintiff TAMARA PELHAM, as the Guardian ad Litem for LEROY  
8                   LITTLE, Plaintiff CAROLYN JAN LITTLE, and all members of Subclasses VI and  
9                   VII, except “accrued damages” Subclass Members, reallege and incorporate herein  
10                  all other paragraphs of the complaint in their entirety as if set forth at length herein.

11                  148. Unum’s Long Term Care Policies are standard Form Policies and  
12                  constitute contracts that exist between LEROY LITTLE, CAROLYN LITTLE and  
13                  the members of Subclasses VI and VII (except “accrued damages” Subclass  
14                  Members), on one hand, and Unum, on the other hand.

15                  149. Unum’s Long Term Care Policies agree to provide certain specified long  
16                  term care benefits to these Plaintiffs and these members of Subclasses VI and VII  
17                  based on certain specified calculations after they suffer a covered loss.

18                  150. An actual controversy exists between these Plaintiffs and these members  
19                  of the Subclasses VI and VII, on the one hand, and Unum, on the other hand.

20                  151. Unum’s company-wide unreasonable interpretation of various terms of  
21                  Unum’s Long Term Care Policies denies and/or postpones the payment of benefits to  
22                  these Plaintiffs and these members of Subclasses VI and VII.

23                  152. Because Unum’s interpretation is erroneous, as a matter of law, these  
24                  25                  26                  27                  28



1 Plaintiffs, on their own behalf, and on behalf of these members of Subclasses VI and  
2 VII, seek a judicial determination that Unum's institutional practices violate the  
3 standard Form Policies.  
4

5 153. A declaration is necessary to determine the parties' rights and  
6 obligations under Unum's Long Term Care Policies. Upon such a finding by this  
7 Court, these Plaintiffs on behalf of these members of Subclasses VI and VII will seek  
8 an injunction against Unum to enjoin Unum from engaging in and/or continuing its  
9 offending institutional practices as are set forth in this Complaint, including but not  
10 limited to, Unum's practice of changing the language in duplicate copies of Unum's  
11 Long Term Care Policies. Unless enjoined by this Court, Unum will continue to  
12 engage in the above-described acts and practices. Unum's acts and practices have  
13 caused and will continue to cause great and irreparable harm to these members of  
14 Subclasses VI and VII, given the unique nature of the benefits purchased, which are  
15 long term care insurance benefits, and because any money damages eventually  
16 awarded long after an insured seeks and needs long-term care, but is denied them, is  
17 no substitute to providing benefits on time and in the proper amounts. As a result,  
18 these Plaintiffs and these members of Subclasses VI and VII have no other adequate  
19 remedy at law, and injunctive relief is necessary in order for these class members to  
20 secure care for themselves at the moment they learn they are desperately in need of it.  
21 An award of money damages long after Unum's breaches its contracts cannot undo  
22 the irreparable harm that will be suffered by these members of Subclasses VI and VII  
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1 forced to forego essential care necessary at a particular moment in time for their well-  
2 being and health.

3  
4 WHEREFORE, Plaintiffs, Individually, and as the representatives of the Class  
5 Members, pray for relief from this Court, and seek damages, equitable relief and  
6 other remedies as follows:  
7

8 A. For an Order from this Court certifying this action as a class action  
9 and Plaintiffs as the Class Representatives, and appoint Plaintiffs'  
10 counsel as class counsel;  
11

12 B. For all Subclasses, the right to rescind the contract as illusory and  
13 (at the election of each insured) to obtain a refund of all premiums  
14 paid;  
15

16 C. For all subclasses (except Subclass VI), general and special  
17 damages;  
18

19 D. For Subclass V, and the members of Subclass VII whose policies  
20 were mailed to them in California by Unum, all foreseeable  
21 consequential damages, including but not limited to attorneys'  
22 fees, arising out of Unum's breach of the implied covenant of  
23 good faith and fair dealing;  
24

25 E. For Subclass V, and the members of Subclass VII whose policies  
26 were mailed to them in California by Unum, punitive damages  
27  
28

- 1 F. For Subclass V, and the members of Subclass VII whose policies  
2 were mailed to them in California by Unum, statutory attorney  
3 fees and *Brandt* attorney fees;  
4  
5 G. For pre-judgment and post-judgment interest;  
6  
7 H. For costs of this lawsuit;  
8  
9 I. For the members of Subclass VI and VII, except “accrued  
10 damages” Subclass Members, declaratory and injunctive relief;  
11 and  
12 J. For any other relief including equitable relief under the UCL as  
13 this Court deems just and proper.  
14

15  
16 Dated: March 26, 2015

SHENOI KOES LLP

17 By:

18 \_\_\_\_\_/S/\_\_\_\_\_

19 Allan A. Sheno  
20 Attorneys for Plaintiffs and the  
21 Proposed Subclasses  
22  
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28

**DEMAND FOR JURY TRIAL**

Plaintiffs and the members of the Class hereby request a jury trial on all claims so triable.

Dated: March 26, 2015

SHENOI KOES LLP

By: \_\_\_\_\_/S/\_\_\_\_\_

Allan A. Sheno

For Plaintiffs and the Proposed Subclasses