

JS-CAND 44 (Rev. 10/2020)

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I (a) PLAINTIFFS FRANK LOWENBERG</p> <p>(b) County of Residence of First Listed Plaintiff MARIN COUNTY <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> LAW OFFICES OF GARRY R. CARLIN; 301 EAST OCEAN BLVD, SUITE 1550, LONG BEACH, CA 90802; 562-432-8933</p>	<p>DEFENDANTS ILLINOIS MUTUAL LIFE INSURANCE COMPANY</p> <p>County of Residence of First Listed Defendant UNKNOWN <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment Of Veteran's Benefits <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <hr/> <p style="text-align: center;">REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p style="text-align: center;">PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury -Medical Malpractice <hr/> <p style="text-align: center;">CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 448 Education	<p style="text-align: center;">PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury -- Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <hr/> <p style="text-align: center;">PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <hr/> <p style="text-align: center;">PRISONER PETITIONS</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <hr/> <p style="text-align: center;">OTHER</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee-Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC § 881 <input type="checkbox"/> 690 Other <hr/> <p style="text-align: center;">LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <hr/> <p style="text-align: center;">IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC § 158 <input type="checkbox"/> 423 Withdrawal 28 USC § 157 <hr/> <p style="text-align: center;">PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent-Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <hr/> <p style="text-align: center;">SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <hr/> <p style="text-align: center;">FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC § 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC § 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing. *(Do not cite jurisdictional statutes unless diversity):*
 BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; BREACH OF INSURANCE CONTRACT; AND DECLARATORY JUDGMENT
 Brief description of cause:
 INSURANCE COMPANY BREACHED "RENEWABLE FOR LIFE" HEALTH INSURANCE

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY *(See instructions):* JUDGE HAYWOOD S. GILLIAM JR. DOCKET NUMBER 4:21-cv-09739-HSG

IX. DIVISIONAL ASSIGNMENT *(Civil Local Rule 3-2)*
(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 09/19/2022 SIGNATURE OF ATTORNEY OF RECORD

1 **LAW OFFICES OF GARY R. CARLIN, APC**
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8 Attorneys for Plaintiffs, FRANK LOWENBERG

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12

13 FRANK LOWENBERG,
14 individually and on behalf of all
15 members of the public similarly
16 situated,

17 Plaintiffs,

18 vs.

19 ILLINOIS MUTUAL LIFE
20 INSURANCE COMPANY, an
21 Illinois corporation; and DOES 1
22 through 50, inclusive

23 Defendants.
24
25
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27
28

CASE NO.:

CLASS ACTION COMPLAINT

- (1) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;**
- (2) BREACH OF INSURANCE CONTRACT; AND**
- (3) DECLARATORY JUDGMENT**

[DEMAND FOR JURY TRIAL]

STATEMENT OF THE CASE

1
2
3 1. Defendants intentionally and willfully canceled over twenty (20)
4 “Renewable for Life” insurance policies. Plaintiff, along with Class members, were
5 promised a “Renewable for Life” insurance policy so long they paid the premiums
6 to the policy. Despite paying the premiums, DEFENDANT believed that it was
7 justifiable to cancel all remaining policies because it was no longer “profitable.”
8 Plaintiff, like many other class members, have had their premiums for over fifty
9 (50) years, and now that they have entered their golden years, DEFENDANT
10 decided to not honor their end of the bargain and cancel the “Renewable for Life”
11 insurance. Plaintiff and Class members lost health coverage in a time that they most
12 need it, a time that no other insurance company would want to grant them an
13 insurance policy without it costing a fortune because of their age and health.
14 Plaintiff and Class members lost their bargain for exchange, the insurance coverage
15 and they lost the opportunity to choose a health insurance plan that does not cost a
16 fortune because of their reliance on DEFENDANT’s Policy terms; because of this,
17 Plaintiff and Class members seek special, compensatory, punitive damages, and an
18 injunction.
19
20
21
22
23

PARTIES

24
25 2. At all times herein mentioned, PLAINTIFFS have been a citizen of the
26 state of California.
27

28 3. PLAINTIFFS are informed and believe that DEFENDANT is, and at

1 all relevant times herein, been an Illinois Corporation and doing business within
2 California purposefully availing itself to the jurisdiction, capable of suing and being
3 sued in California.
4

5 4. PLAINTIFFS are informed and believe that DEFENDANT, and
6 DOES 1-50, inclusive, and each of them, engaged in insuring individuals, under the
7 laws of the State of California and doing business within the county of Marin, State
8 of California.
9

10 5. PLAINTIFFS are informed and believe and thereon allege that each of
11 the DEFENDANTS herein were at all times the agent, employee, or representative
12 of each remaining DEFENDANTS and were at all times herein acting within and
13 outside the scope and purpose of said agency and employment. PLAINTIFFS
14 further allege that as to each DEFENDANT, whether named or referred to as a
15 fictitious name, said DEFENDANTS supervised, ratified, controlled, acquiesced in,
16 adopted, directed, substantially participated in, and/or approved the acts, errors,
17 and/or omissions, of each remaining DEFENDANT.
18
19
20

21 6. PLAINTIFFS are informed and believe that the DEFENDANTS
22 committed other wrongful acts or omissions of which PLAINTIFFS are presently
23 unaware. PLAINTIFFS shall conduct discovery to identify said wrongful acts and
24 will seek leave of court to amend this Complaint to add said acts upon discovery.
25

26 7. That the true names and capacities, whether individual, corporate,
27 associate, or otherwise, of defendants DOES 1 through 50, inclusive are unknown
28

1 to PLAINTIFFS, who therefore sues said Defendants by such fictitious names.
2 PLAINTIFFS are informed and believe and thereon allege that each of the
3 Defendants designed herein as a DOE is legally responsible in some manner for the
4 events and happenings referred to herein, and legally caused injury and damages
5 proximately thereby to PLAINTIFFS, as herein alleged.
6
7

8 **JURISDICTION AND VENUE**
9

10 8. This Court has subject-matter jurisdiction over this action pursuant to
11 28 U.S.C. §1332(d)(2). The amount in controversy against the class representative
12 exceeds \$75,000. Also, the class representative is a citizen of California and
13 Defendant is a citizen of Illinois.
14

15 9. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this
16 action because a substantial part of the events, omissions, and acts giving rise to the
17 claims herein occurred in this District where DEFENDANTS and each of them,
18 distributed, marketed, advertised, and sold “Renewable Health Insurance” which
19 are the subject of the present complaint. Finally, venue is appropriate in this District
20 pursuant to 28 USC § 1391(b)(2) because a substantial part of the acts and
21 omissions that gave rise to this Complaint occurred or emanated from this District.
22
23

24 10. This Court has personal jurisdiction over DEFENDANTS because
25 they are authorized to do business and do conduct business in California and
26 because they have specifically marketed, advertised, and sold “Renewable Health
27
28

1 Insurance” in California, and have sufficient minimum contacts with this state
2 and/or sufficiently avails themselves of the markets of this state through their
3 promotion, sales, and marketing within this state to render the exercise of
4 jurisdiction by this Court permissible.
5

6 **FACTUAL ALLEGATIONS**
7

8 11. In or about 1972, Plaintiff Frank Lowenberg, (hereinafter referred to as
9 “FRANK”) purchased a non-cancelable medical insurance policy from Illinois
10 Mutual Health with policy number 841804 (hereinafter referred to as “POLICY”).
11

12 12. At all times herein mentioned FRANK consistently paid the POLICY
13 premiums on time, and never intentionally misrepresented material facts to
14 DEFENDANT at the time of obtaining the policy.
15

16 13. When FRANK purchased the POLICY he resided in Michigan. In
17 1976 to the present, he has been a California resident. DEFENDANT knowingly
18 accepted payments from FRANK, for over forty-five (45) years from the state of
19 California.
20

21 14. On or about April of 2021 DEFENDANT’s employee, Beth Martin
22 (herein after referred to as “MARTIN”), contacted FRANK by email regarding the
23 cancelation of his lifetime policy. MARTIN indicated that DEFENDANT intends
24 to discontinue the POLICY within six (6) months, effective on or about November
25 1, 2021. MARTIN stated that DEFENDANT’s cancelation of the POLICY is due to
26 the fact that only (30) insured are still alive with the same POLICY as FRANK.
27
28

1 15. The State of Michigan approved the discontinuation of the policy, but
2 the California Department of Insurance has not.

3
4 16. On or about May, 7, 2021 FRANK sent DEFENDANT'S employee
5 MARTIN an email requesting an internal grievance process and a written response
6 listing specific language in the POLICY that allows DEFENDANT to exclude
7 future coverage on a non-cancellable policy.

8
9 17. FRANK has become very ill the last several years and relies on the
10 POLICY to continue his medical care.

11
12 18. In or about June 3, 2021 FRANK sent an email to DEFENDANT's
13 employee MARTIN, Emily Wilburn, and President Katie McCord-Jenkins, to put
14 them on notice that FRANK is in touch with the California Department of
15 Insurance.

16
17 19. FRANK is in dire need of surgeries that have not yet taken place, and
18 is having difficulties finding a suitable replacement for his health insurance.
19 FRANK is in the middle of his treatments that cannot be changed or stopped in his
20 current condition.

21
22 20. PLAINTIFFS are informed and believe that DEFENDANT is
23 cancelling the POLICY because it is no longer profitable to the company.

24
25 **CLASS ACTION ALLEGATIONS**

26
27 21. Plaintiffs bring claims pursuant to Federal Rule of Civil Procedure 23
28 on behalf of the following Class, as defined below: All PLAINTIFFS, and each of

1 them, consumers and distributors who's Illinois Mutual Health Policy was
2 canceled.

3
4 22. This action has been brought and may properly be maintained as a
5 class action against ALL DEFENDANTS and each of them, pursuant to the
6 provisions of Federal Rule of Civil Procedure 23.

7
8 23. **Numerosity:** The precise number of members of the proposed Class is
9 unknown to plaintiffs at this time, but, based on information and belief, Class
10 members are so numerous that their individual joinder herein is impracticable and
11 unfeasible. All Class members may be notified of the pendency of this action by
12 reference to DEFENDANTS and each of their records or by other alternative
13 means.
14

15
16 24. **Commonality:** Numerous questions of law or fact are common to
17 Plaintiffs' claims and members of the proposed Class. These common questions of
18 law and fact exist as to all Class members and predominate over questions affecting
19 only individual Class members. These common legal and factual questions include,
20 but are not limited to the following:
21

22 a. Whether ILLINOIS MUTUAL LIFE INSURANCE COMPANY
23 breached the implied covenant of Good Faith and Fair Dealing by
24 cancelling the "renewable for life" insurance policies;
25

26 b. Whether ILLINOIS MUTUAL LIFE INSURANCE COMPANY
27 breached the insurance contract.
28

1 c. Whether the reason for terminating the insurance contracts was due
2 to contracts no longer being profitable.

3
4 d. Whether plaintiff and the other class members are entitled to
5 injunctive, equitable and declaratory relief.

6 25. **Typicality:** The claims of the named Plaintiff are typical of the
7 proposed Class's claims in that the named Plaintiff was a customer during the class
8 period and had their insurance policy canceled even though he paid their premiums
9 on the "Renewable for Life" insurance policy just like the other class members.

10
11 26. **Adequate Representation:** Plaintiffs will fairly and adequately
12 represent the Class's interests in that he has no conflicts with any other Class
13 members. Plaintiffs have retained competent counsel experienced in prosecuting
14 complex class actions, including those involving breach of contract insurance, and
15 they will vigorously and diligently litigate this class action.

16
17 27. **Predominance and Superiority:** There is no plain, speedy, or
18 adequate remedy other than maintaining this class action. A class action is superior
19 to other available means, if any, for the fair and efficient adjudication of this
20 controversy. Prosecution of separate actions by individual Class members would
21 create the risk of inconsistent or varying adjudications, establishing incompatible
22 standards of conduct for the Defendant. Treatment as a class action will achieve
23 substantial economies of time, effort, and expense and provide comprehensive and
24 uniform supervision by a single court. This class action presents no material
25
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28

1 difficulties in management.

2 28. Class action certification is warranted under Fed. R. Civ P. 23(b)(1)(A)
3 because the prosecution of separate actions by individual members of the proposed
4 Class would create a risk of inconsistent or varying adjudications with respect to
5 individual Class members, which may produce incompatible standards of conduct
6 for Defendants. 34. Class action certification is warranted under Fed. R. Civ P.
7 23(b)(1)(B) because the prosecution of separate actions by individual members of
8 the proposed Class would create a risk of adjudications with respect to individual
9 Class members, which may, as a practical matter, be dispositive of the interests of
10 the other members not parties to the adjudications or substantially impair or impede
11 their ability to protect their interests.
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16 29. The prerequisites to maintaining a class action for injunctive or
17 equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as DEFENDANTS, and
18 each of them have acted or refused to act on grounds generally applicable to the
19 Class, thereby making final injunctive, declaratory, or equitable relief appropriate
20 with respect to the Class as a whole. 36. Class action certification is also warranted
21 under Fed. R. Civ P. 23(b)(3) because questions of law or fact common to the class
22 members predominate over any questions affecting only individual members, and a
23 Class action is superior to other available remedies for the fair and efficient
24 adjudication of this controversy. The amount of damages available to the individual
25 Plaintiffs are insufficient to make litigation addressing DEFENDANTS, and each
26
27
28

1 of their conduct economically feasible for most in the absence of the class action
2 procedure. Individualized litigation also presents a potential for inconsistent or
3 contradictory judgments and increases the delay and expense to all parties and the
4 court system presented by the case's legal and factual issues. By contrast, the class
5 action device presents far fewer management difficulties and provides the benefits
6 of a single adjudication, economy of scale, and comprehensive supervision by a
7 single court.

10 30. Class action certification is also warranted under Fed. R. Civ P.
11 23(c)(4) because questions of law or fact common to the Class members may be
12 certified and decided by this Court on a class-wide basis.

14 FIRST CAUSE OF ACTION

15 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

16 **(By FRANK LOWENBERG Against All Defendants)**

17 31. Plaintiff hereby incorporates by reference the allegations in the above
18 paragraphs of this Complaint as though fully set forth herein.

19 32. There is a duty of an insurer in every insurance policy to deal in good
20 faith and fairly with its insured. *See Crisci v. Security Ins. Co.* (1967) 66 Cal.2d
21 425, and *Comunale v. Traders & General Ins. Co.* (1958) 50 Cal.2d 654. The
22 breach of the duty of good faith and fair dealing comes both from contract and tort.
23 "[there] is an implied covenant of good faith and fair dealing in every contract
24 [including insurance policies] that neither party will do anything which will injure
25
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1 the right of the other to receive the benefits of the agreement." *Comunale, supra*, at
2 p.658.

3
4 33. Additionally, " an insurer ... who refuses to accept a reasonable
5 settlement within the policy limits in violation of its duty to consider in good faith
6 the interest of the insured in the settlement, is liable for the entire judgment against
7 the insured even if it exceeds the policy limits." *Id.* at p. 661

8
9 34. The insurer has the same duty to act under the contract/ policy when
10 addressing third persons' claims as it does for the insured themselves. *Gruenberg v.*
11 *Aetna Ins. Co.*, (1973) 9 Cal. 3d 566, 510 P.2d 1032, 108 Cal. Rptr. 480, 1973 Cal.

12 LEXIS 210

13
14 35. FRANK and DEFENDANT entered into an insurance contract.

15
16 36. FRANK at all times paid his POLICY premiums on time and therefore
17 did all or substantially all of the significant things that the contract required him to
18 do.

19
20 37. All conditions required for DEFENDANT'S performance had
21 occurred.

22
23 38. DEFENDANT intentionally and deliberately failed to resolve the
24 claim in a timely and professional manner, in bad faith.

25
26 39. DEFENDANTS, by engaging in the foregoing conduct, did not act
27 fairly and in good faith;

28 40. Upon information and belief, Plaintiff, FRANK LOWENBERG has

1 not violated his obligation under the insurance policy that would excuse
2 Defendant's bad faith.

3
4 **SECOND CAUSE OF ACTION**

5 **Breach of Insurance Contract**

6 **(By FRANK LOWENBERG Against All Defendants)**

7
8 41. Plaintiff hereby incorporates by reference the allegations in the above
9 paragraphs of this Complaint as though fully set forth herein.

10 42. FRANK entered into a written insurance contract with DEFENDANT.

11
12 43. FRANK at all times paid his POLICY premiums on time and therefore
13 did all or substantially all of the significant things that the contract required him to
14 do.

15
16 44. DEFENDANT failed and refused, and continues to fail and refuse, to
17 timely and fully tender its performance as required by the POLICY; in that, it has
18 failed to tender to the FRANK all monies due and owing for his insured damage
19 which he suffered as a result of the denial of benefits and otherwise.

20
21 45. Defendant's failure and refusal to honor its contractual obligations
22 include, but are not limited to, breach of contract, failing and intentionally refusing
23 to pay the full amount of Plaintiff's loss, refusing to pay for losses covered under
24 the policy, and failing and intentionally refusing to promptly investigate and resolve
25 Plaintiffs' claims.
26

27
28 46. FRANK has been harmed because he can no longer receive continuous

1 treatment.

2 47. DEFENDANT's failure and refusal to timely perform its obligations
3 has proximately and directly caused FRANK to suffer damages.
4

5 48. DEFENDANT acted with malice, oppression, fraud, and with
6 despicable conduct in conscious disregard of the rights of FRANK. The conduct
7 was the result of DEFENDANT acting for its own personal corporate and economic
8 interests in knowing violation of its duties owed to FRANK.
9

10 **THIRD CAUSE OF ACTION**

11 **Declaratory Relief**

12 **(By FRANK LOWENBERG Against All Defendants)**

13 49. Plaintiff hereby incorporates by reference the allegations in the above
14 paragraphs of this Complaint as though fully set forth herein.
15

16 50. An actual controversy has arisen and now exists between Plaintiff and
17 Defendant.
18

19 51. Plaintiff contends that he purchased a lifetime medical insurance
20 policy from Defendant, that he paid all premiums required to maintain the lifetime
21 medical insurance policy active and in full force, and that such policy included
22 provisions that Plaintiff would be covered for life under the policy.
23

24 52. Individual long-term care insurance policies are contracts between a
25 consumer and an insurer. Such policies are regulated by the California Department
26 of Insurance and have all the consumer protections required under California law.
27
28

1 Individual policies are guaranteed renewable and cannot be cancelled by the
2 insurance company unless the premium is not paid on time. Coverage cannot be
3 cancelled due to an insured's age or health.
4

5 53. Plaintiff contends that Defendants breached the policy and failed to
6 comply with its terms by stating their intention to cancel the policy and end
7 coverage for Plaintiff without having obtained permission to do so by the State of
8 California and despite the fact that Plaintiff had fully complied with all of his
9 obligations pursuant to the policy. In committing this breach and by engaging in
10 bad faith, intentional misrepresentation, and other acts which were in violation of
11 the policy, Defendants caused Plaintiff to suffer extreme emotional distress,
12 economic damage, and other damages in an amount to be proven at trial.
13
14
15

16 54. A judicial declaration invalidating Defendant's decision to cancel the
17 policy for failing to comply with the normal procedures required for cancelling
18 such policies is therefore required as Defendant failed to comply with its
19 obligations under the long term care insurance policy and acted in violation of
20 California law when it communicated its intention to cancel said policy without
21 alleging any breach on the part of Plaintiff and without obtaining consent from the
22 State of California in undertaking to cancel the policy.
23
24

25 55. A judicial declaration is required as Defendant is elderly and requiring
26 medical treatment and would face immediate and severe harm if confronted with
27 the loss of his long term care insurance policy.
28

1 56. A temporary restraining order, preliminary injunction, and permanent
2 injunction is also necessary to prohibit Defendant from effectuating its intent and
3 state desire to cancel the long term care insurance policy during the pendency of the
4 proceedings. Without such injunction, Defendants will carry out their stated intent
5 which will have the effect of denying Plaintiff his rights under the policy to medical
6 care.
7

8
9 57. Plaintiff, FRANK LOWENBERG's health situation remains serious,
10 as he is critically ill, in the middle of treatments which cannot be changed or
11 stopped based on his current condition. Since this is an emergency situation,
12 Plaintiff cannot wait until a further hearing can be scheduled and held and therefore
13 prays for immediate action by this honorable Court to prevent this harm from
14 occurring.
15

16
17 58. Plaintiffs ask the Court for a preliminary injunction hearing, in which
18 the Plaintiff's Policy record will show that Plaintiff, FRANK LOWENBERG, has
19 fully performed his end of the contract, by making all payments to Defendant since
20 the Policy was contracted nearly fifty years ago, on November 17, 1972. Plaintiff
21 ask the Court to maintain the status quo, as Defendant is refusing to confer justly
22 due benefits onto the Plaintiff after forty-five years of accepting Plaintiff FRANK
23 LOWENBERG's payments to Defendant from the State of California.
24
25

26
27 59. The likelihood of Plaintiffs' success on the merits is high, based on
28 what can be proven to the Court through the terms of contract signed by both

1 Plaintiff, FRANK LOWENBERG, Defendant, IL MUTUAL and record of
2 payment. Plaintiffs asks the Court to balance the hardships, weighing in favor the
3 Plaintiffs.
4

5 60. Plaintiff then asks the Court to grant a permanent injunction, as
6 Plaintiff will suffer irreparable injury or harm by Defendant cancelling, not carrying
7 out the contracted Policy, when Plaintiff needs it most, nearly fifty years after
8 contracting and nearly fifty years of payments made to Defendant. Plaintiff,
9 FRANK LOWENBERG will become increasingly ill and may lose his life, which
10 would constitute irreparable harm.
11
12

13 61. Plaintiff, FRANK LOWENBERG claims a property right of the
14 Policy, for which was paid into by Plaintiff FRANK LOWENBERG's sums of
15 money from the State of Michigan for over three years, and from the state of
16 California for over forty-five years. This is in fact a property right, as Plaintiff has
17 contracted for the policy, signed by the IL MUTUAL's President at the time, dated
18 November, 17, 1972, having been fully paid by Plaintiff, FRANK LOWENBERG.
19
20

21 62. Plaintiffs assert that Court's ability to enforce this matter is highly
22 feasible, as it requires one party to make payments or to relinquish money for
23 Plaintiffs' medical care, according to Policy terms.
24

25 63. Plaintiffs ask the Court to balance the hardships of both the Plaintiff
26 and Defendant in the matter, but assert that Plaintiff, FRANK LOWENBERG, an
27 individual, will endure the most hardship, possibly even death, if a corporation,
28

1 Defendant, realizes its intent to cancel said policy, for which has been contracted
2 and paid in full by Plaintiff, depriving Plaintiff of due benefits for personal gain.
3

4
5 **PRAYER FOR RELIEF**

- 6 1. For general damages according to proof;
7
8 2. For benefits due under the Policy;
9
10 3. For prejudgment interest on lost benefits;
11
12 4. For a declaration regarding Plaintiff's rights to future benefits under
the Policy.
13
14 5. For such equitable relief as the Court deems just and proper;
15
16 6. For restitution of the value of the premiums improperly acquired from
Plaintiff;
17
18 7. For attorney's fees and costs of suit incurred pursuant to any applicable
provision of law;
19
20 8. For interest at the legal rate from the date of injury or pursuant to Code
21 of Civil Procedure § 3287;
22
23 9. For punitive damages, according to proof; and

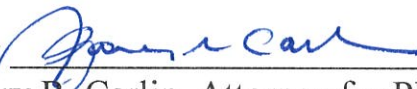
24 ///

25 ///

1 10. For such other and further relief as the Court deems just and proper, to
2 include equitable remedies of 1) Temporary Restraining Order, 2) Preliminary
3 Injunction, and 3) Permanent Injunction.
4

5
6
7 Dated: September 19,
2022

LAW OFFICES GARY R. CARLIN, APC

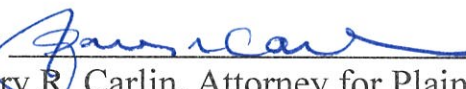
8
9 By 
10 Gary R. Carlin, Attorney for Plaintiffs
11 LORETTA ASHTON LOWENBERG and
FRANK LOWENBERG

12
13 **DEMAND FOR JURY TRIAL**

14
15 Plaintiff hereby respectfully demands a jury trial.

16
17 Dated: September 19,
2022

LAW OFFICES OF GARY R. CARLIN, APC

18
19 By 
20 Gary R. Carlin, Attorney for Plaintiffs
21 LORETTA ASHTON LOWENBERG and
FRANK LOWENBERG

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

FRANK LOWENBERG, individually and on behalf of
all members of the public similarly situated,

Plaintiff(s)

v.

ILLINOIS MUTUAL LIFE INSURANCE COMPANY,
an Illinois corporation; and DOES 1 through 50,
inclusive

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ILLINOIS MUTUAL LIFE INSURANCE COMPANY
AGENT FOR SERVICE OF PROCESS: C T CORPORATION SYSTEM
300 SW ADAMS ST.
PEORIA, IL 61634

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: LAW OFFICES OF GARY R. CARLIN, APC
301 EAST OCEAN BLVD., SUITE 1550
LONG BEACH, CA 90802

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [‘Emergency Situation’: Illinois Mutual Cashes In by Canceling Lifelong Health Insurance Policies, Class Action Alleges](#)
