

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY**

J. GREGORY SHELDON, individually and on	)	
behalf of others similarly situated,	)	
	)	Case No. _____
Plaintiff,	)	
	)	Division _____
vs.	)	
	)	
KANSAS CITY LIFE INSURANCE	)	
COMPANY	)	
	)	
Serve: A Craig Mason Jr (Registered Agent)	)	
3520 Broadway	)	
Kansas City, MO 64111	)	
	)	
Defendant.	)	

**PETITION**  
**(Civil Action Codes CA, EA, EC)**

Plaintiff J. Gregory Sheldon, by and through his counsel of record, states and alleges the following claims against Defendant Kansas City Life Insurance Company.

**NATURE OF ACTION**

1. This is a class action for breach of contract to recover amounts that Defendant charged Plaintiff and the proposed class in excess of amounts authorized by the express terms of their life insurance contracts. Plaintiff's claims are supported by the written provisions of his contract, which are materially the same as those of other contracts held by the members of the proposed class.

2. The terms of Plaintiff's life insurance contract provide for a "contract value" consisting of monies held in trust by Defendant for Plaintiff, and Defendant is contractually bound to deduct from the contract value only those charges that are explicitly identified and authorized by the contract's terms.

3. Despite unambiguous language in the contract, which is a fully integrated insurance agreement, Defendant breaches the contract by deducting charges from Plaintiff's contract value in excess of the amounts specifically permitted by the contract. Defendant has breached the contract repeatedly and continues to do so.

4. Defendant has caused material harm to Plaintiff and the proposed class by improperly draining monies they have accumulated in the contract values of their contracts. Every unauthorized dollar taken from contract owners is one less dollar that can be used to: earn interest; pay future premiums; increase the death benefit; use as collateral for contract loans; or withdraw as cash.

5. Plaintiff brings this case as a class action under Missouri Rule of Civil Procedure 52.08, individually and on behalf of the following persons (the "class"):

All persons who own or owned a life insurance contract, that is a security, issued or administered by Defendant, the terms of which provide or provided for: (1) an insurance or cost of insurance charge or deduction calculated using a rate that is determined based on Defendant's expectations as to future mortality experience; (2) additional but separate contract charges, deductions, or expenses; (3) an investment, interest-bearing, or savings component; and (4) a death benefit.

6. On behalf of himself and the class, Plaintiff seeks to recover damages, as well as declaratory and injunctive relief.

### **PARTIES**

7. Plaintiff J. Gregory Sheldon resides in Kansas City, Missouri, and is a citizen of the State of Missouri.

8. Defendant Kansas City Life Insurance Company is a corporation incorporated under the laws of the State of Missouri, with its principal place of business in Kansas City, Missouri.

### **JURISDICTION AND VENUE**

9. Jurisdiction and venue are proper in this Court.

10. This Court has personal jurisdiction over Defendant pursuant to RSMo. § 506.500(1), (2), and/or (5) because the claims alleged herein against Defendant arise from Defendant's (1) transaction of business within Missouri, (2) making of contracts within Missouri, and (5) contracting to insure persons located within Missouri at the time of contracting.

11. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to Article V, § 14(a), of the Missouri Constitution. And, jurisdiction is vested in the Circuit Court of Jackson County, Missouri in that the damages are in excess of the monetary jurisdictional minimum of the Circuit Court.

12. Venue is proper in this Court pursuant to RSMo. § 375.1803.1 because Defendant's registered office is located in Jackson County, Missouri. Accordingly, pursuant to RSMo. §§ 375.1800.1 and 508.010.17, Defendant resides in Jackson County, Missouri. Venue is proper at Kansas City pursuant to RSMo. § 478.461.2.

13. This case is not removable to federal court. There is no federal question jurisdiction pursuant to 28 U.S.C. § 1331 in that Plaintiff's claims assert no federal question or federal statute violation. In addition, there is no federal diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) in that Plaintiff is a citizen of Missouri and the Class has been defined to include citizens of Missouri and Defendant is a citizen of Missouri. Moreover, there is no federal diversity jurisdiction under 28 U.S.C. § 1332(d)(2) because this action solely involves claims: concerning covered securities; or that relate to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to a security, and is therefore excepted from federal diversity jurisdiction pursuant to 28 U.S.C. § 1332(d)(9). This action is therefore not removable to federal court. *See Lincoln*

*Nat'l. Life Ins. Co. v. Bezich*, 610 F.3d 448 (7th Cir. 2010); *see also Eminence Inv'rs, L.L.L.P. v. Bank of New York Mellon*, 782 F.3d 504 (9th Cir. 2015).

### **FACTUAL BACKGROUND**

14. Plaintiff purchased from Defendant a “Flexible Premium Variable Life Insurance Contract Nonparticipating” bearing contract number 5020182, with a contract date of December 28, 2000, and an initial specified amount of \$100,000 (the “Contract”). A true and accurate copy of the Contract is attached hereto as Exhibit A, and incorporated herein by reference.

15. Plaintiff has always been both the “owner” and the “insured” under the Contract, which remains in force.

16. Defendant is the effective and liable insurer of the Contract, and contracts meeting the class definition (the “Class Contracts”).

17. The entire contract between Plaintiff and Defendant consists of the Contract, the application, and any supplemental applications. Ex. A at p. 12.

18. The terms of the Contract are not subject to individual negotiation and are materially the same for all contract owners.

19. Only the President, Vice President, Secretary, or Assistant Secretary of Defendant has authority to change a provision of the Contract, and any such “approved change must be endorsed on or attached to” the Contract. Ex. A at p. 17.

20. Insurance agents do not have “authority to make any changes or waive any of the terms” of the Contract. Ex. A at p. 17; *see also* Plaintiff’s application included in Ex. A at p. 10 (“No agent has the authority to waive any of the [Defendant]’s rights or requirements, or to make or change any contract.”).

21. Defendant has issued and administered, and currently administers, all aspects of the Contract and Class Contracts, including collecting premiums, and determining, assessing, and deducting contract charges.

22. Plaintiff's Contract and the Class Contracts are permanent life insurance, meaning their purpose is to provide insurance protection for the life of the insured.

23. In addition to a death benefit, the Contract and Class Contracts provide contract owners an investment, savings, or interest-bearing component that accumulates value over time. Although the savings component in certain of the Class Contracts may be identified by a different name, it is identified in the Contract and throughout this Complaint as the "contract value."

24. Generally, under variable universal life contracts like those owned by Plaintiff and class members, premiums are deposited into the contract value of the contract, and the insurer deducts certain amounts directly from premium payments and monthly deductions from the contract value as disclosed and authorized by the contract.

25. The funds held in the contract value are contract owner property that Defendant holds in trust for its contract owners.

26. The Contract and Class Contracts expressly identify how the contract value is calculated:

As of the contract date the contract value equals:

- (1) the initial net premium paid; less
- (2) the monthly deduction, as defined in Section 3.17 of this contract.

On any day after the contract date, the contract value is equal to the fixed account value (including the loan account value) plus the variable account value.

Ex. A. at p. 17.

27. The Contract and Class Contracts expressly identify how the fixed account value is calculated:

As of the contract date the fixed account value equals:

- (1) the portion of the net premium allocated to the fixed account; less
- (2) the portion of the monthly deduction allocated to the fixed account.

On each valuation day the fixed account value will be equal to:

$$A + B + C - D - E - F$$

“A” is the fixed account value on the preceding valuation day plus interest from the preceding valuation day to the date of calculation.

“B” is the portion of the net premiums allocated to the fixed account and received since the preceding valuation day, plus interest from the date such net premiums were received to the date of calculation.

“C” is the amount of any transfers from the subaccounts to the fixed account since the preceding valuation day, plus interest on such transferred amounts from the effective dates of such transfers to the date of calculation.

“D” is the amount of any transfers from the fixed account to the subaccounts since the preceding valuation day, plus interest on such transferred amount from the effective dates of such transfers to the date of calculation.

“E” is the amount of any partial surrenders and any applicable surrender charge deducted from the fixed account since the preceding valuation day, plus interest on these surrendered amounts from the effective date of the partial surrenders to the date of calculation.

“F” is a pro-rata share of the monthly deduction, as described in Section 9.6, Monthly Deduction, for the month beginning on that monthly anniversary day.

Ex. A. at p. 17.

28. The Contract and Class Contracts expressly identify how the variable account value is calculated:

The variable account value is the sum of the values of the subaccounts under this contract.

As of the allocation date the value of each subaccount equals:

- (1) the portion of the initial net premium allocated to the subaccount; less

(2) the pro-rata share of the monthly deduction, and the mortality and expense risk charge allocated to the subaccounts.

Ex. A. at p. 18.

29. The Contract expressly defines the specific charges that Defendant may assess and deduct from Plaintiff's premium payments and the Contract's contract value. Defendant may assess and deduct only those charges allowed by the Contract.

30. The Contract authorizes Defendant to deduct a premium expense charge of 2.25% from each premium payment. Ex. A at p. 5.

31. The Contract also authorizes Defendant to deduct a mortality and expense risk charge of 0.90% (on an annual basis) of the average daily net assets of the variable account. Ex. A at p. 5.

32. The Contract defines its "Mortality and Expense Risk Charge" as follows:

This is a charge [Defendant] deduct[s] from the assets of the subaccounts to compensate [Defendant] for assuming the mortality and expense risks for this contract. This charge is shown in Section 1, Contract Data.

Ex. A at p. 10.

33. The Contract also authorizes Defendant to take from the contract value a "Monthly Deduction." The Monthly Deduction is:

The amount [Defendant] deduct[s] on the monthly anniversary day from the contract value to pay the cost of insurance, monthly expense charge, any applicable increase expense charge, and the cost of any additional benefits provided by riders for the month beginning on that monthly anniversary day.

Ex. A at p. 10.

34. The Contract and Class Contracts expressly identify how the Monthly Deduction is calculated:

[Defendant] will make a monthly deduction from the contract value on each monthly anniversary day equal to the sum of the following:

(1) the cost of insurance, as described in Section 9.7, Cost of Insurance;

(2) the monthly expense charge and any applicable increase expense charge, as shown in Section 1, Contract Data; and

(3) the cost of any additional benefits provided by riders for the contract month.

Ex. A at p. 18.

35. The Contract authorizes Defendant to deduct a monthly expense charge in the amount of \$26 per month for the first contract year and \$6 per month after the first contract year for all remaining contract years. Ex. A at p. 5.

36. The Contract defines its “Monthly Expense Charge” as follows:

This is a charge [Defendant] deduct[s] from the contract value on each monthly anniversary day to compensate [Defendant] for the costs associated with administration of the contract. This charge is shown in Section 1, Contract Data.

Ex. A at p. 10.

37. The Contract also authorizes Defendant to deduct an increase expense charge of \$20 per month for 12 months following each increase in specified amount. Ex. A at p. 4.

38. In addition to setting the maximum amounts Defendant is authorized to deduct for expense charges, the Contract expressly identifies a separate cost of insurance charge deducted from the contract value each month.

39. The “Cost of Insurance” is defined in the Contract as:

The charge [Defendant] make[s] for providing pure insurance protection using the current cost of insurance rates for this contract. It does not include the cost of any additional benefits provided by riders.

Ex. A at p. 10.

40. The Contract identifies how the cost of insurance is calculated:

The cost of insurance on any monthly anniversary day is equal to:

$$\underline{Q \times (R - S)}$$



1000

“Q” is the cost of insurance rate (as described in Section 2, Monthly Cost of Insurance Rates).

“R” is the Insured’s death benefit on that day divided by no less than 1.0032737.

“S” is the contract value, as described in Section 9.2, Contract Value, prior to subtracting the cost of insurance.

Ex. A at p. 18.

41. The Contract discloses how the monthly cost of insurance rates (“Q” in the above paragraph) will be determined:

The monthly cost of insurance rates used in calculating the cost of insurance on each monthly anniversary day are based on the Insured’s age, number of completed contract years, sex, and risk class.

The cost of insurance rates used will be determined by [Defendant] based on [Defendant’s] expectations as to future mortality experience. Any change in the current cost of insurance rates will be on a uniform basis for Insureds of the same age, sex and risk class whose contracts have been in force the same length of time. The current cost of insurance rates will never be increased to recover losses incurred, or decreased to distribute gains realized by [Defendant] prior to the change.

The cost of insurance rates used will not exceed those shown in the tables below. These rates are based on the 1980 Commissioners Standard Ordinary Smoker or Nonsmoker Mortality Table, age last birthday. The guaranteed maximum cost of insurance rates for special risk classes will be adjusted appropriately.

Ex. A at p. 8.

42. Age, number of completed contract years, sex, and risk class are factors commonly used within the life insurance industry to determine the mortality expectations of an insured or group or class of insureds.

43. Because the Contract specifically identifies age, number of completed contract years, sex, and risk class in the cost of insurance provisions, and expressly states that the cost of insurance rates actually used will be determined based on Defendant’s expectations as to future

mortality experience, the parties agreed that Defendant's mortality expectations are what determine cost of insurance rates under the Contract.

44. Like the Contract, the Class Contracts disclose similar periodic deductions that Defendant is authorized to take from contract owners' contract values, including specifically, cost of insurance charges that are calculated using rates that Defendant must determine based on its expectation as to future mortality experience and separate expense charges.

45. Although the Contract and Class Contracts authorize Defendant to determine cost of insurance rates based on its "expectations as to future mortality experience," based on information and belief, Defendant does not determine cost of insurance rates based on its "expectations as to future mortality experience." Defendant considers and uses other unauthorized factors to determine such rates, including without limitation, expenses.

46. By failing to determine cost of insurance rates based on its "expectations as to future mortality experience," Defendant causes those rates to be higher than what is explicitly authorized by the Contract and Class Contracts.

47. By failing to determine cost of insurance rates based on its expectations as to future mortality experience, Defendant repeatedly breaches the Contract and Class Contracts by impermissibly inflating those rates such that they exceed Defendant's "expectations as to future mortality experience."

48. The higher cost of insurance rates used by Defendant cause the monthly cost of insurance charge to be greater than what is explicitly authorized by the Contract and Class Contracts. Consequently, Defendant withdraws from the contract value amounts for the cost of insurance that are greater than those authorized under the Contract and Class Contracts.

49. Each of Defendant's past and future cost of insurance deductions from the contract values of Plaintiff and the class constitutes separate breaches of contract.

50. As a direct and proximate result of Defendant's breaches, Plaintiff and the class have been damaged, and those damages are continuing in nature in that Defendant has deducted and will continue to deduct cost of insurance charges from the contract values of contract owners in unauthorized amounts.

51. By loading cost of insurance rates with expense experience factors, Defendant repeatedly breaches the Contract and Class Contracts by impermissibly deducting amounts from the contract values of Plaintiff and the class in excess of the expense charge amounts expressly authorized by the Contract and Class Contracts.

52. Defendant's inclusion of expense loads in the cost of insurance rates is not authorized under the expense provisions of the Contract. Indeed, Defendant charged contract owners the expense amounts authorized under the Contract's and Class Contracts' expense provisions, and therefore, did not have authorization to deduct additional expenses through cost of insurance charges.

53. Each of Defendant's deductions for expenses in excess of the maximum expense charge amounts constitutes separate breaches of contract.

54. As a direct and proximate result of Defendant's breaches, therefore, Plaintiff and the class have been damaged and those damages are continuing in nature in that Defendant has deducted and will continue to deduct expenses from the contract values of Plaintiff and the class in amounts not authorized by the Contract and Class Contracts.

55. The nature of Defendant's conduct is such that Plaintiff and each member of the class would be unaware that Defendant was taking inflated charges and improper amounts from

contract values. Defendant possesses the actuarial information and equations underlying the computation of rates and charges for the Contract. The cost of insurance rates used to calculate cost of insurance charges are not disclosed to contract owners, nor are the components or factors used to determine those rates. And, even if they were, Plaintiff and the members of the class would lack the knowledge, experience, or training to reasonably ascertain how Defendant calculated the rates and charges included in the Contract.

56. Because of its superior knowledge of the aforementioned computations, Defendant was aware that Plaintiff and each member of the class did not know about the improper deductions. Defendant sent Plaintiff and the class annual statements each year that identified each month's cost of insurance charge but did not disclose the factors Defendant considered and used to determine the cost of insurance rates. Plaintiff did not learn of Defendant's breaches until after he had engaged counsel, who consulted an actuarial expert.

57. Plaintiff did not discover, nor could he have discovered through reasonable diligence, the facts establishing Defendant's breaches or the harm caused thereby.

### **CLASS ACTION ALLEGATIONS**

58. Pursuant to Missouri Rules of Civil Procedure 52.08(a), 52.08(b)(1), 52.08(b)(2), 52.08(b)(3) and/or 52.08(c)(4), Plaintiff brings this action on behalf of himself and all contract owners similarly situated, and seeks to represent the following class:

All persons who own or owned a life insurance contract, that is a security, issued or administered by Defendant, the terms of which provide or provided for: (1) an insurance or cost of insurance charge or deduction calculated using a rate that is determined based on Defendant's expectations as to future mortality experience; (2) additional but separate contract charges, deductions, or expenses; (3) an investment, interest-bearing, or savings component; and (4) a death benefit.

59. Excluded from the class is Defendant, any entity in which Defendant has a controlling interest, any of the officers, directors, or employees of the Defendant, the legal

representatives, heirs, successors, and assigns of the Defendant, anyone employed with Plaintiff's counsels' firms, any Judge to whom this case is assigned, and his or her immediate family. Also excluded from the class is any contract that explicitly discloses all of the factors on which Defendant based its determination of cost of insurance rates and charges.

60. Plaintiff's claims satisfy the numerosity, typicality, adequacy, commonality and superiority requirements under Missouri Rule of Civil Procedure 52.08, as set forth more fully herein.

61. The persons who fall within the class number in at least the hundreds, and thus the numerosity standard is satisfied. Because class members are geographically dispersed across the country, joinder of all class members in a single action is impracticable.

62. Class members are readily ascertainable from information and records in Defendant's possession, custody, or control. Notice of this action can readily be provided to the class.

63. There are questions of law and fact common to the claims of Plaintiff and the class that predominate over any questions affecting only individual class members. The questions of law and fact arising from Defendant's actions that are common to the class include, without limitation:

- (a) Whether Defendant is permitted by the Class Contracts to determine cost of insurance rates that are not based on its expectations as to future mortality experience;
- (b) Whether Defendant determines cost of insurance rates that are not based on its expectations as to future mortality experience;
- (c) Whether Defendant is permitted by the Class Contracts to consider and use unauthorized factors to determine the monthly cost of insurance rates used to calculate cost of insurance charges;

- (d) Whether Defendant considered, added, included, used, or relied on unauthorized factors to determine the monthly cost of insurance rates used to calculate cost of insurance charges;
- (e) Whether Defendant is permitted by the Class Contracts to charge expense amounts to contract owners in excess of the amounts disclosed in the Class Contracts;
- (f) Whether Defendant charged expense amounts to contract owners in excess of the amounts disclosed in the Class Contracts;
- (g) Whether Defendant breached the terms of the Class Contracts;
- (h) Whether the class sustained damages as a result of Defendant's breaches of contract;
- (i) Whether the class is entitled to damages, restitution, and/or other equitable relief; and
- (j) Whether the class, or a subset of the class, is entitled to declaratory relief stating the proper construction and/or interpretation of the Class Contracts.

64. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the claims asserted herein.

65. Plaintiff's claims are typical of the claims of the class in that Plaintiff and the class members all purchased contracts containing the same or similar limitations on the amounts that Defendant could charge its contract owners under the express terms of the Contract and Class Contracts.

66. Plaintiff will fairly and adequately protect and represent the interests of the proposed class, because his interests are aligned with, and not antagonistic to, those of the proposed class, and he is represented by counsel who are experienced and competent in the

prosecution of class action litigation, and have particular expertise with class action litigation on behalf of owners of universal life insurance contracts.

67. Maintenance of this action as a class action is a fair and efficient method for adjudicating this controversy. It would be impracticable and undesirable for each member of the class to bring a separate action. Because of the relatively small size of individual class members' claims, absent a class action, most class members would likely find the cost of litigating their claims prohibitively high and would have no effective remedy. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

**COUNT I: BREACH OF CONTRACT**  
**(Cost of Insurance Charge)**

68. The preceding paragraphs are incorporated by reference as if fully alleged herein.

69. Plaintiff and the class purchased life insurance contracts—the Contract and Class Contracts—from Defendant.

70. The Contract and Class Contracts are valid and enforceable contracts between the Defendant and Plaintiff and class members.

71. Plaintiff and the class substantially performed their obligations under the terms of the Contract and Class Contracts.

72. Defendant considers and uses unauthorized factors to determine its monthly cost of insurance rates.

73. Defendant does not determine cost of insurance rates based on its expectations as to future mortality experience.

74. Defendant impermissibly causes cost of insurance rates to be higher for the Contract and the Class Contracts.

75. Because Defendant calculates cost of insurance charges using monthly cost of insurance rates that are higher than those authorized by the Contract and Class Contracts, Defendant has deducted and will deduct cost of insurance charges from the contract values of Plaintiff and the class in amounts greater than those authorized by their contracts.

76. Defendant's practice of deducting charges in amounts not authorized by the Contract and Class Contracts results in repeated breaches of the contracts.

77. As a direct and proximate result of Defendant's breaches, Plaintiff and the class have sustained damages that are continuing in nature in an amount to be determined at trial.

**COUNT II: BREACH OF CONTRACT**  
**(Expense Charges)**

78. The preceding paragraphs are incorporated by reference as if fully alleged herein.

79. By loading monthly cost of insurance rates with expense factors, Defendant impermissibly deducts expense charges from the contract values of Plaintiff and the class in amounts in excess of the maximum expense charges expressly authorized by their contracts.

80. By deducting unauthorized expense charges from the contract values of Plaintiff and the class, Defendant has breached and continues to breach the Contract and Class Contracts.

81. As a direct and proximate result of Defendant's breaches, Plaintiff and the class have sustained damages that are continuing in nature in an amount to be determined at trial.

**COUNT III: BREACH OF CONTRACT**  
**(Improving Expectations as to Future Mortality Experience)**

82. The preceding paragraphs are incorporated by reference as if fully alleged herein.



83. The Contract and Class Contracts require Defendant to determine cost of insurance rates based on its expectations as to future mortality experience.

84. Although its mortality expectations have generally improved because people are living longer today than when the Contract and Class Contracts were initially priced, Defendant has, on information and belief, failed to reduce monthly cost of insurance rates for the Contract and Class Contracts to reflect those improved mortality expectations.

85. Defendant's failure to reduce these rates even though its expectations of future mortality experience improved constitutes breaches of the Contract and Class Contracts.

86. As a direct and proximate result of Defendant's breaches, Plaintiff and the class have sustained damages that are continuing in nature in an amount to be determined at trial.

#### **COUNT IV: DECLARATORY AND INJUNCTIVE RELIEF**

87. The preceding paragraphs are incorporated by reference as if fully alleged herein.

88. An actual controversy has arisen and now exists between Plaintiff and the class, on the one hand, and Defendant, on the other, concerning the respective rights and duties of the parties under the Contract and Class Contracts.

89. Plaintiff contends that Defendant has breached the Contract and Class Contracts in the following respects:

- (a) By failing to determine cost of insurance rates based on its expectations as to future mortality experience, Defendant impermissibly increased monthly cost of insurance rates for the Contract and Class Contracts and, as a result, withdrew cost of insurance charges from the contract values of Plaintiff and the class in an amount greater than those authorized by the Contract and Class Contracts.
- (b) By inflating monthly cost of insurance rates with unauthorized expense factors, Defendant impermissibly deducted expenses from the contract values of Plaintiff and the class in amounts in excess of the maximum expense charges expressly authorized by the Contract and Class Contracts.

- (c) By failing to reduce cost of insurance rates to reflect Defendant's improving expectations as to future mortality experience.

90. Plaintiff therefore seeks a declaration of the parties' respective rights and duties under the Contract and Class Contracts and requests the Court declare the aforementioned conduct of Defendant unlawful and in material breach of the Contract and Class Contracts so that future controversies may be avoided.

91. Pursuant to a declaration of the parties' respective rights and duties under the Contract and Class Contracts, Plaintiff further seeks an injunction enjoining Defendant (1) from continuing to engage in conduct in breach of the Contract and Class Contracts, and from continuing to collect unlawfully inflated charges in violation of the Contract and Class Contracts; and (2) ordering Defendant to comply with the terms of the Contract and Class Contracts in regards to its assessment of charges against Plaintiff and class members' contract values.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, requests relief and judgment against Defendant as follows:

- (a) That the Court enter an order certifying the class, appointing Plaintiff as a representative of the class, appointing Plaintiff's counsel as class counsel, and directing that reasonable notice of this action, as provided by Missouri Rule of Civil Procedure 52.08(c)(2), be given to the class;
- (b) For a judgment against Defendant for the causes of action alleged against it;
- (c) For damages in an amount to be proven at trial;
- (d) For a declaration that Defendant's conduct as alleged herein is unlawful and in material breach of the Contract and Class Contracts;

- (e) For appropriate injunctive relief, enjoining Defendant from continuing to engage in conduct related to the breach of the Contract and Class Contracts;
- (f) For pre-judgment and post-judgment interest at the maximum rate permitted by law;
- (g) For Plaintiff's attorney's fees;
- (h) For Plaintiff's costs incurred; and
- (i) For such other relief in law or equity as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable.

October 1, 2019

Respectfully submitted,

**STUEVE SIEGEL HANSON LLP**

*s/ Patrick J. Stueve*

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