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9 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

11
12 JOHN S. LAVIOLETTE, a resident and
13 citizen of California,

14 Plaintiff,

15 vs.

16 RELIASTAR LIFE INSURANCE
17 COMPANY and DOES 1-50,

18 Defendants.

Case No.: BC394945

COMPLAINT FOR

1. Declaratory Relief
2. Breach of Duty of Good Faith and Fair Dealing

DEMAND FOR JURY TRIAL

21 **INTRODUCTION**

22 1. This action arises from ReliaStar Life Insurance Company's ("ReliaStar")
23 illegal and unfair practice of engaging in post-claims underwriting and use of
24 inapplicable policy provisions to delay payment of claims.

25 2. Plaintiff, John LaViolette, is the custodian of a \$10,000,000 life insurance
26 policy (No. 3102577R) ("Policy") taken out by the Insured for the benefit of Insured's
27 now three-year old child. The Insured died in January 2008.

1 designates those defendants by these fictitious names. Each of the defendants sued
2 herein as a DOE is legally responsible in some manner for the events and happenings
3 referred to and proximately caused the injuries suffered by plaintiff. Plaintiff will amend
4 this complaint to allege their true names and capacities when the same becomes known
5 to plaintiff.

6 9. Plaintiff is informed and believes and thereon alleges that at all relevant
7 times each of the defendants was the agent and employee of each of the remaining
8 defendants, and in doing the things hereinafter alleged was acting within the course and
9 scope of such agency and employment.

10 **FACTUAL BACKGROUND**

11 10. On or about June 19, 2007, the defendants issued and delivered to the
12 Insured in the State of California its Policy of life insurance (No. 3102577R). In
13 consideration for the payment to the defendants of the premiums specified in the Policy,
14 which the Insured agreed to pay, the defendants insured the life of the Insured in the
15 sum of \$10,000,000 (Ten Million Dollars).

16 11. Plaintiff is the primary beneficiary on the Policy as custodian for the benefit
17 of a minor, under the California Uniform Transfers to Minors Act, and it is in this capacity
18 that plaintiff brings this action.

19 12. The Policy provides as follows:
20 "When the Insured dies, we will pay the Death
21 Benefit to the Primary Beneficiary or to the
22 Contingent Beneficiary if no Primary
23 Beneficiary is then living."

24 13. The Insured died of accidental causes on January 22, 2008.

25 14. At the time of the Insured's death, the Insured had duly paid all the
26 premiums according to the terms of the Policy, and the Policy was in full force and
27 effect.
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15. The Policy provides as follows:

“CONTESTABILITY: We have a right to contest the validity of this Policy based on material misrepresentations made in the initial application for two years from the Issue Date, during which time the Insured was living. Thereafter, we may contest this Policy only if premiums due are not paid by the end of the Grace Period.”

16. By letter dated January 31, 2008, the defendants advised plaintiff as follows:

“We have received notice of the death of [the Insured] . . . Because the Insured died within two years of the date the policy was issued, we will need to verify that all the questions in the application for insurance were answered correctly. This is provided under the contestability provision of the policy . . . Further consideration will be given to this claim upon receipt of the requested documents.”

Along with the letter, defendants mailed plaintiff an “Authorization to Release Information” form instructing plaintiff to identify “all physicians who attended to the individual and all hospitals or institutions where the individual was treated” since November 16, 1996. The form also instructed the plaintiff to list Insured’s primary care physician and pharmacy. Under applicable California law, this conduct constitutes post-claims underwriting and is prohibited.

1 17. Both the Insured and the plaintiff duly performed all of the conditions of the
2 Policy on their part.

3 **FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF**

4 **(Against All Defendants)**

5 18. Plaintiff refers to paragraphs 1 through 17, inclusive, and incorporates
6 those paragraphs as though set forth in full in this cause of action.

7 19. In June 2007, the insured completed the application for insurance.
8 Defendants reviewed and accepted the application, then accepted insured's premium
9 payments.

10 20. After receiving notice of the Insured's death, defendants have sought to
11 engage in post-claims underwriting by instructing plaintiff to identify "all physicians who
12 attended to the individual and all hospitals or institutions where the individual was
13 treated" during the last eleven years along with Insured's primary care physician and
14 pharmacy.

15 21. Based on the plain language of the contestability clause of the Policy,
16 which states that the defendants may "contest the validity of th[e] Policy based on
17 material misrepresentations made in the initial application for two years from the Issue
18 Date, during which time the Insured was living," the plaintiff contends that the
19 defendants can no longer contest the validity of the Policy because the Insured is
20 deceased.

21 22. The defendants contend that they have the right to contest the policy for a
22 period of two years whether or not the insured is living or dead.

23 23. An actual controversy therefore exists between the parties with regard to
24 the interpretation of the contestability clause in the policy.

25 24. Plaintiff seeks declaration from the Court as to the interpretation of the
26 contestability clause and the rights and obligations of the parties thereunder.
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1 32. Plaintiff alleges on information and belief that defendants acted
2 maliciously, fraudulently and/or oppressively with the intention of depriving plaintiff of
3 the insurance policy benefits. Accordingly, plaintiff is entitled to recover exemplary and
4 punitive damages under California Civil Code, Section 3294, in an amount according to
5 proof, in order to punish and to make an example of defendants, and to deter such
6 conduct in the future.

7 WHEREFORE, plaintiff prays for judgment as follows:

- 8 1. For a declaration of the rights and obligations of the parties under the
9 insurance policy;
- 10 2. For general and consequential damages, including mental and emotional
11 distress, insurance policy benefits, interest, attorneys' fees and other
12 damages to be proven at trial;
- 13 3. For punitive and exemplary damages;
- 14 4. For costs of suit incurred herein; and
- 15 5. For such other and further relief as the Court deems just and proper.

16 Dated: July 23, 2008

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DEMAND FOR JURY TRIAL

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Plaintiff hereby demands a jury trial on all causes of action that are triable to a jury.

Dated: July 23, 2008

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