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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

PAULINE FAIRBANKS, on behalf of herself)
and all others similarly situated,)

Plaintiffs,)

vs.)

FARMERS NEW WORLD LIFE INSURANCE)
COMPANY, FARMERS GROUP, INC., and)
DOES 1-100, INCLUSIVE,)

Defendants.

CASE NO. BC305603
(The Honorable Anthony Mohr, Presiding)

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR COMPENSATORY
AND PUNITIVE DAMAGES AND
INJUNCTIVE RELIEF FOR:**

1. **Violations of *Business and Professions Code* Section 17200;**
2. **Breach of Contract;**
3. **Breach of the Implied Covenant of Good Faith and Fair Dealing;**
4. **Negligent Misrepresentation;**
5. **Fraudulent Inducement; and**
6. **Violations of Consumer Legal Remedies Act**

EXHIBIT INDEX

Text has been underlined for easy identification.
 True and correct copies of all exhibits have been provided.

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<u>Exh. No.</u>	<u>Description</u>	<u>Status</u>	<u>Page Nos.</u>
1	<i>Ms. Fairbank's FFUL policy</i>		4, 5, 8, 21, 23, 24, 35, 36, 39, 40, 44, 45, 55, 56
2	<i>Ms. Fairbank's FUL policy</i>		4, 37, 44, 51, 56
3	<i>5-7-2003 Joel Kuni Deposition (pg. 53)</i>	Excerpt	4, 44
4	<i>February 17, 1993 Interest Committee Minutes</i>	Excerpt	4, 19, 29, 44
5	<i>1991 Agent's Guide Highlights of Important Provisions</i>	Excerpt/Sealed	5, 6, 8, 24, 44
6	<i>1996 Agent's Guide</i>	Excerpt/Sealed	5, 6, 8, 22, 24, 44, 51
7	<i>5-7-2003 Joel Kuni Deposition (pg. 109)</i>	Excerpt	5, 20, 27, 40, 44
8	<i>Ms. Fairbank's Annual Statement</i>		5, 6, 24, 37, 44, 55
9	<i>Farmer's Flexible Universal Life Sales Guide</i>	Excerpt	6, 44
10	<i>May 22nd and May 23rd Product Development Committee Meeting Minutes</i>	Redacted/Sealed	6, 23, 44
11	<i>10/12/95 Product Development Committee Meeting Minutes</i>	Redacted/Sealed	7, 14, 20, 44
12	<i>3-2-2004 David Demmon deposition (pg. 67)</i>	Excerpt	7, 22, 37, 44
13	<i>3-2-2004 David Demmon deposition (pgs. 31, 11, 12)</i>	Excerpts	7, 44
14	<i>August 22, 1984 Inter-Office Correspondence</i>	Sealed	14, 44
15	<i>March 21, 1994 correspondence from Bruce McCartney to State of</i>		

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16	<i>Washington Insurance Department</i>	14, 44
	<i>12-6-1995 Product Development Committee Minutes</i>	Sealed	19, 44
17	<i>5-16-1996 Product Development Committee Minutes</i>	Sealed	19, 44
18	<i>Farmers Universal Life First Issued 10-84</i>	Sealed	21, 44
19	<i>FNWL Farmers Flexible Universal Life Introduction Date April 1, 1988</i>	Sealed	21, 44
20	<i>FNWL Farmers Flexible Universal Life Instruction Date April 1, 1988</i>	Sealed	21, 44
21	<i>July 27, 1987 Product Development Committee Minutes</i>	Sealed	22, 44
22	<i>May 11, 1987 Product Development Committee Minutes</i>	Sealed	23, 44
23	<i>November 29, 1983 Inter-Office Correspondence</i>	Sealed	27, 44
24	<i>June 22, 1984 Inter-Office Correspondence</i>	Sealed	27, 44
25	<i>March 10, 1986 Inter-Office Correspondence</i>	Sealed	27, 44
26	<i>November 17, 1994 Interest Committee Minutes</i>	Sealed	29, 44
27	<i>November 10, 1995 Interest Committee Minutes</i>	Sealed	29, 44
28	<i>Consumer's Notice and Demand</i>	44, 59

COMES NOW Plaintiff Pauline Fairbanks on behalf of herself and all others similarly situated,

1 and demanding trial by jury, complain and allege upon information and belief as follows:

2
3 and alleges as follows:

4 **THE PARTIES**

5 **PLAINTIFF**

6
7 1. Plaintiff, PAULINE FAIRBANKS is, and at all relevant times, was, a resident of the
8 County of Los Angeles, State of California. During the Class Period, Plaintiff PAULINE
9 FAIRBANKS purchased both a Farmers' Universal Life and Flexible Premium Universal Life
10 policies for her own use and not for re-sale. As a Farmer's Agent, Ms. Fairbanks only received two to
11 three hours training respectively on FFUL and FUL policies. Ms. Fairbanks relied on the Farmer's
12 computer to inform her of the fact that the planned premiums were \$70.00 per month. The computer
13 print-out was ambiguous and contained inadequate disclaimers and definitions to inform a reasonable
14 person, including even Farmer's Agents, that they would lose their insurance when they needed it the
15 most, as more fully explained in Paragraph 32(b) 26, sections i, j, p and t, (at pgs. 14, 15, 19, 21-24 of
16 this Complaint) and Paragraphs 63 (at pg. 35 of this Complaint) and 64, sections a-f (at pgs. 36 & 37
17 of this Complaint). Ms. Fairbanks paid more than the minimum premium, according to the policy
18 specifications page (last page) of her FFUL policy.

19 **Exhibit 1**= Ms. Fairbank's FFUL policy number 004179091P

20 **Exhibit 2** = Ms. Fairbank's FUL policy number 004179091X

21
22 2. As admitted by Joel Kuni, Farmer's Product Development Actuarial Manager, in his
23 deposition of 5-7-2003, at page 53, (a true and correct copy of Mr. Kuni's depo excerpt is attached
24 hereto as **Exhibit 3**), "**the minimum premium is not sufficient and never was sufficient to keep**
25 **the policy in force all the way to maturity.**" In spite of the fact that **Farmers knew that policies**
26 **would self-destruct** and it was discussed at the highest levels of the company in Interest Committee
27 meetings, as shown by the Interest Committee minutes of 2-17-1993, Farmers took no action, other
28 than to continue to take policyholder's money, which continues until today. A true and correct copy
of the 2-17-1993 Interest Committee minutes is attached hereto as **Exhibit 4**. The fact that policies

1 will self-destruct is not disclosed in plain language in the policy, **(Ex. 1)** the Farmer’s Agent Guide
2 (1991 version and 1996 revised guide) excerpts from both guides are attached hereto as **Exhibits 5**
3 **and 6**, and/or the Farmer’s policy specifications page attached to the policy. **(Ex. 1)** It should be
4 noted that the Farmer’s Flexible Universal Life (FFUL) is under the heading Permanent Life
5 Insurance Plans. **(Ex. 6) In spite of this admission, FFUL policies are described as permanent**
6 **insurance in the “Table of Contents” (Ex. 6) of the Agent’s Guide.**

7
8 3. Even if the policyholder paid the target premium, which is the amount an agent can
9 collect full commission on (which Plaintiff alleges has the effect of dissuading the agent to sell at a
10 higher premium) the policy will still lapse. Mr. Kuni admits at page 109 of his deposition (a true and
11 correct copy is attached hereto as **Exhibit 7**) that “. . . **the target premium, again, did not**
12 **guarantee that the policy would last all the way to maturity under any given assumption.”**

13
14 4. The words target premium and maturity are not defined in the FFUL policy, **(Ex. 1)** the
15 Agent’s Guide, **(Exhibits 5 and 6)** or the annual statement. (a true and correct copy of the annual
16 statement is attached hereto as **Exhibit 8**) Mr. Kuni testified at page 109 **(Ex. 7)** that “. . . **there is a**
17 **theoretical premium that a policyholder could pay that would be sufficient on a guaranteed**
18 **basis to keep his policy in-force all the way to maturity age of the contract, regardless of what**
19 **happens in the future to interest rates, and the target premium is nowhere near as high as that**
20 **amount.”**

21
22 5. Incredibly, Farmers uses a **third term** called the **“Planned Premium”** on the policy
23 specifications page of the Class Representative, Ms. Fairbank’s FFUL policy. **(Ex.1-last page)**. Ms.
24 Fairbanks paid the amount called the “Planned Premium” per the Farmer’s computer. The insurance
25 contract is ambiguous and confusing because inconspicuously, further down the page, under the
26 “note” section of the policy specifications page it also talks about the planned premium necessary to
27 keep the policy in-force until maturity and states another premium amount. It states “The planned
28 annual premium necessary to guarantee maturity of this policy assuming guaranteed interest and risk
rates is \$2,460.06.” **(Ex. 1)** The statements about planned premiums are misleading and defective
because they fail to explain that if you choose to pay the smaller planned premium as a consumer,

1 you will lose your insurance when you need it the most. The Terms “Planned Premium,” and “Risk
2 Rates” in either usage, are not defined and/or inadequately defined in the insurance policy given to
3 policyholders, Farmers Agent’s Guide in Plaintiff’s possession, **(Exs.5 & 6)** annual statements **(Ex.**
4 **8)** in Plaintiff’s possession.

5 6. Instead, the Farmers Sales Guide (Sales Guides and Agent’s Guides are two different
6 documents used by agents) uses the term “**Guideline Premium**” “GP.” The term GP is not defined in
7 the Sales Guide, nor are the terms “**lapses**” or “**under-funding.**” (true and correct excerpts from the
8 Sales Guides are attached hereto as **Exhibit 9)** **Instead, the training materials state the term “GP”**
9 **will not be used in policyholder’s annual statements. It should be noted that the annual**
10 **statements also did not use the term “Planned Premium.” (Ex. 8)**

11
12 7. By failing to define the above terms, the relationship or similarity of those terms in
13 simple language, without a large and effective warning, Farmer’s effectively misled and defrauded
14 policyholders and hid the fact that all policies where anything below the maximum premium was paid
15 would self-destruct (lapse). This is exactly what will happen to Ms. Fairbanks, individually and/or
16 has happened or will happen to all other FFUL policyholders.

17 18 **FARMERS INTENT**

19
20 8. The Defendants’ intent to hide information from policyholders is shown by the Product
21 Development Committee minutes, (a true and correct copy is attached hereto as **Exhibit 10)** which
22 states, “**FFUL and FUL annual statements will be reviewed by the contract specialist and**
23 **modified to reduce the visibility of the amount of administrative fees relative to the total**
24 **premium”**

25
26 9. The intent of Farmers to take policyholder’s money without paying death claims and
27 cash surrenders is shown in another excerpt from the Product Development Committee meeting
28 minutes of 10-12-1995, a true and correct copy is attached hereto as **Exhibit 11.**

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10. In a closed meeting of the Product Development Committee, Farmer's Officers

discuss raising the minimum and target premiums. The minutes show Farmers discussed not raising premiums because Farmers would have to pay more death claims and more cash surrenders to policyholders and raising premiums would not improve Farmers profitability for the next ten years. After discussing those factors, the Committee voted against raising premiums. (Ex. 11)

11. Ms. Fairbanks, individually and all other FFUL policyholders, would all be damaged in the same way because this memorandum shows another example of Ms. Fairbanks, individually, and other FFUL policyholders losing their insurance. Farmers kept all this information secret from policyholders and agents as admitted by the testimony of David Demmon. (a true and correct copy of an excerpt from Mr. Demmon's depo is attached hereto as **Exhibit 12**) David Demmon was Chairman of the Interest Committee from 1992 to 2002 and Farmers Group, Inc.'s Vice President of Finance beginning in February 2002 to present. (a true and correct copy of an excerpt from Mr. Demmon's deposition is attached hereto as **Exhibit 13**) The Defendants' deceived Ms. Fairbanks as to the true way her policy would perform because based on the admissions of Joel Kuni, Product Development Actuary, Ms. Fairbanks, individually, and all other policyholders who paid less than the theoretical premium will lose their FFUL policies before maturity.

12. Pauline Fairbanks has kept and is still keeping her part of the bargain. Ms. Fairbanks relied on the Farmer's computer and paid the planned premiums on a timely basis. Pauline Fairbanks has never received adequate warning or notice that her policies would lapse before maturity and/or age 65 or at any other time. Defendants did not sell Mrs. Fairbanks the policy on a vanishing premium or replacement basis. All of the acts of non-disclosure committed by Defendants as set out herein above, were never disclosed to Pauline Fairbanks by Defendants. Said Plaintiff first became aware of the facts set forth in First Amended Complaint on or about September 2003.

13. Ms. Fairbanks relied on Farmer's computer specifications in the purchase of her policies. Her FFUL policy, **(Ex. 1)** will lapse before maturity **and is not permanent insurance as designated in the Agent Guide. (Exs. 5 & 6)** Ms. Fairbanks, individually, has been damaged by the

1 loss of a future property interest her FFUL life insurance policy, **(Ex. 1)** and all other policyholders
2 have been damaged in the same manner.

3 **DEFENDANTS**

4
5 14. Defendant, FARMERS NEW WORLD LIFE INSURANCE COMPANY and Does
6 1 through 25, is, and at all relevant times, was, a life insurance company, organized under the laws of
7 the State of Washington and doing business in and duly licensed to sell life insurance in the State of
8 California. Said Defendant and Does are corporations or business entities licensed to do and doing
9 business as insurance companies in all of the Counties of the State of California. Among other
10 things, said Defendants issued life insurance policies, established practices and procedures for the
11 underwriting, marketing, advertising, selling, renewing of life insurance policies, including without
12 limitation, universal life insurance policies and flexible premium universal life policies, established
13 practices and procedures for the rating of premiums and the amount of said premiums, established
14 practices and procedures for the renewing of said life insurance policies, established practices and
15 procedures for the handling of claims, investigated and handled claims arising under life insurance
16 policies, employed attorneys with respect to claims arising under insurance policies, and issued to
17 Plaintiff and those similarly situated, either or both, a Farmers' Universal Life and Flexible Premium
18 Universal Life policy.

19
20 15. Defendant, FARMERS GROUP, INC. and Does 26-50 is, and at all relevant times,
21 was, corporations or business entities licensed to do and doing business as insurance companies,
22 management companies and attorneys in fact for related insurance companies, in all of the Counties
23 of the State of California, with its principal place of business located at 4860 Wilshire Blvd in Los
24 Angeles, California. Among other things, said Defendants established practices and procedures for
25 the creation of life insurance policies, including without limitation, universal life insurance policies
26 and flexible premium universal life policies to be issued by sibling corporations including co-
27 defendants, established practices and procedures for the underwriting, marketing, advertising,
28 management, selling and renewing of said life insurance policies, established practices and
procedures for the rating of premiums and the amount of said premiums, established practices and

1 procedures for the handling of claims, investigated and handled claims arising under life insurance
2 policies, employed attorneys with respect to claims arising under insurance policies, and managed the
3 issuance to Plaintiff and those similarly situated, either or both, a Farmers' Universal Life and
4 Flexible Premium Universal Life policy.

5 **CO-CONSPIRATORS**

6
7 16. Many individuals that are employees and officers of Farmer's Group, Inc. sit on
8 committees, act as officers and make decisions concerning Farmer's New World Life Insurance
9 Company. Various persons, individuals, partnerships, corporations, and associations, not named as
10 defendants in this Complaint, have participated as co-conspirators in the violations alleged herein
11 and have performed acts and made statements in furtherance thereof.

12
13 **DOE DEFENDANTS**

14
15 17. Plaintiff does not know the true names or legal capacities of the Defendants sued
16 herein as Does 1 through 100, inclusive, and therefore sues said Defendants by such fictitious names.
17 Plaintiff is informed and believes, and thereupon alleges, that each of the Defendants designated
18 herein as a Doe is legally responsible in some manner for violations of *Business and Professions code*
19 section 17200, breach of contract, breach of the implied covenant of good faith and fair dealing,
20 reckless and/or negligent supervision, negligent misrepresentation, fraud and deceit or in some other
21 actionable manner, for the events and happenings hereinafter referred to as well as were tortuously
22 responsible in some manner for illegally causing the injuries and damages to Plaintiff and those
23 similarly situated as hereinafter alleged, including, but not limited to, tortious liability based upon the
24 laws of general negligence, professional negligence, products liability, volunteer liability and any
25 other statutory and common law tort liability laws giving rise to third-party standing on the part of
26 Plaintiff. Plaintiff will seek leave of Court to amend her Complaint to insert the true names and/or
27 capacities of such fictitiously named Defendants when the same has been ascertained.
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18. Plaintiff is informed and believes, and thereupon alleges, that each of the Defendants, whether specifically named or designated herein as a Doe, were the agents, representatives, servants, employees, principals, joint-venturers, co-conspirators, management companies and/or representatives of each of the remaining co-Defendants and, in doing the acts hereinafter alleged, were acting within the course and scope of said agency, employment, joint-venture, conspiracy, re-insurance agreement, co-insurance agreement, management company agreement and/or service with the approval, knowledge, authority, acquiescence and/or ratification of each of the remaining Defendants.

19. All of the acts and conduct herein and below described of each and every corporate Defendant was duly authorized, ordered and directed by the respective and collective Defendant corporate employers, and the officers and management-level employees of said corporate employers. In addition thereto, said corporate employers participated in the aforementioned acts and conduct of their said employees, agents and representatives, and each of them; and upon completion of the aforesaid acts and conduct of said corporate employees, agents and representatives, the Defendant corporations, respectively and collectively, ratified, accepted the benefits of, condoned, lauded, acquiesced, authorized and otherwise approved of each and all of the said acts and conduct of the aforementioned corporate employees, agents and representatives.

20. For purposes of this Complaint all named Defendants and Does are collectively hereinafter identified as "Farmers."

JURISDICTION

21. This is a civil action seeking compensatory damages, punitive damages, injunctive relief, and attorneys' fees pursuant to California's common law and statutory law, including without limitation, California *Business and Professions Code* Section 17200 based upon violations by Farmers. Under California *Business and Professions Code* Section 17200 Plaintiffs' claims seek full restitution obtained against defendants as a result of its unlawful, unfair or fraudulent business acts or

practices alleged herein. Additionally, jurisdiction may, be exercised over defendants by virtue of the California long-arm statute, California *Code of Civil Procedure* Section 410.10.

22. Pursuant to California *Code of Civil Procedure* Section 382, Plaintiff brings this case individually and as a class action on behalf of a consumer or end-user class consisting of all persons who purchased a Farmer’s Universal Life (also known as Interest Sensitive Whole Life in some States) and/or a Flexible Premium Universal Life policy from Farmer’s New World Life Insurance Company from 1984 – 1996, nationally. Alternatively, the class includes present and former policyholders of the States of California and Texas.

23. This action is also brought as a class action after proper notice was given, pursuant to California *Code of Civil Procedure* Sections 1780, et seq.

VENUE

24. Venue as to each defendant is proper in this judicial district, pursuant to California *Business and Professions Code* Sections 1750(a) and 17203 and California *Code of Civil Procedure* Sections 395(a) and 395.5. Each defendant either maintains an office, transacts business, has an agent, or is found in the City and County of Los Angeles and is within the jurisdiction of this Court for purposes of service of process. The unlawful acts alleged herein had a direct effect on consumers within the State of California and more particularly, within the City and County of Los Angeles. Additionally, the trade and commerce described herein is carried in whole or in part, in the State of California and, more particularly, within the City and County of Los Angeles.

25. As shown by the declaration regarding proper venue filed concurrently with this complaint, pursuant to California *Code of Civil Procedure*, section 1782, venue is proper in Los Angeles, County.

CLASS ACTION ALLEGATIONS

1 26. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a
2 class action pursuant to Section 382 & 1780, et seq. of the California *Code of Civil Procedure*. The
3 class, which Plaintiff seeks to represent, is composed of and defined as follows:

4 All persons who purchased a Farmers' Universal Life and/or Flexible Premium Universal
5 Life policy from Farmers' New World Life Insurance Company nationally, and in the
6 alternative in California and Texas, for their own use and not for resale ("Plaintiff Class").
7 The Farmers' Universal Life policy was issued beginning in or about 1984. The policy
8 consisted of life insurance and the side accounts or investments accounts called an
9 accumulation account. The Flexible Premium Universal Life policy also contained an
10 accumulation account. This policy was non-participating, which means that policyholders did
11 not participate in the profits of Farmers. The flexible nature of the policy allowed
12 policyholders to pay in whatever amount they could afford to pay. The policyholder had to
13 pay at least the minimum premium the first year.

14
15 27. Plaintiff seeks certification on behalf of Plaintiff individually, and as a class action on
16 behalf of all persons or entities (the "Class" or "Class Members") who have or had at the time of the
17 policy's termination, an ownership interest in one or more interest-sensitive whole life, universal life,
18 flexible premium universal life or non-participating interest-sensitive whole life policies issued by
19 Farmers between November 3, 1984 and December 31, 1996 ("Class Period") nationally, and in the
20 alternative, who were residents of the States of California and or Texas on the date(s) of the
21 policy(ies) issuance.

22
23 28. In the alternative, the Class should include all policies sold on the basis that the
24 premiums would vanish from 1984 to December 31, 1996. New policyholders were told they could
25 make an initial lump sum payment or make premium payments during the initial years of the policy
26 (typically between five to ten years) and thereafter the policy would be fully paid-up -- thus, the
27 premiums would "vanish." This course of conduct was designed to and did, induce thousands of
28 existing policy holders and new customers to purchase new Farmers permanent life insurance policies
based upon the false and misleading vanishing premium sales presentations and policy illustrations.

1 Farmers knew or should have known that the term vanish was misleading. Farmers also knew or
2 should have known that the projections for future policy growth in vanishing sales illustrations were
3 based on unrealistic assumptions.

4
5 29. Pleading further in the alternative, the class could include, as a sub-class, all
6 individuals who were individually replaced by Farmers from 1984 through December 31, 1996. The
7 class and all sub-classes excludes all individuals who reviewed their policies directly or indirectly as
8 a result of their employment and/or through an employment related group. The class excludes any
9 individuals, group and/or sales where ERISA applies. All policyholders whose policies were
10 replaced by Farmers have the following injuries and damages in common:

- 11 a. new sales and administrative charges;
- 12 b. new suicide and incontestability clauses;
- 13 c. a higher cost of insurance; and
- 14 d. depleted funds in their original policy.
- 15 e. **The defendant encouraged replacement even though it was not in the best**
16 **interest of policyholders, according to company policy and industry**
17 **policy, beginning with a company wide replacement and exchange**
18 **program in 1984 to encourage policyholders to buy FUL policies to**
19 **increase the company's value without notifying policyholders**
20 **(FTSP017048), (a true and correct copy is attached hereto as Exhibit 14)**
21 **In spite of the fact that replacement is not in the best interest of**
22 **policyholders, according to an October 12, 1995 Product Development**
23 **Committee meeting, (Ex. 11) the defendants continued to reward agents**
24 **for replacements in four ways, including increased commissions in some**
25 **instances.**

26 30. The Defendant, Farmers New World Life Insurance Company's Director of Compliance,
27 Bruce McCartney, wrote a letter to the State of Washington Insurance Department complaining about
28 replacement. (a true and correct copy of that letter is attached hereto as **Exhibit 15**) Farmer's
complaints about replacement, but continues to encourage it without regard to client's needs.

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31. Specifically excluded from the Plaintiff Class are the defendants herein; current officers, directors or current employees of any defendants; any entity in which any defendant has a controlling interest; the affiliates, legal representatives, attorneys, heirs, or assigns of any defendant, and any federal, state or local governmental entity, and any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs and any EMSA and/or ERISA controlled or related plans and/or ERISA plan member. Any situation, person and/or entity where ERISA applies.

32. This action has been brought and may properly be maintained as a class action, pursuant to the provisions of California *Code of Civil Procedure* Section 382 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable:

(a) **Numerosity**: The Plaintiff Class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While, the exact number of class members is unknown to Plaintiff at this time, Plaintiff believes that it is approximately 1 million policyholders based upon the amount of trade and commerce, and hence joinder of all members of the Plaintiff Class is not practicable.

(b) **Common Questions Predominate**: Common questions of law and fact exist as to all members of the Plaintiff Class and predominate over any questions which affect only individual Class Members. These common questions of law and fact include, without limitation:

1. whether the Defendants committed an unfair, unlawful and/or fraudulent business practice, or committed some other legal wrong by charging inadequate premiums on Flexible Premium Universal Life policies while knowing that every insurance policies would lapse before maturity where the maximum guideline premium was not paid;

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2. whether the disclosures and disclaimers made in connection with the marketing, advertising, management and selling of said policies were inadequate;
3. whether the policies in question were inherently fraudulent by allowing the Defendants to commit actions behind closed doors, which materially affected the policies;
4. the effect upon and the extent of injuries sustained by Plaintiff and members of the Plaintiff Class and the appropriate type and/or measure of damages;
5. whether defendants violated *Business and Professions Code* Section 17200, and/or committed other legal wrongs including breach of contract, breach of the implied covenant of good faith and fair dealing, and negligent misrepresentation;
6. the amount of restitution available to the Plaintiff and class members as a result of Defendant's violations of *Business and Professions Code* Section 17200.
7. breach of contract, breach of the implied covenant of good faith and fair dealing, reckless and/or negligent misrepresentation, fraud and deceit and the *Consumer Legal Remedies Act*;
8. The amount of punitive damages available to Ms. Fairbanks and the class for the Defendant's willful, wanton, reckless and/or malicious acts described throughout this complaint.

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9. whether Farmers, routinely engaged in fraudulent and deceptive acts and practices and courses of business in the sale of its life insurance policies;
10. whether Farmers, routinely failed to disclose to Plaintiff and Class Members material information such as the nature and extent of the commissions earned by its agents in the sale of the life insurance policies;
11. whether Farmers developed, encouraged and engaged in a scheme designed to sell policies to new individuals as well as new policies to existing policy holders through fraudulent concealment of material facts;
12. whether Farmers fraudulently and improperly concealed the true nature of Farmers' life insurance policies by disguising the life insurance policies as vanishing premium policies, investment vehicles or savings plans;
13. whether Farmers engaged in deceptive acts and practices in the sale of its policies as "vanishing premium" policies by representing through policy illustrations, sales materials and uniform sales presentations approved and prepared by it that the single prepayment of premiums made by Class Members at the time of purchase, or a fixed number of premiums paid during a fixed period of years, would be sufficient to carry the cost of the policies for the life of the insured;
14. whether Farmers failed to disclose to victims of the investment plan/savings scheme that a substantial part of the money that would be paid by the customer would be used to pay a mortality charge for life

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insurance, pay agents' commissions and pay administrative charges to Farmers and, thus, that part of the money paid by the customer would not earn any interest or investment income whatsoever, and/or the true rate of return under the Policy as well as its comparative value with respect to other investment vehicles;

15. whether Farmers concealed at the time of sale and thereafter the number and/or amount of out-of-pocket premium payments a policy holder would have to pay and the cash values, surrender values and/or benefits (including lifetime income payable) a policy holder would realize based on a particular number of cash premium payments, or the nature of the product being sold;

16. whether Farmers concealed from Plaintiff and Class Members the interest payable on its policies by failing to adequately disclose that the interest payable as illustrated in the uniform sales presentation and policy illustrations approved and prepared by them were not guaranteed at the illustrated levels and could decrease in future policy years;

17. whether Farmers failed to disclose to Plaintiff and Class Members material information relating to the amount of payments and/or projections of future Farmers interest;

18. whether the uniform sales presentations and/or policy illustrations presented to Plaintiff and Class Members contained false and misleading data relating to interest, premiums, cash values, surrender values, death benefits, investment returns and income payable;

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- 19. whether the interest, values, assumptions, mortality experience, expenses, lapse rates, interest rate and investment return projections underlying defendants' policy illustrations were so flawed as to have an adverse impact on Plaintiff and Class Members;
- 20. whether the interest, values, assumptions, mortality experience, expenses, interest rate and investment return projections underlying defendants' policy and interest illustrations were inconsistent with or contrary to defendants' internal forecasts, business plans, estimates, analyses or projections concerning future interest rates;
- 21. whether Farmers failed to disclose to Plaintiff and Class Members material information concerning the benefits from, and suitability and impact of, using some or all of an existing policy's cash value to purchase a new policy by means of a surrender or withdrawal/partial surrender of, or loan from, the existing policy;
- 22. whether the Plaintiff and Class Members have sustained damages and the proper measure of damages;
- 23. whether the Plaintiff and Class Members are entitled to an award of punitive damages against Farmers;
- 24. the appropriate nature of class wide equitable relief;
- 25. whether the FFUL and FUL policies were adhesion contracts; and
- 26. whether the Defendants committed an unfair, unlawful and/or fraudulent business practice or committed some other legal wrong:

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- a) **by failing to disclose to policyholders that policies where only the minimum premium is paid would self-destruct**, as admitted by the 2-17-1993 Interest Committee minutes and by continuing to take said policyholders money in premiums from 1993 to the present; **(Ex. 4)**

- b) **by failing to disclose to policyholders that FFUL policies would lapse before policyholders turned 65** and by continuing to take policyholders money in premiums from at least 1996 up until the present time; **(Exs. 16 & 17)**

- c) by failing to disclose to policyholders the material fact that the majority of policies where even the target premium was paid would lapse before maturity, as admitted by Joel Kuni, Product Development Actuarial Manager, in his deposition on May 7, 2003, and by continuing to accept policyholders money in premiums without disclosing this material fact; **(Kuni depo Ex. 7)**

- d) by failing to disclose that policies where even the target premiums were paid would lapse before maturity under any given assumptions as admitted by Joel Kuni, Product Development Actuarial Manager. **(Ex. 7)**

- e) by defectively designing FFUL policies so they would lapse before maturity, where even the target premium was paid.

- f) The Defendants continue to accept these premiums without disclosing these material facts to policyholders, which is an ongoing fraud;

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- g) by purposely failing to include information or notice about potential lapses in annual reports to policyholders;
- h) **by failing to raise minimum and target premiums so policies would not lapse on October 12, 1995 because more money would go to the policyholders in cash surrenders and death claims and it would reduce profits for ten years, as shown by the Product Development Committee minutes of that date; (Ex. 11)**
- i) **by failing to disclose that FFUL policies were designed so the Farmers Defendants made a 1% profit spread on the investment portion before any interest was ever paid to policyholders; (Ex. 18 & 19)**
- j) by failing to disclose Farmers can change the current risk rates and/or the interest rate spread on both new and in force policies to recover any anticipated reductions in profits due to projected changes in mortality, persistency, interest rates, or expenses. **(Ex. 20)**
- k) by requiring policyholders to use their own assumptions. In other words, Farmer's required the policyholder to figure out what interest rate Farmers would pay them and the risk rate and administrative expense Farmers would charge them if the policyholder did not guess correctly the policyholder would have an inaccurate view of future policy performance, and make a signed request along with a ten dollar fee to Farmers New World Life Insurance Company to obtain policy

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information about future policy performance. **(Ex.1)** By requiring the policyholder to do this impossible task and predict what Farmers was going to do, the defendant, Farmers utilized its superior knowledge took and unconscionable and/or unfair act and continued to effectively hide its ongoing fraud and information regarding lapses. By using hard to understand language in disclaimers in small print and inconspicuous. The term assumptions and its parameters were also not defined in the policy;

- l) by failing to inform agents of the Defendant's knowledge of future lapses learned in Interest Committee, Product Development and SST meetings, as admitted by Farmer's Vice President and former head of the Interest Committee, David Demmon in his deposition on March 2, 2004; **(Ex. 12)**

- m) by failing to train and/or inform agents that even if minimum premiums, or even target premiums, were paid, policies would lapse as set out above;

- n) by marketing FFUL policies as permanent insurance and training agents in the same manner as shown by the copy of the training materials; **(Ex. 6)**

- o) by failing to define and/or explain lapses and potential lapses to the class.

- p) **whether the agent's sales and marketing guides were inadequate and failed to explain the dangers of lapses to agents due to under-funding. The guideline level premium**

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was not identified as such in the policy, instead it was identified as the annual premium necessary to guarantee maturity of the policy assuming guaranteed interest and risk rates. These terms were not defined and were inadequate to notify the policyholders of the risk of their policy lapsing when policyholders needed the coverage the most. The original company specifications developed in 1986, (a true and correct copy of which is attached hereto as Exhibit 21) indicated the defendants did not want to provide guideline premiums to policyholders. In 1989 the defendants modified annual statements on FUL and FFUL products to reduce the visibility of the administration fees relative to the total premium as set out in the May 22nd and 23rd Product Development Committee meeting minutes. (Ex. 10) This deceptive act occurred throughout the class period. In 1990 the defendants acted again to revise annual statements and make such statements more appealing to policyholders; (Ex. 22)

- q) by failing to inform policyholders where the risk rates the Defendants were currently charged stood in relationship to the maximum risk rate, as set out in the policy, the Defendants were allowed to charge;
- r) by concealing from all policyholders the material fact that by raising risk rates the Defendants could negate or lower the amount of interest paid to policyholders;
- s) by giving training materials to agents that policies were credited with a rate of interest that reflects the most recent

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interest rate market trends when in actuality rates were set based on the Defendant's competitive position and the strength of sales of the particular product;

t) by using different, undefined terms, which were inadequate to inform FFUL policyholders of the danger of losing their policy. Those terms were:

1. Guideline Premium; (not used in Ex. 1)
2. Guideline Maximum Premium; (a term used in annual statements. **(Ex. 8)** It is not used in the policy **(Ex. 1)**)
3. Target Premium; (not used in policy, Ex. 1)
4. Planned Premium;
5. Planned Premium to keep the policy in-force until maturity; and
6. the annual premium necessary to guarantee maturity of the policy assuming guaranteed interest and risk rates;

u) by failing to define the word lapse and by failing to warn policyholders of the potential of lapses and/or under-funded policies. (not used in policy or agent materials)

c) **Typicality:** Plaintiffs' claims are typical of the claims of the members of Plaintiff Class. Plaintiff and all members of the Plaintiff Class sustained injuries and damages arising out of defendants' common course of conduct in violation of law as complained of herein. The

injuries and damages of each member of the Plaintiff Class were caused directly by defendants' wrongful conduct in violation of law as alleged herein.

(d) **Adequacy** Ms. Fairbanks will fairly and adequately protect the interests of the members of the Plaintiff Class. Plaintiff resides in California, purchased her policies in California for their own use and not for resale, and is an adequate representative of the Plaintiff Class as she has no interests which are adverse to the interests of absent class members. Ms. Fairbanks never knowingly sold a policy on the basis of replacement or the fact premiums would vanish. Ms. Fairbanks relied on Farmer's computers at all material times to buy her own policies and to sell to others by utilizing the Defendants' computer to state the amount of premiums it was necessary for the policyholder to pay. As set out, Plaintiff has sustained damages, like all members of the class, because of the actions of the Defendants. The actions of the Defendants are a producing and proximate cause of Ms. Fairbank's injuries and the class. Plaintiff has retained counsel who have substantial experience and success in the prosecution of complex class action and consumer protection litigation.

(e) **Superiority**: A class action is superior to other available means for the fair and efficient adjudication of this controversy since individual joinder of all Class Members is impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Furthermore, as the damages suffered by each individual member of the class may be relatively small, the expenses and burden of individual litigation would make it difficult or impossible for individual Class Members to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

33. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action. California has a

1 strong interest in this class and California law national class should be used uniformly for a. The
2 claims of the Plaintiff are typical of the claims of the Class and Plaintiff has no interests adverse to
3 the interests of other Class Members. Plaintiff will fairly and adequately protect the interests of the
4 Class and have retained counsel experienced and competent in the prosecution of class actions and
5 complex litigation.

6 34. Plaintiff believes the fraudulent conduct by Farmers as fully described in this
7 Complaint, was systematic and continuous and has affected many other Farmers policyholders over
8 time.

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10 35. A class action is superior to other available methods for the fair and efficient
11 adjudication of this controversy. Absent a class action, the class members will continue to suffer
12 damage and Farmers' violations of law will proceed without remedy while Farmers continues to
13 retain the proceeds of its ill-gotten gains.

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15 36. Most individual Class Members have little interest in or ability to prosecute an
16 individual action, due to the complexity of the issues and insurance policies involved in this
17 litigation, the enormity of Farmers' uniform sales scheme and the relatively small, although
18 significant, damages suffered by the Class Members.

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20 37. This action will cause an orderly and expeditious administration of class claims,
21 economies of time, effort and expense will be fostered, and uniformity of decisions will be ensured.

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23 38. This action should present no difficulty which would impede its management by the
24 court as a class action and is the best available means by which Plaintiff and Class Members can seek
25 redress for the harm caused to them by Farmers.

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27 **GENERAL ALLEGATIONS**

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39. On or about 1984, Farmers created and otherwise developed, the Farmers' Universal Life policies. With the creation and development of this new insurance policy, Defendant and Does implemented a program of "Replacement" ("Replacement" is herein defined as the replacement of one life insurance policy with cash values with another policy with cash values. This type of replacement can result in new expense charges, new commissions and new suicide and contestability clauses. Money will not accumulate as rapidly because of the new expenses for the policy). Farmers encouraged Replacement of previously existing policies with Farmer's Universal Life products by quoting high rates. **(Exhibit 23)** Defendant and Does engaged in such conduct in violation of its long standing policy that Replacement was not in the best interest of its policyholders. **The Defendants' true replacement policy was and is to increase company value by churning our existing business and opening up the whole book of business to replacement,** as set out in the true and correct documents attached hereto as **Exhibits 24 & 25.** Churning is replacement.

40. On or about 1988, Farmers created and otherwise developed the Flexible Premium Universal Life policy. That policy required a minimum premium to be paid in the first year. After the first year, a policyholder could allegedly put in whatever amount of money they wish to put in. Farmers' New World Life Insurance Company's own internal documents show that:

- (a) policies, when only a minimum premium is paid, will self-destruct;
- (b) many policies will lapse before the policyholders even turn 65;
- (c) the testimony of Joel Kuni, a Farmer's New World Life Insurance Company actuary, who is in charge of product development, admits that the policies where even the target premium is paid, under any given assumptions, will lapse before maturity. **(Ex. 7, Kuni depo pg. 109)**

41. At all relevant times after 1984, Farmers set interest rates based on what competitors were doing. Farmers also arbitrarily lowered interest rates for existing policyholders and increased

the interest rates paid to induce new people to purchase Farmers life insurance policies. None of these material facts were ever disclosed to purchasers of said policies or existing Farmers policyholders.

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3 42. Farmers' New World Life Insurance Company policies were also inherently defective
4 in that they were a flexible premium universal life policy, designed on the premise that Farmers' New
5 World Life Insurance Company would be able to pay 11.5% to policyholders, which is an interest
6 rate far higher than the company had ever earned on a consistent, long-term basis and therefore there
7 was never a good faith belief that said policies could generate enough money to pay policyholders
8 11.5% interest.

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10 43. By the start of the Class Period, Farmers embarked upon a course of conduct through
11 its general agencies, managerial offices and sales force, to sell high-commission life insurance
12 policies to the public through false and misleading uniform sales presentations and policy illustrations
13 promising vanishing premiums. Farmers trained its sales force to convince then-existing Farmers
14 policyholders and to solicit new policyholders to purchase new Farmers life insurance policies based
15 on the fraudulent vanishing premium policy illustrations and sales presentations. Farmers agents were
16 trained and encouraged to engage in uniformly fraudulent and misleading sales practices as more
17 fully described elsewhere in this Complaint. Moreover, Farmers developed, prepared and distributed
18 policy illustrations, uniform sales scripts and sales materials, which were used by Farmers agents
19 throughout the nation to mislead and defraud existing and prospective policyholders.

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21 44. The policy illustrations distributed by Farmers and used by its agents induced Plaintiff
22 and the Class Members to purchase new Farmers life insurance policies. These illustrations contained
23 numerous misrepresentations, omitted information needed to make the illustration not misleading.
24 Existing policyholders were shown that if they surrendered cash values or paid-up additions, or
25 borrowed against their current policies and used the proceeds to pay one lump sum or pay premiums
26 for only a certain number of years, they would receive a new or additional policy typically with
27 higher death benefits, cash values, surrender values or lifetime income. New policyholders were
28 shown illustration they could make an initial lump sum payment or make premium payments during
the initial years of the policy (typically between five to ten years) and thereafter the policy would be

fully paid-up -- thus, the premiums would “vanish.” This course of conduct was designed to and did, induce thousands of existing policyholders and new customers to purchase new Farmers permanent life insurance policies based upon the false and misleading vanishing premium sales presentations through policy illustrations.

FUL POLICIES

45. Other legal wrongs included failing to disclose the material facts that since FUL policies were not the driving force of sales production; interest rates on FUL policies would be lowered one-half of a percent in 1993; (Ex. 4) and by continuing to accept premiums from FUL policyholders without advising them of the reasons for lowering FUL rates;

46. By failing to disclose the material facts of paying less interest to FUL policyholders beginning in at least 1993 and in all probability continuing on until today as shown by the 2-17-1993 Interest Committee notes. (Ex. 4) The November 17, 1994, Interest Committee notes shows FUL policies were earning .35% less than a comparable FFUL policy. (a true and correct copy of the 11-17-94 Interest Committee notes are attached hereto as Exhibit 26) In the November 10, 1995 meeting the discrimination was noted but not reversed and policyholders were not notified of the on-going fraud and rate discrimination; as shown by the true and correct copy of the 11-95 meeting attached hereto as Exhibit 27.

47. By failing to define premium and its three components: by failing to define and explain the terms projected interest rate and/or projected risk rates and how such projections are calculated in the attached FUL policy of Pauline Fairbanks, individually and as Class Representative and all other FUL Policyholders.

48. By failing to define the term special premium class and the rates charged for any regular and/or special premium class within the policy; and by only filing the way guaranteed

minimum values method are calculated with the State Insurance Department, the defendants effectively hid this crucial information from policyholders.

49. The decisions, knowledge and actions of the Interest Committee and Product Development, SST, Committees concerning lapses were concealed from all policyholders and agents per Farmer's Vice President, David Demmon's testimony.

50. Farmers agents were strongly encouraged and assisted by Farmers to sell Universal life insurance products to the public. Universal life insurance is actually term insurance, but is much more expensive than terms insurance and contains much higher profit margins for Farmers. Farmers armed its sales force with the uniform policy illustrations and sales materials and the computer hardware and software so they could put into practice these schemes.

51. The sale of life insurance policies based upon the vanishing premium sales presentations and policy illustrations was an enormous marketing success for Farmers. Farmers received millions of dollars in premium income from the sales of these products.

52. In recent years, Farmers has reduced the interest payable on its life insurance policies. Some of the reductions were based on what competitors were paying in interest and Farmer's reduced existing policyholders' interest payments and raised interest rates to induce new policyholders to buy Farmer's policies. Farmers failed to disclose this information to Plaintiff and the Class Members or to disclose the effect these reductions would have upon policies purchased based upon the vanishing premium sales presentations and policy illustrations.

53. This Paragraph is intentionally left blank.

54. Numerous Class members have yet to learn they have been victimized by Farmers' uniform misrepresentations and omissions. Despite exercising reasonable diligence, Plaintiff and the Class Members could not discover and were prevented from discovering Farmers' fraudulent sales practices in selling life insurance policies that would lapse before maturity, and/or using the interest

rate scenarios discussed herein, vanishing premium sales presentation and policy illustration. Given the special relationship between Farmers and its policyholders including Plaintiff and the Class Members, Farmers owed Plaintiff and the Class Members an affirmative duty of full and fair disclosure at all relevant times but failed to honor and discharge its duty. Rather than ensure truthful disclosure of material facts, Farmers concealed disclosure of material facts relating to the life insurance policies it sold.

55. Farmers knew the presentations being made by its unsuspecting agents to unsuspecting existing and prospective policyholders were false and misrepresented what the policyholders were to receive in return for their premium dollars. The illustrations and presentations prepared, approved and disseminated by Farmers and used by its agents failed to disclose even the most fundamental facts and information concerning the vanishing premium policies. Farmers illustrations and presentations failed to disclose to Plaintiff and the Class Members, among other things, that:

- (a) premiums would not “vanish” but would continue to be payable over the term of the policies;
- (b) the number of “out-of-pocket,” cash premium payments a policy holder would have to pay for his or her policy;
- (c) the cash value, interest and other policy benefits a policy holder would realize under his or her policy based on a particular number of cash premium payments was usually not in the best interest of its policyholders. In spite of this fact, in 1984 the replacement program was a company sponsored, nationwide program.
- (d) the policy illustrations that were used by Farmers were based on inflated or skewed interest rates, expense and lapse rate assumptions and underlying interest rate projections that had no reasonable basis, including gaining competitive advantage;

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- (e) the policy illustrations used by Farmers were inconsistent with Farmers' own internal forecasts, business plans, estimates, analyses and/or projections of interest rates, mortality experience, expenses, lapse rates and related investment returns and their effect on interest rates payable by Farmers and were so flawed as to have an adverse impact upon all Class Members;
- (f) the interest rates used to illustrate policy performance in the policy illustrations approved and prepared by it were based on erroneous assumptions lacking any reasonable basis in fact and thus foreseeably would not be maintained at illustrated levels and most likely would decrease in future policy years;
- (g) the policies would not pay for themselves as represented and illustrated by Farmers if -- as defendants knew or should have known --the current interest rates payable on the policies declined;
- (h) the interest rates payable were extremely sensitive to prevailing market factors such as interest rates paid by the competition;
- (i) even incremental reductions in the interest rates payable by Farmers would require policyholders to continue paying premiums for many years beyond the schedule illustrated and represented in the policy illustrations; and
- (j) Farmers knew or should have known or anticipated that the interest rates payable to policyholders would be less than the rates projected in the uniform policy illustrations.

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56. Without disclosure of the foregoing material facts and information, the uniform sales presentations and policy illustrations prepared, approved and disseminated by Farmers and used by its agents were inherently false, misleading and deceptive.

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57. Since at least 1984, Farmers, through its agents, has engaged in improper and systematic “churning” activities. The term “churning” is commonly used in the life insurance industry to describe the replacement of an existing policy with a new one. Improper churning occurs when policyholders are convinced to replace policies when it is not in their best interests to do so and without full information. Improper churning results in: (a) a substantial financial detriment to the policyholder; (b) a significant financial benefit to the Farmers agent in the form of a large commission on the first year premium; and c) a sales “load” or other administrative charge being paid to Farmers. Improper churning is sometimes referred to as, “twisting” or “piggybacking.” [“Twisting” is normally used in the life insurance industry to refer to a situation where the cash value is stripped from an existing insurance policy and used to acquire an insurance policy issued by another company. The term “piggybacking” is normally used in the life insurance industry to refer to the situation where the cash value is stripped from a life insurance policy and used to acquire another life insurance policy issued by the same company. Insurance companies sometimes euphemistically refer to some or all of these practices as “financed life insurance.”].

58. During the Class period Farmers agents would identify customers with substantial cash values in existing policies. They would recommend to these customers that they acquire a new Farmers insurance policy. Farmers agents frequently churned policyholders by incorporating a vanishing premium or investment/savings presentation. Farmers customers including Class Members were led to believe they were receiving additional or better coverage for no additional premium or a limited number of premiums.

59. The dissemination of false information and omission of material information by Farmers during the Class period was a substantial factor in executing the churning scheme. Farmers failed to disclose to Plaintiff and the Class Members, among other things, that:

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- (a) it was not in a policyholder's best interest to surrender or borrow against an existing policy to purchase a new policy, even if the new policy has a higher face amount of death benefit;
- (b) the cash value in their existing policies would be depleted or loaned against without their knowledge or permission;
- (c) when the cash value in existing policies was depleted, the policy holder would owe premiums on the new policy;
- (d) the amount of commission that the agent would earn as a result of the transaction;
- (e) the amount of the sales load or administrative charge that Farmers would earn as a result of the transaction;
- (f) the true financial effect of the transaction to the policy holder;
- (g) if an existing policy was fully surrendered or lapsed valuable policy benefits such as suicide clauses, contestability clauses, avocation, and medical waivers would be lost;
- (h) the purchase of a new policy was subject to new underwriting standards, at an older insurable age and therefore at higher cost;
- (i) The new policy would have new contestability and suicide clauses; and
- (j) that the Defendants failed to disclose to policyholders Farmers had a nationwide replacement program and that Farmers nationwide replacement program did not consider the needs or suitability of policyholders.

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60. In addition to the direct training, instruction and sales materials provided by Farmers to its agents, the agents were also substantially motivated by Farmers' sales commission and compensation structure.

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FIRST CAUSE OF ACTION

(Injunctive Relief and Restitution,

Pursuant to *Business and Professions Code* Section 17200

Against All Defendants and Does)

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61. Plaintiff incorporates by reference each and every allegation set forth above as though fully set forth herein.

62. Farmers' conduct in the development, marketing, advertising, selling, issuing, renewing, and administration of its life insurance policies first issued during the Class Period constitutes unlawful, unfair and fraudulent business practices under *Business and Professions Code* Section 17200, et. seq.

INADEQUATE WARNING AND DISCLOSURE

63. The term "Planned Premium," contained in Ms. Fairbanks FFUL policy, **(Ex. 1)** is not defined in Ms. Fairbanks policy. The term "planned premium" necessary to keep the policy to maturity is also not defined and/or inadequately defined in Ms. Fairbanks policy, on the policy specifications page, **(Ex.1, last page)** and is written in inconspicuous language and type. These terms are inadequate, unintelligible and ambiguous. It is ambiguous which planned premium you should pay and it is not clear that if you pay the smaller planned premium you will lose your insurance. **(Ex. 1)**

64. The disclaimer in Ms. Fairbanks individual FFUL policy and all other FFUL policyholders is inadequate and ambiguous for the following reasons:

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- a) the language in “b” (immediately below) indicates you will lose your insurance if you fail to make your payments, a concept which everyone understands. However, the language fails to explain you will lose your insurance *even if you make your payments*;

- b) the language in the “so called” disclaimer in Ms. Fairbanks FFUL policy “the actual amount of frequency of your premium payments will affect the values and duration of your insurance” is inadequate and ambiguous because it does not use the term planned premium used in the same policy on Ms. Fairbanks policy specifications page. **(Ex. 1, last page)**

- c) the alleged disclaimer is also inadequate and ambiguous because it fails to refer Ms. Fairbanks, individually, back to the policy specification page. It does not define values, duration or planned premium.

- d) conversely the policy specifications page and the terms planned premium is again inadequate because it fails to refer the policyholder to the alleged disclaimer under premiums and did not warn Ms. Fairbanks individually of her policy self-destructing. **(Ex. 1)**

- e) The alleged disclaimer and language in Ms. Fairbanks policy is also inadequate to warn and advise Ms. Fairbanks that Farmers may have charged her far less than the maximum risk rate for her age in the year she bought her FFUL policy. This can result in even more exponential risk rate increases leaving Ms. Fairbanks even more vulnerable to having her FFUL policy self-destruct (lapse).

- f) The annual statement of Ms. Fairbanks, individually, fails to notify Ms. Fairbanks of the risk rate she is paying in relationship to the actual risk rate.

The annual statement given to Ms. Fairbanks, **(Ex.8)** fails to adequately explain, define or use the terms planned premium, guideline premium or warn Ms. Fairbanks of the impending self-destruction of her policy.

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65. The above described actions and omissions of the Defendants together and singularly are a producing and proximate cause of Ms. Fairbanks individual damages and are a violation of the UCL section 17.200 et seq. These actions together and singularly are a violation of the UCL section 17.200 et seq and are also a producing and proximate cause of all other FFUL policyholder's damages.

66. Ms. Fairbanks also owned an FUL policy **(Ex. 2)** and all FUL policyholders were damaged in the manner set out beginning in Paragraphs 45 through 52. The reasons for lowering the interest rates were material facts, which were not disclosed to any policyholders or agents, as previously established by Demmon's testimony, (Demmon depo pg. 67, **Ex.12**) Ms. Fairbanks, individually, and all class members who owned FUL policies were deceived and damaged in the same manner because Farmers concealed the material facts that FUL policies would be paid less interest and the reasons Ms. Fairbanks, individually, and all other FUL policyholders in the class would be paid less interest. Ms. Fairbanks, individually, was damaged by the payment of less interest and the non-disclosure of those material facts. All other FUL policyholders were damaged in the same manner.

**VANISHING PREMIUM ALLEGATIONS
UNDER THE UNFAIR COMPETITION LAW**

67. In 1987, the defendants produced vanishing premium illustrations for any desired premium payment pattern using the deposit fund and the automatic premium loan features to fraudulently induce purchasers. In 1987, the defendant knew policies where the minimum guaranteed interest were paid on a 60 year old male, non-smoker, sold on a vanishing basis would lapse in fifteen years and failed to disclose said information to policyholders. The Defendant's calculations also showed that a policy sold to a male, age 30, would lapse after 18 years at a 5.0% interest rate. Further

1 calculations show that females, age 55, would lapse in 32 years at 7.5% interest. These calculations
2 show that many policies have not reached their vanish date as of the date of the filings of this lawsuit.
3 The policyholders would not be on notice their premiums are not going to vanish as promised and the
4 information has been fraudulently concealed from them.

5 68. Plaintiff is informed and believes, and thereupon alleges, that said unlawful, unfair
6 and fraudulent business practices as alleged in this Complaint are continuing in nature and are
7 widespread practices engaged in by Farmers. Plaintiff hereby seeks injunctive relief prohibiting
8 Farmers' continued violation of the above-described unlawful conduct so as to enjoin them,
9 individually and collectively, from continuing to engage in such unlawful conduct. Such injunctive
10 relief is completely proper as Plaintiff and Class Members who purchased life insurance policies from
11 Farmers during the Class Period, have no adequate remedy at law to protect themselves from
12 Farmers' pervasive, unfair, unlawful and fraudulent business practices. No remedy at law is adequate
13 because insureds must initiate litigation after Farmers' unlawful conduct has already occurred. Once
14 a remedy at law matures, Farmers' actions will have already violated California law by compelling
15 insureds, including the Plaintiffs, to initiate litigation to obtain insurance benefits. Granting
16 injunctive relief will protect other residents who have purchased insureds policies from Farmers.
17 Moreover, Defendants, by its individual and collective conduct as described herein, have treated
18 Plaintiff and other insureds, unreasonably, unfairly, maliciously, oppressively and fraudulently, and
19 will continue to do so unless enjoined.

20
21 69. As a result of Farmers' improper conduct, Plaintiff and the Class Members have
22 suffered and will suffer immediate and irreparable harm. Plaintiff and the Class Members have lost
23 and face the prospect of losing many millions of dollars in death benefits, cash values, surrender
24 values and income due to their inability or unwillingness to pay additional and/or increased premiums
25 on a policy or policies they were told would require no future premium payments. More importantly,
26 the Plaintiff and the Class Members may now be forced to pay millions of dollars in additional and/or
27 increased premiums they never agreed or expected to pay. Many of the Class Members are elderly
28 persons in or nearing retirement who cannot now afford to pay continued premiums on life insurance.
Many Class Members have now become uninsurable and will be unable to obtain other insurance.

1 There is no adequate remedy at law and without the equitable and other relief requested herein,
2 Plaintiff and Class Members will suffer irreparable harm.

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4 70. Plaintiff further respectfully requests this Court order that Defendants provide
5 restitution to those harmed by its conduct all according to proof, including but not limited to,
6 restitution of all premiums paid on FFUL policies from at least February 17, 1993 to date.

7
8 71. Plaintiff respectfully requests an award of attorneys' fees upon prevailing in this
9 request for injunctive relief. With regards to injunctive relief, Plaintiffs seek an injunction to enjoin
10 the defendants from allowing any FFUL policy to lapse before maturity; to enjoin the defendants
11 from engaging in interest rate discrimination against FUL policyholders and an injunction preventing
12 any FUL policy from lapsing before maturity.

13 72. Plaintiffs seek an order reinstating all FFUL policies which lapsed after rate increases
14 in 1999 and 2003.

15
16 **SECOND CAUSE OF ACTION**

17 **(Breach of Contract Against All Defendants and Does)**

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19 73. Plaintiff incorporates by reference each and every allegation set forth above as though
20 fully set forth herein.

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22 74. Ms. Fairbanks paid more than the minimum premium in the first year of \$394.00
23 required by her FFUL policy. **(Ex. 1)** Page six (6) of Ms. Fairbanks FFUL policy requires:

24
25 “After the first premium payment has been paid, subsequent premiums
26 can be paid at any time. The amount of premium payments are flexible
27 after the first policy year. In the first year you must pay at least the
28 minimum premium shown on the policy specifications page. The

actual amount and frequency of your premium payments will affect the values and duration of your insurance.

Premiums are to be paid to our home office or to our authorized agent. We will provide a receipt signed by one of our officers upon receipt.”

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75. As shown on the policy specifications page of **Ex. 1**, Ms. Fairbanks continued to timely pay her planned premiums of \$70.00 per month.

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76. The Defendants have breached that contract to Ms. Fairbanks because if only minimum premiums are paid, the policy will self-destruct as Mr. Kuni admitted, “. . . first of all, I should say the target premium, again, did not guarantee that the policy would last all the way to maturity under any given assumption.” (**Ex. 7**, Kuni depo pg. 109). Under the terms of the policy, (**Ex.1**) Ms. Fairbanks was not required to pay \$2,460.00 per year to keep the policy in force until age 95. Instead, it offered the alternative of paying a lesser amount without adequately disclosing, as set out in Paragraph 32b, 26 sections i, j, p and t, Paragraph 63 and Paragraph 64 sections a-f, she would lose her insurance if she chose the lesser amount. The Defendants have breached the contract, based on Mr. Kuni’s admissions, and Ms. Fairbanks, individually, has been damaged by the breach that will cause the loss of her insurance. All other FFUL policyholders who have not paid the theoretical premium, but have paid at least the minimum premium, have also had their insurance contracts breached by the Defendants and been damaged in the same manner as Ms. Fairbanks.

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77. Farmers entered into written contracts of adhesion with the Plaintiff and the Class Members in which Farmers promised that the *payment* of minimum premiums in the first year and the payment of planned premiums, would be sufficient to carry the cost of the policies until maturity. Farmers breached material terms of such contracts. The Farmer’s computer reinforced this bargain.

28
78. Farmers further failed and neglected to perform the conditions of the contracts, and have further breached the contracts, in that they have demanded that Plaintiff and the Class Members pay additional and/or increased premiums class members or risk having their policy canceled. Many

1 Class members have had policies canceled due to their inability or unwillingness to pay additional
2 and/or increased premiums agreed to between them and Farmers. The Class members have been
3 compelled to continue to make increased premium payments, which they could not afford, due to
4 their uninsurability, age or other factors, or to accept lower death benefits.

5 79. By reason of the foregoing, Plaintiff and the Class Members have been irreparably
6 harmed and damaged in an amount to be determined at the trial of this action. Plaintiff and the Class
7 Members have lost and face the prospect of losing many millions of dollars in death benefits, cash
8 values, surrender values and income due to their inability or unwillingness to pay additional and/or
9 increased premiums on a policy or policies they were told would require no future premium
10 payments. More importantly, the Plaintiff and the Class Members may now be forced to pay millions
11 of dollars in additional premiums and/or increased premiums they never agreed or expected to pay.
12 Many of the Class Members are elderly persons in or nearing retirement who cannot now afford to
13 pay continued premiums on life insurance. Many Class Members have now become uninsurable and
14 will be unable to obtain other insurance. As such, Plaintiff and Class Members have incurred special
15 damages according to proof in an amount well in excess of the minimum jurisdiction of this Court.
16

17
18 **THIRD CAUSE OF ACTION**

19 **(Breach of the Implied Covenant of Good Faith**
20 **and Fair Dealing Against All Defendants and Does)**
21

22 80. Plaintiff incorporates by reference each and every allegation set forth above as though
23 fully set forth herein.
24

25 81. Ms. Fairbanks, individually, will lose her FFUL policy before age 95 based on the
26 admissions in the testimony of Joel Kuni and the Interest Committee minutes and other evidence. The
27 loss of her policy when she has complied with the insurance contract equates to denial of benefits.
28 Ms. Fairbanks, individually, has sustained damages from the breach of duty of good faith and fair
dealing in that she will lose her FFUL policy before age 95.

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82. As a direct and legal result of the issuance of life insurance policies to Plaintiff and the Class the relationship of insurer and insured arose, creating under the law an implied covenant of good faith and fair dealing owed by Farmers to Plaintiff and the Class. As a result of this special relationship, Farmers was required to do the following:

- (a) make full disclosure to Plaintiff and the Class Members regarding the nature of the product being sold and the financial effect of the transaction on the customer at all relevant times;
- (b) advise Plaintiff and the Class Members of the substantial commissions that were being earned by the agents as a result of the transaction, the sales load and the administrative charges being earned by Farmers at all relevant times;
- (c) act in a way that was beneficial to, and not detrimental to, Plaintiff and the Class Members at all relevant times;
- (d) refrain from misrepresenting the benefits, advantages, conditions or terms of any insurance policy through policies designed with adequate wording at all relevant times;
- (e) refrain from illustrations which misrepresented the dividends and/or interest to be received on any insurance policy at all relevant times;
- (f) refrain from making illustrations and programs which contained misrepresentations made for the purpose of inducing or intending to induce the lapse, self-destruction, forfeiture, exchange, conversion or surrender of any insurance policy at all relevant times;

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- (g) refrain from producing a false or misleading insurance policies for the purpose of obtaining a fee, commission, money or other benefits at all relevant times;
- (h) refrain from making any misleading representation or fraudulent material omissions for the purpose of inducing the Plaintiff to purchase, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance in another insurer at all relevant times;
- (i) refrain from engaging in the “twisting”, “churning”, “investment! savings plan” and “vanishing premium” schemes as described above with its own existing policyholders at all relevant times;
- (j) refrain from providing already existing policyholders a lesser interest rate return so as to use that money to provide a higher interest rate to prospective applicants so as to entice those applicants to become Farmers policyholders at all relevant times;
- (k) to advise Plaintiff and the Class Members of the material information outlined above in Paragraphs 1 through 7 (pgs. 4-6), Paragraphs 32b, 26 sections a-u, (pgs. 19-24), Paragraph 63, (pg. 35), Paragraph 64, sections a-f (pgs. 36 & 37) and **Exhibits 1-28**, at all relevant times; and
- (l) refrain from sending Class Members Period premium notices stating that said policyholders will now have to make additional and/or increased premium payments beyond those previously agreed to in order to keep their policies in force given the representations made by Farmers at the point of sale of said policies and at all relevant times thereafter that said policies contained a the vanishing premium feature and further allow policyholders to buy what they believed was premium insurance and pay a premium Farmers’ knew was inadequate to keep the policy in force until maturity.

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2 83. As a direct and legal result of Defendants' breach of its implied covenant of good faith
3 and fair dealing as alleged herein, Plaintiff and Class Members have suffered damages as follows:

4 a. Class members are entitled to general damages, including the benefit of the
5 bargain, because of policy lapses before maturity to buy similar policies from
6 another company including an annuity to fund said policies to avoid adverse
7 tax consequences at their present tax rate they were promised, less the value of
8 future premium payments; and

9
10 b. Special damages according to proof for attorneys' fees incurred by being
11 forced by Defendants' conduct to retain an attorney in order to remedy
12 Farmers' breach of contract; breach of duty of good faith and fair dealing: loss
13 of policy benefits due to being unable or unwilling to pay additional and/or
14 increased premiums when it was represented at the point of sale that payment
15 of future premiums was not necessary because said premiums would "vanish"
16 at a certain point in time, thus causing said policies to lapse or renew or
17 cancel; loss of policy benefits and other economic loss caused by Farmers'
18 "churning", "twisting", "piggybacking", "investment plan" and "vanishing
19 premium" schemes as described in this Complaint; loss of use of money and
20 for other financial losses according to proof.

21
22 84. In issuing and renewing said life insurance policies and in tortiously breaching its
23 implied covenant of good faith and fair dealing, Defendants acted with malice, fraud and oppression
24 towards Plaintiff and Class Members in conscious disregard of their independent and collectively
25 rights in that it engaged in the acts set forth in the General Allegations Section of this Complaint and
26 this Cause of Action during its marketing, advertising, selling, issuing, renewing and canceling of
27 said policies.
28

1 85. All of the aforementioned conduct was done pursuant to a company wide defacto
2 policy to intentionally and willfully vex, annoy, intimidate, injure and harass Plaintiff, and other
3 similarly situated Class Members. Therefore, in doing the acts alleged herein, Defendants' actions
4 were fraudulent, malicious, and oppressive in violation of *Civil Code*, Section 3294 in that its conduct
5 was intended to cause, and did cause, injuries to Plaintiff and Class Members, was done with a
6 conscious disregard of their independent and collective rights, thereby warranting the assessment of
7 punitive damages against Defendants, and each of them, in an appropriate amount to punish it and set
8 an example for others. All of the foregoing conduct was authorized, approved and/or ratified by
9 Defendants' management-level employees.

10 **FOURTH CAUSE OF ACTION**

11 **(Negligent Misrepresentation Against All Defendants and Does)**

12
13 86. Plaintiff incorporates by reference each and every allegation set forth above as though
14 fully set forth herein.

15
16 87. The Defendants negligently misrepresented and/or designed the terms and conditions
17 of Ms. Fairbank's individual FFUL policy, **(Ex.1)** by failing to define, or even list, the following
18 terms:

- 19
20 a) Guideline Premium;
- 21 b) Target Premium;
- 22 c) Planned Premium;
- 23 d) Planned Premium to keep the policy in-force until maturity;
- 24 e) the annual premium necessary to guarantee maturity of the policy assuming
- 25 guaranteed interest and risk rates; and
- 26 f) by failing to adequately warn and explain the alleged disclaimer: "the
- 27 actual amount and frequency of your premium payments will affect the
- 28 values and duration of your policy;" meant that even if you paid the
planned premium or any amount below the theoretical amount you would

still lose your insurance in the FFUL policy sold to Ms. Fairbanks,
individually and all other policyholders; and

g) Guideline Maximum Premium, (also see Paragraph 32b 26t)

88. Ms. Fairbanks, individually, relied on the policy, the training materials and the Farmer's computer and the inadequate, non-existent and defective explanations and so called disclaimers and was damaged because her FFUL policy will self-destruct (lapse). These defects, together and singularly, were a producing and proximate cause of Ms. Fairbank's individual damages. All other class members would be damaged in the same manner by the same causes.

FUL POLICIES

89. Ms. Fairbanks was damaged individually by the material omission of facts regarding her FUL policy, set out in Paragraphs 45 through 52, and the discretion the Defendants had in the payment of interest on her FUL policy because of marketing reasons and profit considerations. This discretion was never disclosed to Ms. Fairbanks and she was individually damaged by the payment of lower interest and the lower accumulation in her FUL policy because of the lower interest until the present time. The lack of disclosure did not allow her to make informed decisions. All other FUL policyholders were damaged in the same manner.

90. Plaintiff repeats and realleges each and every allegation set forth above and incorporates the same by reference as though fully set forth herein.

91. Pursuant to the "vanishing premium" and "churning" schemes described above, Farmers undertook to review the insurance coverages and needs of, and to provide advice and counsel to Farmers customers on the subject of what would be in the customer's best interest with respect to the acquisition of a new insurance policy. Farmers then persuaded Plaintiff and Class Members to purchase Farmers life insurance policies by representing the policies could be obtained with no additional and/or increased premiums without affecting the death benefit or cash value in the existing policy, and/or that the policy premiums would be fully-paid within a certain time.

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92. Farmers had a common law duty to disclose to, and a duty not to conceal from, Plaintiff and the Class Members facts, which were pertinent and material to the sale of life insurance to them. In executing the sales scheme described above, Farmers knowingly, recklessly, maliciously and with intent to defraud, concealed pertinent and material information from Plaintiff and the Class Members in selling life insurance to them. Plaintiff and the Class Members had a right to rely upon Farmers to disclose to them and not to conceal pertinent and material facts from them in connection with the sale of life insurance to them. Plaintiff and the Class Members did so rely, resulting in damages to them. At the same time the misrepresentations were made as described above Farmers concealed from Plaintiff and Class Members, relevant and material information relating to what they were purchasing and the transaction through which the policy would be sold.

93. The representations made by Farmers as described and explained in the Paragraphs set forth through this Complaint, and the concealment engaged in by Farmers were done negligently, without full disclosure, without regard to the truth or falsity of such representations and with the intent to induce Plaintiff and Class Members to purchase Farmers life insurance policies. The representations were made and the concealments done with the knowledge, authority, ratification, approval, cooperation and/or acquiescence of Farmers' officers, managers and other high-level personnel. Plaintiff and Class Members relied upon said representations to their detriment and damages.

94. Farmers had superior knowledge to Plaintiff and the Class Members concerning not only the different types of financial and life insurance products available, but also whether additional life insurance was appropriate. The relationship between Farmers and Plaintiff and the Class Members was calculated and intended by Farmers to repose confidence and trust in Farmers as it related to life insurance and investments.

95. Farmers knew or should have known the Plaintiff and the Class Members placed this confidence and trust in them, and Farmers accepted the confidence and trust reposed in it by Plaintiff and the Class Members.

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96. Plaintiff and the Class Members generally had no prior training, expertise or knowledge concerning either the need for or what different life insurance products were available and relied solely upon the advice and recommendations of Farmers.

97. Class members have yet to learn they have been victimized by Farmers' uniform misrepresentations and omissions. Despite exercising reasonable diligence, Plaintiff and the Class Members could not discover and were prevented from discovering Farmers' fraudulent sales practices in selling life insurance policies using the lapse and interest rate scenarios and discrimination discussed herein, vanishing premium sales presentations and all policy illustrations *and reports*. Given the special relationship between Farmers and its policyholders including Plaintiff and the Class Members, Farmers owed Plaintiff and the Class Members an affirmative duty of full and fair disclosure at all relevant times but failed to honor and discharge its duty. Rather than ensure truthful disclosure of material facts, Farmers concealed disclosure of material facts relating to the life insurance policies sold and annually renewed.

98. As a result of Farmers' improper conduct, Plaintiff and the Class Members have suffered and will suffer immediate and irreparable harm. Plaintiff and the Class Members have lost and face the prospect of losing many millions of dollars in death benefits, cash values, surrender values and income due to their inability or unwillingness to pay additional and/or increased premiums on a policy or policies. The FFUL policy also limits the amount of money a policyholder can put in, which can cause future lapses. More importantly, the Plaintiff and the Class Members may now be forced to pay millions of dollars in additional and/or increased premiums they never agreed or expected to pay. Many of the Class Members are elderly persons in or nearing retirement who cannot now afford to pay continued increased premiums on life insurance. Many Class Members have now become uninsurable and will be unable to obtain other insurance.

99. As a direct and legal result of Defendants' negligent misrepresentations as alleged herein, Plaintiff and Class Members have suffered damages as follows:

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- a. Class members are entitled to general damages, including the benefit of the bargain, because of policy lapses before maturity to buy similar policies so sufficient funds, after taxes, will be available to pay the premiums from another company plus an annuity to fund said policies to avoid adverse tax consequences calculated to include their present tax rate so sufficient fund, after taxes, will be available to pay the premiums, less the value of future premium payments; and

- b. Special damages according to proof for loss of policy benefits due to being unable or unwilling to pay additional and/or increased premiums when it was represented at the point of sale that payment of increased future premiums was not necessary because said premiums would “vanish” at a certain point in time, thus causing said policies to lapse or renew or cancel; loss of policy benefits and other economic loss caused by Farmers’ “churning”, “twisting”, “piggybacking”, “investment plan” and “vanishing premium” schemes as described in this Complaint; loss of use of money and for other financial losses according to proof.

100. In engaging in the acts described above, Defendants acted with malice, fraud and oppression towards Plaintiff and Class Members in conscious disregard of their independent and collectively rights in that it engaged in the acts set forth in the General Allegations Section of this Complaint and this Cause of Action during its marketing, advertising, selling, issuing, renewing and canceling of said policies.

101. All of the aforementioned conduct was done pursuant to a company wide defacto policy to intentionally and willfully defraud, vex, annoy, intimidate, injure and harass Plaintiff, and other similarly situated Class Members. Therefore, in doing the acts alleged herein, Defendants’ actions were fraudulent, malicious, and oppressive in violation of *Civil Code*, Section 3294 in that its conduct was intended to cause, and did cause, injuries to Plaintiff and Class Members, was done with a conscious disregard of their independent and collective rights, thereby warranting the assessment of

1 punitive damages against Defendants, and each of them, in an appropriate amount to punish it and set
2 an example for others. All of the foregoing conduct was authorized, approved and/or ratified by
3 Defendants' management-level employees.

4
5 **FIFTH CAUSE OF ACTION**

6 **(Fraudulent Inducement Against all Defendants and Does)**

7 102. Plaintiff incorporates by reference each and every allegation set forth above as though
8 fully set forth herein.

9
10 103. The Defendants fraudulently induced Ms. Fairbanks individually to purchase her
11 FFUL policy number 004179091P by fraudulently representing that she was purchasing permanent
12 insurance. The previous allegations of this Complaint set out the alleged warnings and disclaimers
13 were inadequate, misleading, deceptive and ambiguous to advise Ms. Fairbanks, individually, that she
14 had actually purchased what was effectively a term policy, not permanent insurance.

15
16 104. The illustration and policy failed to advise Ms. Fairbanks, individually, in plain
17 conspicuous language, where her planned premium was in relationship to the maximum risk rate that
18 Farmers could charge her at the age she bought the policy. This omission did not allow Ms. Fairbanks
19 to plan or consider even greater rate increases by the Defendants.

20
21 105. The FFUL policy was defective because it failed to warn or advise Ms. Fairbanks that
22 the consequences of failing to pay the planned premium necessary to keep the policy in-force until
23 maturity beginning in the first year and every year thereafter would result in exponential rate
24 increases of that type of planned premium in later years. For example: In November 2003, Ms.
25 Fairbanks would have had to pay over \$13,000.00 per year for the next thirty (30) years for a
26 \$50,000.00 FFUL policy. Ms. Fairbanks was individually damaged by these failures. Farmer's
27 training materials, **(Ex. 6)** have FFUL policies under permanent insurance.

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106. These defects, failures and/or omissions were a proximate and/or producing cause of Ms. Fairbank's individual damages and the damages of all other FFUL policyholders.

107. The individual damage to Ms. Fairbank's FUL policy described in the Complaint apply to this cause. Those omissions of fraud induced Ms. Fairbanks to purchase her FUL policy and she was individually damaged by the loss of interest, the loss of accumulation of interest, because less interest was paid to her and the omission of material facts and inadequate definitions, explanations, warning, training materials and disclaimers, which did not allow Ms. Fairbanks to make a fully informed decision to purchase her FUL policy and continue to pay and retain said FUL policy. **(Ex. 2)** All of these actions and omissions, together and singularly, were a producing and/or proximate cause of Ms. Fairbanks individual damages and all other FUL policyholders.

108. Pursuant to the "vanishing premium", lapses and rate discrimination and "churning", schemes described above, Plaintiff and the Class Members were led to believe they were obtaining permanent and/or an additional life insurance policy providing additional death benefit for no additional premium or out-of-pocket expense or that the premiums on their policy would be fully-paid within a certain time.

109. Farmers had a common law duty to disclose to, and a duty not to conceal from, Plaintiff and the Class Members facts, which were pertinent and material to the sale of life insurance to them. In executing the sales scheme described above, Farmers knowingly, recklessly, maliciously and with intent to defraud, concealed pertinent and material information from Plaintiff and the Class Members in selling life insurance to them. Plaintiff and the Class Members had a right to rely upon Farmers to disclose to them and not to conceal pertinent and material facts from them in connection with the sale of life insurance to them. Plaintiff, Individually, and the Class Members did so rely, resulting in damages to them. Plaintiff, Individually, and the Class Members in fact relied upon the fraud, lies, misrepresentations and nondisclosure as Farmers had intended that they do. As a result of such reliance, they purchased life insurance believing that it was obtained without affecting an existing policy, and/or permanent insurance as they had been assured by Farmers and/or they purchased life insurance believing it was permanent as it had been represented by Farmers.

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110. As a result of Farmers’ improper conduct, Plaintiff and the Class Members have suffered and will suffer immediate and irreparable harm. Plaintiff and the Class Members have lost and face the prospect of losing many millions of dollars in death benefits, cash values, surrender values and income due to their inability or unwillingness to pay additional and/or increased premiums on a policy or policies they were told would require no future premium payments. More importantly, the Plaintiff and the Class Members may now be forced to pay millions of dollars in additional and/or increased premiums they never agreed or expected to pay. Many of the Class Members are elderly persons in or nearing retirement who cannot now afford to pay continued increased premiums on life insurance. Many Class Members have now become uninsurable and will be unable to obtain other insurance.

111. As a direct and legal result of Defendants’ fraudulent inducement as alleged herein, Plaintiff and Class Members have suffered damages as follows:

- a. Class members are entitled to the general damages of the benefit of the bargain because of policy lapses before maturity to buy similar policies from another company including an annuity to fund said policies to avoid adverse tax consequences at the rate they were promised, less the present value of future premium payments; and
- b. Special damages according to proof for loss of policy benefits due to being unable or unwilling to pay additional and/or increased premiums when it was represented at the point of sale that payment of future premiums was not necessary because said premiums would “vanish” at a certain point in time, thus causing said policies to lapse or renew or cancel; loss of policy benefits and other economic loss caused by Farmers’ “churning”, “twisting”, “piggybacking”, “investment plan” and “vanishing premium” schemes as described in this Complaint; loss of use of money and for other financial losses according to proof.

1 112. In engaging in the acts described above, Defendants acted with malice, fraud and
2 oppression towards Plaintiff and Class Members in conscious disregard of their independent and
3 collectively rights in that it engaged in the acts set forth in the General Allegations Section of this
4 Complaint and this Cause of Action during its marketing, advertising, selling, issuing, renewing and
5 canceling of said policies.

6
7 113. All of the aforementioned conduct was done pursuant to a company wide defacto
8 policy to intentionally and willfully vex, annoy, intimidate, injure and harass Plaintiff, and other
9 similarly situated Class Members. Therefore, in doing the acts alleged herein, Defendants' actions
10 were fraudulent, malicious, and oppressive in violation of *Civil Code*, Section 3294 in that its conduct
11 was intended to cause, and did cause, injuries to Plaintiff and Class Members, was done with a
12 conscious disregard of their independent and collective rights, thereby warranting the assessment of
13 punitive damages against Defendants, and each of them, in an appropriate amount to punish it and set
14 an example for others. All of the foregoing conduct was authorized, approved and/or ratified by
15 Defendants' management-level employees.

16
17 **SIXTH CAUSE OF ACTION**
18 **(Violations of the Consumer Legal Remedies Act)**
19

20 114. The class members' claims against Defendants involve questions of law and fact
21 common to the class that are substantially similar and predominate over questions affecting
22 individual class members. All of The allegations already set out in this Complaint are incorporated as
23 if fully set out herein.

24
25 115. The claims or defenses of Plaintiff are typical of the claims or defenses of the class
26 since Farmers engaged in unfair or deceptive acts or practices in violation of Civil Code section 1770
27 in connection with the sale of Farmers Universal Life (FUL) and Farmers Flexible Universal Life
28 (FFUL) policies from 1984 through 1996 in all states where Farmer's did business. The FFUL sales
are an ongoing fraud because Farmer's continues to accept funds on the basis that policyholders have

1 been sold permanent insurance when Farmer's knows the policies will self-destruct and families will
2 lose their insurance when there is a high risk of the insured dying.

3
4 116. Farmers also engaged in, including but not limited to, failing to warn Ms. Fairbanks,
5 individually and consumers of the risks of under-funding, including but not limited to the deceptive,
6 defective and inadequate disclaimers, warning and definitions already set out herein, and the risks of
7 replacements and vanishing premium policies. Farmers engaged in a nationwide replacement and
8 vanishing premium sales campaign to the detriment of policyholders. Farmers lowered interest rates
9 paid to policyholders arbitrarily and unreasonably without adequate disclosure. Farmers failed to
10 disclose the FFUL policy was designed so Farmers had to take a percentage of profit off the top
11 before paying interest to policyholders. Farmer's agents received training materials stating Farmers
12 was paying current high interest rates, which was untrue. Farmer's statements and policies failed to
13 even include or define terms that would adequately warn policyholders they would lose their
14 insurance due to under-funding. FUL and FFUL policies constitute adhesion contracts drafted in a
15 manner that was unfair to policyholders. Farmers is selling insurance as an investment, not insurance.

16 ANNUAL STATEMENTS

17
18 117. Class Representative, Pauline Fairbank's annual statements on her FFUL policies
19 violated the CLRA in the following manner:

- 20 a) the statement (**Ex. 8**) did not define planned premium or even use the term,
21 although it was used on the policy specification page of Ms. Fairbanks FFUL
22 policy; (**Ex. 1**)
23
24 b) the term guideline maximum premium was deceptively designed and was
25 inadequate to warn Ms. Fairbanks, individually, and all other class members
26 of the dangers of under-funded policies self-destructing (lapsing). The term
27 guideline maximum premium, as set out on **Ex. 8**, Ms. Fairbank's individual
28 statement for 1999 (all other statements share the same defects through 2004)
simply states: "If you do not make changes to the face amount of this policy,

1 the Maximum Premium that can be paid into the policy during the next policy
2 year and continue to qualify for favorable life insurance tax treatment is :
3 \$17,195.30.” That statement does not refer to planned premium, lifetime
4 coverage premium, target premium, minimum premium or guideline premium
5 and is defective and misleading. It fails to advise anyone of the consequences
6 of not paying the Guideline Maximum Premium.

7
8 118. Only notifying the Plaintiff, Pauline Fairbanks and Class Representative of the
9 maximum amount she can put in and still obtain favorable tax treatment when the real danger is self-
10 destruction because of under-funding is an unconscionable act or cause of action.

11 119. The scenario under the section of the annual statement titled “For Your Information”
12 does not show the policyholder what happens to the policy if the policyholder continues to make
13 payments and maximum risk charges are applied. These failures constitute a violation of all causes of
14 action under this Complaint for Ms. Fairbanks, individually and all other class members, with the
15 exception of breach of contract, and continue until today. These improper actions are continuing and
16 caused Ms. Fairbanks, Class Representative, individual damages along with all other class members.
17 Such acts and/or actions are a producing and/or a proximate cause of Ms. Fairbanks individual
18 damages, along with all other

19
20 120. In particular, the Defendants violated Civil Code sections 1770 (5), representing that
21 Ms. Fairbank’s individual FFUL and FUL policies (**Exs. 1 & 2**) have sponsorship, approval,
22 characteristics, ingredients, uses, benefits, or qualities which they do not have . . . , (7) representing
23 that Ms. Fairbank’s FFUL and FUL policies (**Exs. 1 & 2**) are of a particular standard, quality or
24 grade, or that goods are of a particular style or model, if they are of another, (9) advertising Ms.
25 Fairbank’s FFUL policy (**Ex. 1**) with intent not to sell it as advertised, (14) representing that a
26 transaction confers or involves rights, remedies, or obligations, which it does not have or involve, or
27 which are prohibited by law, and (19) inserting an unconscionable provision(s) in the contract.
28

1 121. All of these actions together and singularly violated Civil Code section 1770(g) with
2 respect to Ms. Fairbanks individually and all other class members.

3
4 122. On or about July 28, 2004, Plaintiffs notified Defendants of the unlawful acts
5 described in Paragraphs 114 - 120 of this Complaint by written notice which contained a demand that
6 Defendant:

- 7 a) stop the sale of under-funded Universal policies of any type;
- 8
9 b) notify all policyholders of FUL and FFUL policies who have not paid the
10 guideline premium as that term is defined and utilized by Farmers New World
11 Life Insurance Company and Farmers Group, Inc., that their policies will
12 lapse and the date of that lapse; reinstate all FUL and FFUL policies that have
13 lapsed because of under-funding;
- 14 c) warn all future policyholders **that Universal life insurance is not permanent**
15 **insurance and has a high probability of lapsing when the insured is in**
16 **their sixties, seventies or eighties;**
- 17
18 d) stop the use of the term vanishing premium and/or similar terms, nationwide,
19 and stop the use of that sales technique;
- 20
21 e) stop the use of replacements and the encouragement of replacement, in any
22 form;
- 23
24 f) stop the payment of any commission on a replacement and disclose to FUL
25 policyholders that Farmers arbitrarily lowered the interest rates paid to them;
- 26
27 g) notify policyholders of other improprieties in the setting of interest rates; set
28 out in the Interest Committee meeting minutes, including, but not limited to
1990 through 1996; or agree within that time to do so;

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- h) repay that interest along with the legal rate of interest;
- i) allow rescission and refund of all under-funded policies, investment, replacement and/or vanishing premium sales, (under-funded policies can also involve investment, replacement and/or vanishing premium sales);
- j) or in the alternative, pay all holders of investment, replacement and/or vanishing premium sales and under-funded policies damages based on the benefit of the bargain, within 30 days after receipt of this notice.

123. Plaintiffs’ notice was sent via facsimile and certified mail, return receipt requested number 7001 2510 0000 5392 2353 to Peter Mason, Fulbright & Jaworski, 865 South Figueroa Street, 29th Floor, Los Angeles, California 90017. A true and correct copy of Plaintiffs’ notice and demand is attached as **Exhibit 28** and is incorporated by reference.

124. Plaintiff, Pauline Fairbanks is a senior citizen and has suffered substantial economic damage resulting from Defendants’ conduct; that one or more of the factors set forth in Civil Code section 3345 are present; and that an additional award of \$5,000.00 for each such class member is appropriate.

125. As a result of the Civil Code section 1770 violations described in Paragraphs 114 – 120, but more fully described throughout this Complaint, Plaintiff and each class member has suffered actual damages.

126. Defendants acted with oppression, fraud and/or malice in engaging in the Civil Code section 1770 violations described in this Complaint. As a result, Plaintiff, individually, and the class which Plaintiff represents, are entitled to punitive damages.

1 126. Defendants continue to violate Civil Code section 1770(b) and (e) and Plaintiff
2 requests that the Court enjoin Defendants from committing those violations.

3
4 128. Plaintiff has incurred, and will continue to incur, expenses for costs and attorney fees
5 necessary for the investigation and prosecution of this action. Those attorney fees and other
6 expenditures will result in a benefit to all members of the class.

7
8 129. WHEREFORE, Plaintiff demands on behalf of herself and consumers similarly
9 situated, judgment against Defendants, and each of them, for the following:

- 10 a) Actual damages in the amount of the benefit of the bargain for each class
11 member, plus an annuity to fund said new policy to avoid adverse tax
12 consequences included in the policyholder's tax bracket;
- 13 b) Damages for each class member in the amount of \$5,000.00 as permitted
14 under Civil Code sections 1780(b) and 3345(b);
- 15 c) Punitive damages;
- 16 d) An injunction permanently enjoining Defendant from engaging in the
17 violations of CC § 1770 described in this Complaint;
- 18 e) Payment of costs and attorney fees from the amount recovered for the
19 common benefit of the class;
- 20 f) Interest as permitted by law;
- 21 g) Any other and further relief the Court may deem proper.

22 **PRAYER FOR RELIEF**

23
24 130. WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
25 follows:

- 26 (a) that the Court determine that this action may be maintained as a class action;
- 27 (b) joint and several judgment in favor of Plaintiff and each and every member of
28 the Plaintiff Class, respectively, be entered against defendants and each, of
them; and

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FIRST CAUSE OF ACTION FOR RELIEF
PURSUANT TO BUSINESS AND PROFESSIONS
CODE, SECTION 17200

131. For a permanent injunction against Defendants, and each of them, restraining, preventing and enjoining said Defendants from engaging in the unfair, unlawful and fraudulent business practices alleged;

132. For an order requiring Defendants, and each of them, to provide restitution based upon money wrongfully obtained through the use of said unfair, unlawful and/or fraudulent business practices including but not limited to:

- a. Enjoin any increase in risk rates and costs of administration for the next forty-five years for all policies in class period;
- b. Reinstate all policies sold in the class period which lapsed after rate increases in 1999 and 2003;
- c. Pay restitution to all policyholders in class period of all rate increases in 1999 and 2003 and rate decreases, which were collected from policyholders to the present;
- d. The cost of all company sponsored replacements shall be refunded to policyholders, along with interest at the legal rate compounded annually;
- e. All policies in the class period where premiums were supposed to vanish and will not vanish as promised, the defendant will be enjoined from collecting further premiums and all policies that have lapsed where premiums were supposed to vanish will be reinstated on these terms and for those class members sold a vanish and who have passed away their policy's face value shall be paid to the estate;

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- f. Reinstatement all policies in the class period, which lapsed after only minimum and/or target premiums were paid and pay the face value to all policyholders whose policy lapsed under such circumstances without borrowing and/or missing the total of annual premium payments up until the lapse date;
- g. Enjoin the Defendants from selling Universal Life policies for at least twenty (20) years or in the alternative, require, **TEN POINT TYPE, IN ALL BOLD CAPS** for new, complete disclaimers and/or warnings; and

- 133. For costs of suit incurred herein;
- 134. For such other and further relief as this Court deems just and proper; and
- 135. Attorney fees.

SECOND CAUSE OF ACTION FOR BREACH OF CONTRACT

- 136. Special damages according to proof and for breach of contract;
- 137. In the alternative, all policyholders shall receive the benefit of the bargain in cash sufficient to purchase a similar or same face value policy from another company, plus funding for an annuity, including taxes in an amount sufficient to pay said policy to avoid the effects of TEFRA and DEFRA, less the present value of all future premium payments to defendant, Farmers.
- 138. Costs of suit incurred herein;
- 139. Interest at the legal rate and interest on FUL policies, as described herein; and

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140. For such other and further relief as this Court deems just and proper.

141. For attorney's fees.

**THIRD CAUSE OF ACTION FOR BREACH OF THE
IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

142. General damages according to proof;

143. Special damages according to proof;

144. In the alternative, all policyholders shall receive the benefit of the bargain in cash sufficient to purchase a similar or same face value policy from another company, plus funding for an annuity, including taxes in an amount sufficient to pay said policy to avoid the effects of TEFRA and DEFRA, less the present value of all future premium payments to defendant, Farmers.

145. Punitive damages in an amount sufficient to punish Defendants according to proof based upon Defendants' net worth;

146. Costs for suit incurred herein;

147. Interest at the legal rate and interest on FUL policies, as described herein; and

148. For such other further relief as this Court deems just and proper.

**FOURTH CAUSE OF ACTION FOR
NEGLIGENT MISREPRESENTATION**

149. General damages according to proof;

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- 150. Special damages according to proof;

- 151. In the alternative, all policyholders shall receive the benefit of the bargain in cash sufficient to purchase a similar or same face value policy from another company, plus funding for an annuity, including taxes in an amount sufficient to pay said policy to avoid the effects of TEFRA and DEFRA, less the present value of all future premium payments to defendant, Farmers.

- 152. Punitive damages in an amount sufficient to punish Defendants according to proof based upon Defendants' net worth;

- 153. Costs for suit incurred herein;

- 154. Interest at the legal rate and interest on FUL policies, as described herein; and

- 155. For such other further relief as this Court deems just and proper.

FIFTH CAUSE OF ACTION FOR FRAUDULENT INDUCEMENT

- 156. General damages according to proof;

- 157. Special damages according to proof;

- 158. In the alternative, all policyholders shall receive the benefit of the bargain in cash sufficient to purchase a similar or same face value policy from another company, plus funding for an annuity, including taxes in an amount sufficient to pay said policy to avoid the effects of TEFRA and DEFRA, less the present value of all future premium payments to defendant, Farmers.

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- 159. Punitive damages in an amount sufficient to punish Defendants according to proof based upon Defendants' net worth;
- 160. Costs for suit incurred herein;
- 161. Interest at the legal rate and interest on FUL policies, as described herein; and
- 162. For such other further relief as this Court deems just and proper.

SIXTH CAUSE OF ACTION FOR
VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT

163. WHEREFORE, Plaintiff demands on behalf of herself and consumers similarly situated, judgment against Defendants, and each of them, for the following:

- a) Actual damages in the amount of the benefit of the bargain for each class member, plus an annuity to fund said new policy to avoid adverse tax consequences included in the policyholder's tax bracket;
 - b) Damages for each class member in the amount of \$5,000.00 as permitted under Civil Code sections 1780(b) and 3345(b);
 - c) Punitive damages;
 - d) An injunction permanently enjoining Defendant from engaging in the violations of CC § 1770 described in this Complaint;
 - e) Payment of costs and attorney fees from the amount recovered for the common benefit of the class;
 - f) Interest as permitted by law;
 - g) Any other and further relief the Court may deem proper.
- 164. General damages according to proof;
 - 165. Special damages according to proof;

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- 166. In the alternative, all policyholders shall receive the benefit of the bargain in cash sufficient to purchase a similar or same face value policy from another company, plus funding for an annuity, including taxes in an amount sufficient to pay said policy to avoid the effects of TEFRA and DEFRA, less the present value of all future premium payments to defendant, Farmers.

- 167. Costs for suit incurred herein;

- 168. Interest at the legal rate and interest on FUL policies, as described herein; and

- 169. For such other further relief as this Court deems just and proper.

Respectfully submitted,
THE SELLER LAW FIRM, PLLC

Dated: September 3, 2004

By: _____
David L. Sheller, Esquire

Attorneys for Plaintiff and the Plaintiff Class

PROOF OF SERVICE

(Declaration)

[*C.C.P.* §§ 1005(b), 1001, 1013, 2015.5]

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STATE OF TEXAS)
)ss.
COUNTY OF HARRIS)

I, the undersigned, declare: I am employed in the County of Harris, State of Texas, and am over the age of eighteen (18) years of age and not a party to the within action; my business address is 440 Louisiana, Suite 1550, Houston, Texas 77002.

On the 3rd day of September 2004 I served the foregoing document described as **PLAINTIFFS' SECOND AMENDED COMPLAINT** on the interested parties in this action by delivering a true and correct copy of each document thereof, addressed as follows:

Peter H. Mason
Fulbright & Jaworski
865 South Figueroa Street
29th Floor
Los Angeles, CA 90017

BY MAIL: I am readily familiar with this firm's practice of collecting and processing correspondence for mailing. I know that the correspondence is deposited with the U.S. Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, at Houston, Texas.

BY FACSIMILE: I transmitted by facsimile machine, to the fax number(s) indicated below, a true and correct copy of the document(s) described hereinabove to counsel indicated hereinbelow. The foregoing document was transmitted by facsimile transmission and the transmission was reported as completed and without error.

PERSONAL SERVICE: I personally served the document on defense counsel for the Defendants in this action.

(State) I declare under penalty of perjury under the laws of the State of Texas that the above is true and correct.

Executed on the 3rd day of September 2004 at Houston, Texas

David L. Sheller