

1 WILLIAM M. SHERNOFF (SBN 38856)
 2 wshernoff@shernoff.com
 3 SAMUEL L. BRUCHEY (SBN 271995)
 4 sbrucey@shernoff.com
 5 **SHERNOFF BIDART ECHEVERRIA LLP**
 6 301 N. Cañon Drive, Suite 200
 7 Beverly Hills, CA 90210
 8 Telephone: (310) 246-0503
 9 Fax: (310) 246-0380

Attorneys for Plaintiff and the Class

10
 11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**
 13

14 ARTHUR AVAZIAN and others
 15 similarly situated,

16 Plaintiffs,

17 v.

18
 19
 20 GENWORTH LIFE AND ANNUITY
 21 INSURANCE COMPANY and DOES
 22 1 through 10,

23 Defendants.

Case No.

24
 25 **CLASS ACTION COMPLAINT AND**
 26 **DEMAND FOR JURY TRIAL**

- 27
 28
1. BREACH OF CONTRACT
 2. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING



1 Arthur Avazian (Arthur) brings this action on behalf of himself and all
2 others similarly situated against defendant Genworth Life and Annuity
3 Insurance Company (Genworth). By and through his attorneys and based on
4 individual experience, the investigation of counsel and information and belief,
5 Arthur alleges as follows.

6
7 **NATURE OF THE CASE**

8 1. Arthur has filed this class action lawsuit because Genworth has
9 knowingly and repeatedly failed to comply with a California statutory scheme
10 that seeks to safeguard consumers' life insurance coverage by requiring insurers
11 to observe clearly defined notice procedures before terminating coverage for
12 nonpayment of premium.

13 2. By violating California law, Genworth has improperly lapsed
14 countless numbers of life insurance policies, saving the company untold sums by
15 retaining premiums on policies the company will never pay out on.

16 3. Under a California law which became effective January 1, 2013, life
17 insurance companies such as Genworth are required to a) give their
18 policyholders an opportunity to designate a third party to receive notice of a
19 potential termination of benefits for nonpayment of premium (Designation
20 Requirement); b) provide notice to the designated third party of any
21 nonpayment of premium prior to terminating any policy (Third-Party Notice
22 Requirement); and c) provide 30 days written notice to the policyholder prior to
23 cancelation (30-Day Notice Requirement).

24 4. The public policy underlying these legal requirements, which were
25 publicly supported by California's governor, insurance commissioner and
26 department of insurance, is to protect consumers, especially seniors, from losing
27 valuable, longstanding insurance coverage owing to an accidentally missed
28 premium payment. The author of the legislation put it this way:

1 Individuals can easily lose the critical protection of life
2 insurance if a single premium is accidentally missed. If an
3 insured individual loses coverage and wants it reinstated, he or
4 she may have to undergo a new physical exam and be
5 underwritten again, risking a significantly more expensive,
6 possibly unaffordable premium if his or her health has
7 changed in the years since purchasing the policy. Therefore,
8 the protections provided by [the Requirements] are intended
9 to make sure that policyholders have sufficient warning that
10 their premium may lapse due to nonpayment.

11 5. This is not a mere hypothetical concern. When insureds fall ill or are
12 in the final stages of life, it is not uncommon that they miss a premium payment
13 owing to their predicament.

14 6. Genworth has repeatedly and intentionally failed to adhere to the
15 Designation, 30-Day Notice and Third-Party Notice Requirements.

16 7. Furthermore, Genworth has misrepresented the law to its insureds,
17 telling them, falsely, that the anti-lapse laws do not apply to insurance policies
18 issued after January 1, 2013.

19 8. Arthur is but one of Genworth's insureds or beneficiaries who has
20 been damaged by the company's misconduct. In 2016, Genworth improperly
21 terminated Arthur's \$500,000 life insurance policy, on which he had paid more
22 than \$70,000 in premiums over 23 years.

23 24 **JURISDICTION AND VENUE**

25 9. This action is a civil matter over which this Court has jurisdiction
26 under the provisions of 28 U.S.C. § 1332.

27 10. At all relevant times, Arthur was a citizen of California, and Genworth
28 was a citizen of Virginia. The amount in controversy exceeds the jurisdictional

1 minimum under 28 U.S.C. § 1332.

2 11. Venue is appropriate in this district under 28 U.S.C. § 1391 because
3 Genworth has transacted business, was found or had agents in this district, and
4 the events giving rise to claims at issue occurred in this district.

5 12. This Court has personal jurisdiction over Genworth because
6 Genworth a) transacted business in this district; b) issued insurance policies in
7 this district; c) had substantial contacts with this district; and/or d) was engaged
8 in the illegal conduct alleged herein, which was directed at and had the intended
9 effect of causing injury to persons residing or located in this district.

11 THE PARTIES

12 13. Plaintiff Arthur Avazian at all relevant times was a citizen of the state
13 of California. He was the insured of the life insurance policy that was issued in
14 California and improperly terminated by Genworth in California.

15 14. Defendant Genworth Life and Annuity Insurance Company is a
16 corporation organized and existing under the laws of the state of Virginia and is
17 authorized to transact and is transacting the business of insurance in the state of
18 California.

19 15. The true names and capacities, whether individual, corporate,
20 associate or otherwise, of defendants Does 1 through 10 are unknown to Arthur,
21 who therefore sues these defendants by such fictitious names. Arthur alleges that
22 each of the Doe defendants is legally responsible in some manner for the events
23 and happenings referred to herein and will ask leave of this Court to amend this
24 complaint to insert the true name and capacity of each Doe defendant when that
25 information becomes known.

27 FACTUAL ALLEGATIONS

28 16. In 2012 Assembly Bill 1747 was enacted and created Sections 10113.71

1 and 10113.72 of the California Insurance Code (the Statutes).

2 17. The Statutes went into effect on January 1, 2013 and established notice
3 and designation requirements for life insurance policies.

4 18. The mandates of the Statutes included the Designation Requirement,
5 30-Day Notice Requirement and the Third-Party Notice Requirement, which
6 required insurers to: a) give their policyholders an opportunity to designate a
7 third party to receive notice of a potential termination of benefits for
8 nonpayment of premium; b) provide notice to designated third parties of any
9 nonpayment of premium before terminating any policy; and c) provide
10 policyholders 30 days' written notice of termination.

11 19. The Statutes read, in pertinent part, as follows:

12 **Section 10113.71:**

13 (b)(1) A notice of pending lapse and termination of a life
14 insurance policy shall not be effective unless mailed by the
15 insurer to the named policy owner, a designee named
16 pursuant to Section 10113.72 for an individual life insurance
17 policy, and a known assignee or other person having an
18 interest in the individual life insurance policy, at least 30 days
19 prior to the effective date of termination if termination is for
20 nonpayment of premium....

21 (3) Notice shall be given to the policy owner and to the
22 designee by first-class United States mail within 30 days after a
23 premium is due and unpaid. However, notices made to
24 assignees pursuant to this section may be done electronically
25 with the consent of the assignee.

26 **Section 10113.72:**

27 (a) An individual life insurance policy shall not be issued or
28 delivered in this state until the applicant has been given the





1 right to designate at least one person, in addition to the
2 applicant, to receive notice of lapse or termination of a policy
3 for nonpayment of premium. The insurer shall provide each
4 applicant with a form to make the designation. That form shall
5 provide the opportunity for the applicant to submit the name,
6 address, and telephone number of at least one person, in
7 addition to the applicant, who is to receive notice of lapse or
8 termination of the policy for nonpayment of premium.

9 (b) The insurer shall notify the policy owner annually of the
10 right to change the written designation or designate one or
11 more persons. The policy owner may change the designation
12 more often if he or she chooses to do so.

13 (c) No individual life insurance policy shall lapse or be
14 terminated for nonpayment of premium unless the insurer, at
15 least 30 days prior to the effective date of the lapse or
16 termination, gives notice to the policy owner and to the person
17 or persons designated pursuant to subdivision (a), at the
18 address provided by the policy owner for purposes of receiving
19 notice of lapse or termination. Notice shall be given by first-
20 class United States mail within 30 days after a premium is due
21 and unpaid.

22 20. Genworth has chosen to disregard the Statutes with respect to life
23 insurance policies it issued or delivered in California prior to January 1, 2013.

24 21. Genworth furthermore tells its insureds and beneficiaries, falsely, that
25 it is under no obligation to abide by the Statutes with respect to life insurance
26 policies it issued or delivered in California prior to January 1, 2013.

27 22. As a result of its disregard of the Designation, 30-Day Notice and
28 Third-Party Notice Requirements of the Statutes, Genworth has improperly

1 terminated policies and refused to pay out proceeds that are due to beneficiaries
2 of such policies.

3 23. Arthur's policy (the Policy) is but one example of life insurance that
4 was improperly terminated by Genworth.

5 24. Genworth issued the Policy, number NO2556902 , to Arthur in 1993.
6 It provided a death benefit of \$500,000.

7 25. Arthur timely made all premium payments due under the Policy until
8 2016, at which time he had paid more than \$70,000 in premiums to Genworth.

9 26. Arthur missed the January 2016 premium payment.

10 27. Genworth sent Arthur a letter dated February 1, 2016 notifying him
11 that the Policy had entered into a "61 day grace period" owing to "insufficient"
12 premiums.

13 28. Genworth sent no further correspondence regarding the Policy to
14 Arthur or anyone else until its letter to Arthur of April 6, 2016, with imparted:
15 "Your policy has lapsed without value and no longer provides coverage."

16 29. Genworth did not abide by the Designation, 30-Day Notice and
17 Third-Party Notice Requirements of the Statutes, rendering their lapse of the
18 Policy unlawful and in bad faith.

19 30. As result of the Policy's lapse, Arthur lost the peace of mind that the
20 Policy had provided him with for 23 years. The more than \$70,000 in premium
21 payments he made during that time were rendered useless, as was the promise of
22 the Policy's ultimate \$500,000 death benefit.

23 24 **CLASS ACTION ALLEGATIONS**

25 31. Arthur brings this class action on behalf of himself and all persons
26 and entities similarly situated pursuant to Rule 23 of the Federal Rules of Civil
27 Procedure. Specifically, he brings this action on behalf of the following class (the
28 Class), which is subject to refinement based on information learned during

1 discovery:

2 All insureds and beneficiaries of life insurance policies issued
3 or delivered by Genworth in California before January 1, 2013
4 who lost either their coverage or their ability to make a claim
5 owing to the termination of their policies by Genworth for
6 nonpayment of premium.

7 32. Excluded from the Class are: a) Genworth; b) any entity in which
8 Genworth has a controlling interest; c) Genworth's officers, directors and
9 employees; d) Genworth's legal representatives, successors and assigns; e)
10 governmental entities; and f) the court to which this case is assigned.

11 33. Members of Class are so numerous and geographically dispersed,
12 throughout California and likely the United States, that joinder of all members is
13 impracticable. The Class should be readily identifiable from information and
14 records in Genworth's possession.

15 34. Arthur's claim is typical of the claims of the members of the Class.
16 Arthur and all members of the Class were damaged by the same wrongful
17 conduct of Genworth, that is, its a) failure to satisfy the Designation, 30-Day
18 Notice and Third-Party Notice Requirements; b) breach of its insurance
19 contracts; and c) bad faith through in wrongfully terminating policies and
20 withholding payment of benefits due under such policies.

21 35. Arthur will fairly and adequately protect and represent the interests of
22 the Class. Having suffered the same injury from the same conduct of Genworth,
23 Arthur's interests align with and are not antagonistic to those of the Class
24 members.

25 36. Arthur's counsel in this matter are experienced in the prosecution of
26 complex commercial class actions involving insurer misconduct such as this one.

27 37. Questions of law and fact common to members of the Class
28 predominate over questions that may affect only individual class members.

1 Common questions of law and fact raised in this action include but are not
2 limited to the following:

- 3 • Whether the Designation, 30-Day Notice and Third-Party Notice
4 Requirements applied to Genworth policies issued or delivered
5 before January 1, 2013;
- 6 • Whether Genworth has failed to satisfy the Designation, 30-Day
7 Notice and Third-Party Notice Requirements;
- 8 • Whether Genworth violated the Statutes by not satisfying the
9 Designation, 30-Day Notice and Third-Party Notice Requirements;
- 10 • Whether Genworth breached its life insurance contracts by not
11 satisfying the Designation, 30-Day Notice and Third-Party Notice
12 Requirements;
- 13 • Whether Genworth breached its duty of good faith and fair dealing
14 by not satisfying the Designation, 30-Day Notice and Third-Party
15 Notice Requirements;
- 16 • Whether Genworth engaged in bad faith by informing its insureds
17 and claimants that the Statutes do not apply to policies it issued or
18 delivered in California before January 1, 2013.

19 38. Treatment of this dispute as a class action is a superior method for the
20 fair and efficient adjudication of this matter over individual actions. Class
21 treatment will permit a large number of similarly situated persons to prosecute
22 their common claims in a single forum simultaneously, efficiently and without
23 the unnecessary duplication of evidence, effort and expense that numerous
24 individual actions would require. In addition, class treatment will avoid the risk
25 of inconsistency and varying adjudications.

26 39. The many benefits of proceeding through the class mechanism,
27 including providing injured persons or entities a method for obtaining redress
28 on claims that could not practicably or cost effectively be pursued individually,

1 substantially outweigh any potential difficulties in management of this case as a
2 class action.

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4 **FIRST CAUSE OF ACTION: BREACH OF CONTRACT**

5 40. Arthur refers to all preceding paragraphs and incorporates them as
6 though set forth in full in this cause of action.

7 41. Genworth issued life insurance policies, which were binding
8 contracts, to Arthur and the Class.

9 42. Genworth breached the terms of these life insurance policies by the
10 following acts and/or omissions:

- 11 a) Failing to timely invite insureds in the Class, including Arthur, to
- 12 designate a third party to receive termination notices for
- 13 nonpayment of premium, as required by the Designation
- 14 Requirement of the Statutes;
- 15 b) Failing to give written notice to insureds in the Class, including
- 16 Arthur, that Genworth was going to terminate their life insurance
- 17 policies within 30 days for nonpayment of premium, as required by
- 18 the 30-Day Notice Requirement of the Statutes;
- 19 c) Failing to notify a third party designee of insureds in the Class,
- 20 including Arthur, about the impending termination of the insureds’
- 21 policies for nonpayment of premium, as required by the Third-Party
- 22 Notice Requirement of the Statutes;
- 23 d) Improperly terminating insureds’ policies and thereby precluding
- 24 claims from being made by beneficiaries in the Class;
- 25 e) Improperly terminating insureds’ policies and thereby refusing to
- 26 pay claims made by beneficiaries in the Class.

27 43. Genworth breached the terms and provisions of its policies by other
28 acts or omissions of which Arthur and the Class are presently unaware but



1 which will be shown according to proof at trial.

2 44. As a direct and proximate result of Genworth's breaches, Arthur and
3 the Class have suffered damages in an amount to be determined according to
4 proof at trial.

5
6 **SECOND CAUSE OF ACTION:**
7 **BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

8 45. Arthur refers to all preceding paragraphs and incorporates them as
9 though set forth in full in this cause of action.

10 46. In every insurance policy there exists an implied duty of good faith
11 and fair dealing that the insurance company will not do anything to injure the
12 right of the insured to receive the benefit of the policy. Genworth breached its
13 duty of good faith and fair dealing owed to Arthur and the Class and deprived
14 them of the benefit of their policies in the following ways:

- 15 a) Unreasonably and without proper cause failing to timely invite
16 insureds in the Class, including Arthur, to designate a third party to
17 receive termination notices for nonpayment of premium, as
18 required by the Designation Requirement of the Statutes;
- 19 b) Unreasonably and without proper cause failing to give written
20 notice to insureds in the Class, including Arthur, that Genworth was
21 going to terminate their life insurance policies within 30 days for
22 nonpayment of premium, as required by the 30-Day Notice
23 Requirement of the Statutes;
- 24 c) Unreasonably and without proper cause failing to notify a third
25 party designee of insureds in the Class, including Arthur, about the
26 impending termination of the insureds' policies for nonpayment of
27 premium, as required by the Third-Party Notice Requirement of the
28 Statutes;

- 1 d) Unreasonably and without proper cause terminating insureds’
- 2 policies and thereby precluding claims from being made by
- 3 beneficiaries in the Class;
- 4 e) Unreasonably and without proper cause terminating insureds’
- 5 policies and thereby refusing to pay claims made by beneficiaries in
- 6 the Class;
- 7 f) Unreasonably and without proper cause notifying members of the
- 8 Class that the Statutes do not apply to Genworth policies issued or
- 9 delivered in California before January 1, 2013;
- 10 g) Failing to consider the interests of the Class members, including
- 11 Arthur, at least as much as its own in terminating polices for
- 12 nonpayment of premium and in retaining benefits due or potentially
- 13 due under such policies.

14 47. Genworth breached its duty of good faith and fair dealing by other
15 acts or omissions of which Arthur and the Class are presently unaware but
16 which will be shown at trial.

17 48. As a proximate result of the aforementioned unreasonable conduct of
18 Genworth, the Class, included Arthur, suffered and will continue to suffer
19 damages in amounts to be proven at trial.

20 49. As a further proximate result of the unreasonable conduct of
21 Genworth, the Class, included Arthur, was compelled to retain legal counsel and
22 to institute litigation to obtain compensation for their injuries. Therefore,
23 Genworth is liable for those attorney fees, witness fees and litigation costs
24 reasonably incurred in seeking compensation.

25 50. Genworth furthermore committed institutional bad faith. Genworth’s
26 institutional bad faith amounts to reprehensible conduct because it is part of a
27 repeated pattern of unfair practices and not an isolated occurrence. The pattern
28 of unfair practices constitutes a conscious course of wrongful conduct that is

1 firmly grounded in the established company policy of Genworth.

2 51. Genworth's conduct described herein was intended to cause injury to
3 the Class, including Arthur, and/or was despicable conduct carried out with a
4 willful and conscious disregard of the rights of Arthur and the Class. Said
5 conduct subjected Arthur and the Class to cruel and unjust hardship in
6 conscious disregard of their rights and/or constituted an intentional
7 misrepresentation, deceit or concealment of material facts known to Genworth
8 with the intention to deprive Arthur and the Class of property, legal rights or to
9 otherwise cause injury. Said conduct thus constitutes malice, oppression or fraud
10 under California Civil Code section 3294, thereby entitling Arthur and the Class
11 to punitive damages in an amount appropriate to punish or set an example of
12 Genworth.

13 **PRAYER FOR RELIEF**

14 Arthur, on behalf of himself and each member of the Class, prays for relief
15 and judgment as follows:

- 16 a) An order pursuant to Code of Civil Procedure section 382 and Civil
17 Code sections 1780, et seq. certifying this case as a class action and
18 appointing Arthur and his counsel to represent the Class;
- 19 b) Economic and foreseeable consequential damages, plus prejudgment
20 interest, for Genworth's breach of contract;
- 21 c) Economic and consequential damages, including damages for mental
22 and emotional distress, attorney fees and punitive damages, plus
23 prejudgment interest, for breach of Genworth's implied covenant of
24 good faith and fair dealing;
- 25 d) Attorney fees and costs of suit incurred;
- 26 e) Pre-judgment and post-judgment interest, as provided by law;

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f) Such other and further relief as the court deems just and proper.

Dated: April 27, 2017

SHERNOFF BIDART ECHEVERRIA LLP

By: /s/ Samuel L. Bruchey
WILLIAM M. SHERNOFF
SAMUEL L. BRUCHEY
Attorneys for Plaintiffs

JURY DEMAND

Arthur and the Class demand a jury trial on all causes of action that can be heard by a jury.

Dated: April 27, 2017

SHERNOFF BIDART ECHEVERRIA LLP

By: /s/ Samuel L. Bruchey
WILLIAM M. SHERNOFF
SAMUEL L. BRUCHEY
Attorneys for Plaintiffs



ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Genworth Life Insurance Allegedly Cancels Policies Without Warning](#)
