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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

JOE S. YEARBY, on behalf of himself and all  
others similarly situated,

Plaintiff,

v.

AMERICAN NATIONAL INSURANCE  
COMPANY,

Defendant.

Case No. 3:20-cv-09222

**CLASS ACTION COMPLAINT FOR  
BREACH OF CONTRACT**

**JURY TRIAL DEMANDED**

1 Joe S. Yearby (“Plaintiff”), on behalf of himself and all others similarly situated, for his  
2 Complaint against defendant American National Insurance Company (“ANICO”), states as  
3 follows:

4 **NATURE OF THE ACTION**

5 1. This is a class action brought on behalf of Plaintiff and similarly situated owners  
6 of life insurance policies issued by ANICO in the state of California. Plaintiff seeks to represent  
7 a class of ANICO policyholders who have been forced to pay unlawful and excessive cost of  
8 insurance (“COI”) charges, deducted from their account values on a monthly basis that are not, as  
9 the policies require, determined from time to time by ANICO based on its expectations as to  
10 future mortality experience.

11 2. The policies at issue in this case are universal life policies, including variable  
12 universal life policies, issued in California on standardized form contracts by ANICO. Universal  
13 life (“UL”) policies combine death benefits with a savings or investment component, often known  
14 as the “account value,” “policy value,” or “cash value.” A key feature of such policies is the  
15 “unbundling” or “transparency” of the various charges and credits. This means that the monthly  
16 deductions are broken down into an array of discrete charges and credits: the COI charges, other  
17 contractually-specified charges, and crediting rates. The Dictionary of Insurance Terms describes  
18 unbundled universal life insurance as “coverage in which the investment features, mortality  
19 element and cost factors of a life insurance policy are separated, permitting each part to be  
20 independently analyzed.” The COI charge is the policy’s unbundled insurance component and is  
21 used to cover the insurer’s mortality risk. It is also referred to by both ANICO and the broader  
22 industry as the “mortality charge” or the “pure cost of protection.” The savings component, as  
23 discussed in more detail herein, allows policyholders to use their policies as tax-advantaged  
24 savings vehicles and earn interest on the policy value.

25 3. Cost of insurance rates are not fixed. Because COI charges are intended to  
26 compensate the insurer for mortality risk (i.e., the expected probability that the insured will die in  
27 a particular policy year), they are determined in the future by the insurer based on its expectations  
28 as to future mortality experience. ANICO is required to periodically review the COI rates to

1 confirm that they correctly reflect the insurer’s current mortality expectations. ANICO  
 2 acknowledges that it reviews its mortality continuously and conducts these COI rate  
 3 redeterminations periodically, using its current mortality experience. *See* ANICO’s 2019 Annual  
 4 Report to National Association of Insurance Commissioners, Exhibit 5 Interrogatories,  
 5 Supplemental Responses to Interrogatory 3 (Header: Nonguaranteed Element Determination  
 6 Process – Life Insurance. “[C]ost of insurance rates . . . are determined at issue for all durations  
 7 based on experience factors in effect at the time the policy issued. Unless there is a change in the  
 8 expected experience factors, there is no need to change any of the nonguaranteed policy elements.  
 9 The process of redetermination of nonguaranteed policy elements begins with a **review** of  
 10 company experience. If there is a material change in expected experience, **a redetermination of**  
 11 **the rates based on the new experience factors is done** . . .). ANICO recently conducted these  
 12 new mortality reviews, and concluded that its mortality expectations had improved. *See, e.g.,*  
 13 ANICO’s 10-K (2019) (“Life insurance and annuity are mainstay segments . . . We believe that  
 14 the combination of predictable and **decreasing mortality rates** . . . suggest a viable and  
 15 profitable future for these lines of business.”). Yet ANICO did not reduce COI rates, as it was  
 16 required to do under the plain terms of the policies.

17 4. ANICO also made annual certifications to the National Association of Insurance  
 18 Regulators and various state regulators concerning whether its “anticipated experience” for  
 19 mortality underlying its COI charges differs from its “current experience” of mortality. This  
 20 necessarily requires an analysis comparing current mortality rates to emerging experience.  
 21 ANICO’s annual financial reporting, including its predictions of future cash flows, also  
 22 incorporates updated expectations of future mortality experience.

23 5. If a review shows that mortality rates are projected to decline, the monthly COI  
 24 rates that ANICO used to calculate the monthly COI charges must be reduced. This principle is  
 25 inherent in the meaning of “cost of insurance,” and is further embodied in the plain language of  
 26 the policies at issue in this case, each of which expressly states that “*Monthly* Cost of Insurance  
 27 Rates will be determined by the Company from *time to time* based on the Company’s  
 28 expectations as to future mortality experience”—and nothing else. ANICO imposes other charges

1 through which it recoups administrative costs and earns a profit, such as a premium expense  
2 charge of each premium collected and an administrative expense charge.

3 6. But Plaintiff, along with numerous other ANICO policyholders, have been  
4 subjected to unlawful monthly calculations and deductions from their account value and forced to  
5 pay inflated COI charges that are not allowed by the plain language of their insurance contracts.

6 7. Despite its contractual commitment that monthly COI rates will be determined  
7 “based on the Company’s expectations as to future mortality experience,” and despite the fact  
8 ANICO has recently enjoyed significantly improved mortality experience and expectations,  
9 monthly COI rates have not been determined based on ANICO’s improving mortality  
10 expectations, and the results of ANICO’s new mortality reviews are being ignored to the  
11 detriment to the members of the Class.

12 8. It is now well-documented that nationwide mortality expectations have *improved*  
13 significantly. The Society of Actuaries and the American Academy of Actuaries periodically  
14 publish mortality tables using information collected from America’s largest insurers. Those tables  
15 show that mortality rates have improved at a rate of roughly 1% per year.

16 9. In October 2015, the American Academy of Actuaries (the “Academy”) released a  
17 new Commissioners Standard Ordinary (CSO) mortality table and report, observing that mortality  
18 had continued to improve from the 2001 CSO mortality tables:

19 At the request of the NAIC, the Society of Actuaries (SOA) and the American  
20 Academy of Actuaries (Academy) have collaborated to create new Valuation  
21 Basic Tables (VBT), Relative Risk tables (RR), and Commissioners Standard  
22 Ordinary Mortality Tables (CSO). The current CSO table was created in 2001  
23 based on experience from 1990-1995 and thus, is at least 20 years old. *Since that  
time, industry experience studies performed by the Society of Actuaries  
Individual Life Experience Committee (ILEC) have shown significant  
improvement in the mortality rates experienced by the industry from that  
underlying the 2001 CSO table development.*<sup>1</sup>

24 10. ANICO has recently confirmed that its “[m]ortality rates will remain reasonably  
25 consistent within standard industry mortality table ranges.” ANICO 10-K (2019). It has also  
26 recently confirmed that it reviews its mortality experience annually. *Id.* (“**At least annually**, we  
27 test the adequacy of the net benefit reserves . . . recorded for life insurance. . . . To perform the

28 <sup>1</sup> <https://www.soa.org/Files/Research/Exp-Study/research-2017-cso-report.pdf>.

1 tests, we use our best-estimate assumptions as to policyholder mortality, persistency,  
2 maintenance expenses, and invested asset returns.”). Despite these annual reviews conducted  
3 which changed (that is, for ANICO, resulted in improved) mortality expectations and  
4 corresponding decrease in mortality risk, ANICO never determined its COI rates based on its  
5 updated mortality assumptions, which would have resulted in far lower rates than those charged.  
6 At the same time, ANICO asserts the right—and many other insurers have exercised their right—  
7 to increase COI rates in the event that future experience is more adverse than assumed at pricing.  
8 This is wrong: the requirement that rates “will be determined by the Company from time to time  
9 based on the Company’s expectations as to future mortality experience” runs both ways.

10 11. In sum, ANICO has violated and continues to violate its contractual commitment  
11 to policyholders that its COI charges will be calculated monthly using rates that “will be  
12 determined” based on ANICO’s “expectations as to future mortality experience.” ANICO has  
13 refused to decrease COI rates despite its recent reviews concluding that it has improving future  
14 mortality expectations in each of the most recent years. Plaintiff therefore seeks monetary relief  
15 for the COI overcharges that ANICO has wrongly imposed on Plaintiff and members of the  
16 proposed Class.

### 17 **THE PARTIES**

18 12. Plaintiff Joe S. Yearby is an individual and a citizen of the state of Louisiana.  
19 Mr. Yearby is the owner of ANICO policy number UL090652, issued on June 9, 1986 in the state  
20 of California.

21 13. Defendant American National Insurance Company is an insurance company  
22 organized and existing under the laws of Texas and has its principal place of business in Texas  
23 and is licensed to transact insurance in California.

### 24 **JURISDICTION AND VENUE**

25 14. This Court has jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C. § 1332(d)  
26 because this is a class action with diversity between at least one class member (including  
27 Plaintiff) and one defendant and the aggregate amount of damages exceeds \$5,000,000. This  
28

1 action therefore falls within the original jurisdiction of the federal courts pursuant to the Class  
2 Action Fairness Act, 28 U.S.C § 1332(d).

3 15. This Court has personal jurisdiction over ANICO because ANICO issued the life  
4 insurance policies at issue in California.

5 16. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-(c)  
6 because the events giving rise to Plaintiff's cause of action occurred in this District and because  
7 ANICO transacts business and/or has transacted business during the relevant time period within  
8 the Northern District of California. In addition, a substantial part of the acts and omissions giving  
9 rise to the claims on behalf of the Class set forth herein, including ANICO's issuance of  
10 Plaintiff's life insurance policy, occurred in this judicial district and/or in the San Francisco  
11 Division.

## 12 **FACTUAL BACKGROUND**

### 13 **A. The Policies at Issue**

14 17. The policies at issue are all flexible-premium, UL policies issued by ANICO in  
15 California (the "Subject Policies"). They were all issued on the same standardized policy forms  
16 and insureds are not permitted to negotiate different terms.

17 18. UL policies combine death benefits with a savings or investment component, often  
18 known as the "account value," "policy value," or "cash value." One benefit of UL policies is that  
19 they permit policyholders flexibility in the amount and timing of premiums necessary to keep the  
20 policies in-force. Unlike other kinds of whole life insurance that require fixed monthly premium  
21 payments, the premiums required for UL policies need only be sufficient to cover the COI  
22 charges and certain other specified expenses. The COI charge is deducted from the policy value  
23 (i.e., the savings component) of the policy on a monthly basis, so the policyholder forfeits the  
24 COI charge entirely to ANICO. Any premiums paid in excess of COI charges and other charges  
25 are applied to the policy value. These excess premiums earn interest at the credited rate. This  
26 structure is beneficial because it allows policyholders the choice to either (i) minimize their  
27 capital investment and generate greater rates of return through other investments or (ii) to use the  
28 UL policy as a savings vehicle and earn interest on the account value.

19. The COI charge is supposed to be the insurer's cost of providing mortality coverage, and is designed to fluctuate depending on the insurer's projected mortality experience. The size of the COI charge is highly significant to universal life policyholders. First, it dictates the minimum amount of money that must be paid to keep a policy in force. Second, high COI rates can quickly diminish policy value and reduce the amount of money on which interest can be earned. Absent a secondary guarantee, if the policy value diminishes such that COI charges and certain other specified expenses can no longer be deducted, then the policy will go into grace and, if no additional premiums are paid after adequate time provided by an accurate grace notice, the policy may lapse.

20. Cost of insurance charges are typically the most expensive part of the contract and form the largest deduction from an owner's account value. For example, from June 9, 2018 to June 9, 2019, ANICO made \$3,700.48 of deductions from the account value of Plaintiff's policy. Of this, \$3,340.71 were deductions for cost of insurance, that is, over 90% of the deductions for that year.

21. The cost of insurance charge ("COI charge" or "mortality charge") is calculated as follows:

**Cost of Insurance.** The Cost of Insurance is determined on a monthly basis. . . . The Cost of Insurance for the Insured is calculated as (a) multiplied by the result of (b) minus (c), where:

- (a) is the Cost of Insurance rate as described in the Cost of Insurance Rates section;
- (b) is the Insured's Proceeds at Death at the beginning of the policy month divided by 1.0032737; and
- (c) is the Cash Value at the beginning of the policy month.

22. The Subject Policies also provide that that monthly cost of insurance rates for any given sex, age, or rating class "will" be determined by ANICO based on its expectations as to future mortality experience:

**Cost of Insurance Rates.** The monthly Cost of Insurance rate is based on the sex, attained age, and rating class of the person insured. . . . Monthly Cost of Insurance Rates will be determined by the Company from time to time based on the Company's expectations as to future mortality experience. However, the Cost of Insurance Rates will not be greater than those shown in the Table of Guaranteed Maximum Insurance Rates.

23. The Subject Policies are known in the insurance industry as “Single Consideration Policies” because the only factor that the carrier can and must consider when determining monthly COI rates is “expectations as to future mortality experience.” Nothing else. Because the cost of insurance on the Subject Policies must be “determined on a monthly basis” and the COI rates “will be determined” based solely on expectations as to future mortality experience, COI rates must be adjusted downward if those expectations improve following review. ANICO imposes other charges through which it recovers administrative expenses and earns a profit. This includes premium expense charges of all premiums and a monthly administrative expense charge. This means that the Subject Policies are “fully unbundled”: each component of the policy has a separate charge. ANICO also profits from the interest spread it earns on policyholders’ policy values (i.e., the difference between interest earned by ANICO on policy accounts and the amount of interest credited to policy accounts).

24. By contrast, ANICO has issued other insurance policies that do not require it to base its COI rates on mortality alone when that is its intention, including based on its expectations as to future mortality experience as well as investment earnings, persistency, and expenses. These types of policies are known in the insurance industry as Multi-Factor COI Provisions, because it allows the insurer to base COI rates on factors other than pure mortality. The Subject Policies all contain Single-Factor COI Provisions: no factor other than mortality may be considered.

**B. ANICO Fails to Reduce COI Rates Despite Mortality Improvement**

25. In recent years, ANICO has periodically quantified its “expectations as to future mortality experience” and reviewed its COI rates. In quantifying its future mortality expectations, ANICO performs experience studies which examined its historical mortality experience and, from that mortality experience, develop predictions of mortality it expects to see in the future. These expectations are quantified by insurers in the form of mortality tables, which are charts showing the expected rate of death at a certain age. Rate of death can be measured as a percentage or in terms of the number of deaths per thousand. Separate tables can be produced to reflect groups with different mortality. Mortality tables will usually have separate tables for gender. Mortality

1 tables for use with individual life insurance policies additionally distinguish mortality rates for  
2 tobacco-use status, underwriting status and duration since underwriting. Mortality tables are used  
3 by actuaries to calculate insurance rates, and, if developed properly, are designed to reflect the  
4 carrier's then-current (that is, that year's) expectations as to future mortality experience.

5 26. ANICO has updated its expectations as to future mortality experience, first by  
6 reviewing its historical mortality experience (i.e., the actual deaths experienced in a given period).  
7 Using that recent mortality experience, ANICO reviewed its mortality expectations in order to  
8 update those expectations. As part of this process, ANICO adjusts that raw experience (that is,  
9 whether each particular insured has died or not) to account for its prediction of how future  
10 experience will differ to arrive at its then-expected future mortality experience. Those  
11 expectations are then used for financial statements, reserve-setting, and projections of future  
12 profits. "For interest-sensitive business, best-estimate assumptions are updated to reflect  
13 observed changes based on experience studies and current economic conditions. We reflect the  
14 effect of such assumption changes in DAC and reserve balances accordingly." ANICO 10-K  
15 (2019) at 33. "American National periodically reviews its estimates of actuarial liabilities for  
16 future policy benefits and compares them with its actual experience." *Id.* at 99.

17 27. Life insurers, like ANICO, have experienced dramatic improvements in mortality  
18 experience and mortality expectations. In May 2013, for example, the reinsurance company RGA  
19 published a report sponsored by the SOA enumerating mortality rates and mortality  
20 improvements at older ages, which showed material rates of mortality improvements. In March  
21 2014, the actuarial firm Milliman published a report sponsored by the SOA called "Select Period  
22 Mortality" showing select rates of mortality that are strongly improved over prior years. Their  
23 report was based on a survey of insurance companies – including ANICO. And in 2017, the 2017  
24 CSO Table took effect, again reflecting continued mortality improvement.

25 28. ANICO has recently confirmed that its own "[m]ortality rates will remain  
26 reasonably consistent within standard industry mortality table ranges," and that it itself has seen  
27 "predictable and decreasing mortality rates." In other words, ANICO has recently admitted that  
28

1 its own expectations of future mortality experience have improved, just as they have industry-  
2 wide.

3 29. Despite this industry-wide and ANICO-specific improvement in mortality rates—  
4 and corresponding decrease in the cost of providing mortality coverage—ANICO did not  
5 determine COI rates to reflect its updated expectations as to future mortality experience, and has  
6 never adjusted its COI rates downward to reflect its improving mortality expectations.

7 30. The new monthly rates currently being imposed on Plaintiff's policies were not  
8 fixed at policy issuance. Each time ANICO imposes a new COI rate as insureds age, that increase  
9 must be in conformity with the terms of the policy, including the requirement that such rates "will  
10 be determined...based on the Company's expectations as to future mortality experience." The  
11 COI rates recently imposed on Plaintiff have not been determined on that basis.

12 31. The nature of ANICO's conduct is such that Plaintiff and each member of the  
13 proposed Class would be unaware that ANICO was engaging in wrongdoing, and ANICO has in  
14 fact affirmatively concealed its wrongdoing. Only ANICO possesses its internal expectations as  
15 to future mortality experience on which COI rates are supposed to be based, and its underlying  
16 computation of rates and charges for the Subject Policies, and ANICO does not disclose this  
17 information to policyholders.

18 32. ANICO was aware that Plaintiff and each member of the Class did not know about  
19 the improper COI charges because of ANICO's superior and unique knowledge of its COI rates  
20 and mortality expectations. ANICO sent Plaintiff annual statements that identified the insurance  
21 charges while affirmatively concealing its updated mortality expectations and the factors used to  
22 calculate the COI rates. Without disclosure by ANICO of its mortality expectations each year, or  
23 the methodology through which COI rates are being calculated and applied, a reasonable  
24 policyholder, acting diligently, would have no way of knowing that he or she was being cheated.  
25 ANICO is estopped from asserting a statute of limitations affirmative defense. ANICO's conduct  
26 in failing to disclose the true factors it was using to determine COI rates misled Plaintiff and  
27 prevented him from learning of the factual bases of these claims for relief. Plaintiff proceeded  
28 diligently to file suit once he discovered the need to proceed. Plaintiff was not at fault for failing

1 to discover any breaches and had no actual or presumptive knowledge of the breaches. ANICO is  
 2 aware that it has superior and in fact exclusive knowledge of its own expectations of future  
 3 mortality experience, and has in fact used this disparity of knowledge to exploit and cheat  
 4 policyholders.

### 5 **CLASS ACTION ALLEGATIONS**

6 33. This action is brought by Plaintiff individually and on behalf of a class pursuant to  
 7 Rules 23(b)(3) of the Federal Rules of Civil Procedure. The class—referred to as the “California  
 8 COI Overcharge Class”—consists of:

9 All owners of universal life (including variable universal life) insurance policies  
 10 issued in California by American National Insurance Company, or its predecessors  
 11 in interest, that provide that cost of insurance rates are determined based on  
 expectations as to future mortality experience.

12 The California COI Overcharge Class does not include defendant ANICO, its officers and  
 13 directors, members of their immediate families, and the heirs, successors or assigns of any of the  
 14 foregoing.

15 34. Each class consists of hundreds of consumers of life insurance and are thus so  
 16 numerous that joinder of all members is impracticable. The identities and addresses of class  
 17 members can be readily ascertained from business records maintained by ANICO.

18 35. The claims asserted by Plaintiff are typical of the claims of the California COI  
 19 Overcharge Class.

20 36. The Plaintiff will fairly and adequately protect the interests of the classes and does  
 21 not have any interests antagonistic to those of the other members of the classes.

22 37. Plaintiff has retained attorneys who are knowledgeable and experienced in life  
 23 insurance matters and COI matters, as well as class and complex litigation.

24 38. Plaintiff requests that the Court afford class members with notice and the right to  
 25 opt-out of any class certified in this action.

26 39. This action is appropriate as a class action pursuant to Rule 23(b)(3) of the Federal  
 27 Rules of Civil Procedure because common questions of law and fact affecting the class  
 28 predominate over any individualized issues. Those common questions that predominate include:

(a) the construction and interpretation of the form insurance policies at issue in this litigation;

(b) whether ANICO's actions in failing to calculate and determine monthly COI rates based on its expectations as to future mortality experience for the California COI Overcharge Class violated the terms of those form policies;

(c) whether ANICO breached its contracts with Plaintiff and members of the classes;

(d) whether ANICO's expectations as to future mortality experience have improved; and

(e) whether Plaintiff and members of the classes are entitled to receive damages as a result of the unlawful conduct by defendant as alleged herein and the methodology for calculating those damages.

40. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

(a) the complexity of issues involved in this action and the expense of litigating the claims, means that few, if any, class members could afford to seek legal redress individually for the wrongs that defendant committed against them, and absent class members have no substantial interest in individually controlling the prosecution of individual actions;

(b) when ANICO's liability has been adjudicated, claims of all class members can be determined by the Court;

(c) this action will cause an orderly and expeditious administration of the class claims and foster economies of time, effort and expense, and ensure uniformity of decisions;

(d) without a class action, many class members would continue to suffer injury, and ANICO's violations of law will continue without redress while defendant continues to reap and retain the substantial proceeds of their wrongful conduct; and

(e) this action does not present any undue difficulties that would impede its management by the Court as a class action.

**FIRST CLAIM FOR RELIEF****Breach of Contract**

41. Plaintiffs reallege and incorporate herein the allegations of the paragraphs above of this complaint as if fully set forth herein. This claim is brought on behalf of Plaintiff and the California COI Overcharge Class.

42. The Subject Policies are binding and enforceable contracts.

43. ANICO breached its contracts with Plaintiff and members of the California COI Overcharge Class by determining and deducting COI charges calculated using COI rates that were not based on ANICO's expectations as to future mortality experience. These overcharges include, but are not limited to, the excess COI charges that ANICO deducted by not using its then-current mortality expectations to determine rates, and failing to reflect mortality improvement in those rates.

44. Each and every failure to calculate monthly COI charges using rates that are based on ANICO's "expectations as to future mortality experience" constituted a discrete violation of the insurance contract in place at that time. Each such failure to follow contractual mandates violated the contractual rights of Plaintiff and all class members who owned an insurance policy in force at that time.

45. Plaintiff and the members of the California COI Overcharge Class have performed all of their obligations under the policies, except to the extent that their obligations have been excused by ANICO's conduct as set forth herein.

46. As a direct and proximate cause of ANICO's material breaches of the policies, Plaintiff and the members of the California COI Overcharge Class have been – and will continue to be – damaged as alleged herein in an amount to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFOR, Plaintiff and the California COI Overcharge Class pray for judgment as follows:

1. Declaring this action to be a class action properly maintained pursuant to Rule 23 of the Federal Rules of Civil Procedure;
2. Awarding Plaintiff and the class compensatory damages;
3. Awarding Plaintiff and the class pre-judgment and post-judgment interest, as well as costs and attorneys' fees; and
4. Awarding Plaintiff and the class such other relief as this Court may deem just and proper under the circumstances.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff and California COI Overcharge Class hereby demand a trial by jury as to all issues so triable.

Dated: December 18, 2020

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Attorneys for Plaintiff

## CIVIL COVER SHEET

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

## I. (a) PLAINTIFFS

JOE S. YEARBY, on behalf of himself and all others  
similarly situated

(b) County of Residence of First Listed Plaintiff Ouachita  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See Attachment I.(c).

## DEFENDANTS

AMERICAN NATIONAL INSURANCE COMPANY,

County of Residence of First Listed Defendant \_\_\_\_\_

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                                   | DEF                        |
|---|---------------------------------------|----------------------------|---|---------------------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4            | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332(d)

Brief description of cause:

Breach of Contract

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

12/18/2020

/s/ Steven G. Sklaver

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**ATTACHMENT I.(c)**

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