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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA by and through JOHN GARAMENDI, INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
UNIVERSAL LIFE RESOURCES, ULR INSURANCE SERVICES, INC., BENEFITS COMMERCE, DOUG P. COX, METLIFE, INC., CIGNA CORPORATION, PRUDENTIAL FINANCIAL, INC., UNUMPROVIDENT CORPORATION, and DOES 1-500, inclusive, Defendants.

) Case No.
) COMPLAINT FOR INJUNCTIVE RELIEF
) PURSUANT TO CALIFORNIA
) INSURANCE CODE SECTION 12928.6
) FOR VIOLATIONS OF SECTIONS 332,
) 781, 790.02, 790.03, 1065.1, AND 1759.10

1 The People of the State of California, by and through John Garamendi as the Insurance
2 Commissioner of the State of California (the "Insurance Commissioner"), complain against insurance
3 broker defendants Universal Life Resources, ULR Insurance Services, Inc., Benefits Commerce, and
4 Doug P. Cox (the "ULR Defendants" or "ULR"), and certain insurance company defendants MetLife,
5 Inc., Prudential Financial, Inc., CIGNA Corporation, and UnumProvident Corporation (the "Insurer
6 Defendants") and allege as follows:

7 **NATURE OF THE ACTION**

8 1. The Insurance Commissioner of the State of California is vested with the duty and power
9 to protect the rights of all Californians as it relates to the activities of insurance agents, brokers, insurers
10 and others conducting the business of insurance within California. The Insurance Commissioner brings
11 this action pursuant to Cal. Ins. Code §12928.6 to enjoin defendants from continuing unlawful conduct
12 targeting California policyholders, including businesses, organizations, employers, employees and
13 others that have purchased insurance products and services from or through defendants. In violation of
14 Cal. Ins. Code §§332, 781, 790.02, 790.03, 1065.1, and 1759.10, defendants have concealed hundreds
15 of millions of dollars in undisclosed or inadequately disclosed fees, commissions and other
16 compensation paid to the ULR Defendants as kickbacks by the Insurer Defendants in return for the
17 ULR Defendants steering their clients to purchase insurance policies and other services from the Insurer
18 Defendants. This compensation typically has taken the form of "contingent commissions" or
19 "overrides" based upon volume, persistency and profitability of the placed business, and excessive
20 "Communication Fees" or "Enrollment Fees." These fees and commissions have been paid pursuant to
21 compensation agreements entered into between the ULR Defendants and Insurer Defendants. The costs
22 for these arrangements are ultimately borne by California policyholders who purchase insurance
23 policies and other services to cover risks related to the lives and health of their employees.

24 2. In the increasingly complex and sophisticated business of insurance, businesses,
25 employers and other entities often turn to insurance consultants, brokers or agents ("brokers") to help
26 them select, negotiate and procure insurance policies and other services. Brokers specialize in a range
27 of areas of insurance including commercial lines such as professional liability; employee-benefits plans
28 including group life, health and disability; and personal lines such as auto, home, life and health.

1 3. The ULR Defendants purportedly provide specialized advice, expertise and
2 recommendations to employers and their employees in developing, implementing and modifying
3 employee-benefit plans for their employees. Ordinarily, their clients are employers looking to procure
4 group life and accidental death, long term disability, health and supplemental group plans as part of, or
5 as a supplement to, the employers' employee-benefit plan. The brokers' clients rely on them to
6 determine which insurance products and services best fit the needs of both the employer and its
7 employees, and from which insurance carriers to purchase those products and services.

8 4. ULR Defendants purport to provide independent and unbiased brokerage and consulting
9 services to their clients. As brokers, they have a fiduciary duty to find the most suitable coverage at the
10 lowest cost for their clients, to put the interests of their clients ahead of their own and to exercise the
11 utmost duty of candor and full disclosure. The ULR Defendants have a duty to disclose the sources and
12 amounts of *all* income and other remuneration in whatever form received from any transactions
13 involving their clients. It is because of ULR Defendants' proffered expertise and promise of objectivity
14 that clients engage the ULR Defendants' services. However, as detailed below, the ULR Defendants
15 have engaged in a massive scheme with Insurer Defendants to profit at the expense of Californians.

16 5. In conjunction with the ULR Defendants, Insurer Defendants have contracted with
17 California's insureds to provide employee-benefit plans and other insurance products. Insurer
18 Defendants have a duty under the California Insurance Code to disclose all material facts to the
19 policyholders relating to their insurance policies, including compensation paid the brokers thereto, but
20 they have failed to do so as described herein.

21 6. Defendants have engaged and continue to engage in a scheme and common course of
22 conduct to steer ULR Defendants' clients to purchase insurance policies from Insurer Defendants
23 through agreements that provide contingent commissions (aka overrides) and other undisclosed or
24 inadequately disclosed compensation to ULR Defendants. Defendants use a number of euphemisms for
25 these improper steering agreements, such "special compensation service agreements," "direct vendor
26 marketing agreements" and "preferred broker compensation plans." The steering agreements provide
27 further compensation (in addition to standard consulting fees or commissions) paid by the Insurer
28 Defendants to ULR Defendants based on such factors as: (a) the total volume of insurance ULR

1 Defendants place with a particular insurer; (b) the renewal of that business (*i.e.*, persistency); and (c) its
2 profitability, *i.e.*, total amount of claims paid and loss ratios. All of these factors are controlled by the
3 defendants, who manipulate the market for insurance placed for their clients. These agreements are
4 akin to profit-sharing arrangements between ULR Defendants and Insurer Defendants. These
5 agreements constitute a blatant conflict of interest because the ULR Defendants have a direct financial
6 interest in recommending only those insurance products that are offered by Insurer Defendants with
7 whom they have the undisclosed agreements and other arrangements.

8 7. In addition, the ULR Defendants have exacted compensation through other hidden or
9 inadequately disclosed payments, such as “enrollment fees,” “communication fees,” “service fees,”
10 “finders fees” and/or “administration fees.” In connection with the policies they place with ULR
11 Defendants’ clients, Insurer Defendants seek to offer their employees the option to purchase
12 supplemental insurance coverage, such as supplemental life or long-term disability, which typically has
13 higher profit margins than the basic plans offered by the employer. Defendants fail to disclose either to
14 the employer or the employee that these additional “fees” paid to the ULR Defendants are recouped by
15 Insurer Defendants by building that cost into the premiums charged for supplemental insurance policies
16 and “services.”

17 8. Second, the Insurer Defendants, in breach of their duties to existing clients, also engage
18 in an industry practice known as “low hanging fruit,” whereby the Insurer Defendants flip existing
19 clients with whom they have direct contracts (no broker involvement) to ULR Defendants in return for
20 the ULR Defendants steering their clients to the Insurer Defendants.

21 9. Third, defendants have engaged in tying arrangements, whereby the placement of ULR
22 Defendants’ clients with the Insurer Defendants hinges upon promises of other clients or other
23 insurance business.

24 10. As a result of these unlawful practices, defendants have and continue to increase their
25 profits at the expense of California policyholders. ULR Defendants retain millions of dollars in
26 undisclosed fees, while purporting to provide independent and unbiased advice to their clients, and
27 Insurer Defendants are able to fix, maintain or stabilize the premium rates paid by California
28 policyholders at an artificially high level.

1 11. Defendants have exploited ULR Defendants' perceived position of trust and expertise as
2 insurance consultants, and Insurer Defendants' similar positions of trust *vis-à-vis* purchasers of their
3 insurance products and services. In these acts and practices, all of the defendants named herein have
4 betrayed the public trust, and they must be enjoined to restore California policyholders' public
5 confidence in the industry and prevent further harm and injury to Californians.

6 12. California policyholders have been harmed and continue to suffer harm by: (a) paying
7 excessive premiums and undisclosed fees and charges for the insurance products and services that ULR
8 Defendants purportedly undertook to negotiate on their behalf for the best possible terms; (b) receiving
9 insurance that was more expensive and/or inferior to other available insurance products; and (c) not
10 being reimbursed for money improperly collected. California policyholders have not received the
11 services for which they paid ULR Defendants, and Insurer Defendants in turn have passed the costs of
12 their scheme onto California policyholders in the form of higher premiums and charges for services,
13 and/or inadequate coverage.

14 JURISDICTION AND VENUE

15 13. This Court has jurisdiction over all causes of action asserted herein pursuant to the
16 California Constitution, Article VI, §10 and the express statutory conferral of jurisdiction pursuant to
17 Cal. Ins. Code §12928.6.¹

18 14. This Court has jurisdiction over defendants Universal Life Resources, ULR Insurance
19 Services, Inc., Benefits Commerce, and Doug P. Cox because they are California residents.

20 15. This Court has jurisdiction over all other defendants because they have and continue to
21 engage in the alleged acts and practices in California, are foreign insurers that conduct a substantial
22 amount of business in California, and/or are authorized to sell insurance in California either directly or
23 through their subsidiaries. Each defendant has sufficient minimum contacts with California and
24 otherwise intentionally avails itself of the laws and markets of California through the promotion,
25 marketing and distribution of insurance products and/or services within the State of California so as to
26

27 ¹ All references to statutory code sections herein refer to the California Insurance Code, unless
28 otherwise indicated.

1 render the exercise of jurisdiction by the California courts permissible. Each of the defendants provide
2 services, conduct business and/or sell products in California.

3 16. Venue is proper in this Court because all ULR Defendants are headquartered or reside in
4 this County, and they and the other defendants transact substantial business in this County.

5 **PARTIES**

6 17. Plaintiff John Garamendi is the Commissioner of the California Department of Insurance
7 and is responsible for administering and enforcing the laws of the State of California relating to the
8 business and/or conduct of insurance.

9 18. Defendants Universal Life Resources, ULR Insurance Services, Inc., Benefits Commerce
10 and Doug P. Cox are referred to collectively herein as "ULR Defendants" or "ULR."

11 (a) Defendant Universal Life Resources is a California Limited Partnership with its
12 principal place of business in California. It is located at 12264 El Camino Real, Suite 303, San Diego,
13 California. Universal Life Resources promotes itself as a national group life, accident and disability
14 consulting company that provides broker services to its clients, the insureds. Universal Life Resources
15 purports to help "employers develop and implement improved plans that reduce costs for both the
16 employer and its employees." Universal Life Resources is authorized to do business in California and
17 does, in fact, conduct substantial business in California.

18 (b) Defendant ULR Insurance Services, Inc. ("ULR Insurance") is a California
19 corporation with its principal place of business in California. It is located at 12264 El Camino Real,
20 Suite 303, San Diego, California. ULR Insurance is the general partner of Universal Life Resources,
21 and it is the successor-in-interest of Universal Life Resources Insurance Services, Inc. and Universal
22 Life Resources, Inc. ULR Insurance is a registered Life Agent with the California Department of
23 Insurance under license number 0C36876, and conducts substantial business in California. ULR
24 Insurance is authorized to sell insurance in California on behalf of Metropolitan Life Insurance
25 Company, Prudential Insurance Company of America, Life Insurance Company of North America,
26 Connecticut General Life Insurance Company, Provident Life and Accident Insurance Company, and
27 UnumProvident Life Insurance Company of America.

1 (c) Defendant Doug P. Cox ("Cox") resides at 7811 Sendero Angelica, San Diego,
2 California. Cox is the President and a limited partner of Universal Life Resources. Cox is a registered
3 Life Agent, under the license number 0B48712, with the California Department of Insurance. Cox is
4 authorized to sell insurance in California on behalf of Metropolitan Life Insurance Company, Prudential
5 Insurance Company of America, Life Insurance Company of North America, Provident Life and
6 Accident Insurance Company, and UnumProvident Life Insurance Company of America.

7 (d) Benefits Commerce is a California corporation owned and controlled by
8 defendant Cox. It shares its corporate headquarters with the other ULR entities at 12264 El Camino
9 Real, Suite 303, San Diego, California 92130. Benefits Commerce is also an employee-benefits
10 consultant.

11 19. Defendant MetLife, Inc. ("MetLife") is a publicly-held company, incorporated in the
12 State of Delaware and headquartered in the State of New York. MetLife designs, develops, markets and
13 sells insurance products for individuals and business clients in California. For purposes of this
14 Complaint, MetLife includes its subsidiary, Metropolitan Life Insurance Company ("Metropolitan
15 Life"), as well as other subsidiaries, affiliates, partnerships, joint ventures, divisions, business units and
16 affiliated entities that are authorized to sell insurance in California. MetLife wrote 6.5% of its direct
17 premiums in California in 2003, representing over \$1.9 billion. Metropolitan Life's regional office is
18 located in Contra Costa County, California. Metropolitan Life has been authorized to do business in
19 California since 1908, and it conducts business in this County and throughout California.

20 20. Defendant Prudential Financial, Inc. ("Prudential") is a publicly-held company
21 incorporated in the State of New Jersey and which conducts substantial business in California.
22 Prudential designs, develops, markets and sells insurance products for individuals and business clients
23 in California. For purposes of this Complaint, Prudential includes its subsidiary, The Prudential
24 Insurance Company of America ("Prudential Insurance"), as well as its other subsidiaries, affiliates,
25 partnerships, joint ventures, divisions, business units and affiliated entities that are authorized to sell
26 insurance in this State. In 2003, Prudential Insurance collected 12.7% of its direct premiums in
27 California, representing over \$2.038 billion. Prudential Insurance conducts business in this County and
28 throughout California, including maintaining an office in Woodland Hills, California.

1 21. Defendant CIGNA Corporation (“CIGNA”) is a publicly-traded company incorporated
2 in Delaware, headquartered in Pennsylvania and which does substantial business in California. CIGNA
3 is a leading provider of employee-benefits products in the United States. Through its operating
4 subsidiaries, CIGNA offers a broad array of products and services, including group life, accident and
5 disability insurance for California businesses of all sizes. For purposes of this Complaint, CIGNA
6 includes its subsidiaries, Life Insurance Company of North America and Connecticut General Life
7 Insurance, as well as its other subsidiaries, affiliates, partnerships, joint ventures, divisions, business
8 units and affiliated entities that are authorized to sell insurance in California and conduct substantial
9 business in this State. Life Insurance Company of North America has been licensed to sell disability
10 and life insurance in California since 1957. In 2003, 14.1% of its direct premiums were written in
11 California, representing over \$223 million. Connecticut General Life Insurance Company has been
12 authorized to sell disability and life insurance in California since 1913. In 2003, 9.7% of its direct
13 premiums were written in California, representing over \$1.2 billion.

14 22. Defendant UnumProvident Corporation (“UnumProvident”) is a publicly-traded
15 company incorporated in Delaware and headquartered in Tennessee which, through its subsidiaries, is
16 the leading provider of group long-term, short-term and individual disability income products in the
17 world, including in California. UnumProvident also leases and occupies a building in Glendale,
18 California. For purposes of this Complaint, UnumProvident includes its subsidiaries, UnumProvident
19 Life Insurance Company of America and Provident Life and Accident Insurance Company, as well as
20 other subsidiaries, affiliates, partnerships, joint ventures, divisions, business units and affiliated entities
21 that are authorized to sell insurance in California and conduct substantial business in this State.
22 UnumProvident Life Insurance Company of America, California Company I.D. No. 2039-6, has been
23 licensed to sell disability and life insurance in California. In 2003, 11.4% of its direct premiums were
24 written in California, representing \$490 million. Provident Life and Accident Insurance Company has
25 been licensed to sell disability and life insurance in California since 1928. In 2003, 8% of its direct
26 premiums were written in California, representing \$127 million.

27 23. The true names and capacities of the defendants named herein under C.C.P. §474 as
28 Does 1 through 500 are presently unknown to plaintiff, who therefore sues them by such fictitious

1 names. Plaintiff will amend this Complaint to allege the true names and capacities of these defendants
2 when they have been determined. Each of the fictitiously named defendants is responsible in some
3 manner for the conduct alleged herein. The Doe defendants are individuals, associations, partnerships,
4 joint ventures, corporations, institutes or other entities who participated in the wrongful conduct alleged
5 herein in ways that are unknown to plaintiff at this time.

6 24. At all times mentioned in the causes of action alleged herein, each and every defendant
7 sued under a fictitious name was an agent and/or employee of each and every other defendant. In doing
8 the things alleged in the causes of action stated herein, each and every defendant sued under a fictitious
9 name was acting within the course and scope of this agency or employment and was acting with the
10 consent, permission and authorization of each of the remaining defendants. All actions of each
11 defendant sued under a fictitious name, as alleged in the causes of action stated herein, were ratified and
12 approved by every other defendant or its officers or managing agents.

13 25. Whenever reference in this Complaint is made to any act of any defendant entity named
14 herein or other corporate defendant as may be named in future course of this action, such allegation
15 shall be deemed to mean that the officers, directors, agents, subsidiaries, affiliates and employees of
16 said defendant did or authorized such act while actively engaged in the management, direction, or
17 control of affairs of the corporate defendant, and while acting within the course and scope of their
18 employment.

19 26. The conduct described herein has occurred, and unless enjoined by the Court, will
20 continue to occur in this County and elsewhere in the State of California.

21 **FACTUAL ALLEGATIONS**

22 **The Insurance Brokerage Industry**

23 27. California businesses, employers and other entities typically hire insurance brokers,
24 agents or consultants ("brokers") to advise them about insurance coverage needs and to find insurers
25 that offer the most suitable coverage and services at the lowest possible price. In this context, a broker
26 represents the business or entity as the client's fiduciary agent; obtains price quotes from insurers,
27 presents the quotes to the client; and makes recommendations based on factors such as price,
28

1 differences in coverage and services, the financial security of the insurers in question, and the insurers'
2 reputation for service or claims payment.

3 28. When the client selects an insurance carrier it typically pays the broker a commission or
4 an agreed-to-fee for locating the best insurer for its needs, and it pays premiums to the insurance
5 company for the selected coverage and/or services. Payment for both purposes is usually accomplished
6 with one payment to the broker. The broker then deducts his commission and forwards the balance of
7 the client's premium to the insurance company.

8 29. California employers hire insurance brokers to advise them on how to design, obtain and
9 modify their employee-benefit packages. This includes group life, accidental death and
10 dismemberment, long term disability and group health insurance, as part of their employees' benefits
11 package. Often employees are approached by the ULR Defendants and Insurer Defendants to purchase
12 supplemental coverage, particularly supplemental life and disability insurance, which is paid for by the
13 employee, typically through a payroll deduction program.

14 30. The ULR Defendants present what they represent as "proposals" to potential clients for
15 analyzing and improving the group insurance programs they provide to their employees. For example,
16 the ULR Defendants may offer to (a) gather information about the employer's group insurance
17 programs; (b) prepare a financial analysis of and design a proposed new group insurance program;
18 (c) prepare a request for proposal and take the program out to bid; (d) implement the new plan and
19 communicate the plan to employees; and (e) provide ongoing management of the plan. For these
20 services, the ULR Defendants often agree to accept a flat-rate fee or standard commission to be paid to
21 the broker by the client.

22 31. Some of the largest corporations in California are clients of the ULR Defendants. The
23 ULR Defendants represent the following California companies: Warner Brothers; Charles Schwab;
24 Northrop Grumman Corporation; Southern California Edison; Pacific Gas & Electric Company; Arco;
25 Sun Microsystems; Silicon Graphics; Intel Corp.; Amdahl Corporation; Altera Corporation; Agilent
26 Technology; Safeway; Gap, Inc.; Callaway Golf Company; and Fluor Corporation. These companies
27 collectively employ tens of thousands of Californians, which are covered under employee-benefit plans,
28

1 own billions of dollars worth of property and spend hundreds of millions on insurance and related
2 services.

3 32. The ULR Defendants represent that they are highly skilled, independent insurance
4 brokerage experts and possess the specialized knowledge and expertise needed to interpret and
5 understand the complex and sophisticated business risks and employee-benefit needs faced by their
6 clients, and that they have the capability to determine which corresponding insurance products and
7 services and insurance companies best fit their clients' needs. The ULR Defendants profess to bring
8 their clients a broad array of insurance companies which they canvas objectively for the most suitable
9 insurance policies at the lowest prices.

10 33. The ULR Defendants purport to be acting on behalf of their clients and encourage their
11 clients to rely on their specialized knowledge and expertise in procuring insurance coverage.
12 Consequently, employers do rely on ULR Defendants for assistance in purchasing various insurance
13 products, including life, accident and disability programs offered as part of their employee-benefits
14 plans. Further, the ULR Defendants seek and obtain confidential, proprietary, sensitive and personal
15 information relating to their clients and employees. As such, the ULR Defendants create a confidential
16 and/or fiduciary relationship with their clients based on their role as brokers and their promises of
17 unbiased, independent broking advice on the most efficient and cost effective insurance products and
18 services.

19 34. The ULR Defendants also purport to represent the best interests of their clients in
20 advertisements, brochures, internet websites and other promotional materials.

21 35. Based on the conduct described above and legal duties imposed on brokers under
22 California law, ULR Defendants owe their clients: (a) a duty of loyalty to act in the best interests of
23 their clients and to always put their clients' interests ahead of their own; (b) a duty of full and fair
24 disclosure and complete candor, including the duty to disclose the source and amounts of all income
25 that the broker receives in or as a result of any transaction involving its clients; (c) a duty of care; (d) a
26 duty to provide impartial and honest advice; (e) a duty to use their best business judgment in connection
27 with any insurance-related products and services purchased by their clients – in other words to find the
28 best coverage at the lowest price; and (f) a duty of good faith and fair dealing.

1 **Contingent Commissions and Other Undisclosed Compensation**

2 36. Although ULR Defendants receive a flat fee or standard commission from either their
3 clients and/or the Insurer Defendants, they have also entered into undisclosed agreements with Insurer
4 Defendants for other types of compensation and remuneration such as contingent commissions,
5 consulting fees, management fees, profit sharing, communication and/or servicing fees, enrollment fees,
6 override agreements and numerous non-monetary gifts that operate as kickbacks for placing insurance
7 with Insurer Defendants. Thus, ULR Defendants are being paid on both sides of the transaction, even
8 though the ULR Defendants purport to be acting on behalf of their clients. Defendants fail to
9 adequately disclose these agreements in any meaningful way.

10 37. The contingent commission agreements (aka overrides) provide that Insurer Defendants
11 will pay undisclosed fees to ULR Defendants based on (a) the volume of premiums generated by ULR
12 Defendants' sales of Insurer Defendants' products, (b) the growth of business and renewal of existing
13 business, and (c) the profitability of the book of business purchased by ULR Defendants' clients, *i.e.*, a
14 favorable claims and loss ratio with a particular insurer. In the employee-benefits insurance industry,
15 these agreements are called "Preferred Broker Fee/Bonus," "Special Compensation Agreements,"
16 "Direct Vendor Marketing Agreements," "Override Agreements," "Special Override Agreements,"
17 "Communication Fees," "Enrollment Fees" and "Service/Administration Fees." These fees are built
18 into the cost base of the policy.

19 38. The ULR Defendants are paid a percentage of the total premium dollar placed with the
20 carrier, called an "Override Fee," after achieving a specified premium, persistency and/or profitability
21 level as dictated by the Insurer Defendants. These fees can be exorbitant, sometimes 3% of the total
22 amount of business that the broker places in an entire year. ULR Defendants instruct Insurer
23 Defendants to build Override Fees into the cost of the plans that Insurer Defendants offer to ULR
24 Defendants' clients. Therefore, ULR Defendants' clients ultimately pay the cost of these undisclosed
25 fees through higher premiums. ULR Defendants refuse to place their clients' business with insurers that
26 do not pay overrides. It is ULR Defendants' policy and practice not to disclose to their clients that an
27 additional fee will be paid by Insurer Defendants and factored into the clients' plans. Nor is ULR
28 Defendants' additional compensation disclosed to state or federal regulatory agencies.

1 39. MetLife, Prudential, UnumProvident and CIGNA have all paid ULR Defendants'
2 Override Fees, which are geared both toward overall volume of business placed by ULR and case-
3 specific client placement or renewal.

4 40. MetLife, Prudential, UnumProvident and CIGNA also offer "Broker Bonus Plans,"
5 through which they pay additional compensation to brokers in return for placing a certain amount of
6 business with CIGNA in a given year and maintaining a high persistency level with their clients.

7 41. In addition, each of the Insurer Defendants has paid ULR Defendants Communication
8 Fees – a per employee charge for each client whose employees purchase optional supplemental group
9 life and/or disability insurance – whether or not the employee actually receives or elects to receive
10 coverage. This compensation is not disclosed, and while purporting to be a "Communication" Fee, the
11 claimed services either do not exist or bear no relation to the amount of such fees.

12 42. Although the Communication Fee is paid by the Insurer Defendants, they recoup the
13 amount by building it into the premium rates charged to the client's employees and dependents who
14 choose optional or supplemental insurance coverage (including dependent coverage). Like the override
15 fee, the Communication Fee is not disclosed to the client or its employees. If it is disclosed at all, such
16 disclosure is woefully inadequate and is buried in the fine print of a voluminous contract.

17 43. The following are a few examples of defendants' concealment of these various fees. In
18 February 2003, ULR was employed by Brinker International, Inc. ("Brinker") to place Brinker's Group
19 Life and Optional Life plans. In soliciting a proposal for defendant CIGNA, ULR represented:

20 [T]he communications fees ... should not be communicated to the client without ULR's
21 prior consent. The cost for this project can be factored into the Optional Life plan
22 overhead or in the carrier's general overhead, but should not impact any other client
plans, *i.e.*, Basic Life.

23 44. In March 2004, an employee-benefits broker which represented retail giant Wal-Mart,
24 emailed defendant Prudential to inquire whether Prudential included a Communication Fee in its
25 premium rates for employee supplemental coverage. If so, the broker inquired, would Prudential reduce
26 the premium rate charged to Wal-Mart employees if he accepted a significantly smaller Communication
27 Fee so as to provide the client with "the best possible value"? The Prudential executive responded:

28 [W]e do build in the cost of communication materials The WalMart rates are not be
[sic] reduced any further.

1 The inference is that even if the broker accepted a lower Communication Fee, Prudential would not
2 lower the premium rate which included a higher built-in fee.

3 45. Similarly, when the same questions were posed by the broker to a MetLife executive,
4 also in connection with Wal-Mart, MetLife's response was reflective of Prudential's and highlighted the
5 Insurer Defendants' willingness to comply with the broker's demands:

6 The communications we are paying on Wal-Mart ... is included in the rates that we have
7 offered. If you were to ask us to pay communications cost of \$3 or \$6 per employee, we
would build the additional expenses ... into our rates.

8 At the time of this email correspondence, MetLife was paying \$10 per employee in Communication
9 Fees to ULR Defendants. When later asked why MetLife paid these fees, which resulted in higher rates
10 to the insured, the same MetLife executive responded, "[w]e build this in because the Broker tells us
11 to," referring to ULR.

12 46. Finally, ULR client Chevron/Texaco approached MetLife and inquired about the
13 existence and/or impact of Communication Fees on their premium rates. Both the head of Sales and
14 head of Product Development at MetLife *denied the existence* of such Communication Fees.

15 47. Communication Fees are a pretext for undisclosed commissions and kickbacks. The
16 ULR Defendants attempt to justify Communication Fees which are typically \$10-\$20 *per employee*, by
17 claiming they prepare a brochure for distribution to employees. The cost of preparing and distributing
18 these brochures is a few dollars at most. Some of this nation's largest corporations, including Bankers
19 Trust, Kodak, Goodyear Tire & Rubber Company, BP Amoco, Lucent Technologies, Waste
20 Management, Inc., and United Air Lines, Inc., have unwittingly paid millions of dollars in
21 Communication Fees for such negligible or non-existent services.

22 48. Unlike defendants here, certain insurers and brokers refuse to pay or receive
23 Communication Fees, due to the lack of adequate disclosure to the client. One example is St. Paul-
24 based Minnesota Life Insurance Company, which refused to do business with ULR because ULR did
25 not adequately disclose fees imposed on employees. ULR has also lost clients, such as Ashland Oil,
26 when they discovered that ULR was lying to them about the fees it was receiving in connection with its
27 insurance policies.

28

1 49. Because the payment and receipt of overrides and Communication Fees present a blatant
2 conflict, neither the broker nor the insurer discloses the nature or amount of these payments to clients
3 and regulators. As a consequence, clients, analysts and regulators have difficulty ascertaining whether
4 and to what extent brokers receive contingent commissions from insurers, and to what extent insurers
5 pay such commissions to brokers.

6 50. A January 14, 2004 JP Morgan report assessing the impact of “increased regulatory
7 scrutiny” on contingent commission agreements is telling. JP Morgan predicted that increased scrutiny
8 would “result in greater disclosure of” those agreements, which in turn “could negatively affect broker
9 earnings.” JP Morgan characterized the current level of disclosure as “weak and incomplete,” and
10 expected “an outcry for reform from insureds.” Its research confirmed that “most brokers will not
11 disclose contingent revenue to the investment community,” let alone to the insureds. In fact, JP Morgan
12 has reported brokers’ admissions that “contingent commissions are traditionally not disclosed to
13 insureds.”

14 51. The industry itself recognizes that undisclosed contingent commissions corrupts the
15 entire process. Clients are misled into thinking they are receiving impartial advice and quality,
16 economical insurance products and services when, in fact, the broker is steering them towards products
17 that will maximize the broker’s profits to the detriment of the client. The Risk and Insurance
18 Management Society, Inc. (“RIMS”) stated in a press release dated August 24, 2004:

19 We believe that undisclosed contingency fees have the potential to compromise the very
20 basis upon which this relationship is built. In an effort to preserve the integrity of this
21 relationship, RIMS strongly advocates for complete and full disclosure of compensation
22 agreements without client request.

23 52. Notably, full disclosure of compensation agreements is required by the IRS and
24 Department of Labor (“DOL”) rules. Most benefit plans are required to follow DOL rules governing
25 compensation arrangements. The rules mandate that broker compensation arrangements must be fully
26 disclosed to the plan’s fiduciary. If the broker fails to disclose all compensation arrangements, the DOL
27 can penalize the broker and even the client. The receipt of undisclosed compensation is prohibited.
28 Further, under 29 U.S.C. §1023(a), insurance companies must disclose all commissions and fees paid to

1 the broker who placed the employee-benefit plan. In particular, all compensation paid to brokers must
2 be disclosed on the Form 5500 (including Schedule A thereto) filed with the IRS and DOL.

3 53. However, Insurer Defendants have concealed these payments from employee-benefit
4 plans and the IRS. Insurers must supply information regarding the amount of “insurance fees and
5 commissions paid to agents, brokers and other persons” to the plan for purposes of its Form 5500. As
6 reflected in the Form 5500 filed for Intel’s Group Life and Accidental Death and Dismemberment
7 Insurance Plan in 2001, UnumProvident told the plan it had paid Cox \$78,951 in commissions for the
8 Group life, but *nothing* in fees; paid Cox \$87,189 in commissions but *no fees* for the Group AD&D
9 Plan; and paid Cox \$5,500 in commissions but *no fees* for a Business Travel Accident Plan. In the
10 Form 5500 for 2002, UnumProvident again only reported commissions, in the amount of \$54,730,
11 \$86,731 and \$5,500, respectively. In reality, defendants Cox and ULR earned far more in undisclosed
12 commissions, overrides and Communication Fees from UnumProvident. Intel (and its employees) paid
13 \$128 million for Group Life and Accidental Death and Dismemberment coverage in 2001 and a
14 comparable amount in 2002. Unbeknownst to Intel and its employees, UnumProvident paid additional
15 undisclosed overrides and Communication Fees in excess of **\$1,000,000** to the ULR Defendants for
16 2001 and 2002.

17 54. Finally, undisclosed fees and remuneration also come in the form of lavish gifts, travel
18 and loans from the Insurer Defendants to the ULR Defendants. For example, defendant CIGNA has
19 sponsored trips for defendant Cox to premier vacation destinations. Other Insurer Defendants offer
20 similar perks for preferred brokers.

21 **Steering and “Low Hanging Fruit”**

22 55. In order to maximize the undisclosed revenue that ULR Defendants receive from the
23 Insurer Defendants, they steer their clients to purchase policies from insurers that offer contingent
24 commissions and other forms of undisclosed kickbacks, and specifically recommend those policies and
25 terms that they believe will generate the highest kickbacks from the insurer.

26 56. For example, ULR advised its client Intel to change its carrier from defendant CIGNA to
27 defendant UnumProvident solely to earn a \$1.5 million Communications Fee. ULR did so even though
28 UnumProvident rates paid by Intel and its employees were less favorable than CIGNA’s.

1 57. ULR Defendants steer more than 90% of their business to the Insurer Defendants, with
2 MetLife receiving approximately 50% of ULR's business alone.

3 58. In addition, ULR Defendants steer clients towards certain types of plans that permit ULR
4 to more easily hide compensation received from Insurer Defendants. For example, ULR encourages its
5 clients to place their employee-benefit plans with "non-participating" insurers, versus "participating"
6 insurers that pay dividends to their policyholders. The former do not report the specific components
7 that are included in the pricing of the policyholder's premium such as compensation paid to ULR
8 Defendants, while the latter must provide such information. In order to maximize their undisclosed
9 fees, ULR Defendants steer their clients toward non-participating plans.

10 59. Insurer Defendants also direct brokers to steer business in their direction through special
11 incentive programs. For example, defendant CIGNA enters into "national agreements" with certain
12 brokers such as ULR Defendants, which provide for override fees to those brokers. CIGNA refers to
13 these brokers as its "partners." CIGNA encourages its "partners" to explain rate increases to their clients
14 at the time of renewal and to persuade the client to remain with CIGNA. Brokers are incentivized
15 through these "national agreements" to maintain the business for CIGNA and not to bid out the plan at
16 the time of renewal.

17 60. One of the most egregious steering practices in which defendants engage is known as
18 "low hanging fruit" in the industry. It is a common industry practice for insurers to obtain additional
19 insurance business by tantalizing brokers with the offer to flip (or provide ULR) clients with which they
20 have direct insurance contracts (*i.e.* who are purchasing insurance without a broker) in exchange for
21 steering ULR's clients to the insurer. The broker is then able to earn contingent commissions and other
22 undisclosed compensation from the Insurer Defendant on that "flipped" client. The ULR Defendants
23 have engaged in this practice with CIGNA and other Insurer Defendants.

24 **Defendants' Tying Arrangements**

25 61. Finally, defendants have engaged in an anti-competitive practice known as "tying."
26 Tying is a type of leveraging agreement in which the ULR Defendants have promised to steer clients to
27 the Insurer Defendants in return for the Insurer Defendants agreeing to pay contingent commissions,
28

1 overrides, Communication Fees and other undisclosed fees. Insurer Defendants also instigate tying
2 arrangements, such as occurs in the “low hanging fruit” scenario described above.

3 **Effect of Defendants’ Misconduct**

4 62. Because defendants fail to adequately disclose contingent commission agreements,
5 overrides, communication fees and other forms of undisclosed compensation, California policyholders
6 are not aware of their existence, operation or effect on their insurance contracts.

7 63. Moreover, as a result of defendants’ scheme and common course of conduct, California
8 policyholders have and continue to suffer injuries in their business or property. Insureds paid more for
9 insurance and/or received inferior insurance coverage than they would have in the absence of the
10 improper conduct described herein. Defendants’ fraudulent scheme and common course of conduct
11 constitutes an ongoing threat to California policyholders and will continue to cause economic losses and
12 threaten their ability to obtain appropriate insurance coverage at a fair price unless enjoined by this
13 Court.

14 **FIRST CAUSE OF ACTION**

15 **Injunctive Relief Pursuant to Insurance Code Section 12928.6** 16 **For Violations of Insurance Code Section 332** **(Against All Defendants)**

17 64. Plaintiff incorporates by reference each and every allegation contained above as though
18 fully set forth herein.

19 65. California Insurance Code §12928.6 provides:

20 Whenever the commissioner believes, from evidence satisfactory to him, that any person
21 is violating or about to violate any provisions of this code or any order or requirement of
22 the commissioner issued or promulgated pursuant to authority expressly granted the
23 commissioner by any provision of this code or by law, the commissioner may bring an
24 action in the name of the people of the State of California in the superior court of the
25 State of California against such person to enjoin such person from continuing such
26 violation or engaging therein or doing any act in furtherance thereof. In such action an
27 order or judgment may be entered awarding such preliminary or final injunction as is
28 proper.

25 66. Pursuant to this authority, the Insurance Commissioner seeks to enjoin defendants from
26 violating §332. Section 332, which is entitled “Required disclosures,” provides:

27 Each party to a contract of insurance shall communicate to the other, in good faith, all
28 facts within his knowledge which are or which he believes to be material to the contract

1 and as to which he makes no warranty, and which the other has not the means of
2 ascertaining.

3 67. For purposes of §332, "materiality" is determined "solely by the probable and reasonable
4 influence of the facts upon the party to whom the communication is due, in forming his estimate of the
5 disadvantages of the proposed contract, or in making his inquiries." Cal. Ins. Code §334.

6 68. The acts and practices of Insurer Defendants alleged herein constitute conduct proscribed
7 by §332, in that they have failed to communicate in good faith material facts surrounding, *inter alia*,
8 compensation paid to ULR Defendants; the impact on the premium rates charged to insured; the pricing
9 of the insured's insurance policies; their steering of clients to purchase their insurance products; and the
10 terms, benefits or advantages of the insurance policy. Insurer Defendants have also concealed or made
11 false representations regarding these material facts within the meanings of §§330, 331, 358 and/or 359.

12 69. ULR Defendants' acts and practices as alleged herein also constitute violations of §332
13 because they have failed to communicate in good faith material facts surrounding, *inter alia*, their
14 representation of the insured; their representation of Insurer Defendants; their receipt of contingent
15 commissions, overrides, fees, and other compensation that are ultimately borne by the insured; the
16 impact of such payments on their representation and advice to the insured; their steering practices; the
17 pricing of the insured's insurance policies; and the terms, benefits, or advantages of the insurance
18 policy. Alternatively, ULR Defendants have violated §332 as Insurer Defendants' agents, co-
19 conspirators, and/or aiders and abettors. ULR Defendants have also concealed or fraudulently omitted
20 to communicate material facts within the meaning of §§330, 331, 358 and 359.

21 70. The above violations of §332 by all defendants constitute cause for the issuance of
22 injunctions against each defendant pursuant to §12928.6.

23 SECOND CAUSE OF ACTION

24 **Injunctive Relief Pursuant to Insurance Code Section 12928.6** 25 **For Violations of Insurance Code Sections 790.02 and 790.03(b)** 26 **(Against All Defendants)**

27 71. Plaintiff incorporates by reference each and every allegation contained above as though
28 fully set forth herein.

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FIFTH CAUSE OF ACTION

**Injunctive Relief Pursuant to Insurance Code Section 12928.6
For Violations of Insurance Code Section 1065.1
(Against All Defendants)**

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

86. Pursuant to his authority under §12928.6, the Insurance Commissioner seeks to enjoin defendants from violating §1065.1, which prohibits persons purporting to do insurance business in this state from conducting their “business and affairs in a manner which is hazardous to its policyholders, creditors or the public”

87. The acts and practices of defendants alleged herein constitute violations of §1065.1 because the manner in which defendants have and continue to conduct their business and affairs has resulted in loss and continues to pose a risk of financial loss to California policyholders.

88. The above violations of §1065.1 by all defendants constitute cause for the issuance of injunctions against each defendant pursuant to §12928.6.

SIXTH CAUSE OF ACTION

**Injunctive Relief Pursuant to Insurance Code Section 12928.6
For Violations of Insurance Code Section 1759.10
(Against ULR Defendants)**

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

90. Pursuant to his authority under §12928.6, the Insurance Commissioner seeks to enjoin ULR from violating §1759.10, which provides:

No person shall act as, or hold himself out to be, an administrator in this state, other than an adjuster licensed in this state for the kinds of business for which he is acting as an administrator, unless he holds a certificate of registration as an administrator issued by the commissioner.

91. Section 1759 defines an administrator as:

[A]ny person who collects any charge or premium from, or who adjusts or settles claims on, residents of this state in connection with life or health insurance coverage or annuities or coverage described in Section 740

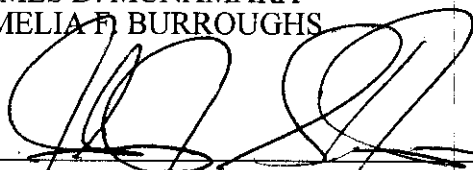
1 B. An order imposing a trust upon defendants' ill-gotten monies and freezing all of
2 defendants' funds acquired by means of any act or practice declared by this Court to be a violation of
3 the Insurance Code or the regulations promulgated thereunder;

4 C. For plaintiff's costs of suit and attorneys' fees; and

5 D. For such other and further relief as the Court deems proper and just.

6 DATED: November 17, 2004

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