EXHIBIT A

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

LSIMC, LLC, on behalf of itself and all others similarly situated, Plaintiff, vs. AMERICAN GENERAL LIFE INSURANCE COMPANY, Defendant.	Case No. CV 20-11518-SVW-PVCx **CLASS ACTION** **FOURTH AMENDED COMPLAINT FOR BREACH OF CONTRACT** **JURY TRIAL DEMANDED**

Pursuant to Federal Rule of Civil Procedure 15(a)(2), Plaintiff, on behalf of itself and all others similarly situated, for its Fourth Amended Complaint against American General Life Insurance Company, states as follows:

NATURE OF THE ACTION

1. This is a class action brought on behalf of Plaintiff and similarly situated owners of life insurance policies issued by American General Life Insurance Company ("AmGen"). AmGen has cheated Plaintiff and other owners of similar policies out of tens of millions of dollars by deliberately under-paying interest owed on amounts deposited with AmGen in violation of the terms of their standardized form contracts.

2. The life insurance policies at issue include universal life insurance, which combines a savings component and an insurance component. The savings component is referred to as the policies' account (or accumulation) value, and policyholders earn interest on amounts held in those accounts. That rate of interest is called the "interest rate," "declared annual interest rate," or "credited rate." The amounts in the account, plus accrued interest, are then used to pay for the insurance component through cost of insurance ("COI") and other charges. The amounts in the accounts can also be withdrawn through loans or the surrendering of a policy and converted into cash for the policyholder.

3. The amount of interest AmGen credits to a policyholder's account depends on the date when AmGen receives the premiums deposited in the account. For any of the policies at issue, AmGen applies a "New Premiums" credited rate to a premium when it is deposited into a policyholder's account. The premium continues earning interest at the "New Premiums" rate in effect at the time it was deposited for approximately 36 months, after which it earns interest at a "Portfolio" rate until the policy matures or until the premium is exhausted through COI charges or other deductions.

4. Credited rates are not fixed at issuance. Instead, AmGen reviews its "New Premiums" and "Portfolio" credited rates quarterly. The AmGen policies at issue in this case all expressly state that, unlike COI rates and other charges, "[a]ny redetermination of interest rates will be based ***only*** on expectations of future investment earnings":

> Any redetermination of the cost of insurance rates, Premium Expense Charge Percentage or Monthly Administration Fee will be based on our future expectations as to mortality, persistency, expenses, reinsurance costs, and state and federal taxes. ***Any redetermination of interest rates will be based only on expectations of future investment earnings.*** We will not change these rates or charges in order to recoup any prior losses.

5. AmGen has breached the terms of the policies by redetermining credited rates based on factors other than its expectations of future investment earnings. For example, for at least the period from 2014 through 2020, AmGen has redetermined the "New Premiums" credited interest rates on Plaintiff's policy at exactly 3.00%—which is the guaranteed minimum set forth in the policy—despite AmGen's expectations of future investment earnings exceeding 3%. As discussed below, this breach of the "based only on" clause is part of a deliberate strategy by AmGen to turn credited rates into a profit center and thereby increase shareholder returns at the expense of AmGen's contractual obligations owed to policyowners.

6. Life insurers like AmGen enjoy a long-term capital advantage in their investment position which allows them to pursue investment strategies that earn higher investment returns than investors who are restricted to short-term investments. A life insurance company's long-term capital comes from the long-dated nature of the life insurance products they sell. This allows AmGen to invest life insurance deposits in long-duration securities such as corporate debt, commercial and residential mortgage-backed securities, loan-backed and structured securities and mortgage loans, which earn significantly higher interest rates than United States

treasury bonds. For example, over the past several years it is common and standard in the life insurance industry for insurers of AmGen's size to have projected future investment earnings, and in fact earned returns, at rates between 5% and 6.5% each and every year.

7. Indeed, AmGen's 2019 annual statement, filed with the National Association of Insurance Commissioners (NAIC), suggests that AmGen's investment earnings were at least 4.9% in each of 2018 and 2019—1.9% higher than the "New Premiums" crediting rate that AmGen declared for Plaintiff's policy in each of those two years.

8. A detailed analysis shows that 2019 was not an anomaly, nor explainable as a one-time divergence between AmGen's expectations and its actual returns (i.e., that it had unexpectedly positive investment earnings in 2019 in one year alone). Rather, AmGen's investment earnings have been in excess of 4.6% *every year* from 2012 through 2020, and it has been retaining as profit between 21% and 48% of its net investment income in each of those years. Because past experience is the primary driver of future expectations, and because actuarial principles require expectations to be set using reasonable assumptions and credible historical data, it is clear that AmGen did not, in fact, set its expectation of future investment earnings at exactly 3.00% for the past six years while earning actual returns of 5.9% (2012), 5.6% (2013, 2014, 2015), 5.2% (2016), 5.0% (2017), 5.2% (2018), 4.9% (2019), and 4.6% (2020). To the contrary, AmGen's expectations of future investment earnings in each of those years, every year, were substantially greater than 3.00%.

9. According to the 2019 Annual Report of AIG, AmGen's parent company, it "actively manage[s] the credited rates used for new and in-force business" in order to maximize the spread between credited rates and earned rates, and it apparently believes that the only limits on its ability to reduce rates are "the competitive environment, contractual minimum crediting rates, and provisions that allow rates to be reset only at pre-established intervals." AIG also brags that it is

crediting the guaranteed minimum on 63% of all universal life account value. No mention is made in AIG's Annual Report of the contractual requirement that credited rates be based "only on [AmGen's] expectations of future investment earnings."

10. AmGen even admitted in its own motion to dismiss the original Complaint[1], and Plaintiff agrees and independently alleges, that AmGen "designs universal life policies to achieve a profit spread," and adjusts its interest rates not due solely to changes in AmGen's expectations of future investment earnings, but rather "to try and maintain this projected spread." Maintenance of this profit spread at redetermination is not mentioned in nor permitted by the terms of the policies, which state that interest rates will be redetermined based "only" on AmGen's expectations of investment earnings. The "competitive environment" is similarly not a permissible factor on which to redetermine New Premiums or Portfolio credited interest rates. Each time AmGen has redetermined interest rates from the time these policies were sold, the newly determined interest rates are not "based only on expectations of future investment earnings," as the contracts require but rather, at best, they are based on expectations of future investment earnings **and** also, amongst other improper factors, a profit spread (that AmGen illegally pockets). Not only does this breach occur each year since policy issuance, but Plaintiff also continues to pay for these breaches today.

11. Simply put, AmGen is now ignoring the very clear contractual language and instead redetermining interest rates based on its shareholder-driven profit targets and its perspective on the competitive environment. Because neither profit targets nor competitive environment goals are "expectations of investment earnings,"

[1] *See* Dkt. 22 at 26-28, 26 n.9, 27 n.10 (acknowledging that AmGen determines a profit spread "assumed at pricing," that AmGen manages "credited rates to try and maintain" profit spread, and that AmGen's "redetermination of credited rates is based on preserving the projected spread determined at the time of policy pricing," and also citing to Actuarial Standards of Practice and other cases to support AmGen's position that profit can be a factor in credited rate determinations, despite none of those cases or standards of practice contemplating the single-factor credited rate language at issue here).

AmGen has breached, and is breaching, the terms of these standardized form contracts and their "based only on" interest rate redetermination requirements. Plaintiff, on behalf of itself and similarly situated owners of policies issued nationwide, seeks damages and other relief for under-payment of interest that is owed under the contracts.

THE PARTIES

12. Plaintiff LSIMC, LLC is a Delaware limited liability company, whose only member is Cook Street Master Trust III, a New York common law trust. LSIMC, LLC owns universal life policy number UM0066177L, which was issued by AmGen on February 20, 2010 (the "LSIMC Policy").

13. The LSIMC policy was issued in the State of California and states on its face "THIS IS A CALIFORNIA POLICY."

14. Defendant American General Life Insurance Company is a corporation organized and existing under the laws of Texas and has its principal place of business in Houston, Texas and is licensed to and does transact insurance in California.

JURISDICTION AND VENUE

15. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1332(d) because this is a class action with diversity between at least one putative class member and one defendant and the aggregate amount of damages exceeds $5,000,000. This action therefore falls within the original jurisdiction of the federal courts pursuant to the Class Action Fairness Act, 28 U.S.C § 1332(d).

16. This Court has personal jurisdiction over AmGen because it regularly transacts business and issues life insurance in the State of California and many of the policies at issue in this case were issued in California.

17. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-(c) because a substantial part of the events giving rise to Plaintiff's cause of action occurred in this District. Plaintiff's policy was issued in Los Angeles County.

FACTUAL BACKGROUND

A. The Policies at Issue

18. The policies at issue include flexible-premium, universal and variable universal life policies issued by AmGen or its predecessors-in-interest. They were all issued on standardized policy forms and insureds are not permitted to negotiate different terms.

19. Universal life policies combine death benefits with a savings or investment component, often known as the "account value" or "policy value," and referred to in the AmGen policies as the "Accumulation Value."[2] There are no fixed monthly premium payments on universal life policies. Rather, the policyholder pays into the account value, and then monthly charges, such as cost of insurance charges, are deducted therefrom. So long as the cash surrender value is sufficient to pay the COI and other charges, the policy will remain in force.

20. Excess amounts in the account value earn interest. This interest helps fund future policy charges, and reduces the amount of premiums that the policyholder will have to pay in the future. AmGen applies a "last in first out" (LIFO) method to taking deductions from the account. The newest premiums are used to pay COI charges and other deductions and, assuming they are sufficient to do so, older premiums remain in the account accruing interest.

21. Plaintiff's policy makes clear that while a number of factors may be considered in setting COI rates and other charges, redeterminations of credited interest rates must be based only on one thing—AmGen's expectations of future investment earnings:

> Any redetermination of the cost of insurance rates, Premium Expense Charge Percentage or Monthly Administration Fee will be based on our future

[2] The policies also use the term "cash value," which is defined as the Accumulation Value less surrender charges. "Cash surrender value" is defined in the policies as cash value less indebtedness. This is the net amount a policyholder would receive if he or she were to surrender a policy.

> expectations as to mortality, persistency, expenses, reinsurance costs, and state and federal taxes. ***Any redetermination of interest rates will be*** based ***only on expectations of future investment earnings.*** We will not change these rates or charges in order to recoup any prior losses.

22. Notably, AmGen has issued other universal life policies that allow it to consider additional factors in setting credited rates. For example, AmGen has issued policies with the following language, which omits the "based only on expectations of future investment earnings" language and groups interest rates in with other policy charges:

> Any redetermination of the cost of insurance rates, ***interest rates***, expense charges, net premium percentage or monthly administration fee, will be based on our expectations as to ***investment earnings, mortality, persistency, expenses, reinsurance costs, and state and federal taxes***. We will not change these charges in order to recoup any prior losses.

This is what is known as a Multi-Factor Credited Rate Provision, as it allows the insurer to base credited rates on factors other than expectations of future investment earnings.

23. The policies at issue in this case all contain Single-Factor Credited Rate provisions: no factor other than expectations of future investment earnings may be considered. By making clear that redeterminations of credited rates cannot be based on anything else except for expectations of future investment earnings, this language means that (a) interest rates must be based on AmGen's expectations of its future investment returns at the time they are declared and (b) profit objectives, spread maintenance, the "competitive environment" (or lack thereof) and other factors cannot be considered in any redetermination of interest rates.

24. The credited rate that AmGen applies to the premiums in a policy's account depends on when the premium was received. Newly deposited premiums earn interest at the "New Premiums" rate in effect at the time of the deposit. The premium continues earning interest at the "New Premiums" rate in effect when it was

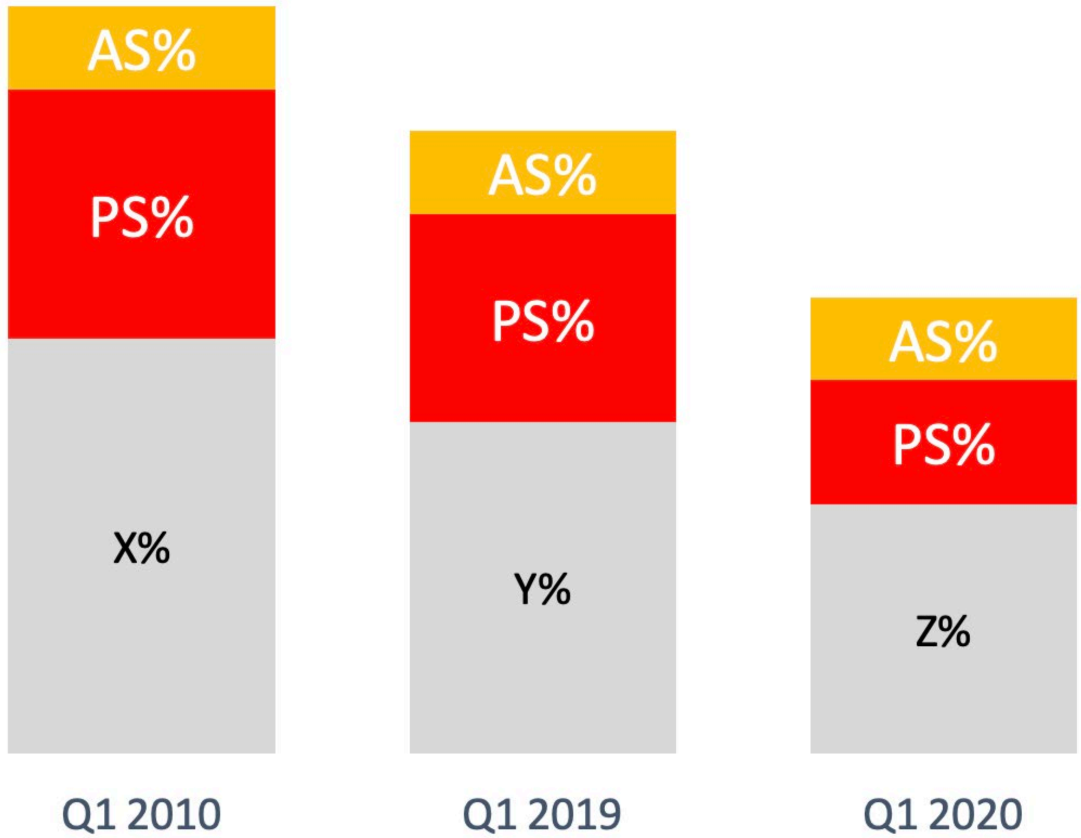
deposited for approximately 36 months. After that 36-month period, interest is credited at the "Portfolio" rate.

25. The New Premiums crediting rate and the Portfolio crediting rate are separately redetermined by AmGen. Because amounts that have been in a policyholder's accumulation value for longer than 36 months are managed on a portfolio basis in longer-term funds, the Portfolio crediting rate is generally higher than the New Premiums crediting rate. Likewise, AmGen's expectations of future investment earnings are higher for amounts managed on a portfolio basis.

26. To illustrate, for an interest payment credited to a class plaintiff's account in January 2022, AmGen may apply a Portfolio crediting interest rate of X% for premium payments made in the first quarter 2010, a New Premiums crediting interest rate of Y% for premium payments made in the first quarter 2019 for, and a different New Premiums crediting interest rate of Z% for premium payments made in the first quarter of 2020. Thus, if the current value of a policy account results from payments made in 2010, 2019, and 2020, then the portion of the account value resulting from Q1 2010 premium payments is credited at X%, the portion of the account value resulting from Q1 2019 premium payments is credited at Y%, and the portion from Q1 2020 premium payments is credited at Z%.

27. Yet, for each quarter since the time the policy was issued, AmGen has been redetermining a much lower interest rate than the contract permits by not basing either the New Premiums or Portfolio rate only on expectations of future investment earnings. Graphically, this can be depicted as follows, where the length of the full bar (orange plus red plus grey) represents AmGen's expectations of future investment earnings for that quarter; the gray bar (X%, Y%, and Z%) represents the lower interest rates that AmGen actually applied to premium payments made in that quarter; with "**PS%**" representing the **"pricing profit spread"** and **"AS%"** the **"additional spread"** that AmGen illegally keeps for itself (e.g. to account for the "competitive

environment" (or lack thereof) and other factors not contractually enumerated in the policies).



28. AmGen's redetermination of interest rates flies in the face of the policies' contractual requirement and is improper. AmGen only credited X%, Y%, and Z% in the example above, but AmGen should have credited, and continue to credit, interest rates that are based only on its expectations of future investment earnings for the relevant quarter: at least X% + PS% + AS% for premium payments made in Q1 2010, at least Y% + PS% + AS% for premium payments made in Q1 2019, and at least Z% + PS% + AS% for premium payments made in Q1 2020. Instead, AmGen has improperly kept a pricing profit spread (PS%) and additional spread (AS%) for itself. Worse still, because AmGen collects at least a pricing spread on both the New Premiums and Portfolio credited rates, policyholders are harmed anew each month from breaches first made decades ago and that continue through today.

29. While AmGen likes to tout information about its *blended* credited interest rate, the blended rate masks the breaches even more and is ultimately meaningless: any blended rate is just the product of New Premiums rates from the past 36 months and the "Portfolio" rate in effect at the time. Yet, for example, if AmGen has been improperly deducting a 1.9% profit spread throughout the life of the policy since issuance, the New Premiums rates and Portfolio rate should all have been at least 1.9% higher during any given quarter, and any implied blended rate should also have been at least 1.9% higher.

30. As discussed in more detail below, AmGen's credited rate analysis memoranda and financial statements filed with the NAIC show that AmGen has not been passing along the benefits received from its expected investment earnings to universal life policyholders, but has instead been pocketing hundreds of millions of dollars of profit spread every year for at least a decade. That profit spread represents the difference between AmGen's net investment earnings on assets backing the life policies and the amounts credited as interest to the account values of those policies.

31. AmGen does not need to manipulate interest rates to generate profits. AmGen imposes other charges through which it recovers all of its costs and earns a profit. The COI charge compensates AmGen for its cost of providing insurance coverage and paying death benefits when due; the Monthly Administration Fee pays for AmGen's administration costs; and AmGen collects a premium charge of 7% of all premiums paid—which largely represents profit to AmGen.

32. AmGen also imposes surrender charges when policyholders seek to cancel their policies and withdraw their account value. And AmGen collects interest when policyholders take policy loans from their account value.

33. By trying to extract profit out of its credited rates above and beyond the profit it already earns from its COI charges, monthly administration fees, premium charges, surrender charges, and loan interest rates, AmGen has breached the plain language the policies, which does not allow interest rates to be based on profit.

34. AmGen's practice of deliberately depressing New Premiums and Portfolio credited rates has a compounding negative effect. With less accrued interest from which to pay COI and other charges, policyholders have to pay more premiums into their accounts. AmGen then deducts from each of those premium payments a 7% premium charge as profit. So, the less interest that accrues, the more premium charges AmGen collects, and the higher AmGen's profit margins.

B. <u>AmGen's Unlawful Failure to Redetermine Credited Rates Based Only on Expectations of Future Investment Earnings</u>

35. At least once every quarter, AmGen adopts a new earned rate assumption for determining its New Premiums and Portfolio credited rates. Earned rate assumptions are documented in AmGen's quarterly credited rate analysis memoranda, and other actuarial memoranda to be used in AmGen's financial projections. As AmGen explains in its 2019 Annual Report: "We also frequently review our interest rate assumptions and actively manage the crediting rates used for new and in-force business."

36. With billions of dollars to invest and sophisticated investment strategies, most insurers of AmGen's size—which by statute are limited to investing in similar classes of assets as AmGen—have projected earned rates between 5.0% and 6.5% over the past ten years, notwithstanding the generally low-interest environment that has persisted since 2008. AmGen is at least in the same range, including for the reasons below. If AmGen's investment positions and returns were in a substantially different and weaker position than any other similar insurer of similar size, AmGen or AmGen's parent company AIG would have to affirmatively disclose those facts in SEC and other regulatory filings, but it has not done so. AmGen's expectations of investment earnings experience are in line with industry standards.

37. AmGen regularly redetermines its "New Premiums" and "Portfolio" credited rates.

38. The table below summarizes AmGen's New Premiums and Portfolio credited rate[3] information from Q1 2015 to Q4 2019:

Quarter	**New Premiums Credited Rate[4]**	**Portfolio Credited Rate**
Q1 2015	3.00%	4.65%
Q2 2015	3.00%	4.65%
Q3 2015	3.00%	4.65%
Q4 2015	3.00%	4.65%
Q1 2016	3.00%	4.65%
Q2 2016	3.00%	4.65%
Q3 2016	3.00%	4.65%
Q4 2016	3.00%	4.65%
Q1 2017	3.00%	4.65%
Q2 2017	3.00%	4.65%
Q3 2017	3.00%	4.65%
Q4 2017	3.00%	4.65%
Q1 2018	3.00%	4.65%
Q2 2018	3.00%	4.65%
Q3 2018	3.00%	4.65%
Q4 2018	3.00%	4.65%

[3] Credited interest rates also have to be reviewed for purposes of certifying illustrations and responding to interrogatories from the National Association of Insurance Commissioners.

[4] Despite regularly redetermining credited rates, the only credited rate information that AmGen disclosed to policyholders before this lawsuit was filed was the New Premiums credited rate in effect at the time of an annual statement. AmGen did not include any information about Portfolio rates on its annual statements to policyholders before this lawsuit was filed.

Q1 2019	3.00%	4.45%
Q2 2019	3.00%	4.45%
Q3 2019	3.00%	4.30%
Q4 2019	3.00%	4.30%

39. AmGen's actual expectations of future investment earnings are higher than AmGen's New Premiums or Portfolio credited rates during this period. An analysis of the yield that AmGen has been earning on Cash and Invested Assets confirms that AmGen's expectations of investment earnings have been higher than its 3.00% New Premiums rate or its 4.65%, 4.45% or 4.30% Portfolio rates for each of the years identified above. AmGen's NAIC Annual Statements disclose the amount of Cash and Invested Assets that AmGen has had for each of the past ten years, as well as both the net investment income that AmGen has earned by investing the Cash and Invested Assets.

40. Insurers derive expectations of future investment earnings primarily by looking at recent historical experience. Absent major macroeconomic changes, an insurer's expectations of future investment earnings for the forthcoming year will be similar to the actual results from preceding years. Thus, while a one- or two-year discrepancy in rates might theoretically be explained by the difference between forward-looking expectations and actual experience (i.e., actual returns were unexpectedly adverse, or unexpectedly favorable), an insurer cannot and will not continually set expectations far higher, or far lower, than its recent returns. For example, if an insurer earned a return of exactly 5% in each of 2015, 2016, 2017, 2018, 2019, and 2020, it would be illogical and contrary to actuarial principles (which require the use of reasonable and credible assumptions) to repeatedly set an investment earnings expectation of 7% in each of those years. Similarly, it would be illogical and contrary to actuarial principles for the insurer to repeatedly set an

investment earnings expectation of 3% in each of those years, only to exceed it by 2% every year, without ever making any adjustments.

41. AmGen's 2019 annual statement shows gross investment income of $6.36 billion and net investment income of $6.10 billion from cash and invested assets of $130.26 billion, across all lines of business. Of these assets, only 1.8% was invested in U.S. Government bonds, while 62.2% was invested in corporate bonds and RMBS/CMBS/CDOs and 15.4% in commercial mortgages. Nearly 30% of these other investments have a term greater than 20 years. This $6.36 billion in gross investment income on $130.26 billion of assets equates to a 4.9% annual return—far higher than the New Premiums and Portfolio rates that AmGen credited to the plaintiff's account in the same time period. Indeed, despite receiving a 4.9% annual return in 2019, AmGen *decreased its Portfolio credited rate twice during the year*.

42. Analysis of AmGen's prior regulatory filings shows that 2019 was not a one-time anomaly, nor an unexpected result. The table below shows, from 2012 through 2020, AmGen's (a) Cash and Invested Assets, (b) AmGen's Net Investment Income, and (c) AmGen's rate of return. Each year, AmGen's actual rate of return far exceeded the New Premiums or Portfolio rates credited to the LSIMC policy:

Year	**Cash and Invested Assets**	**Net Investment Income**	**Implied Yield[5]**
2020	138,072,470,722	6,034,794,387	4.6%
2019	130,264,152,401	6,102,599,548	4.9%
2018	123,838,376,055	6,242,728,275	5.2%
2017	121,511,917,878	5,881,471,505	5.0%
2016	121,326,629,264	6,089,713,899	5.2%
2015	120,217,610,650	6,476,285,250	5.6%
2014	116,969,911,763	6,440,871,171	5.6%

[5] Implied yield is calculated using formula = Net Investment Income/(average(Prior year balance, Current Year Balance – Net Investment Income)).

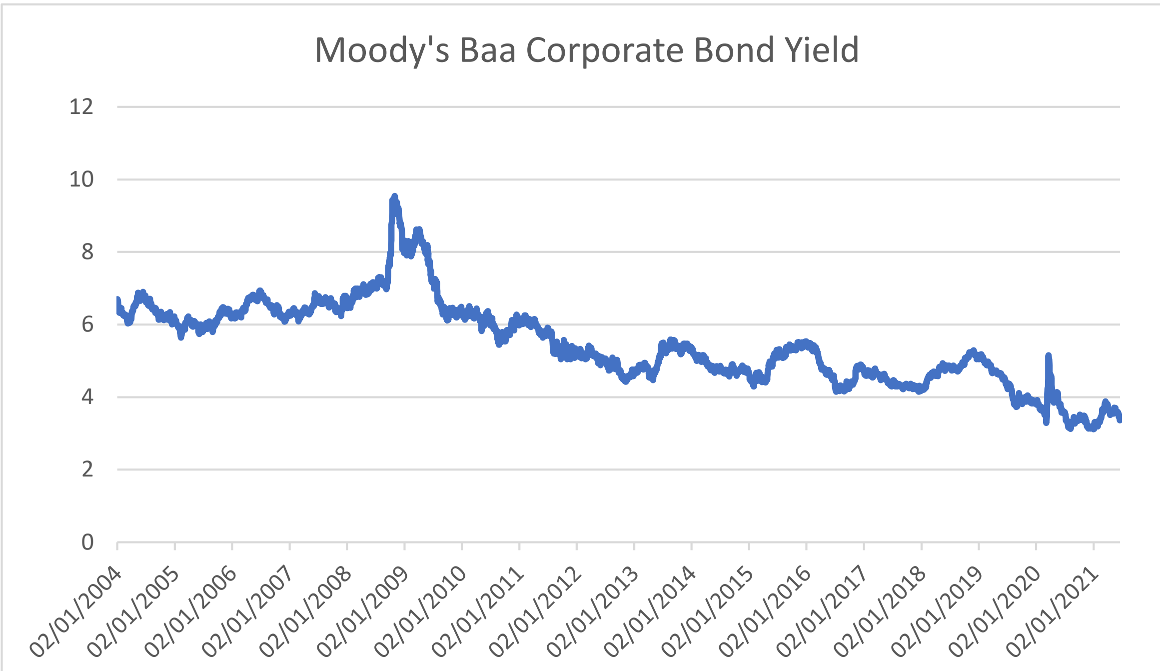
2013	119,229,986,312	6,397,597,506	5.6%
2012	117,442,811,529	6,803,464,534	5.9%

43. In each of those years, given these facts, AmGen did not (and could not consistent with actuarial standards and practice) set an expectation of future investments earnings at the New Premiums or Portfolio rates that it credited policyholders. For example, in any quarter of 2017, if AmGen's actuaries reviewed returns over the preceding five years of 5.2%, 5.6%, 5.6%, 5.6%, and 5.9%, any reasonable expectation of future investment earnings for any quarter in 2017 would have been higher than the 3% New Premiums rate or the 4.65% Portfolio rate that AmGen actually applied. Similarly, for any quarter in 2018, any reasonable expectation of future investment earnings based on the AmGen's yield from the prior five years would have exceeded the 3.0% New Premiums rate or the 4.65% Portfolio rate AmGen actually applied to policyholders' accounts. Indeed, in 2019, AmGen earned 4.9%, yet redetermined New Premiums credited rates at 3% and *even decreased its Portfolio rates twice during the year*, further increasing the spread that it earned at policyholders' expense.

44. It is not plausible—and it is in fact impossible—that AmGen repeatedly set its expectations of future investment earnings so far below its actual returns. Over the course of this nine-year period, the maximum deviation between year-to-year returns was 0.4%. Yet AmGen would have had to assume, for each quarter in 2014 through 2019, that its actual returns would be between 2.6% and 1.6% below the prior year's return in order to derive an expectation of 3.00% for the New Premiums rate that it set. Those differences are 4 to 6.5 times higher than the largest year-to-year change in investment earnings (0.4%) that AmGen experienced over the past decade.

45. AmGen's financial statements are only available online for the last 10 years; however, market bond yields prior to 2012 were higher than in the period

2012-2015 and AmGen's investment yields would have also likely have been greater than 6%. For example, the graph below depicts Moody's Seasoned Baa Corporate Bond Yield index since January 1, 2004. The yield spike seen for the period November 2008-June 2009 is commonly referred to as the "Credit Crunch." Even outside of this period the index average was above 6% for the period 2004-2011. At no point during the past 17 years has the Seasoned Baa Corporate Bond Yield index dipped to 3.00%.



46. AmGen's investment earnings, and expectations of future investment earnings, for the subject policies are almost certainly even higher than numbers set forth above. Universal life—a permanent lifetime product—is one of the longest duration products in AmGen's product suite, compared to products such as term life insurance or term annuity deposits, which allows AmGen to invest in long-term assets that have typically higher rates of return than short-term assets. This means that universal life contributes more to the liquidity premium earnings of AmGen than other products. Thus, it is highly likely that the allocated yield for universal life even exceeded 4.6% in 2020, exceeded 4.9% in 2019, exceeded 5.2% in 2018, exceeded 5.0% in 2017, exceeded 5.2% in 2016, and exceeded 5.6% in 2015. It is likewise

highly likely that AmGen's expectations of future investment earnings were also higher than those company-wide yields. And it is without question that AmGen's expectations of future investment earnings for the long duration universal life policies at issue in this case were higher than the 3.00% New Premiums rate or the Portfolio rates that AmGen credited policyholders during the period.

47. That AmGen invests funds deposited by the owners of the policies in longer duration assets also means that AmGen's returns are less volatile. As discussed above, over the past decade, AmGen's implied yield has never changed more than 0.4% from year to year. That is because, by investing in longer duration assets, AmGen's annual returns are much more stable than shorter duration assets. This makes it impossible that AmGen would have expected investment earnings of exactly 3.00% in each of 2015, 2016, 2017, 2018, and 2019 to set its New Premiums rate, but somehow miraculously generated a yield of 4.9% in 2019, 5.2% in 2018, 5.0% in 2017, 5.2% in 2016, and 5.6% in 2016. Long duration assets simply do not have that volatility. The same principle is true for AmGen's 4.65% Portfolio rate in 2015-2018 and the 4.45% and 4.30% Portfolio in 2019 when compared to the company's yield during the same period.

48. AIG's Life & Retirement division, which include AmGen's universal life business, issues longer dated insurance products, while AIG's General Insurance division issues shorter dated liabilities. As a result, Life and Retirement can afford to invest in longer maturity fixed income investments with typical duration of 8.0 years while General Insurance invests in shorter maturity instruments average of 3.5 years. As AIG's 2019 Annual Report explains:

- "Fixed maturity securities of the General Insurance companies' domestic operations have an average duration of 3.5 years. Fixed maturity securities of the General Insurance companies' foreign operations have an average duration of 3.6 years."

- "The Life and Retirement companies maintain a diversified, high to medium quality portfolio of fixed maturity securities issued by corporations, municipalities and other governmental agencies; structured securities collateralized by, among other assets, residential and commercial real estate; and commercial mortgage loans that, to the extent practicable, match the duration characteristics of the liabilities."
- "The investment portfolio of each product line is tailored to the specific characteristics of its insurance liabilities, and as a result, duration varies between distinct portfolios."
- "Fixed maturity securities of the Life and Retirement companies' domestic operations have an average duration of 8.0 years."

49. Longer dated securities tend to have higher yield and this can be seen in the consistently higher investment earnings yield of the Life & Retirement division, which invests the funds for the policies. In the two years before 2020, the fixed income returns of the longer dated Life and Retirement division assets have averaged over 1.25% more yield than the shorter dated General Insurance assets – a demonstration of the yield premium attached to longer dated assets.

50. AmGen's NAIC filings also confirm that the vast majority of AmGen's investments are in fixed income securities, and that AmGen has followed this strategy for at least the past decade. For example, AmGen's 2020 Annual Statement filed with the NAIC shows the following composition of assets:

Category	**Amount**	**% Portfolio**
Long-Term Bonds	105,019,544,268	76.1%
Preferred Stocks	85,234,355	0.1%
Common Stock	1,030,102,221	0.7%
Mortgage Loans	21,377,825,858	15.5%

Real Estate	8,516,776	0.0%
Cash & equivalents	1,059,068,681	0.8%
Contract loans	1,253,928,684	0.9%
Derivatives	974,896,334	0.7%
Other invested assets	5,410,094,746	3.9%
Receivables for securities	106,362,847	0.1%
Securities Lending	1,692,230,960	1.2%
Other invested assets	54,664,987	0.0%
Total	138,072,470,717	100%

51. The Long-Term Bonds (76.1% of assets) have the following maturity distribution, which AmGen has designed to match the profile of its liabilities:

1 year or less	1-5 years	5-10 years	10-20 years	20+ years	Total
$7.3 billion	$23.9 billion	$25.8 billion	$16 billion	$32.3 billion	$105.2 billion

52. The mortgage assets (15.5% of investments) are largely[6] commercial mortgages which tend to amortize very slowly. Many of those AmGen that invested in do not show any amortization for the year 2020 and thus are long dated fixed yielding assets.

53. The NAIC filings, and AIG's annual reports, thus confirm that: (1) the implied yield that AmGen has earned every year over the past decade (4.6% to 5.9%) is if anything lower than what AmGen has actually earned, and expects to earn, by investing universal life policyholder funds; and (2) because of the long-dated, fixed-yield nature of the portfolio, returns are well known and do not change quickly

[6] Out of $24.1 billion in mortgages, $20.5 billion of those are commercial.

(which is further evidenced by the fact that AmGen's implied yield has never, in the past decade, changed by more than 0.4% on a year-to-year basis).

54. Thus, it is clear (as evidenced by AmGen's actual returns and the long term and non-volatile nature of the assets) that AmGen's expectations of future investment earnings have been substantially higher than the New Premiums or Portfolio earned rates that AmGen has historically set.

55. Discovery conducted to date in this action confirms what the public data alleged above shows, and confirms that AmGen has repeatedly breached the terms of Plaintiff's policy. As part of AmGen's quarterly credited rate analyses, it documents, separately on both a New Money and Portfolio basis: (a) its expected ("benchmark") earned rate (i.e., its expectations of future investment earnings), (b) the crediting rate, and (c) the illicit profit "spread." Discovery has confirmed that, in every quarter since 2015, and in every quarter prior to 2015, AmGen's expectations of future investment earnings for portfolio funds has greatly exceeded the credited rate. As recently as August 2021, AmGen *reduced* the Portfolio credited rate on Plaintiff's policy from 4.30% to 3.95%. AmGen's expectations of future investment earnings dropped by much less than its reduction of the Portfolio credited rate, resulting in a jump in AmGen's illicit profit spread.[7]

56. In depositions, AmGen has confirmed that (a) its expectation of future investment earnings is the benchmark earned rate, and that (b) the profit spread it has been using to redetermine credited rates is not part of its expectation of future investment earnings:

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[7] In this action, AmGen has contended that it assumes a profit spread between earned and credited rates at pricing and that it is allowed to maintain that profit spread in future redeterminations—despite the facts that (i) this profit spread is not disclosed anywhere in the contract, and (ii) the contract mandates that redeterminations of interest rates be "based only" on expectations of future investment earnings. Notably, even if AmGen were permitted to maintain the undisclosed spread assumed at pricing (which it is not), it would still be in breach because AmGen has been unlawfully *increasing* those profit spreads. For example, the "target" profit spread for Plaintiff's product after policy year 5 reflected in the pricing memo is less than the profit spread used in the credited rate analysis.

> Q. Is a product's pricing spread based on American General's expectations of future investment earnings?
>
> A. Expectation of future investment earnings, that's the benchmark earned rate. That's the assumed benchmark earned rate.
>
> Q. So are you saying that the pricing spread is different from American General's expectations of future investment earnings?
>
> A. It -- it -- the expectation of future investment earnings is the estimate the -- the estimate of the – is the benchmark earned rate.
>
> ***
>
> Q. And the benchmark current rate is different than the pricing spread; correct?
>
> A. The -- that is different, yes.

57. Again, the policy requires that "[a]ny redetermination of interest rates will be based ***only*** on expectations of future investment earnings." AmGen repeatedly breached this provision when it redetermined credited rates based on something else entirely—namely, undisclosed, disallowed, and changing profit objectives.

C. AmGen's Repeated Breaches have Allowed It to Reap Massive Profits

58. AmGen's NAIC filings also show the extent to which AmGen has profited from under-crediting interest. AmGen's annual statements since 2012 contain entries showing (a) AmGen's net investment earnings, (b) the interest credited to policies, and (c) the profit margin also known as "spread" between earnings and credits. For 2019 and 2020, this information was disclosed separately for all universal life. In prior years, this information was disclosed at a more

aggregate level referred to as "Interest Sensitive life insurance." For AmGen, the largest component of Interest Sensitive life is universal life.[8]

59. The reserve analyses included in AmGen's NAIC filings show that AmGen has extracted hundreds of millions of dollars of profits on the difference between the investment income earned and the interest credited to policy holder's accounts. The table below shows AmGen's profit spreads since 2012:

Year	**Category**	**Net Investment Income**	**Interest Credited**	**Spread Profit**
2020	Universal Life	440,610,164	303,880,943	136,729,221
2019	Universal Life	583,564,841	300,757,505	282,807,336
2018	Interest Sensitive Life	729,355,585	458,654,976	270,700,609
2017	Interest Sensitive Life	745,417,839	434,557,700	310,860,139
2016	Interest Sensitive Life	740,567,140	494,557,863	246,009,277
2015	Interest Sensitive Life	760,638,746	513,679,286	246,959,460
2014	Interest Sensitive Life	756,383,885	549,248,442	207,135,443
2013	Interest Sensitive Life	769,945,233	600,868,331	169,076,902
2012	Interest Sensitive Life	812,326,012	576,372,873	235,953,139

60. As shown above, for each of the years above, AmGen has consistently been earning a profit margin of between 21% and 48%.

61. This again confirms that AmGen's years-long practice of crediting Plaintiff's new premiums at the same guaranteed minimum rate of 3.00%, in spite of general *increases* in returns across numerous financial indices over the same period of time and a consistent record of investment earnings far in excess of 3.00%, shows that AmGen is not redetermining the New Premiums credited rate based only on expectations of future investment earnings, but instead based on profit targets and assessments of the "competitive environment" and other factors not contractually

[8] For example, as of December 31, 2018, universal life accounted for $7.1 billion of AmGen's $11.3 billion in total Interest Sensitive reserve, or 62.5%.

enumerated in the policies. The same is true for the Portfolio credited rate AmGen applies to premiums that have been in a policyholder's account for longer than 36 months; the Portfolio rate has *decreased* at least three times in the past three years despite positive profit projections. These consistent patterns, reflected in a decade's worth of financial results, cannot be explained as one-time divergences between actual experience and future expectations. Rather, AmGen has been loading Plaintiff's New Premiums and Portfolio credited rates with profit to produce a profit spread. Indeed, AmGen's filings in this action suggest that profit loading has been occurring since issuance, with the result that AmGen's expectations of future investment earnings are in excess of the credited rates redetermined and applied in all prior years, even when the credited rates were far above a policy's guaranteed minimum.

62. As noted above, AmGen's profits in fact exceed the profit loading that AmGen assumed at pricing. AmGen's redetermination analyses quantifies the dollar amount of this additional profit grab.

63. For example, for three products, including Plaintiff's product, AmGen set credited rates at a level far below not only its expectations of future investment earnings, but also below the "targeted credited rate midpoint" (i.e., the earned rate minus the target spread), thereby increasing profits even beyond what AmGen assumed at pricing.

64. The figures in AmGen's redetermination analyses dramatically understate the profits being generated from AmGen's breaches. First, they assume that credited rates can be redetermined based not only on expectations of future investment earnings, but also based on a secret profit spread that AmGen purportedly assumed at pricing. Under the plain and unambiguous policy language, they cannot. Second, the "pricing spreads" in the quarterly redetermination memos are often not the actual spreads that AmGen assumed at pricing. And, in every case, those discrepancies were the result of AmGen *increasing* the target spread set forth in the

pricing memos—to the detriment of policyholders. That is, AmGen assumed one spread at pricing, and then decided to depress crediting rates even further by increasing that spread after issuance (and of course without any disclosure to policyholders). For Plaintiff's product, AmGen assumed a target spread after year 5 of the policy's launch that is less than the target spread used in the credited rate analysis, even though the product had been launched in 2008.

65. The nature of AmGen's conduct is such that Plaintiff and each member of the proposed class would be unaware that AmGen was engaging in wrongdoing, and AmGen has in fact affirmatively concealed its wrongdoing. Only AmGen possesses the internal earned rate projections on which interest rates are supposed to only be based, and AmGen does not disclose this information to policyholders. Nor does AmGen disclose the methodology by which it calculates credited rates, or its pricing assumptions. Indeed, AmGen does not even disclose what rates are being applied to different portions of account value, which vary depending on when a payment is received.

66. Rather, AmGen merely sends annual reports each year showing a "crediting interest rate" for "New Premiums" in effect at the time of the annual statement. AmGen did not include any information about Portfolio rates on its annual statements before 2022. Without disclosure by AmGen of its projected earned rate each year, or the methodology through which credited rates are being calculated and applied, a reasonable policyholder, acting diligently, would have no way of knowing that he or she was being cheated. AmGen is therefore estopped from asserting a statute of limitations affirmative defense. AmGen's conduct in failing to disclose the true factors it was using to redetermine credited interest rates misled Plaintiff and prevented it from learning of the factual bases of these claims for relief. Plaintiff proceeded diligently to file suit once it discovered the need to proceed; Plaintiff was not at fault for failing to discover any breaches; and Plaintiff had no actual or presumptive knowledge of the breaches. Plaintiff did not suspect or learn of any

breaches until October 2020, when the LSIMC policy was reviewed by counsel and experts. AmGen is aware that it has superior and in fact exclusive knowledge of its own expectations of future investment earnings, and has in fact used this disparity of knowledge to exploit and cheat policyholders.

CLASS ACTION ALLEGATIONS

67. This action is brought by Plaintiff individually and on behalf of "the Class" pursuant to Rules 23(b)(3) of the Federal Rules of Civil Procedure.

68. The Class consists of:

> The current or the most recent owner as of January 13, 2023, of one or more life insurance policies issued by American General Life Insurance Company, or its predecessors, on which American General Life Insurance Company credited interest to the accumulation value, and that provide that any redetermination of interest rates will be based "only on expectations of future investment earnings" and that have a guaranteed minimum annual effective interest rate of 3.00%.

69. Plaintiff reserves the right to seek certification of subclasses, or alternative classes, by original issuing company, product, guaranteed minimum credited rate, or dates of ownership (collectively, "Subclasses").

70. The Class and any Subclasses do not include defendant AmGen, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing.

71. The Class and Subclasses consist of thousands of consumers of life insurance and are thus so numerous that joinder of all members is impracticable. The identities and addresses of class members can be readily ascertained from business records maintained by AmGen.

72. The claims asserted by Plaintiff are typical of the claims of the Class and any Subclasses.

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

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

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

76. This action is appropriate as a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure because common questions of law and fact affecting the class 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 AmGen's actions in redetermining the "New Premiums" and/or "Portfolio" credited rates based on impermissible factors, and failing to increase the "New Premiums" and/or "Portfolio" credited rates in line with AmGen's expectations of future investment earnings, violated the terms of the form contracts;

(c) whether AmGen based its "New Premiums" and/or "Portfolio" credited rates on factors other than expectations of future investment earnings;

(d) whether AmGen's expectations of future investment earnings are higher than the "New Premiums" and/or "Portfolio" rates credited to Plaintiff and members of the class;

(e) whether AmGen breached its contracts with Plaintiff and members of the class;

(f) whether Plaintiff and members of the proposed 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.

77. 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 AmGen'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 AmGen'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

78. Plaintiff realleges and incorporates herein the allegations of the paragraphs above of this complaint as if fully set forth herein. This claim is brought on behalf of Plaintiff, the Class, and any Subclasses.

79. The policies, including the LSIMC Policy, are binding and enforceable contracts.

80. AmGen breached these contracts by determining the "New Premiums" and/or "Portfolio" credited rates based on factors other than its expectations of future investment earnings.

81. The policies also contain an implied promise of good faith and fair dealing. This implied promise means that AmGen will not do anything to unfairly interfere with or frustrate the right of any other party to receive the benefits of the contract, or to otherwise take unfair advantage of policyholders or act in bad faith in

the performance of duties. To the extent that AmGen claims that it did not breach the express terms of the policies, it breached the implied covenant of good faith and fair dealing by manipulating the New Premium and Portfolio interest rates—never increasing either by even .01% over several years, despite numerous market fluctuations—in order to increase profits and induce lapses and surrenders. AmGen's actions unfairly interfered with the Plaintiff's and the class's receipt of policy benefits and did not comport with policyholders' reasonable contractual expectations under the policies.

82. Plaintiff, the Class, and any Subclasses have performed all of their obligations under the policies, except to the extent that their obligations have been excused by AmGen's conduct as set forth herein.

83. As a direct and proximate cause of AmGen's material breaches of the policies, Plaintiff and the Class and any Subclasses have been – and will continue to be – damaged as alleged herein in an amount to be proven at trial. To the extent that any policies have lapsed or been surrendered following AmGen's express breach or breach of the implied covenant of good faith and fair dealing, Plaintiff and the members of the Class are entitled to reinstatement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class (inclusive of any Subclasses) 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 such other relief as the Court may deem proper, including without limitation, reinstatement and other equitable relief for policies that were lapsed or surrendered after AmGen's breach; and

4. Awarding Plaintiff and the class pre-judgment and post-judgment interest, as well as attorney's fees and costs.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury as to all issues so triable.

Dated: January 20, 2023

Respectfully submitted,

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