

EXHIBIT 1D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOHN W. GRIFFITHS, on behalf)
of himself and all others similarly)
situated,)
))
Plaintiff,)
v.)
))
AVIVA LONDON ASSIGNMENT)
CORPORATION, AVIVA LIFE INSURANCE)
COMPANY, AVIVA INTERNATIONAL)
INSURANCE LTD, f/k/a CGU)
INTERNATIONAL INSURANCE, plc,)
ATHENE HOLDING, LTD,)
ATHENE LONDON ASSIGNMENT)
CORPORATION and)
ATHENE ANNUITY AND LIFE COMPANY,)
))
Defendants.)
_____)

Civil Action No. 15-cv-13022-NMG

JURY TRIAL DEMANDED

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF MOTION
FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT**

Plaintiff hereby submits his memorandum of law in support of his motion for leave to file a Second Amended Complaint. Plaintiff notes at the outset that the proposed Amendment adds no new parties and will require no additional discovery.

FACTS

Defendant Athene Life Insurance Company, formerly known as AVIVA Life Insurance Company (“AVIVA LIFE”), sold an annuity of which Plaintiff is the beneficiary. At Plaintiff’s behest, the annuity was backed by two Capital Maintenance Agreements pursuant to which a well-capitalized affiliate of AVIVA LIFE, Defendant CGU International Insurance (“CGU”),

agreed to ensure that the AVIVA entity responsible for making payments under Plaintiff's annuity would always have sufficient funds to do so. The Complaint in this case was pled on the basis of the documents which were prepared jointly by Defendants and provided to Plaintiff and which formed the basis for the contractual and other claims initially pled in this case. These claims rested on Defendants' promise to Plaintiff that the annuities bought for him, and at his direction, with funds of which he was the beneficial owner, would be backed by a Capital Maintenance Agreement. Pursuant to the CMA as described in the documents provided to Plaintiff, Defendant CGU would ensure that the entity responsible for issuing Plaintiff's annuity payments each month would always have sufficient funds to do so. These promises were set forth in a marketing document issued by AVIVA LIFE with CGU's approval, and a letter, issued by CGU to AVIVA LIFE for the specific purpose of being disseminated by AVIVA LIFE to potential annuitants and those acting on their behalf.

The promise made, and for which Mr. Griffiths and each member of the class specifically elected to pay, only made sense if it lasted for the duration of the annuity being purchased. This fact was manifest not only in the simple logic of the promise, but also by its language: CGU's commitment was said to be "continuing," and that word is a term of art in the world of guarantees, which means specifically that the commitment continues, even after termination of the arrangement, "with respect to obligations of the [guaranteed entity] incurred prior to the termination." Restatement (Second) of Surety and Guaranty §16.

The claims raised initially by Plaintiff alleged simply that Defendants had made a promise and then broken it.

During discovery, however, one of AVIVA's Rule 30(b)(6) representatives boldly took the position that in their view they had always had the right to walk away from the guarantee.

Harrison, an Vice President and a senior member of its General Counsel's office, testified in deposition that the provision requiring CGU's promise to remain in place for the duration of any annuity issued while the promise was in force could be completely defeated at the whim of AVIVA and CGU. Asked to justify his employer's position that the promise was not in effect after September 30, 2013, he testified that this was so simply because the two parties to the agreement had agreed to amend it in a number of respects, including through the removal of that provision.

In other words, in AVIVA's view, these two companies could walk away from their "commitment" whenever they wished, even to the prejudice of precisely those people who were protected from such conduct under the terms of the agreement as it was in force when the annuitants purchased the "protection" of the CMA.

In addition, documents produced in discovery reveal that Defendants knew perfectly well that the claim being pressed in this case would indeed be made, and that if it were made it would succeed. Thus an internal AVIVA document produced in discovery reveals that Defendants explicitly acknowledged that the beneficiaries of the annuities had valid claims of

Promissory Estoppel* or Fraud claims, if AUSA is unable to meet its' Structured settlement obligations.

(*AII should have reasonably expected the payee to rely, and the payee did in fact rely, on the ALAS CMA in its decision to enter in to an agreement with ALAS (effectively that a contract was formed between AII and the payee))

COMPLIANCE WITH RULE 15 AND MASS.G.L. CHAP. 93A

The Scheduling Order in this case imposes no deadline for amending the complaint, and, therefore, the within motion is assessed under the "freely given" standard of Fed. R. Civ. P. 15, and not the "good cause" standard of Fed. R. Civ. P. 16. Even so, Plaintiff has moved quickly to file the within motion to amend after learning that Plaintiff had enough evidence to seek to bring

a c. 93A claim. The evidence upon which this proposed amendment is based was obtained in the very last deposition taken in this case, on June 15, 2017. A few days after receiving the transcript of that deposition, on July 30, 2017, Plaintiff sent to Defendants the demand letter under Chapter 93A. As all Defendants in this case are represented by counsel, the letter was sent only to counsel, with the request that counsel acknowledge receipt on behalf of their clients or authorize a direct communication between Plaintiff's counsel and Defendants' clients; all counsel so agreed. The Athene Defendants responded to the demand letter in a letter dated August 7, 2017; CGU's counsel provided a letter in response on August 8, 2017, each advancing legal argument as to why the proposed amendment was improper – arguments which Plaintiff had addressed in this Memorandum to the extent that Plaintiff believes they require a response. Plaintiff alleges that the Defendants have failed to make a reasonable offer to settle. Several additional days were taken up with the parties' ultimately successful steps to ensure that the filing of these papers would not require a seal. Plaintiff files motion approximately three weeks after receipt of those letters.

Because, as we stated previously, the proposed amendment adds no new parties and will require no additional discovery, it will cause no conceivable prejudice to the Defendants.

THE PROPOSED NEW COUNT

The position taken by AVIVA in discovery suggests that Defendants believed all along that the commitment they were offering people, and which Mr. Griffiths and each Plaintiff elected to pay for, and for which AVIVA itself was paid over \$6 million at least five years before they decided to abandon any pretense of a commitment, was in fact completely illusory. If Mr. Harrison is right, then Defendants simply fooled everyone who paid for the promise at issue in this case, because in fact it was no promise at all.

This is particularly so because absolutely nothing in the documents disseminated by Defendants to describe the promise gave any clue that the “promise” in fact meant nothing and could be abandoned at any time. On the contrary – Defendants’ marketing documents touted the security and peace of mind that each annuitant could obtain through the “protection” of the CMA at issue in this case.

If Mr. Harrison’s testimony is credited, then Defendants’ actions constitute nothing more than underhanded, deceptive conduct. His story is that purchasers were told, and intentionally induced to believe, that they were paying extra to obtain protection for the security of their annuity for the life of the annuity, when in fact – at least according to AVIVA – absolutely no binding protection was provided at all, because CGU and AVIVA could jointly decide, whenever they wished, to walk away from any commitment. There can be no serious question that this conduct constitutes a deceptive trade practice. Similarly, there can be no question that this interpretation of the CMA is a material fact that should be have been disclosed to anyone deciding whether to purchase CMA protection; but there is also no question that no such disclosure was made, by any Defendant, in either of the documents they approved for dissemination to annuitants and those making purchase decisions on behalf of annuitants.

These proposed new allegations plainly state a claim under Chap. 93A. That provision is violated when

“the practice ... is within at least the penumbra of some common-law, statutory or other established concept of unfairness,” or if it “is immoral, unethical, oppressive, or unscrupulous,” so long as “it causes substantial injury to consumers (or competitors or other businessmen). Mass. Eye & Ear Infirmary v. QLT Phototherapeutics, Inc., 552 F.3d 47, 69 (1st Cir. 2009) (alterations in original) (citation omitted). The lodestone of Chapter 93A claims is whether the defendant's actions "would raise an eyebrow of someone inured to the rough and tumble of the world of commerce." Levings v. Forbes & Wallace, Inc., 8 Mass. App. Ct. 498, 504, 396 N.E.2d 149 (1979).

NExTT Solutions, LLC v. XOS Techs., Inc., 113 F. Supp. 3d 450, 460 (D. Mass. 2015)(Gorton, J.). Some of the Massachusetts caselaw speaks of “rascality” as evidence of the bad faith that can establish a violation of 93A; that requirement is clearly met here. See *Wang Laboratories, Inc. v. Business Incentives Inc.*, 398 Mass. 854, 501 N.E.2d 1163 (Mass. 1986) (bad faith contract termination states a Chapter 93A claim) and *Levings v. Forbes & Wallace, Inc.*, 8 Mass. App. Ct. 498, 396 N.E.2d 149 (Mass. 1979).

There can be no question that Defendants’ conduct meets this standard. No rational person would pay money for a “guarantee” that the “guarantor” could walk away from whenever he wished. All of Defendants’ employees who testified clearly stated that they knew that people buying AVIVA’s annuities wanted to ensure that the annuities would be secure for the long term; and that AVIVA would have sufficient assets to make the payments due throughout the duration of the annuity contracts.

Given this knowledge, Defendants’ representation of the CMA as meaningful protection, when in fact it could be abandoned at the drop of a hat, deserves every one of the epithets used by Massachusetts law to define a violation of Chap. 93A: it is an egregious breach of the duty of good faith and fair dealing, and so “within the penumbra of a common-law, statutory or other established concept of unfairness;” it is all of “immoral, unethical, oppressive and unscrupulous.” And because Plaintiff paid for this illusory promise – and indeed, because he agreed to the purchase of Defendants’ annuity at all, only on the strength of this “promise” -- there can be no question that Plaintiff and every member of the class has sustained injury as a result of Defendants’ conduct.¹

¹ There can be no question that Plaintiff, and all members of the class he proposes to represent, have standing to make this claim. Plaintiff and all members of the proposed class were the direct and intended recipients of AVIVA LIFE’s representations about the CMA, and indeed, CGU’s

In addition, as this Court held in *NExTT Solutions*, while

a mere breach of contract, without more, does not amount to a Chapter 93A violation but a knowing violation of a contractual obligation for the purpose of securing unwarranted benefits can. See Diamond Crystal Brands, Inc. v. Backleaf, LLC, 60 Mass. App. Ct. 502, 507, 803 N.E.2d 744 (2004); Zabin v. Picciotto, 73 Mass. App. Ct. 141, 169, 896 N.E.2d 937 (2008).

Defendants' purported "justification" for their conduct is nothing more than a public announcement that they knowingly breached their agreement with the Plaintiff and the proposed class. This is thus a knowing violation of their contractual obligations, and it was clearly committed simply and only for the purpose of securing an unwarranted benefit. Indeed, so clear was it to Defendants that their position was unfounded that they performed calculations of what CGU's exposure would be to the CMA even *after* they "amended" it to delete its protections for beneficiaries of annuities that had been bought while the CMA was in effect. That calculation, which explicitly incorporated the likelihood that beneficiaries would bring an action to enforce the guarantee provided by the CMA, valued CGU's exposure to this risk in the tens of millions of dollars – even *after* discounting the risk by limiting it to the circumstance that Athene became insolvent and stopped paying the annuities, and after accounting for the possibility that CGU might prevail in the case. It is a violation of Chap. 93A for this reason as well.

General Counsel has testified that CGU knew that AVIVA LIFE would be using the CMA to tout its annuities to potential purchasers. Thus, for example a letter was sent from a director of CGU to Richard Kypta describing the CMA and stating that "A copy of this letter may be provided to potential Assignors, Annuity Payees and their counsel." In addition, AVIVA LIFE and CGU never stipulated that such purchasers could not be third party beneficiaries of the CMA. The only relevant limitation imposed by the CMA on the rights of is that the CMA did not "create any right to payment" – that is, payment *of the annuities themselves* – "from CGU." The claim here does not seek any payment of the annuities by CGU, or damages for the failure to make any such payment. Given CGU's explicit awareness that AVIVA LIFE would use the CMA to induce annuitants and those acting on their behalf to decide to purchase an AVIVA annuity, there can be no serious question that the representations here at issue were directed to these people and that, having been injured because they acted on the basis of such communications, the annuitants have standing to sue.

Finally, Defendants are, or were at all relevant times, engaged in the business of insurance in the Commonwealth of Massachusetts, and the Annuities are insurance policies within the meaning of Mass. Gen. L. Chap. 176D. Defendants' misrepresentations and material omissions regarding the CMAs constitute violations of Mass. Gen. Laws Chap. 176D §§176D §3(1)(a), 3(1)(d), 3(2) and 3(9)(a), each of which constitutes an independent violation of Chap. 93A. The proposed Second Amended Complaint charges these violations.

CONCLUSION

For the reasons stated herein, Plaintiff respectfully requests that this Court grant the within motion and permit Plaintiff leave to file the Proposed Second Amended Complaint (attached as **Exhibit A** to the Declaration of Jerome M. Marcus, Esq.) which includes a c. 93A claim against all Defendants.

Dated: September 1, 2017

The Plaintiff

John W. Griffiths
By His Attorneys,

/s/ Jerome M. Marcus
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Jonathan Auerbach, *pro hac vice*
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CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants via first class mail, postage prepaid, on September 1, 2017.

/s/ Jerome M. Marcus, Esq.

Jerome M. Marcus

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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))
Defendants.)
_____)

Civil Action No. 15-cv-13022-NMG

JURY TRIAL DEMANDED

DECLARATION OF JEROME M. MARCUS

I, Jerome M. Marcus, state as follows:

1. I am of full age and make this Declaration on the basis of personal knowledge.
2. I am one of the counsel for Plaintiff in this case.
3. Attached hereto as Exhibit A is the Proposed Second Amended Complaint in this action which is the subject of Plaintiff's Motion for Leave to Amend the Complaint.

Dated: September 1, 2017

/s/ Jerome M. Marcus
Jerome M. Marcus

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

JOHN W. GRIFFITHS, on behalf)	
of himself and all others similarly)	
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Plaintiff,)	Civil Action No. 15-cv-13022-NMG
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ATHENE LONDON ASSIGNMENT)	
CORPORATION and)	
ATHENE ANNUITY AND LIFE COMPANY,)	
)	JURY TRIAL DEMANDED
Defendants.)	
_____)	

[PROPOSED] SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiff JOHN W. GRIFFITHS (“Griffiths”), on behalf of himself and all others similarly situated, brings this action against Defendants AVIVA LONDON ASSIGNMENT CORPORATION (“AVIVA LAC”), AVIVA LIFE INSURANCE COMPANY (“AVIVA LIFE”), AVIVA INTERNATIONAL INSURANCE LTD f/k/a CGU INTERNATIONAL INSURANCE, plc, (“CGU”), ATHENE HOLDING, LTD., ATHENE LONDON ASSIGNMENT CORPORATION (“ATHENE LAC”) and ATHENE ANNUITY AND LIFE COMPANY (“ATHENE ANNUITY AND LIFE”) and alleges:

INTRODUCTION

1. Plaintiff Griffiths brings this national class action seeking redress for the wrongful conduct of AVIVA LAC, AVIVA LIFE, and CGU (collectively, “AVIVA”), and

ATHENE HOLDING, LTD., ATHENE LAC AND ATHENE ANNUITY AND LIFE (collectively “Athene”), (all of whom are together denominated as “Defendants”). Plaintiff prosecutes this action pursuant to Fed. R. Civ. P. 23, on behalf of himself and all others similarly situated, for damages and other relief arising from this wrongful conduct. (Collectively, “all others similarly situated” shall be referred to as “the Proposed Class”, and Griffiths and the Proposed Class shall be referred to as “Plaintiffs”.)

2. As alleged below in detail, AVIVA sold certain annuities (“the Guaranteed Annuities”) to the public on the basis of a unique guarantee issued by an entity which AVIVA identified as AVIVA’s indirect parent – Defendant CGU -- which was held out to buyers as a source of great financial strength. The Guaranteed Annuities were sold with the written and binding promise – which AVIVA called a Capital Maintenance Agreement Guarantee, and which will be referred to hereafter as “the CMA Guarantee” or “the CMA” -- that Defendant CGU would stand behind the Guaranteed Annuities and ensure that all payments called for by the Guaranteed Annuities would be made and made timely. The Guaranteed Annuities were issued by AVIVA Life Insurance Company, and assigned to AVIVA LAC, so that payments on these annuities were to be made by AVIVA LAC, and the CMA Guarantee embraced these obligations of AVIVA LAC.

3. The Guaranteed Annuities commanded a higher price than other annuities because the financial strength of the CMA Guarantee, and of Defendant CGU, substantially lowered the risk associated with purchase of the Guaranteed Annuities. Griffiths, and all members of the Proposed Class, paid this higher price, and were (and are) as a result entitled to the benefit of the bargain they made: an annuity backed by the financial strength and guarantee of Defendant CGU, and with a risk profile reflecting the CMA Guarantee.

4. Instead, however, after all of the Guaranteed Annuities were sold to Plaintiff Griffiths and all members of the Proposed Class, the AVIVA Defendants sold the Guaranteed Annuities to what they claim is a new entity – Defendants Athene Holding, Ltd., and Athene Annuity and Life Company, in a transaction pursuant to which Defendant Athene LAC became responsible for satisfaction of the Guaranteed Annuities. As a result, Athene now claims that that the CMA Guarantee is no longer in force.

5. In fact, AVIVA Life Insurance Company, which issued the Guaranteed Annuities to Plaintiff Griffiths and all members of the Proposed Class, became Athene Annuity and Life Company simply by changing its name. Athene Annuity and Life is therefore the successor in interest to AVIVA Life.

6. Because Defendants assert that neither CGU nor any other entity any longer guarantees the performance of the Guaranteed Annuities, the risk of default or late payment is materially higher than the risk profile Plaintiffs purchased and paid for, which reflected the CMA Guarantee.

7. Plaintiffs plead, in the alternative, either (a) that Defendants are correct that the CMA Guarantee is no longer in force, in which case Defendants have breached their promise to Plaintiffs and otherwise violated the legal rights and equitable entitlements of the Plaintiffs; or in the alternative, (b) that Athene LAC is the legal successor in interest to AVIVA LAC, and therefore that the CMA Guarantee initially issued in favor of AVIVA LAC in fact remains in force as to Athene LAC. Because this is so, the CMA Guarantee remains in force as to all of the Guaranteed Annuities even though they are now owned by Athene LAC instead of AVIVA LAC.

8. In addition, and independently, the promise made by AVIVA to the purchasers of the Guaranteed Annuities was that Defendant CGU would guarantee all payments to be made on all of the Guaranteed Annuities. This promise directly to the Plaintiffs, upon which Plaintiffs relied when they purchased the Guaranteed Annuities, is an independent contractual obligation entitling Plaintiffs to the benefit of that bargain.

PARTIES

9. Plaintiff Griffiths is a citizen and resident of the State of Hawaii.

10. Upon information and belief, Defendant AVIVA LIFE, a subsidiary of AVIVA USA Corporation, is an insurance company incorporated in Delaware, and with a registered agent for the service of process at Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801. During the relevant time period in this case, AVIVA LIFE maintained its principal place of business at 108 Myrtle Street, North Quincy, MA 02171. Pursuant to M.G.L. c. 223A § 3, Plaintiffs' causes of action arise from this DEFENDANT: (a) committing a tort in the Commonwealth of Massachusetts; and/or (b) transacting business in the Commonwealth of Massachusetts; and/or (c) contracting to supply goods in the Commonwealth of Massachusetts; and/or (d) contracting to insure any person, property or risk located within this commonwealth at the time of contracting.

11. Upon information and belief, Defendant AVIVA LAC, a subsidiary of AVIVA USA Corporation, is an insurance company incorporated in Delaware. During the relevant time period, AVIVA LAC maintained its principal place of business at 108 Myrtle Street, North Quincy, MA 02171. Pursuant to M.G.L. c. 223A § 3, Plaintiffs' causes of action arise from this DEFENDANT: (a) committing a tort in the Commonwealth of Massachusetts; and/or (b) transacting business in the Commonwealth of Massachusetts; and/or (c) contracting to supply

goods in the Commonwealth of Massachusetts; and/or (d) contracting to insure any person, property or risk located within this commonwealth at the time of contracting.

12. Defendant CGU is a corporation formed under the laws of England and Wales. According to the Annual FSA Insurance Return for the Financial year ended 31 December 2003, CGU had as of that date “guaranteed the commercial paper programme and the related committed borrowing facilities of AVIVA plc” and was, as a result of this guarantee, legally responsible for the obligation to satisfy all annuities issued by AVIVA which were backed by the CMA. Pursuant to M.G.L. c. 223A § 3, Plaintiffs' causes of action arise from this DEFENDANT: (a) committing a tort in the Commonwealth of Massachusetts; and/or (b) transacting business in the Commonwealth of Massachusetts; and/or (c) contracting to supply goods in the Commonwealth of Massachusetts; and/or (d) contracting to insure any person, property or risk located within this commonwealth at the time of contracting.

13. Defendant Athene Holding, Ltd., is the parent of all other Athene entities identified in this Complaint. Defendant Athene Holding, Ltd., purchased all of AVIVA’s U.S. business, including all of the annuity contracts at issue in this case, and this transaction provided the basis upon which all Defendants have contended that the CMA Guarantee is no longer in force. Defendant Athene Holding, Ltd., is a corporation incorporated under the laws of Bermuda, with its principal place of business at Chesney House, First Floor, 96 Pitts Bay Road, Pembroke, HM08, Bermuda. Pursuant to M.G.L. c. 223A § 3, Plaintiffs' causes of action arise from this DEFENDANT: (a) committing a tort in the Commonwealth of Massachusetts; and/or (b) transacting business in the Commonwealth of Massachusetts; and/or (c) contracting to supply goods in the Commonwealth of Massachusetts; and/or (d) contracting to insure any person, property or risk located within this commonwealth at the time of contracting.

14. Defendant ATHENE LAC was previously AVIVA LAC, until its name was changed, effective October 2, 2013, to the current name; as a result, ATHENE LAC is the successor in interest to AVIVA LAC. ATHENE LAC is a corporation incorporated under the laws of Delaware and with its statutory office in Wilmington, Delaware, with a registered agent for the service of process at Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801. Pursuant to M.G.L. c. 223A § 3, Plaintiffs' causes of action arise from this DEFENDANT: (a) committing a tort in the Commonwealth of Massachusetts; and/or (b) transacting business in the Commonwealth of Massachusetts; and/or (c) contracting to supply goods in the Commonwealth of Massachusetts; and/or (d) contracting to insure any person, property or risk located within this commonwealth at the time of contracting.

15. Defendant Athene Annuity and Life Company, an Iowa-domiciled company, formerly known as Aviva Life Insurance Company is the current bearer of the obligation to make payments under the Guaranteed Annuities. Athene Annuity and Life is a corporation incorporated under the law of Delaware, with its principal place of business in Des Moines, Iowa. Pursuant to M.G.L. c. 223A § 3, Plaintiffs' causes of action arise from this DEFENDANT: (a) committing a tort in the Commonwealth of Massachusetts; and/or (b) transacting business in the Commonwealth of Massachusetts; and/or (c) contracting to supply goods in the Commonwealth of Massachusetts; and/or (d) contracting to insure any person, property or risk located within this commonwealth at the time of contracting.

JURISDICTION AND VENUE

16. This Court has jurisdiction over the subject matter of this case by operation of the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2) & (6), because the aggregate claims of the putative Class members exceed \$5 million, exclusive of interest and costs, and Plaintiff is a

citizen of a different state than each of the Defendants. *See also*, 28 U.S.C. §1332.

17. This Court has personal jurisdiction over the Defendants by operation of the Massachusetts Long Arm Statute, Mass. Gen. Laws c. 223A §3, inasmuch as each of the Defendants transacted business in this Commonwealth which was specifically related to the transactions and occurrences at issue in this case.

18. Venue lies in this district by operation of 28 U.S.C. § 1391 because a substantial part of the acts at issue in this case took place in this district.

**FACTUAL ALLEGATIONS SPECIFIC TO
THE NAMED PLAINTIFF**

19. In 2001 Plaintiff John Griffiths resolved a personal injury case against the City of Honolulu. To ensure that he and his wife would both receive income for the rest of their lives, the award was utilized to purchase an annuity (“the Griffiths Annuity”).

20. Under the terms of his settlement agreement, Griffiths retained the right to designate the entity from which the City of Honolulu would purchase the Griffiths Annuity.

21. Griffiths was deeply concerned about the reliability of the annuity issuer, and, in exercising his right to determine the identity of the issuer of the Griffiths Annuity, he took extensive care to ensure that the issuer was financially strong.

22. Griffiths worked with Ringler & Associates, a firm of brokers who sell annuities to fund structured settlements. The personnel at Ringler are paid by the issuers of the annuities they sell and are the agents of those issuers.

23. One essential step Griffiths took to ensure the safety of his payment stream was to purchase an annuity issued by AVIVA.

24. Griffiths initially decided to cause the Griffiths Annuity to be purchased from AVIVA because the Ringler agent with whom he was working, Donna L. Hanaïke, informed him

by letter dated October 18, 2001 that “the parent of CGU Life Company, CGU Insurance Company (rated A+ Superior XV) issues a surety bond to guaranty the payments under the annuity. Not all life annuity companies will do this. This affords even better protection than a bank account.”

25. Arrangements for the purchase of the annuity for Griffiths were defined by January 14, 2002, and Griffiths could have executed the relevant documents at that time.

26. Griffiths chose not to complete the arrangements at that time, however, because of what he learned during a telephone conversation he had with Richard Krypta, Senior Vice President and General Counsel of CGU Life Insurance Company, in North Quincy, MA, on January 3, 2002.

27. During that conversation, as Griffiths confirmed in a letter he sent to Krypta dated January 23, 2002, Krypta “explained that CGU Life of America and Norwich Union are in the process of creating a new plan whereby Norwich Union will guarantee the annuities of CGU Life of America. You further explained that this plan is not yet available but that it will be available a month or two from now.”

28. The “new plan” referenced in the conversation between Griffiths and Krypta, and in Griffiths’s letter to Krypta, was the CMA.

29. During this conversation on January 3, 2002, Krypta further explained in that conversation that the span of time required to finalize documentation of the Griffiths Annuity was sufficiently great that by the time the documentation of the Griffiths Annuity was completed, and the Griffiths Annuity was actually issued by AVIVA, the CMA would be in place and would apply to the Griffiths Annuity.

30. As a direct result thereof, Griffiths directed that completion of the documentation for the Griffiths Annuity be delayed until such time that the Griffiths Annuity would, by virtue of the date of its issuance, be covered by the CMA.

31. Ultimately AVIVA did not complete issuance of the contract for the Griffiths Annuity until well into 2003, and Griffiths did not receive the formal contract document for the Griffiths Annuity until June 10, 2003.

32. On May 20, 2003, Jean Miller, an AVIVA Manager, Structured Settlement Administration, wrote to Griffiths. She identified herself as “manager of the administration department that will be issuing the contract for the above mentioned policy number.”

33. In her May 20, 2003, letter, Miller “summarize[d] the benefits you will be receiving with the issued contract” to include “[t]he CMA[, which] provides that the assignment corporation that owns your contract will have the necessary funds to satisfy the obligations assigned to it.”

34. Miller also stated in her letter that “In your [i.e. Griffiths’s] letter [to AVIVA employee Debra Fickett-Wilbar], you also asked for the language that will be included in the CMA (Capital Maintenance Agreement). I have enclosed a sample copy of the letter that you will be receiving with your contract and a flyer, which explains how the CMA works.”

35. The correspondence in Griffiths’s possession between Griffiths, AVIVA, and its agents relating to the formation of the contract for the Griffiths Annuity, and the application to that Annuity of the CMA, is attached hereto as Exhibit A (redacted to remove personal identifying information and privileged communications) and incorporated herein by reference.

36. Griffiths, the City of Honolulu, and two instrumentalities of CGU also executed a Qualified Assignment and Pledge Agreement, which is attached hereto as Exhibit B. This

agreement confirmed that Griffiths maintained certain rights of ownership with respect to the Griffiths Annuity and that, in the event of certain defined events of default, his ownership rights would be even further increased. The Qualified Assignment and Pledge Agreement provides that it is to be governed by the substantive law of the Commonwealth of Massachusetts.

CLASS-WIDE FACTUAL ALLEGATIONS

37. Beginning no later than January 1, 2001, and continuing through 2008, Griffiths and all others similarly situated purchased structured settlement annuities from AVIVA on the strength of promises, set forth in its uniform marketing materials and other documentation from the company stating that these annuity obligations were fully guaranteed under a capital maintenance agreement (“CMA”) with its London affiliate Defendant CGU -- which holds over \$100 billion in assets and has been in existence for centuries -- and that this guarantee was “absolute, unconditional, present and continuing.” AVIVA LIFE issued the Guaranteed Annuities to Plaintiffs, and AVIVA LAC was responsible for making payments on the Guaranteed Annuities.

38. The CMA Guarantee was set forth in correspondence from AVIVA USA Corporation to Plaintiff, sent by AVIVA from its offices at 108 Myrtle Street, North Quincy, MA, 02171.

39. The CMA Guarantee was issued by Defendant CGU with the express purpose and effect of increasing the value of annuities sold within Massachusetts and throughout the United States, including the Griffiths Annuity and all annuities issued for the benefit of all members of the proposed class in this case. On information and belief, the sole purpose of the CMA was to affect the strength, and thereby the price, of annuities issued by Defendants in the United States, including in Massachusetts.

40. Annuities involve a stream of payments that typically extend far into the future. Potential customers for such investments are most concerned with the financial stability and credit of the issuing companies because whether the issuing company is likely to remain solvent, and able to satisfy its obligations under the annuity, for years to come is a material fact bearing on the value of the annuity. To remain relevant and competitive in the market, it is therefore of paramount importance to all annuity issuers that they be able to demonstrate a strong financial position through guarantees and the like.

41. Annuities are priced, in part, on the basis of the level of certainty that the issuing company can present to annuity buyers that the issuer will remain in business, solvent, and able to satisfy its obligations under the annuity throughout the expected duration of the annuity. See, e.g., *In re Estate of Romnes*, 79 N.J. 139, 148 (1979) (purchase price of an annuity would be determined by various factors including “the solvency of the payor”).

42. AVIVA knew the facts alleged in Paragraph 41, *supra*, and was well aware that a CMA guarantee from its multi-billion dollar affiliate that was “absolute, unconditional, present and continuing” would be a material fact bearing on – and materially improving – the risk profile it presented to potential customers, thereby increasing the profitability of the annuity sale for AVIVA.

43. From its office in North Quincy, MA, AVIVA LAC explained the CMA Guarantee with the following language:

This will confirm that AVIVA London Assignment Corporation, a Delaware corporation (AVIVA London Assignment) has entered into a Capital Maintenance Agreement (the ‘Agreement’) with its indirect parent, CGU International Insurance, plc, a company incorporated under the laws of England and Wales (‘CGUII’).

CGUIII has, under the terms of the Agreement, agreed:

1. to maintain sufficient capital in AVIVA London Assignment to ensure that it has the necessary funds available to satisfy all structured settlement agreement obligations assigned to and assumed by AVIVA London Assignment during the term of the Agreement and in accordance with Section 130(c) of the Internal Revenue Code as amended; and
2. that the foregoing obligation shall be absolute, unconditional, present and continuing.

44. Under the terms of the Agreement as defined above in paragraph 43, the CMA Guarantee applies to all payment obligations AVIVA LAC assumed during the term of the Agreement. This includes all payments which will ever be due pursuant to any annuity contract issued or assumed by AVIVA LAC during the term of the Agreement, regardless of whether AVIVA LAC or any other entity was the issuer or obligor of that annuity contract at some later time.

45. AVIVA used this guarantee to enhance significantly the sales volume of the Guaranteed Annuities, and to raise the price of these annuities well above the price they would have commanded in the absence of the CMA Guarantee. Purchase options from other companies offered high rates of interest, but did not have a guarantee equivalent to the CMA Guarantee.

46. The upward impact of the CMA on the price of AVIVA annuities was precisely the purpose and intended effect of the defendants' joint action to issue the CMA.

47. The upward impact on the price of AVIVA annuities caused defendants joint action to issue the CMA was an immediate effect of the issuance of the CMA.

48. The persons most immediately and directly affected by the defendants' joint issuance of the CMA are Griffiths, the proposed Named Plaintiff, and all members of the class, because they are the person who paid more for the Annuities as a result of the issuance of the CMA.

49. In breach of its written promise, however, AVIVA has recently taken the position that the CMA Guarantee was *not* absolute, unconditional, or continuing.

50. Griffiths discovered AVIVA's breach of promise when an annuity payment to Griffiths was missed and he wrote to AVIVA to determine the status of his payment. To Griffiths' surprise, he received a response dated October 29, 2014, written on the stationary of a different company, called "Athene." Its Vice President, Christian S. Walker advised Griffiths in that letter that, as of October 2013, "the owner of the annuity funding your periodic payment obligation is now Athene London Assignment Corporation" and that "as a result of Aviva's sale of [AVIVA USA] and its subsidiaries, including [AVIVA LIFE] to Athene Holding Ltd, *the CMA automatically terminated in accordance with its original terms.*" (Emphasis added).

51. This letter represented the first time that Griffiths had heard anything about a corporate sale or purported termination of the CMA.

52. No notice had been given to Griffiths or those similarly situated about these material changes in circumstances when they occurred.

53. Without offering up anything to replace the CMA Guarantee, Athene simply advised that it would now be making the monthly payments on the Guaranteed Annuities.

54. While AVIVA was in operation in this federal judicial district, AVIVA issued billions of dollars in structured settlement annuities to numerous purchasers, including, without limitation, Griffiths, on the strength of its CMA Guarantee and its "absolute, unconditional, present and continuing" term. In breach of the CMA Guarantee, and while AVIVA was in operation in this judicial district, AVIVA then sold its entire AVIVA LIFE annuity business to a different and unrelated company which lacks the financial strength provided by the CMA

Guarantee, and AVIVA now refuses to honor the CMA Guarantee.

55. As a result of the facts set forth above, Griffiths and others similarly situated purchased annuities backed by a unique guarantee which provided an additional measure of security, for which Griffiths and all members of the Proposed Class paid consideration, only to find that the obligation to satisfy their annuity now rests upon a company unbacked by the CMA Guarantee or any effective equivalent.

56. In addition, AVIVA disseminated marketing material to explain the meaning of the CMA Guarantee. In a document captioned “Capital Maintenance Agreement Here’s How it Works,” AVIVA states that “AVIVA’s CMA guarantees that AVIVA London Assignment Corporation will have the funds necessary to satisfy all Structured Settlement contact obligations assigned to it” and that the obligation imposed by this guarantee was “absolute, unconditional, present and continuing.”

57. The Structured Settlement obligations of Griffiths’s annuity, and those of all members of the Proposed Class, were indeed assigned to AVIVA LAC. Therefore, the CMA Guarantee requires that it remain the case that the entity issuing the CMA Guarantee continue to provide the same assurance which was in place when the CMA Guarantee was issued that the obligations of Griffiths’s annuity, and those of all members of the Proposed Class, will be satisfied.

58. Thus, in the absence of Defendants’ compliance with the CMA Guarantee, Griffiths and the Proposed Class have absolutely no guarantee that any of those funds or the promised annuity payments will be secure or will have the degree of security present when Griffiths and the Proposed Class purchased their annuities. Despite the substantial undue – and unbargained for -- risk that has been involuntarily thrust upon Griffiths and others similarly

situated by the collective actions of AVIVA, Defendants have made no attempt whatsoever to honor or replace their “absolute, unconditional, present and continuing” CMA Guarantee, nor have they made any effort to compensate Griffiths and those similarly situated for the increased risk that Defendants caused.

59. Meanwhile, AVIVA profited substantially at two levels at the expense of Griffiths and the Proposed Class -- first, from the boom in Guaranteed Annuity sales that was triggered by its CMA Guarantee and second, from their later sale of all annuity contracts to Athene and by being relieved of the obligations imposed by the CMA. In the latter transaction Athene also profited substantially, also at the expense of Griffiths and all other members of the Proposed Class.

60. Upon information and belief, AVIVA discontinued writing structured settlement annuity policies in 2008.

61. The damage to Griffiths and others similarly situated did not accrue until on or after the date in 2013 when AVIVA LIFE was sold and the CMA Guarantee allegedly terminated.

CLASS ACTION ALLEGATIONS

62. Griffiths brings this action on his own behalf and all others similarly situated pursuant to Fed. R. Civ. P. 23. The Class includes, and is defined as, the following:

All persons who are the beneficial owners of assets which were used to purchase structured settlement annuities that AVIVA and/or its predecessors in interest delivered to purchasers on or after April 1, 2003, which were, at the time of issuance, backed by the CMA Guarantee or its effective equivalent, and with respect to whom such annuities remained in force at the time that AVIVA LIFE was sold and the CMA Guarantee was allegedly terminated with respect to such annuities, and all persons who are the beneficiaries of such Annuities.

63. Excluded from the class are AVIVA, Athene, its/their subsidiaries and affiliates, its/their officers, directors and members of its/their immediate families and any entity in which Defendants have controlling interest, the legal representatives, heirs, successors or assigns of any such excluded party, the judicial officer(s) to whom this action is assigned, and the members of their immediate families.

64. This case is properly brought as a class action under Fed. R. Civ. P. 23(a) and (b)(3), and all requirements therein are met for the reasons set forth in the following paragraphs.

65. Numerosity under Fed. R. Civ. P. 23(a)(1). The members of the Class are, on information and belief, so numerous that separate joinder of each member is impracticable. Upon information and belief, and subject to class discovery, the Class consists of thousands of members or more, the identity of whom are within the exclusive knowledge of and can be ascertained only by resort to the records of the Defendants.

66. Commonality under Fed. R. Civ. P. 23(a)(2). There are numerous questions of law and fact common to the Class relating to Defendants' wrongful practices and those common questions predominate over any questions affecting only individual Class members. The common questions include, but are not limited to:

- a) Whether the CMA Guarantee is absolute, unconditional, present and continuing;
- b) Whether Defendants' refusal to honor the CMA Guarantee constitutes a breach of contract;
- c) Whether AVIVA's assignment of the Guaranteed Annuities to Athene, and the acceptance of that assignment by Athene, without notice to or approval by Plaintiff and the members of the Proposed Class, constitutes a

breach of contract;

- d) Whether Defendants breached their fiduciary duties to their annuity customers by making and then breaching the CMA Guarantee, by purporting to transfer to Athene the obligation to satisfy the Guaranteed Annuities; or by other related conduct;
- e) Whether Defendants were unjustly enriched by the sale of Guaranteed Annuities to Griffiths and members of the Proposed Class, and/or by the sale of those annuities to, and their purchase by, Athene;
- f) Whether Defendants must honor the CMA Guarantee, provide a new guarantee of equal value to Class members, and/or otherwise compensate Class members for the increased risk that they caused Class members to incur.

67. Typicality under Fed. R. Civ. P. 23(a)(3). Griffiths's claims are typical of the claims of the other Class members in that they arise out of the same wrongful business practice by Defendants, as described herein.

68. Adequacy of Representation under Fed. R. Civ. P. 23(a)(4). Griffiths is an adequate representative of the Class and his claims and defenses are typical of those of the other Class members. In addition:

- a) Griffiths is committed to the vigorous prosecution of this action on behalf of himself and all others similarly situated and has retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers against insurance companies;
- b) There is no conflict of interest between Griffiths and the unnamed Class

members;

- c) No difficulties are reasonably anticipated in the management of this litigation as a class action; and
- d) Griffiths's legal counsel has the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

69. Predominance under Fed. R. Civ. P. 23(b)(3). The questions of law and fact common to the Class as set forth in the "commonality" allegation above predominate over any individual issues. As such, the "commonality" allegations (paragraph 66 and subparts) are restated and incorporated herein by reference.

70. Superiority under Fed. R. Civ. P. 23(b)(3). A class action is superior to other available methods and highly desirable for the fair and efficient adjudication of this controversy. The amount of each individual Class member's claim is modest relative to the complexity of the litigation and since the financial resources of the Defendants are enormous, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the Class members will continue to suffer losses and Defendants' misconduct will proceed without remedy. In addition, given the complex legal and factual issues involved, individual litigation of the claims here at issue would significantly increase the delay and expense to all parties and to the Court. Such individual litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale and comprehensive supervision by a single court.

COUNT I
BREACH OF CONTRACT
(Against All Defendants)

71. Plaintiff Griffiths realleges and incorporates all allegations in paragraphs 1 through 70 as if fully set forth herein.

72. Griffiths and members of the Proposed Class contracted with AVIVA to provide him/them with a guaranteed stream of income for the rest of his life/their lives.

73. Where the terms of a contract are such as to show that reliance was placed on the personal credit of a party, its benefits cannot be assigned absent the express consent of the parties.

74. AVIVA assigned the contract to a third party vendor.

75. Griffiths and members of the Proposed Class had no knowledge of the assignment and indeed did not consent to it.

76. There is no term in the contract allowing AVIVA to make any assignment of the contract without the consent of the purchaser of the contract.

77. Plaintiffs plead the following in the alternative:

A. The CMA Guarantee remains in force and Defendants' collective failure to honor it is a breach of the terms of the CMA Guarantee.

B. The CMA Guarantee does not remain in force because it was vitiated by the transaction pursuant to which Athene acquired the annuity business of AVIVA LIFE. The vitiation of the CMA Guarantee constitutes a breach of the promise made by AVIVA to Plaintiff and to all members of the Proposed Class.

78. As a direct and proximate result of AVIVA's unauthorized assignment, Griffiths and those similarly situated have sustained damages.

79. Separately, Plaintiff Griffiths's contract, and those of all members of the Proposed Class, included the CMA Guarantee, which by its terms is "absolute, unconditional, present and continuing."

80. In addition, AVIVA material disseminated to explain the meaning of the CMA Guarantee provides that "AVIVA's CMA guarantees that AVIVA London Assignment Corporation will have the funds necessary to satisfy all Structured Settlement contact obligations assigned to it."

81. The Structured Settlement obligations of Griffiths's annuity, and those of all members of the Proposed Class, were indeed assigned to AVIVA LAC. Therefore, the CMA Guarantee requires that it remain the case that the entity issuing the CMA Guarantee continue to provide the same assurance which was in place when the CMA Guarantee was issued so that the obligations of the Griffiths annuity, and those of all members of the Proposed Class, will be satisfied.

82. The Defendants also collectively have the duty to comply with the CMA Guarantee because Athene is a successor in interest to AVIVA, inasmuch as AVIVA became Athene with a simple name change effected through the State of Delaware Bureau of Corporations effective October 2, 2013. For that reason, Athene succeeded to AVIVA LIFE's obligations under the CMA Guarantee.

83. The Defendants' failure to continue to honor the CMA Guarantee is an additional and separate breach of the parties' agreement.

COUNT II
BREACH OF FIDUCIARY DUTY
(Against All Defendants)

84. Plaintiff Griffiths realleges and incorporates all allegations in paragraphs 1 through 83 as if set forth fully herein.

85. The business of insurance, which includes the sale of annuities, is a public trust and must serve the best interest of the insuring public. The law governing the business of insurance demands that the interests of policyholders be placed first; that the letter and spirit of all insurance laws and regulations be followed; and that *every* fact essential to a decision to purchase *any* insurance product -- including annuities -- be accurately and completely presented to their customers. As such, insurers bear an elevated level of responsibility to their customers that is fiduciary in nature. All Defendants bear this duty to Griffiths and to all members of the Proposed Class.

86. In addition, AVIVA voluntarily assumed a fiduciary duty to Griffiths and to all members of the Proposed Class by taking significant sums of his/their money and promising in return that all such funds and payouts thereon would be secured by a CMA guarantee that was “absolute, unconditional, present and continuing.”

87. AVIVA breached its fiduciary duty in a variety of ways, including but not limited to:

- a) Failing to notify Griffiths and Proposed Class members in 2013 that AVIVA LIFE was being sold;
- b) Failing to notify Griffiths and Proposed Class members in 2013 that all annuities subject to the CMA Guarantee were being sold to Athene;

- c) Failing to notify Griffiths and Proposed Class members in 2013 that the CMA Guarantee was no longer in force and that the annuity payments were therefore subject to substantially more risk than they had been when priced and purchased;
- d) Failing to honor CMA Guarantee or to replace it with a guarantee of equivalent value; and
- e) Failing to compensate Griffiths and members of the Proposed Class for the increased risk that AVIVA caused.

88. As a direct and proximate result of AVIVA's breach of fiduciary duty, Griffiths and the members of the Proposed Class have sustained damages.

89. By acquiring the assets of AVIVA LIFE and becoming the party responsible for payment of the obligations under the Guaranteed Annuities issued to Plaintiff and to members of the Proposed Class, where the assets Athene acquired included the proceeds paid by Plaintiff and members of the Proposed Class to AVIVA in exchange for the Guaranteed Annuities, and where the acquisition was effected through a transaction which purported to vitiate the CMA Guarantee, Athene participated in AVIVA's breach of fiduciary duty to Plaintiff and members of the Proposed Class.

COUNT III
PROMISSORY ESTOPPEL
(Against All Defendants)

90. Plaintiff Griffiths realleges and incorporates all allegations in paragraphs 1 through 89 as if set forth fully herein.

91. AVIVA promised through its uniform marketing materials, and in the CMA Guarantee itself that all financial obligations of AVIVA LIFE, including all structured settlement annuities, were backed by this guarantee which was "absolute, unconditional, present and

continuing.” AVIVA made these promises in order to maximize the profitability of its annuity sales, and it was successful in accomplishing that goal for itself.

92. Griffiths and those similarly situated relied on the promise of the CMA Guarantee in purchasing structured settlement annuities from AVIVA.

93. By acquiring the assets of AVIVA LIFE and becoming the party responsible for payment of the obligations under the Guaranteed Annuities issued to Plaintiff and to members of the Proposed Class, where the assets Athene acquired included the proceeds paid by Plaintiff and by members of the Proposed Class to AVIVA in exchange for the Guaranteed Annuities, and where the acquisition was effected through a transaction which purported to vitiate the CMA Guarantee, Athene participated in AVIVA’s breach of AVIVA’s representations to Plaintiff and to members of the Proposed Class.

94. Griffiths and those similarly situated have been harmed by Defendants’ failure to comply with the CMA Guarantee because Plaintiff and the Proposed Class are now locked into annuities, there is allegedly no CMA Guarantee or guarantee of equivalent value, and he/they cannot terminate the Guaranteed Annuities without sustaining substantial losses.

95. Injustice can only be avoided by having Defendants fulfill the promise made by the CMA Guarantee, so that the financial resources said to stand behind the CMA Guarantee will in fact continue to do so.

COUNT IV
UNJUST ENRICHMENT
(Against All Defendants)

96. Plaintiff Griffiths realleges and incorporates all allegations in paragraphs 1 through 95, as if set forth fully herein.

97. Griffiths and those similarly situated conferred a substantial benefit on AVIVA

through his/their purchase of the structured settlement annuities that were secured by the CMA Guarantee.

98. AVIVA voluntarily accepted and retained the benefit conferred.

99. By acquiring the assets of AVIVA LIFE and becoming the party responsible for payment of the obligations under the annuities issued to Plaintiff and to members of the Proposed Class, where the assets Athene acquired included the proceeds paid by Plaintiff and by members of the Proposed Class to AVIVA in exchange for the Guaranteed Annuities, and where the acquisition was effected through a transaction which purported to vitiate the CMA Guarantee, Athene participated in AVIVA's wrongful conduct which has injured Plaintiff and members of the Proposed Class.

100. The circumstances described in detail above are such that it would be inequitable for any of the Defendants to retain any of the benefits it/they has/have received as a result of its/their wrongful conduct.

COUNT V
MASS.G.L. c. 93A §§2, 9, 11
(Against All Defendants)

101. Plaintiff Griffiths realleges and incorporates all allegations in paragraphs 1 through 100, as if set forth fully herein.

102. On June 30, 2017, Plaintiff sent demand letters in accordance with Mass. Gen. Laws c. 93A to counsel to all Defendants (hereinafter, the "93A letters"). Plaintiff sent said demand letters to counsel to all Defendants because counsel to all Defendants agreed to accept service of such letters on behalf of their respective clients.

103. On August 7, 2017, the Athene Defendants, through counsel, forwarded a letter to Plaintiff's counsel responding to the c. 93A letter. Said response failed to include a reasonable

offer to settle the within matter.

104. On August 7, Defendant CGU, through counsel, forwarded a letter to Plaintiff's counsel responding to the c. 93A letter. Said response failed to include a reasonable offer to settle the within matter.

105. At all times relevant, all Defendants were engaged in trade or commerce within the meaning of G.L. c. 93A §§2, 9 and 11.

106. All Defendants agreed on the content of all marketing materials that would be used to describe the CMA and to promote sale of the Annuities on the basis of their coverage by the CMA.

107. None of these materials disclosed that Defendants believed that, under the terms of the CMA Agreements between and among them, Defendants had the right to terminate the CMA Guarantee at any time as to all annuities, including those sold while the CMA Guarantee was in force.

108. Any CMA Guarantee which could be dissolved at any moment, without notice to or approval by the annuitant who was protected by the CMA Guarantee, would be illusory and worthless, and sale of the Annuities "backed" by such a "guarantee" constituted a false and deceptive trade practice.

109. Nonetheless, on or about September 30, 2013, Defendants jointly signed documents purporting to remove from the CMA's the language which protected the Plaintiff and all members of the proposed class in this case. The removed language barred CGU from abandoning its promise to ensure the solvency of the entity paying the Annuities. After removing this language, Defendants jointly agreed to "terminate" the CMA's entirely.

110. Defendants' actions are based on either one or the other of two beliefs about the

CMAs: that their protections of Annuity holders either can, or cannot, be removed consistently with the law. Under either possibility Defendants have violated Chap. 93A.

111. If the protections can legally be removed, then Defendants violated Chap. 93A by failing to disclose to Annuity purchasers this fact, and Defendants' belief about this fact. Indeed, as alleged elsewhere in this Complaint, rather than disclosing this belief, Defendants intentionally represented to Plaintiff and every member of the proposed class that the protections afforded by the CMAs would extend throughout the life of the Annuities being purchased for, and at the direction of, Plaintiff and each member of the proposed class.

112. This is so because the fact, if it is a fact, that the CMA Guarantee could be dissolved at any moment without notice to or approval by the annuitant who was protected by the CMA, is a fact which would be deemed material to and by any purchaser of an annuity covered by the CMA Guarantee; to and by any person participating in the decision whether to purchase such an Annuity; and to and by any person covered by such an Annuity. Yet Defendants not only did not disclose this fact to Annuity holders and those representing or advising them; on the contrary, Defendants' jointly crafted marketing materials that explicitly represented that the CMA's were designed to provide, and would provide, long term protection for the life of the Annuities.

113. If the protections cannot legally be removed, then Defendants violated Chap. 93A by seeking to remove them – an action Defendants have taken together, knowing it was legally without merit, solely in order to enrich themselves improperly at the expense of Plaintiff and the members of the proposed class.

114. The fact that Defendants knew there was and is no merit to the position they have taken, and are taking in this case, with respect to the permissibility of terminating the

CMAs as to those Annuities sold while the CMAs were in effect, is revealed in the internal discussions of CGU and its parent AVIVA plc.

115. Specifically, in 2012 and 2013 CGU's parent AVIVA plc, was negotiating to sell AVIVA Life to Athene Holding Group. As it did so, AVIVA attempted to determine the exact purchase price and, as part of that exercise, to determine the economic impact on AVIVA of AVIVA's continued exposure to the CMA even after Defendants had jointly acted to strip the CMA's of any protection for the Annuities here at issue.

116. AVIVA attempted to protect itself from exposure to the CMA by, among other things, obliging Athene -- the purchaser of AVIVA Life -- to segregate assets to ensure that the guarantee created by the CMA, to ensure the solvency of the entity paying the Annuities, would never be called upon.

117. Separately, as alleged herein, Defendant CGU and Defendant AVIVA Life purported to amend the CMA's to delete the language protecting Annuity holders, and then the same two parties purported to terminate the CMAs in their entirety.

118. Notwithstanding these steps, AVIVA personnel recognized that even all of these steps together were not a perfect guarantee, and that they might fail and leave AVIVA exposed. That is, AVIVA personnel acknowledged that, notwithstanding all of these steps, there remained a possibility that Athene would fail and that Annuity holders would invoke the CMA.

119. AVIVA personnel explicitly acknowledged that if this were to occur, Annuity holders would press precisely the claim stated in this case. AVIVA personnel stated that there is

Residual risk of Promissory Estoppel* or Fraud claims, if AUSA is unable to meet its' Structured settlement obligations.

*AII should have reasonably expected the payee to rely, and the payee did in fact rely, on the ALAS CMA in its decision to enter into an agreement with ALAS (effectively that a contract was formed between AII and the payee)

120. This internal discussion makes clear that CGU – also known as AII – indeed knew, when it took the steps to “terminate” the CMA, that the very claim pressed here would be made and that the claim is correct – because, just as AVIVA personnel say, “AII should have reasonably expected the payee to rely, and the pay did in fact rely, on the ALAS CMA in its decision to enter in to an agreement with ALAS (effectively that a contract was formed between AII and the payee.”

121. Attempting to escape its obligations when it knew these were the facts is not only a breach of contract – the contract, among others, that AII acknowledges exists “between AII [i.e. Defendant CGU] and the payee” – i.e., the Named Plaintiff and every member of the proposed class. This is also an action in bad faith, engaged in by Defendants solely to secure an unwarranted benefit.

122. So clear was it to AVIVA that its position was unfounded that AVIVA employees calculated CGU’s exposure to the CMAs *after* CGU and AVIVA Life “amended” them to delete its protections for annuitants whose annuities had been bought while the CMAs were in effect. That calculation, which explicitly incorporated the likelihood that the policy holders would successfully take legal action to challenge CGU’s actions, valued CGU’s exposure to this risk in the tens of millions of dollars – even *after* discounting the risk by limiting it to the circumstance that the payor of the Annuities became insolvent and stopped making payments on the Annuities, and the possibility that CGU might prevail in the case.

123. This is additional proof that AVIVA had actual knowledge that the claim pled here was meritorious.

124. Defendants never disclosed to the Plaintiff or to any member of the class their awareness that the steps Defendants had taken to terminate the CMAs in fact left CGU with a

legal obligation under those very CMAs. The marketing materials that Defendants prepared, approved, and disseminated, or whose dissemination Defendants authorized, never disclosed this fact. The failure to disclose this fact constitutes an unfair method of competition and an unfair or deceptive act or practice within the meaning of Mass. G.L. Chap. 93A §2.

125. The Defendants' violation of Mass. Gen. Laws c. 93A, §§ 2, 9 and 11, and the rules and regulations promulgated thereunder, was both willful and knowing.

126. The wrongful conduct of the Defendants violated, among other things, 940 C.M.R. §3.16, and, further, constitutes unfair and deceptive business practices in violation of Mass. Gen. Laws c. 93A.

127. As a direct and proximate result of the unfair and deceptive business practices of Defendants, Plaintiff has suffered damages, including, without limitation, economic damages reflecting the additional amounts that were paid by Plaintiff and the proposed class to purchase the what they believed was the additional security provided by the CMA, as well as other damages.

128. The Annuities are insurance policies within the meaning of Mass. Gen. Laws c. 176D, and Defendants are persons who are, or who are at all relevant times, engaged in the business of insurance in the Commonwealth of Massachusetts for purposes of Mass Gen Laws c. 176D §1.

129. If Defendants actually believe that they have the right at any time to abandon the CMAs, then Defendants misrepresented the scope of the CMAs to the public, to Griffiths and to all members of the proposed class, in violation of Mass. Gen. Laws c. 176D §§3(1)(a), 3(1)(d), 3(2) and 3(9)(a).

WHEREFORE Plaintiff Griffiths demands judgment against Defendants AVIVA LONDON ASSIGNMENT CORPORATION, AVIVA LIFE INSURANCE COMPANY, AVIVA INTERNATIONAL INSURANCE LTD f/k/a CGU INTERNATIONAL INSURANCE, plc, ATHENE HOLDING, LTD., ATHENE LONDON ASSIGNMENT CORPORATION and ATHENE ANNUITY AND LIFE COMPANY, for himself and the Proposed Class members, which certifies this matter as a class action pursuant to Fed. R. Civ. P. 23; designates Griffiths as an appropriate Class representative; awards damages for Defendants' breaches of contract and breaches of fiduciary duty in an amount to be determined at trial; awards double or treble damages, and reasonable attorney's fees, as authorized by Mass.G.L. c. 93A §11; orders all Defendants to disgorge all profits and other financial benefits they have received by virtue of the inequitable conduct described herein; awards all costs and disbursements incurred in connection with this action, including reasonable attorney's fees, expert witness fees and other costs; and grants such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Griffiths and all others similarly situated hereby demand trial by jury on all issues in this complaint that are so triable as a matter of right.

Dated: _____, 2017

Respectfully submitted,

/s/ Jerome M. Marcus

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