

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA.

CASE NO.: CA 01-07648-AD

KIM WALLANT and LOUIS BOREK,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

FREEDOM LIFE INSURANCE
COMPANY OF AMERICA,
a corporation,

Defendant.

_____ /

AMENDED CLASS ACTION COMPLAINT

KIM WALLANT and LOUIS BOREK, on behalf of themselves and all others similarly situated, by and through her undersigned counsel, brings this action pursuant to Florida Rule of Civil Procedure 1.220(b)(1)(B) and 1.220(b)(3) against the Defendant, FREEDOM LIFE INSURANCE COMPANY OF AMERICA, a corporation (hereinafter "FREEDOM LIFE") and all facts being extant and material hereto alleges:

GENERAL ALLEGATIONS

1. This is a Class Action for both damages in excess of Fifteen Thousand (\$15,000) Dollars and equitable relief.
2. Plaintiffs, KIM WALLANT and LOUIS BOREK are, in all respects, sui juris.
3. Defendant, FREEDOM LIFE, is a corporation authorized to do and doing business in Palm Beach County, Florida.

CLASS REPRESENTATION ALLEGATIONS

4. Pursuant to F.R.C.P. 1.220(b)(1)(B) and 1.220(b)(3), Plaintiffs, KIM WALLANT and LOUIS BOREK bring this claim on behalf of all insured persons who were insured by the Defendant, FREEDOM LIFE, who were issued certificates of health insurance in the State of Florida for five (5) years prior to the filing of the initial class action complaint.

5. This Class consist of: All insured persons who were issued illegal certificates that did not comport with the clear requirements of Fla. Stat. §627.6515(2) and whose certificates contained adhesion language pertaining to dispute resolution that was both procedurally and substantively unconscionable for five (5) years prior to the filing of the initial complaint.

6. Plaintiffs KIM WALLANT and LOUIS BOREK allege on information and belief that the number of Class members is so numerous that joinder of all of them is impractical. Plaintiffs' beliefs are based on the fact that: (1) Defendant FREEDOM LIFE purports to sell insurance in Florida under the out-of-state group health insurance law, Fla. Stat. §627.6515; (2) that the Defendant FREEDOM LIFE has issued a large number of group health insurance certificates in the State of Florida; (3) that each such certificate illegally fails to comply with Fla. Stat. §627.6515(2); (4) that each such certificate contains such a unconscionable adhesion procedurally and substantively unconscionable dispute resolution language; (5) that Defendant FREEDOM LIFE, regularly improperly denies or delays payment of claims in violation of Florida law.

7. The members of this Class will be easily ascertained from the records of the Defendant FREEDOM LIFE when discovery commences herein.

8. Class Representatives, claim raises questions of law and fact that are common to claims of each member of The Class. Specifically, the central issues raised by this action are whether the Defendant, FREEDOM LIFE, despite purporting to sell group insurance in Florida pursuant to Florida Statute §627.6515, illegally issued certificates in violation of Fla. Stat. §627.6515(2); whether the dispute resolution procedures contained in each certificate is both procedurally and substantively unconscionable; whether Defendant, FREEDOM LIFE has been improperly delaying or denying payment of claims in violation of Florida law.

9. The claim of The Class Representatives are typical of the claim(s) of each member of The Class.

10. The Class Representatives are Florida residents who will fairly and adequately protect and represent the interest of each member of The Class. Additionally, the Class Representatives are fully cognizant of her responsibilities as Class Representatives, and have retained experienced counsel fully capable of, and intent upon, vigorously pursuing this action.

11. The question of law or fact common to Class Representatives' claim and the claim of each member of The Class predominate over any question of law or fact affecting only individual members of The Class. Additionally, the prosecution of separate claims by or against individual members of The Class would create a risk of The Class which would, as a practical matter, be dispositive of the interest of other

members of The Class who are not parties to the adjudication(s), or would substantially impair or impede the ability of other members of the class who are not parties to the adjudication(s) to protect their interest. Class Representation is therefore clearly superior to other available methods for the fair and efficient adjudication of this controversy.

COUNT I
BREACH OF CONTRACT

Class Representatives, KIM WALLANT and LOUIS BOREK hereby adopt, reallege and reaffirm each and every allegation contained in paragraphs 1 through 11 of this Class Action Complaint and further allege:

12. Defendant, FREEDOM LIFE, issued a Certificate of Insurance to the Plaintiffs, KIM WALLANT and LOUIS BOREK. (Exhibit "A" and Exhibit "B" respectively).

13. This action is not subject to the provisions of the Federal Employment Retirement Income Security Act (ERISA) 29 U.S.C. §1001 et. seq., in that:

A) Class Representatives purchased such insurance to provide for themselves and their immediate family;

B) Such insurance is not an employer sponsored plan by any measure;

C) Such insurance was neither issued to a Multiple Employer Welfare Arrangement (MEWA) nor a Multiple Employer Group (MEG) as defined by ERISA.

14. The subject health insurance policy adopts and incorporates Florida Statutes and Administrative Code Sections governing the health insurance Industry in this state.

15. Therefore the requirements of Florida Statutes §627.6515 and §627.65625 are to be read not only as requirements governing the insurance industry in general, but also as actual contractual provisions contained within the certificates of insurance issued by the Defendant, FREEDOM LIFE within the State of Florida.

16. As a result of its violation of Florida Statutes §627.6515 and 627.65625 Defendant, FREEDOM LIFE has breached the health insurance contracts with Plaintiffs, KIM WALLANT, LOUIS BOREK and other members of The Class, causing them to suffer a monetary loss.

WHEREFORE, KIM WALLANT and LOUIS BOREK, individually and as Class Representative, respectfully requests this Honorable Court to enter judgment in favor of the Plaintiffs and The Class or persons which she seems to represent and award damages insured as a result of the Defendant, FREEDOM LIFE INSURANCE COMPANY'S Breach of Contract and to further award statutory pre-judgment interest, penalty interest of 10% attorneys fees pursuant to Fla. Stat. §627.6698 and/or §627.428, and demands trial by jury of all issues so triable.

COUNT II
DECLARATORY JUDGMENT

Class Representatives, KIM WALLANT and LOUIS BOREK, individually and as Class Representatives, hereby adopt, reallege and reaffirm each and every allegation contained in paragraphs 1 through 11 of this Class Action and further alleges:

17. This is action for declaratory relief pursuant to Chapter 86 of the Florida Statutes.

18. KIM WALLANT and LOUIS BOREK, individually, and as Class Representatives, contend that the Defendant, FREEDOM LIFE purports to do business in Florida pursuant to Florida Statute §627.6515, yet the Certificate of Insurance does not comport with the simple, clear requirements of Fla. Stat. §627.6515(2).

19. KIM WALLANT and LOUIS BOREK, individually, and as Class Representatives contends that by virtue of the Defendant, FREEDOM LIFE's violation of Fla. Stat. §627.6515(2), it is not exempt from the various provisions of Part VII of the Florida Insurance Code, including Florida Statute §627.65625 and therefore, FREEDOM LIFE's failure to follow Part VII of the Florida Insurance Code is wrongful.

20. Further, KIM WALLANT and LOUIS BOREK contend that the Defendant, FREEDOM LIFE by its adhesive, procedurally and substantively unconscionable alternative dispute resolution section placed in the certificate deprived class members of their rights under the Florida Constitution and Statutes.

21. On the facts of this case the Plaintiffs, KIM WALLANT and LOUIS BOREK, individually, and as Class Representatives, are in doubt as to their rights and the rights of all other purported Class members under the terms and provisions of the subject insurance policy and Florida law.

WHEREFORE, KIM WALLANT and LOUIS BOREK, on behalf of themselves and on behalf of all purported Class members, respectfully requests that this Court:

A) Take jurisdiction over this matter for purposes of rendering a declaratory decree;

B) Having taken jurisdiction, enter an Order declaring that Defendant, FREEDOM LIFE violated Fla. Stat. §627.6515(2); and that FREEDOM LIFE is not exempt from the requirements of Part VII of the Florida Insurance Code; and as a result any claims denied based on policy language not in accordance with Part VII must be reprocessed and paid accordingly;

C) Require the Defendant, FREEDOM LIFE notify the Florida Department of Insurance of the Court's decision;

D) Enter an Order declaring the dispute resolution procedure in the Certificate of Insurance is void and unenforceable;

E) Enter an Order declaring that FREEDOM LIFE must comply with all provisions of Part VII of the Florida Insurance Code;

E) Require that the Defendant, FREEDOM LIFE promptly and properly notify each and every Class member of this Court's findings and further require the Defendant, FREEDOM LIFE to fully compensate each Class member insured as a result of any violation of Part VII of the Florida Insurance Code;

F) Grant both preliminary and permanent injunctive relief to prevent any further harm resulting from acts and/or omissions of the Defendant, FREEDOM LIFE;

G) Grant such other relief as this Court deems proper;

H) Retain jurisdiction over the parties and the subject matter to assess reasonable attorneys fees and costs to Class counsel and assess any and all penalties this Court deems meet and just.

WHEREFORE, KIM WALLANT and LOUIS BOREK, individually and as Class Representatives, respectfully request this Honorable Court to enter judgment in favor of the Plaintiffs and The Class or persons which they seem to represent and award damages insured as a result of the Defendant, FREEDOM LIFE INSURANCE COMPANY'S Declaratory Relief and to further award statutory pre-judgment interest, penalty interest of 10% attorneys fees pursuant to Fla. Stat. §627.6698 and/or §627.428, and demand trial by jury of all issues so triable.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by FAX and U.S. Mail this ___ day of _____, 2002 to: EDWARD W. GERECKE, ESQ., Carlton, Fields, et al., Post Office Box 3239, Tampa, FL 33601.

EDWARD H. ZEBERSKY, ESQ.
Zebersky & Payne, LLP
4000 Hollywood Blvd.
Presidential Circle—400 North Tower
Hollywood, FL 33021
Telephone (954) 989-6333
Facsimile (954) 989-7781

LIGGIO, BENRUBI & WILLIAMS, P.A.
1615 Forum Place
Suite 3B, The Barristers Building
West Palm Beach, FL 33401
Telephone (561) 616-3333
Facsimile (561) 616-3266
Email: jliggio@liggiolaw.com

By: _____
Edward H. Zebersky, Esq. (FBN 0908370)