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THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN GABRIEL, RUTH BJORKLUND, and
LAUREN GUSTAFSON-OMER each on his
and her own behalf and on behalf of similarly
situated persons,

Plaintiffs,

v.

NATIONWIDE LIFE INSURANCE
COMPANY, an Ohio corporation,

Defendant.

Case No. C09-0508 JCC

ANSWER TO COMPLAINT

COMES NOW Defendant Nationwide Life Insurance Company (hereafter
“Nationwide”), and in answer to Plaintiffs’ Complaint (hereafter “complaint”), alleges,
avers, and denies as follows:

I. PARTIES

1. Nationwide admits that Mr. Gabriel was covered under an insurance
plan issued by Nationwide from approximately January 1, 2007, to May 31, 2008.
Nationwide avers that the plan speaks for itself. Nationwide is currently without sufficient
information and/or belief to form an adequate opinion as to the truth of the remaining
allegations in paragraph 1 and therefore denies the same.

ANSWER TO COMPLAINT: Case No. C09-0508 JCC - 1

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
US Bank Centre
1420 5th Ave., Suite 3010
Seattle, WA 98101
Telephone 206.622.1711 Fax 206.292.0460

1 extent that any answer is required, Nationwide denies the same. Nationwide denies the
2 remaining allegations in paragraph 7.

3 8. Nationwide denies the allegations in paragraph 8.

4 **IV. CLASS ACTION ALLEGATIONS**

5 9. *Definition of Class.* Paragraph 9 consists of a description of the
6 persons Plaintiffs seek to represent, and does not require an answer. To the extent that any
7 answer is required, Nationwide denies the allegations.

8 10. *Size of Class.* Nationwide admits that more than 450 Washington
9 residents were covered under the insurance plans issued by Nationwide and that Nationwide
10 provided information to the Washington Office of the Insurance Commissioner about the
11 plans and the Washington residents covered thereunder. The remaining allegations in
12 paragraph 10 are comprised of legal conclusions to which no answer is required. To the
13 extent that any answer is required, Nationwide denies the same.

14 11. *Common Questions of Fact and Law.* Nationwide denies the
15 allegations in paragraph 11.

16 12. *Class Representative.* Nationwide denies the allegations in paragraph
17 12.

18 13. *Class Counsel.* Nationwide is currently without sufficient
19 information and/or belief to form an adequate opinion as to the truth of the allegations in
20 paragraph 13 and therefore denies the same.

21 14. *Defendant has Acted on Grounds Generally Applicable to the Class*
22 *as a Whole.* Nationwide denies the allegations in paragraph 14.

23 15. *Questions of Law and Fact Common to the Class Predominate Over*
24 *Individual Issues.* Nationwide denies the allegations in paragraph 15.

V. FACTUAL ALLEGATIONS

A. Ruth Bjorklund

16. Nationwide is currently without sufficient information and/or belief to form an adequate opinion as to the truth of the allegations in paragraph 16 and therefore denies the same.

17. Nationwide is currently without sufficient information and/or belief to form an adequate opinion as to the truth of the allegations in paragraph 17 and therefore denies the same.

18. Nationwide is currently without sufficient information and/or belief to form an adequate opinion as to the truth of the allegations in paragraph 18 and therefore denies the same.

19. Nationwide is currently without sufficient information and/or belief to form an adequate opinion as to the truth of the allegations in paragraph 19 and therefore denies the same.

20. Nationwide is currently without sufficient information and/or belief to form an adequate opinion as to the truth of the allegations in paragraph 20 and therefore denies the same.

21. Nationwide is currently without sufficient information and/or belief to form an adequate opinion as to the truth of the allegations in paragraph 21 and therefore denies the same.

22. Nationwide admits that Mrs. Bjorklund was covered under an insurance plan issued by Nationwide from approximately October 1, 2006, to January 31, 2008. Nationwide avers that the plan speaks for itself. Nationwide is currently without sufficient information and/or belief to form an adequate opinion as to the truth of the remaining allegations in paragraph 22 and therefore denies the same.

1 23. Nationwide admits that Mrs. Bjorklund was covered under an
2 insurance plan issued by Nationwide, which coverage was effective as of October 1, 2006.
3 Nationwide avers that the plan speaks for itself. Nationwide is currently without sufficient
4 information and/or belief to form an adequate opinion as to the truth of the remaining
5 allegations in paragraph 23 and therefore denies the same.

6 24. Nationwide is currently without sufficient information and/or belief
7 to form an adequate opinion as to the truth of the allegations in paragraph 24 and therefore
8 denies the same.

9 25. Nationwide admits that it received premium payments for Mrs.
10 Bjorklund's coverage. Nationwide is currently without sufficient information and/or belief
11 to form an adequate opinion as to the truth of the remaining allegations in paragraph 25 and
12 therefore denies the same.

13 26. Nationwide is currently without sufficient information and/or belief
14 to form an adequate opinion as to the truth of the allegations in paragraph 26 and therefore
15 denies the same.

16 27. Nationwide admits that Mrs. Bjorklund submitted claims for
17 coverage. Nationwide is currently without sufficient information and/or belief to form an
18 adequate opinion as to the truth of the remaining allegations in paragraph 27 and therefore
19 denies the same.

20 28. Nationwide is currently without sufficient information and/or belief
21 to form an adequate opinion as to the truth of the allegations in paragraph 28 and therefore
22 denies the same.

23 29. Nationwide denies the allegations in paragraph 29.
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1 **B. John Gabriel**

2 30. Nationwide admits that Mr. Gabriel was covered under an insurance
3 plan issued by Nationwide from approximately January 1, 2007, to May 31, 2008.
4 Nationwide denies the remaining allegations in paragraph 30.

5 31. Nationwide admits that Mr. Gabriel's premiums were timely paid.
6 Nationwide is currently without sufficient information and/or belief to form an adequate
7 opinion as to the truth of the remaining allegations in paragraph 31 and therefore denies the
8 same.

9 32. Nationwide denies that Mr. Gabriel is entitled to the relief sought.

10 **C. Lauren Gustafson-Omer**

11 33. Nationwide admits that Ms. Gustafson-Omer was covered under an
12 insurance plan issued by Nationwide from approximately January 1, 2006, to December 31,
13 2007. Nationwide denies the remaining allegations in paragraph 33.

14 34. Nationwide admits that Ms. Gustafson-Omer's premiums were timely
15 paid. Nationwide is currently without sufficient information and/or belief to form an
16 adequate opinion as to the truth of the remaining allegations in paragraph 34 and therefore
17 denies the same.

18 35. Nationwide is currently without sufficient information and/or belief
19 to form an adequate opinion as to the truth of the allegations in paragraph 35 and therefore
20 denies the same.

21 36. Nationwide is currently without sufficient information and/or belief
22 to form an adequate opinion as to the truth of the allegations in paragraph 36 and therefore
23 denies the same. Nationwide avers that the plan speaks for itself.

24 37. Nationwide is currently without sufficient information and/or belief
25 to form an adequate opinion as to the truth of the allegations in paragraph 37 and therefore
26 denies the same.

1 38. Nationwide denies the allegations in paragraph 38.

2 **D. Nationwide's Authorization to Sell Health Insurance in Washington**
3 **State**

4 39. The allegations in paragraph 39 are comprised of legal conclusions to
5 which no answer is required. To the extent that any answer is required, Nationwide denies
6 the allegations as stated.

7 40. The allegations in paragraph 40 are comprised of legal conclusions to
8 which no answer is required. To the extent that any answer is required, Nationwide denies
9 the allegations as stated.

10 41. The allegations in paragraph 41 are comprised of legal conclusions to
11 which no answer is required. To the extent that any answer is required, Nationwide denies
12 the allegations as stated.

13 **VI. CLAIMS FOR RELIEF**

14 **A. First Claim-Illegal Contract**

15 42. In answer to paragraph 42, Nationwide incorporates by reference its
16 answers and averments to paragraphs 1-41.

17 43. Nationwide denies the allegations in paragraph 43.

18 **B. Second Claim-Violation of the Washington Consumer Protection Act**

19 44. In answer to paragraph 44, Nationwide incorporates by reference its
20 answers and averments to paragraphs 1-43.

21 45. Nationwide denies the allegations in paragraph 45.

22 **VII. RELIEF SOUGHT**

23 46. Nationwide denies that Plaintiffs are entitled to the relief sought.

24 With respect to any allegations otherwise not responded to in this Answer,
25 Nationwide denies those allegations on information and belief.

AFFIRMATIVE DEFENSES

1
2 In further answer to Plaintiffs' complaint and by way of affirmative defenses
3 thereto, Nationwide alleges as follows:

- 4
- 5 1. Plaintiffs fail to state a claim upon which relief can be granted;
 - 6 2. Some or all of the Plaintiffs' claims are barred by the doctrine of accord and
7 satisfaction;
 - 8 3. Some or all of the Plaintiffs' claims are barred by the doctrines of laches,
9 waiver and estoppel;
 - 10 4. Some or all of the Plaintiffs have failed to mitigate their alleged damages;
 - 11 5. Some or all of the Plaintiffs' claims are barred by their own breach of contract
12 and/or condition;
 - 13 6. Some or all of the Plaintiffs' damages, if any, were proximately caused or
14 contributed to by the fault of the Plaintiffs, third parties, or entities for which Nationwide
15 has no legal responsibility;
 - 16 7. Some or all of the Plaintiffs' claims are barred by the applicable Statute of
17 Limitations;
 - 18 8. Some or all of the Plaintiffs' claims should be dismissed because there is no
19 actual and/or justiciable controversy between Nationwide and the Plaintiffs;
 - 20 9. Some or all of the Plaintiffs' claims fail for lack of consideration;
 - 21 10. Some or all of the remedies sought by Plaintiffs are precluded by and
22 inconsistent with each other, the Washington Insurance Code, the common law, and the
23 doctrines of retention of benefits and election of remedies;
 - 24 11. All claims against Nationwide are barred to the extent that any insurance
25 contract allegedly issued by Nationwide does not provide coverage for any risks and/or
26 losses which were known or reasonably should have been known;

ANSWER TO COMPLAINT: Case No. C09-0508 JCC - 8

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1 12. The Plaintiffs have not sustained any damages for which they are entitled to
2 any recovery against Nationwide;

3 13. Nationwide met all of its obligations under Plaintiffs' insurance contracts;

4 14. Some or all of Plaintiffs' claims violate Nationwide's right to Due Process
5 under the Fourteenth Amendment of the United States Constitution, under the Commerce
6 Clause of the United States Constitution, and under the Full Faith and Due Credit Clause of
7 the United States Constitution in that the claims would permit or require Washington State
8 to impermissibly regulate extraterritorial conduct;

9 15. Some or all of Plaintiffs' claims violate Nationwide's right to free speech
10 under the First Amendment of the United States Constitution and the Washington
11 Constitution;

12 16. To the extent that Plaintiffs seek exemplary damages under the Consumer
13 Protection Act for the conduct which allegedly caused injuries asserted in the Complaint,
14 the sum of damages is limited to \$10,000;

15 17. To the extent that Plaintiffs seek exemplary damages under the Consumer
16 Protection Act for the conduct which allegedly caused injuries asserted in the Complaint,
17 such an award is not permitted by Washington law and would, if granted, violate
18 Nationwide's state constitutional rights. Plaintiffs' claims for exemplary damages would
19 further violate the Fourth, Fifth, Sixth, and Fourteenth Amendments of the Constitution of
20 the United States; and

21 18. Nationwide specifically reserves the right to amend this Answer by way of
22 adding additional affirmative defenses, counterclaims, cross-claims, or by instituting third
23 party actions as additional facts are obtained through investigation and discovery.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, having fully answered plaintiffs' complaint, defendant Nationwide
26 Life Insurance Company prays that plaintiffs' Complaint be dismissed with prejudice, for

ANSWER TO COMPLAINT: Case No. C09-0508 JCC - 9

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Telephone 206.622.1711 Fax 206.292.0460

1 its costs, attorneys' fees to the fullest extent possible, and for such other and further relief as
2 the Court may deem just.

3 Dated this 17th day of June, 2009.

4 SCHWABE, WILLIAMSON & WYATT, P.C.

5
6 By: /s/Matthew Turetsky
7 Matthew Turetsky, WSBA #23611
8 Bert W. Markovich, WSBA #13580
9 Attorneys for Defendant
10 Nationwide Life Insurance Company
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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of June, 2009, I caused to be served the foregoing ANSWER TO COMPLAINT on the following parties via United States District Court – Western District of Washington’s Electronic Case Filing System (“ECF”) at the following addresses::

Eleanor Hamburger
Richard E. Spoonemore
Sirianni Youtz Meier & Spoonemore
719 Second Avenue, Suite 1100
Seattle, WA 98104
Phone: (206) 223-0303
Fax: (206) 223-0246
ehamburger@sylaw.com
rspoonemore@sylaw.com

/s/Matthew Turetsky

Matthew Turetsky, WSBA # 23611
Bert W. Markovich, WSBA #13580
Schwabe, Williamson & Wyatt, P.C.
1420 5th Avenue, Suite 3010
Seattle, WA 98101
(206) 622-1711
(206) 292-0460 (Fax)
mturetsky@schwabe.com
bmarkovich@schwabe.com
Attorneys for Defendant
Nationwide Life Insurance Company