IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 18-cv-01897-DDD-SKC

PHT HOLDING I LLC,
On behalf of itself and all others similarly situated,

Plaintiff,

v.

SECURITY LIFE OF DENVER INSURANCE COMPANY,

Defendant.

DECLARATION OF ZACHARY B. SAVAGE IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF SETTLEMENT

I, Zachary B. Savage, declare as follows:

1. I submit this declaration in support of final approval of the proposed class action settlement in this matter between Plaintiff, on behalf of itself and the proposed class, and Defendant Security Life of Denver Insurance Company ("Security Life" or "Defendant").

2. I am a partner in the law firm of Susman Godfrey L.L.P., which is counsel for Plaintiff and the Court-appointed Class Counsel (referred to herein as "Class Counsel") in the above-captioned matter. I am a member in good standing of the bar of this Court. I have personal, first-hand knowledge of the matters set forth herein and, if called to testify as a witness, could and would testify competently thereto.

3. **Exhibit 1** to the attached is a true and correct copy of the jury verdict from a recent COI class action trial, *Meek v. Kansas City Life Ins. Co*., 19-cv-472, Dkt. 311, in which

the jury awarded damages of $5,059,275.00.

4. **Exhibit 2** to the attached is a true and correct copy of a post-trial Order from *Meek v. Kansas City Life Ins. Co*., 19-cv-472, Dkt. 329, in which the Court partially decertified the class and directed that judgment be entered in favor of the class in the amount of $908,075.00.

5. **Exhibit 3** to the attached is a true and correct copy of the final judgment from from *Meek v. Kansas City Life Ins. Co*., 19-cv-472, Dkt. 330, in which judgment was entered in favor of the class in the amount of $908,075.00.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: July 17, 2023

/s/ Zachary B. Savage
Zachary B. Savage

EXHIBIT 1

VERDICT FORM A

Note: Complete this form by writing in the names required by your verdict.

On Plaintiffs' claim that Defendant breached the COI charge provision, as submitted in Instruction No. 18, we find in favor of:

Plaintiffs (Plaintiffs) or (Defendant)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiffs.

For the period of June 18, 2014, to February 28, 2021:

We find Plaintiffs' damages for Defendant's consideration of factors other than age, sex, and risk class and its expectations as to future mortality experience when setting the COI rate to be:

$ 908,075.00 (state the amount or, if none, write the word "none").

Note: Fill in the next blank only if you determined Defendant failed to apply its then-current mortality rates when setting the monthly COI charge.

We find Plaintiffs' damages for Defendant's failure to apply its then-current mortality rates when setting the monthly COI charge to be:

$ _____ (state the amount or, if none, write the word "none").

For the period of May 1, 1982, to February 28, 2021:

We find Plaintiffs' damages for Defendant's consideration of factors other than age, sex, and risk class and its expectations as to future mortality experience when setting the COI rate to be:

$ 5,059,275.00 (state the amount or, if none, write the word "none").

Note: Fill in the next blank only if you determined Defendant failed to apply its then-current mortality rates when setting the monthly COI charge.

We find Plaintiffs' damages for Defendant's failure to apply its then-current mortality rates when setting the monthly COI charge to be:

$ _____ (state the amount or, if none, write the word "none").

Dated: 05/25/23

Foreperson

VERDICT FORM B

Note: Complete this form by writing in the names required by your verdict.

On Plaintiffs' claim that Defendant breached the expense charge provision, as submitted in Instruction No. 19, we find in favor of:

Defendant

(Plaintiffs) or (Defendant)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiffs.

For the period of June 18, 2014, to February 28, 2021:

We find Plaintiffs' damages to be:

$ 0 (state the amount or, if none, write the word "none").

For the period of May 1, 1982, to February 28, 2021:

We find Plaintiffs' damages to be:

$ 0 (state the amount or, if none, write the word "none").

Foreperson

Dated: 05/25/23

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

CHRISTOPHER Y. MEEK, Individually and On Behalf of All Others Similarly Situated,	)	
Plaintiff,	)	
v.	)	Case No. 19-00472-CV-W-BP
KANSAS CITY LIFE INSURANCE COMPANY,	)	
Defendant.	)	

ORDER (1) GRANTING DEFENDANT'S MOTION TO PARTIALLY DECERTIFY CLASS, (2) DISMISSING COUNT V WITHOUT PREJUDICE, AND (3) DIRECTING THAT JUDGMENT BE ENTERED

This lawsuit presents claims that Defendant—an insurance company—improperly calculated the rate for the cost of insurance (the "COI Rate"), resulting in improper and excessive charges for cost of insurance (the "COI charge") under a universal life insurance policy (the "Policy"). A trial was conducted the week of May 22, 2023, but several issues remained for resolution before a judgment could be entered. For the reasons discussed below, the Court (1) **GRANTS** Defendant's Motion to Partially Decertify the Class, (Doc. 299), (2) **DISMISSES** Count V without prejudice and (3) **DIRECTS** that judgment be entered.

I. BACKGROUND

The Court starts with a summary of the claims asserted in the Amended Complaint:

- Count I alleges Defendant breached the Policy by considering factors other than the policyholder's age, sex, and risk class and its own expectations as to future mortality experience when calculating the COI Rate;

- Count II alleges Defendant breached the Policy by deducting expense charges in excess of the amount allowed by the Policy;
- Count III alleges Defendant breached the Policy by failing to apply its updated mortality expectations when calculating the COI Rate;
- Count IV asserts a conversion claim; and
- Count V seeks declaratory and injunctive relief.

(*See* Doc. 8.) At trial the Court agreed with Plaintiff's counsel that Count I subsumes Count III.

In February 2022, the Court granted in part Plaintiff's Motion for Class Certification. As relevant here, it determined Kansas law governs Plaintiff's claims, (Doc. 136, p. 16),[1] and Kansas's statute of limitations applies. (Doc. 136, pp. 22-23 & n.10.) Based on these determinations (and others that need not be detailed here) the Court certified the following Class:

> All persons who own or owned [certain specified life insurance policies] issued or administered by Defendant, or its predecessors in interest, that [were] active on or after January 1, 2002, and [who] purchased the life insurance policy while domiciled in Kansas. Excluded from the Class are: KC Life; any entity in which KC Life has a controlling interest; any of the officers, directors, employees, or sales agents of KC Life; the legal representatives, heirs, successors, and assigns of KC Life; anyone employed with Plaintiff's counsel's firms; and any Judge to whom this case is assigned, and his or her immediate family.

(Doc. 136, p. 25.) The Class was certified only for Counts I through IV. (Doc. 136, p. 25.)

On March 27, 2023, the Court granted in part the parties' separate motions for summary judgment. One of the critical issues addressed in that Order related to the statute of limitations. The Court:

[1] All page numbers are those generated by the Court's CM/ECF system.

1. Adhered to its conclusion that Kansas's statute of limitations applied;
2. Held the statute of limitations for the contract claims (Counts I – III) was five years, and all breaches occurring within five years of the suit's filing (June 18, 2019) were timely;
3. Held that, under certain circumstances, Kansas will equitably estop a defendant from asserting the statute of limitations as a defense; and
4. The parties' arguments did not permit the Court to determine whether equitable estoppel applied in this case.

(Doc. 243, pp. 6-12.) The Court then construed the meaning of relevant Policy provisions and determined (1) Defendant had considered improper factors (including, among other things, expenses and profits) in determining the COI Rate, but (2) factual disputes precluded summary judgment on any aspect of Plaintiff's claims that Defendant failed to apply its then-current expectations as to future mortality experience when setting the COI rate. (Doc. 243, pp. 12-17.) These determinations (which need not be detailed further here) essentially granted Plaintiff summary judgment on liability with respect to (1) a portion of Count I and (2) Count II. Finally, the Court granted Defendant summary judgment on the conversion claim (Count IV). (Doc. 243, pp. 18-19.)

Shortly after the summary judgment order was issued, the Court participated in a telephone conference with the parties, and thereafter the parties submitted supplemental briefs. Among other things, the parties agreed the facts relevant to equitable estoppel were to be determined by the Court and not the jury. (Doc. 253, pp. 14-15; Doc. 254, pp. 18-19.)

At the pretrial conference, the Court indicated it needed to hear evidence before it could rule on the issue of equitable estoppel and decided the appropriate course was to proceed to trial and allow the parties to present any additional evidence that related solely to equitable estoppel

outside the jury's hearing. (Doc. 292, p. 10.) To avoid the need for a second trial, the Court also proposed having the jury return a verdict regarding damages for two time periods based on the application (or not) of equitable estoppel. (Doc. 292, pp. 10-11.)[2]

At trial, the Court largely adopted Plaintiff's proposed approach with respect to the verdict directing instructions. The first Verdict Director, (Doc. 309, p. 23 (Instruction No. 18)), told the jury that Defendant breached the Policy if it "(1) considered factors other than age, sex, and risk class and its expectations as to future mortality experience when setting the COI rate" *or* "(2) failed to use . . . its then-current mortality rates when setting the monthly COI charge." The jury was then told it had previously been determined Defendant considered impermissible factors when setting the COI Rate, but it had not been determined whether Defendant failed to apply its then-current mortality rates. The jury was also told it had not been determined whether the Class suffered damages. On the corresponding Verdict Form, the jury was directed to determine (for the two separate periods) damages for Defendant's consideration of impermissible factors. The jury was also directed to indicate whether it found Defendant failed to apply its then-current mortality rates by inserting the amount of damages; if it found Defendant did not breach the policy in this manner, it was to leave the line for damages blank. (Doc. 311, pp. 1-2 (Verdict Form A).) In this way, the first Verdict Director and Verdict Form A addressed Counts I and III.

The second Verdict Director, (Doc. 309, p. 24 (Instruction No. 19)), addressed Count II. The jury was told it had been determined that (1) "Defendant cannot consider expenses when setting the COI rate" but (2) it had done so, and the jury had to "determine whether Plaintiffs were damaged by Defendant's consideration of expenses and, if so, the amount of damages."

[2] Conducting a hearing before trial solely with respect to equitable estoppel would not have been efficient because some evidence relevant to liability and damages also potentially applied to equitable estoppel. A separate hearing before trial would have required that evidence to be presented twice.

For the two time periods at issue, the jury

1. Awarded damages for Defendant's consideration of improper factors in setting the COI Rate,
2. Determined damages for Defendant's consideration of expenses was zero, and
3. Determined Defendant did not breach the Policy by failing to apply its then-current mortality rates.

(Doc. 311.) The Court must determine whether equitable estoppel applies so the appropriate monetary award can be included in the judgment. The Court must also adjudicate Count V.

II. DISCUSSION

A. Statute of Limitations

As stated earlier, the statute of limitations for a breach of contract claim under Kansas law is five years. Under Kansas law a breach of contract claim accrues when the breach occurs; Kansas law does not apply a "discovery rule" and accrual does not depend on when the plaintiff learned (or should have learned) about the breach. *E.g.*, *Great Plains Trust Co. v. Union Pac. R. Co.*, 492 F.3d 986, 993 (8th Cir. 2007) (citing *Pizel v. Zuspann*, 795 P.2d 42, 54 (Kan. 1990)); *Dunn v. Dunn*, 281 P.3d 540, 548 (Kan. Ct. App. 2012). Kansas law also does not recognize the "fraudulent concealment" doctrine, under which the statute of limitations is tolled against a party that has tried to conceal its breach. *E.g., Freebird, Inc. v. Merit Energy Co.*, 883 F. Supp. 2d 1026, 1035 (D. Kan. 2012) (analyzing Kansas law). However, there are circumstances in which Kansas courts will hold a party is estopped from asserting the statute of limitations as a defense.

In briefing on this issue, the parties extensively discuss the elements of equitable estoppel. The Court, however, declines to analyze whether equitable estoppel applies because it finds one of the requirements for equitable estoppel—reliance—is an individualized determination that cannot be decided for the entire Class.

1. Reliance

> A defendant is equitably estopped from asserting the statute of limitations as a defense if,
>
> > by acts, representations, admissions, or silence when [the defendant] had a duty to speak, [it] induced the [plaintiff] to believe certain facts existed. The [plaintiff] must also show that [he] *reasonably relied and acted upon such belief* and would now be prejudiced if the [defendant] were permitted to deny the existence of such facts.

L. Ruth Fawcett Trust v. Oil Producers Inc. of Kansas, 507 P.3d 1124, 1144 (Kan. 2022) (quotation omitted; emphasis supplied) (hereafter "*Ruth Fawcett Trust*"). More succinctly, the defendant's actions must create "a false sense of security that prevented the plaintiff from timely suing." *Id.* at 291; *see also Dunn*, 281 P.3d at 544; *Newman Mem. Hosp. v. Walton Const. Co.*, 149 P.3d 525, 542 (Kan. Ct. App. 2007); *Robinson v. Shah*, 936 P.2d 784, 798 (Kan. Ct. App. 1997). "To determine whether the doctrine applies, courts must look at the facts and circumstances of each case and should not apply it in a formulaic manner." *Ruth Fawcett Trust*, 507 P.3d at 1144.

Here, Plaintiff argues the Annual Statements Defendant sent to policy holders established reliance.[3] The Annual Statements disclose, among other things, deductions for Cost of Insurance and Expense Charges. The Court sets aside any questions about whether equitable estoppel can be based on the Annual Statements. Instead, the Court concludes equitable estoppel can be based on the Annual Statements only if they were seen and read by a would-be plaintiff.

Ruth Fawcett Trust repeatedly described the reliance element as requiring the plaintiff to demonstrate he "detrimentally relied" on the defendant's representations. *Ruth Fawcett Trust*, 507 P.3d at 290-91. It also upheld application of equitable estoppel because the defendant in that case

[3] To the extent Plaintiff argues the Policy holders relied on Defendant to comply with the contract, the Court rejects this argument. All parties to a contract rely on the other party to comply, but equitable estoppel requires the would-be plaintiff to rely on something that caused him or her to not sue. A general expectation that the other party will comply with the contract, or a general statement from the defendant that it complied, is insufficient. To hold otherwise would allow equitable estoppel to be the norm or effectively create a discovery rule where Kansas law does not provide one. *See McCaffree Fin. Corp. v. Nunnink*, 847 P.2d 1321, 1332 (Kan Ct. App. 1993); *see also Murray v. Miracorp, Inc.*, 522 P.3d 805, at *9 (Kan. Ct. App. 2023) (citing *McCaffree*).

"made affirmative misrepresentations that deterred the Class members from pursuing timely legal action." *Id*. at 292. This explanation demonstrates there must be a causal relationship between the defendant's actions and plaintiff's deterrence. As a factual matter, the deterrence required by the Kansas Supreme Court cannot be ascribed to the defendant's statements unless the plaintiff is aware of those statements. Thus, in this case, a Class member could not have suffered detriment based on anything in the Annual Statements unless that Class member read the Annual Statements.

Cases decided before *Ruth Fawcett Trust* support this analysis. For instance, in *Iola State Bank v. Biggs*, the Kansas Supreme Court stated the party asserting estoppel must have been "induced . . . to believe certain facts existed. It must also show it rightly relied and acted upon such belief . . . ." 662 P.2d 563, 571 (Kan. 1983). However, Class members could not be induced to believe anything in the Annual Statements unless they read them. Similarly, in *Dunn*, the Kansas Court of Appeals cited another Kansas Supreme Court decision for the proposition that the defendant's actions must have caused the plaintiff to "'act[ ] in good faith in reliance thereon to his prejudice whereby he failed to commence the action within the statutory period.'" *Dunn*, 281 P.3d at 550 (quoting *Klepper v. Stover*, 392 P.2d 957, 959 (Kan. 1964)). A Class member cannot rely on the Annual Statements, and nothing in the Annual Statements could have caused a Class member to "fail[ ] to commence the action within the statutory period," unless the Class member saw the Annual Statements.

2. Rule 23 of the Federal Rules of Civil Procedure

Rule 23 of the Federal Rules of Civil Procedure allows a class to be certified if, among other things, (1) there are questions of law or fact common to the class and (2) the common questions of law or fact predominate over individual questions. *See* Fed. R. Civ. P. 23(a)(2), 23(b)(3). As the Court discussed in more detail when it certified the class, the common questions

included determinations regarding choice of law issues, the appropriate statute of limitations, and whether certain doctrines (such as fraudulent concealment or the discovery rule) applied. (Doc. 136, pp. 23-25.) However, equitable estoppel was not discussed by the parties when the issue of class certification was raised, so the Court did not have occasion to consider its impact on the Rule 23 analysis. Defendant has raised the issue subsequently; in fact, currently pending is its Motion to Partially Decertify the Class because the issue of equitable estoppel cannot be decided on a class-wide basis. Given the inquiry required to determine if equitable estoppel applies, the Court agrees and concludes the motion, (Doc. 299), should be **GRANTED**.

Plaintiffs allege the Annual Statements misled class members into not realizing they had a cause of action. However, as explained above, the Annual Statements could only mislead those Class members who read the Annual Statements. Whether a plaintiff read the Annual Statements is not a fact common to the class members, so it is not capable of determination on a class-wide basis. *See Wal-Mart Stores v. Dukes*, 564 U.S. 338, 350 (2011) (discussing what qualifies as a "common question"). This conclusion is consistent with other cases holding (in a variety of legal contexts) that the issue of reliance is not amenable to class-wide determination because it requires an individualized determination of what information each class member saw or what each class member thought. *E.g.*, *Hucock v. LG Elec. U.S.A., Inc.*, 12 F.4th 773, 777 (8th Cir. 2021); *Johannessohn v. Polaris Indus. Inc.*, 9 F.4th 981, 985-86 (8th Cir. 2021); *In re St. Jude Med., Inc.*, 522 F.3d 836, 839-40 (8th Cir. 2008); *see also Amgen Inc. v. Connecticut Retirement Plans & Trust Funds*, 568 U.S. 455, 462-3 (2013) ("Absent the fraud-on-the-market theory, the requirement that [securities fraud] plaintiffs establish reliance would ordinarily preclude certification of a class

action seeking money damages because individual reliance issues would overwhelm questions common to the class.").[4]

Plaintiff argues he can rely on class-wide circumstantial evidence to establish reliance; however, he does not identify any such evidence. Facts about Defendant's billing practices, mailing practices, and the format of and information contained in the Annual Statements could be decided class-wide; however, none of this evidence permits the Court to conclude, for each and every class member, whether they looked at the Annual Statements and thereby relied on anything Defendant said therein. Plaintiff's argument cites *Ruth Fawcett Trust*, but there are significant differences between the facts and procedural posture in this case and in *Ruth Fawcett Trust.* The defendant in that case (Oil Producers Incorporated of Kansas, or "OPIK") had leased mineral rights from the plaintiffs. OPIK was required to pay a monthly royalty and was allowed to deduct certain costs (including taxes) from those royalty payments; it itemized those deductions on the monthly check stubs. OPIK was not permitted to deduct conservation fees from the royalty payments, but it did so anyway. To avoid detection, it "disguised" the conservation fees as taxes on the monthly check stubs. *Ruth Fawcett Trust*, 507 P.3d at 1143-44.

The issue of reliance was discussed in greater detail by the trial court and the Kansas Court of Appeals than it was by the Kansas Supreme Court. The trial court made specific findings regarding the check stubs and the information they contained and concluded the class members must have seen the information OPIK provided because they cashed the checks. *L. Ruth Fawcett*

[4] On at least two occasions, the District of Kansas has declined to certify a class to resolve assertions of equitable estoppel because of the individualized nature of the inquiry. "Whether the Court would apply an equitable doctrine to toll a particular class member's statute of limitations must depend on the particular circumstances of that class member's closing, including the particular representations made to the member and the facts available to him." *Doll v. Chicago Title Ins. Co*., 246 F.R.D. 683, 688 (D. Kan. 2007) (emphasis deleted); *see also Commander Properties Corp. v. Beech Aircraft Corp.*, 164 F.R.D. 529, 539 (D. Kan. 1995) ("[A] determination of whether the doctrine of equitable tolling or fraudulent concealment can be invoked by a particular plaintiff requires individual inquiries into [the defendant's] conduct with regard to that plaintiff.")

Trust v. Oil Producers, Inc. of KS, 2016 WL 11775738, at * 2-5, 8 (Kan. Dist. Ct. Sept. 1, 2016). The Kansas Court of Appeals affirmed the finding "that *by cashing the monthly checks* and not questioning the deductions, the royalty owners demonstrated reliance on the check stubs being truthful and accurate." *L. Ruth Fawcett Trust v. Oil Producers, Inc. of KS*, 475 P.3d 1268, 1281 (Kan. Ct. App. 2020) (emphasis added). In addition to the trial court's explanations, the court of appeals opined that reliance could "be inferred because there is no other way to explain why they would not question the deduction. The only reasonable explanation is that the Class members relied on the misrepresentation." *Id*. at 1283.

In this case, there is another plausible and obvious reason why the Class members might not have taken action: they did not look at the Annual Statements. In *Ruth Fawcett Trust*, the trial judge found the class members were aware of the check stubs' contents because the class members cashed the checks; here, there is no similar fact that would permit the Court to find the class members were aware of the Annual Statements's contents. Plaintiff makes much of the Kansas Court of Appeals's observation that "[i]t would not be feasible to take the testimony of every Class member," *id.,* but this does not permit the Court to make a class-wide determination of an individualized fact. To the contrary, it explains why such a determination cannot be made under Rule 23: this individual issue predominates over common issues by requiring testimony from each class member. Moreover, the Kansas Court of Appeals also observed "OPIK does not challenge the Class certification on appeal," *id*., which may explain why OPIK's challenge to the class-wide determination was rejected. In contrast, here, Defendant has challenged the certification through its Motion to Partially Decertify, so the Court must consider the Rule 23 implications of this significant, individualized question's emergence after the class was certified.

3. Decertification

"[A]fter initial certification, the duty remains with the district court to assure that the class continues to be certifiable throughout the litigation," *In re Target Corp. Customer Data Sec. Breach Litig.*, 847 F.3d 608, 612 (8th Cir.), *amended,* 855 F.3d 913 (8th Cir. 2017), and when (as is the case here) the Court concludes the original certification's scope is too broad, it may alter or amend the order certifying the class. Fed. R. Civ. P. 23(c)(1)(C). Accordingly, the Court amends the class definition to obviate the individualized inquiry related to equitable estoppel.

The Court previously determined claims related to improper charges imposed within five years of the filing of suit (that is, on or after June 18, 2014) are timely. The Court will therefore amend the class definition to limit the claims to this period; the new class definition is:[5]

> All persons (1) who own or owned a Better Life Plan, Better Life Plan Qualified, LifeTrack, AGP, MGP, PGP, Chapter One, Classic, Rightrack (89), Performer (88), Performer (91), Prime Performer, Competitor (88), Competitor (91), Executive (88), Executive (91), Protector 50, LewerMax, Ultra 20 (93), Competitor II, Executive II, Performer II, or Ultra 20 (96) life insurance policy issued or administered by Defendant, or its predecessors in interest, (2) that was active on or after January 1, 2002, (3) purchased the life insurance policy while domiciled in Kansas, **and (4) incurred charges for "Cost of Insurance" or "Expense Charges" between June 18, 2014 and February 28, 2021.** Excluded from the Class are: KC Life; any entity in which KC Life has a controlling interest; any of the officers, directors, employees, or sales agents of KC Life; the legal representatives, heirs, successors, and assigns of KC Life; anyone employed with Plaintiff's counsel's firms; and any Judge to whom this case is assigned, and his or her immediate family.

Consistent with the Court's ruling and to minimize prejudice to the class members, all claims based on charges incurred before June 18, 2014, are dismissed without prejudice. The Court will enter judgment based on the jury's verdict for the period between June 18, 2014, and February 28, 2021.

[5] The only substantive change is to add the portion in bold.

B. Count V

Count V is entitled "Declaratory and Injunctive Relief." A request for declaratory or injunctive relief is not an independent claim, and Plaintiff has not demonstrated he is entitled to these remedies.

Plaintiff seeks a declaration establishing "the parties' respective rights and duties under the Policy" and that Defendant's conduct was "unlawful and in material breach of the Policy . . . ." (Doc. 8, ¶ 95.) However, any declaration to which Plaintiff is entitled has already been issued as part of the Court's prior rulings and the jury's verdict; any further relief in the form of a declaration would be redundant and unnecessary.

Plaintiff also asks for an injunction to prevent Defendant from further breaches of the Policy, (Doc. 8, ¶ 96), but he has not satisfied the requirements for an injunction under Kansas law. In particular, Plaintiff has not demonstrated a reasonable probability of irreparable future injury or that an action for damages would not be an adequate remedy. *See Empire Mfg. Co. v. Empire Candle, Inc.*, 41 P.3d 798, 808 (Kan. 2002) (discussing availability of injunctive relief to prevent future breaches of a contract). Therefore, the Court dismisses Count V without prejudice to the Court's other rulings in the case.

III. CONCLUSION

The Court directs that judgment be entered with respect to the following Class:

> All persons (1) who own or owned a Better Life Plan, Better Life Plan Qualified, LifeTrack, AGP, MGP, PGP, Chapter One, Classic, Rightrack (89), Performer (88), Performer (91), Prime Performer, Competitor (88), Competitor (91), Executive (88), Executive (91), Protector 50, LewerMax, Ultra 20 (93), Competitor II, Executive II, Performer II, or Ultra 20 (96) life insurance policy issued or administered by Defendant, or its predecessors in interest, (2) that was active on or after January 1, 2002, (2) purchased the life insurance policy while domiciled in Kansas, **and (4) incurred charges for "Cost of Insurance" or "Expense Charges" between June 18, 2014 and February 28, 2021.** Excluded from the Class are: KC Life; any entity in which KC Life has a controlling interest; any of

the officers, directors, employees, or sales agents of KC Life; the legal representatives, heirs, successors, and assigns of KC Life; anyone employed with Plaintiff's counsel's firms; and any Judge to whom this case is assigned, and his or her immediate family.

The judgment to be entered is as follows:

1. Pursuant to the Court's March 27, 2023, Order, the jury's May 25, 2023, verdict, and this Order, judgment is entered in favor of the Class and against Defendant on Count I in the amount of $908,075.00.
2. Pursuant to the Court's March 27, 2023, Order, the jury's May 25, 2023, verdict and this Order, judgment is entered in favor of the Class and against Defendant on Count II in the amount of zero dollars.
3. Pursuant to the jury's May 25, 2023, verdict, and this Order, judgment is entered in favor of Defendant and against the Class on Count III.
4. Pursuant to the Court's March 27, 2023, Order, judgment is entered in favor of Defendant and against the Class on Count IV.
5. Pursuant to this Order, Count V is dismissed without prejudice to the other rulings in this case.

IT IS SO ORDERED.

/s/ Beth Phillips
BETH PHILLIPS, CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATE: June 20, 2023

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

CHRISTOPHER Y. MEEK, Individually and On Behalf of All Others Similarly Situated,	)	
Plaintiff,	)	
v.	)	Case No. 19-00472-CV-W-BP
KANSAS CITY LIFE INSURANCE COMPANY,	)	
Defendant.	)	

JUDGMENT IN A CIVIL CASE

__X__ **Jury Verdict**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

___ **Decision by Court**. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

__X__ **Decision by Court.** This action came before the Court. The issues have been determined and a decision has been rendered.

IT IS ORDERED AND ADJUDGED
The Court directs that judgment be entered with respect to the following Class:

> All persons (1) who own or owned a Better Life Plan, Better Life Plan Qualified, LifeTrack, AGP, MGP, PGP, Chapter One, Classic, Rightrack (89), Performer (88), Performer (91), Prime Performer, Competitor (88), Competitor (91), Executive (88), Executive (91), Protector 50, LewerMax, Ultra 20 (93), Competitor II, Executive II, Performer II, or Ultra 20 (96) life insurance policy issued or administered by Defendant, or its predecessors in interest, (2) that was active on or after January 1, 2002, (2) purchased the life insurance policy while domiciled in Kansas, **and (4) incurred charges for "Cost of Insurance" or "Expense Charges" between June 18, 2014 and February 28, 2021.** Excluded from the Class are: KC Life; any entity in which KC Life has a controlling interest; any of the officers, directors, employees, or sales agents of KC Life; the legal representatives, heirs, successors, and assigns of KC Life; anyone employed with Plaintiff's counsel's firms; and any Judge to whom this case is assigned, and his or her immediate family.

The judgment to be entered is as follows:

1. Pursuant to the Court's March 27, 2023, Order, the jury's May 25, 2023, verdict, and the Court's June 20, 2023, Order, judgment is entered in favor of the Class and against Defendant on Count I in the amount of $908,075.00.
2. Pursuant to the Court's March 27, 2023, Order, the jury's May 25, 2023, verdict, and the Court's June 20, 2023, Order, judgment is entered in favor of the Class and against Defendant on Count II in the amount of zero dollars.
3. Pursuant to the jury's May 25, 2023, verdict, and the Court's June 20, 2023, Order, judgment is entered in favor of Defendant and against the Class on Count III.
4. Pursuant to the Court's March 27, 2023, Order, judgment is entered in favor of Defendant and against the Class on Count IV.
5. Pursuant to the Court's June 20, 2023, Order, Count V is dismissed without prejudice to the other rulings in this case.

June 20, 2023
Date

Paige Wymore-Wynn
Clerk of Court

/s/ Shauna Murphy-Carr
(by) Deputy Clerk