

## APPENDIX "A"

- 1.) AIG's letter dated for Jan. 8, 2018  
admission to value of Insurance  
Policy Value's. (Sharif A. Gentry Sr.)
- 2.) Notary Public for "PROOF OF HEIRSHIP,"  
Along with
  - A.) Proof of Death
  - B.) Payment of Policy Proceeds
  - C.) Federal Withholding Election  
dated for Dec. 27-29, 2017

(\*NOT INFULL)

**EXHIBIT "A"**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of Los Angeles )

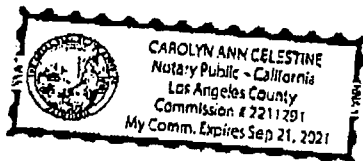
On December 27, 2017 before me, Carolyn Ann Celestine, Notary Public,  
Date Here Insert Name and Title of the Officer

personally appeared Sharif Gentry & Countney Scott  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Proof of Heirship

Document Date: December 27, 2017

Signer(s) Other Than Named Above: \_\_\_\_\_ Number of Pages: 2

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Sharif Gentry

☐ Corporate Officer - Title(s): \_\_\_\_\_

☐ Partner - ☐ Limited ☐ General

☒ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer Is Representing: self

Signer's Name: \_\_\_\_\_

☐ Corporate Officer - Title(s): \_\_\_\_\_

☐ Partner - ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



**Proof of Death  
 Claimant's Statement**

☒ American General Life Insurance Company, P.O. Box 305800, Nashville, TN 37230-5800  
 A member of American International Group, Inc. (AIG)  
 The United States Life Insurance Company in the City of NY  
 Overnight ATTN: Life Claims, #2, American General Center, Nashville TN 37250-0002

<b>To Be Completed By Each Beneficiary (please print)</b>			
POLICY NUMBER/GROUP NUMBER & CERTIFICATE NUMBER (If multiple policies, please list all) 5433 839 134			Claim Number 0018000859
DECEASED FULL NAME (include middle name) Morris, Pamela A			
CAUSE OF DEATH Nat	DATE OF DEATH 12-05-2017	DECEASED SOCIAL SECURITY NUMBER 554-84-7388	DATE OF BIRTH 09-15-1951
List other hyphenations, nicknames, aliases and/or maiden names used by decedent in the past.			
CLAIMANT'S NAME Sharif Ali Gentry		DATE OF BIRTH 02-26-1973	SOCIAL SECURITY # OR TIN 571-19-9661
ADDRESS 13507 Mistletoe Ave		CITY Chino	STATE CA
EMAIL ADDRESS		ZIP 91710	RELATIONSHIP TO DECEASED Son
TELEPHONE NO. ( 323 ) 18988698		ALT NO. ( )	
Have you assigned any of the proceeds of this policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, who have the proceeds been assigned to? _____ (If copy of assignment is available, please include.)			
LIST EACH ASSIGNEE WITH CONTACT NUMBER _____ (If copy of assignment is available, please include.)			
<p><b>IRS/DOL Guidance re: Marriage</b>                  For Federal tax law and ERISA purposes, under current IRS and DOL guidance (1) a same-sex marriage that was valid in the state or country it was entered into will be recognized by the IRS and for DOL, regardless of the married couple's place of domicile; and (2) although a state may recognize domestic partnerships or civil unions, the terms "spouse," "husband" and "wife" do not include individuals who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not designated as a marriage under the laws of that state.</p>			
<p><b>I have read and I understand the important Fraud Disclosure information located on page 8 of this form.</b>                  AUTHORIZATION REGARDING Pamela Morris ("Insured")                  I, the Claimant/Legal Representative of the Insured, authorize each insurance company listed above and American General Life Companies LLC (an affiliate services company) collectively, the "Company," and their authorized representatives including their employees and agents, to provide information to, and, to receive information from, MIB Inc., which operates an information exchange that assists insurance companies with benefit administration, claims, and fraud prevention and detection activities. The authorization will be valid for the duration of the claim or 24 months, whichever is longer. I understand that I may revoke it by giving written notice to the Company, but any action taken by the Company before receipt of such notice will be valid. I acknowledge that I am entitled to obtain a copy of this authorization and a copy will be as valid as the original.</p>			
PLEASE SIGN HERE Signature of Claimant/Legal Representative of the Insured		Sharif Gentry Printed Name	
		12-27-2017 Date	
<p><b>Certification of Trustee(s) complete this section only if Beneficiary is the Trust</b>                  Name of Trust: _____                  Tax ID of Trust: _____</p>			
<p>The undersigned hereby certify as follows:                  1. That they are Trustees under a Trust Agreement dated: _____ Amended: _____                  2. That they are the Trustees designated as beneficiary under the above numbered policy(ies);                  3. That said Trust Agreement is in full force and effect and that by its terms they are empowered to receive payment of the proceeds of the above policy(ies);                  4. That, if applicable, said Trust/Plan is presently fully qualified having met the requirements of Section 401(a) of the Internal Revenue Code.                  It is understood and agreed by the undersigned that payment of such proceeds to the Trustees shall discharge the Company from any and all liability therefor and that the Company shall have no responsibility for the carrying out of the Trust Agreement.                  The plural as used herein shall include the singular wherever applicable.</p>			
Signed this _____ day of _____, 20____.			
Individual Trustee(s): (Trustee Signature)		(Printed Name)	
(Signature) OR		(Printed Name)	
Corporate Trustee:		(Signature)	
(Name of Corporate Trustee)		(Printed Name)	
By: (Officer's Signature) (All co-trustees must sign.)		(Printed Name)	
		Title	



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HR VP CHAPEL

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## ----- Payment of Policy Proceeds -----

If your insurance benefit is \$50,000 or more, you may elect to have the proceeds paid through a free, interest-bearing account called the Instant Access Account. (This option is not available for residents of Alaska, Arkansas, Connecticut, Indiana, Kansas, Kentucky, Louisiana, Maryland, New Jersey, Rhode Island and New York.)

- This is a draft account whereby you may draw down the insurance proceeds and interest by drafting drafts which are payable through The Bank of New York Mellon.
  - A personal draft book will be mailed to you once your claim has been approved. You may access your account by writing a draft for \$250.00 or more. If you wish, you can write a single draft for the entire amount, including interest, to close your account. Your drafts are payable through The Bank of New York Mellon. The delivery of your draft book constitutes payment of your full benefit amount.
  - There are no monthly service charges, per-draft charges or draft fees. Fees will be charged for the following special services: any draft presented for payment against insufficient funds, any stop payment order, and any draft or statement copies. The charging bank reserves the right to change its fees at any time.
  - Should your Instant Access Account balance drop below \$10,000, the account will be automatically closed and a draft for the balance mailed to you, with accrued interest on the 10th day of the following month.
  - You will receive a Quarterly statement, showing all transactions, interest credited and the applicable rate(s) of interest for the period.
  - Your Instant Access Account earns interest at a periodic interest rate determined by the company which is set after monitoring current short term rates and other prevailing rates available in the marketplace.
  - The interest rate is subject to periodic review and may be adjusted by the company. There is not a minimum interest rate credited to the account.
  - Interest is compounded daily and credited to your account monthly. Interest may be taxable; please consult with your tax advisor regarding taxable interest amounts.
  - To obtain the current interest rate for your account, please review your Quarterly statement or call 1-888-562-9158 (M-F) 8 AM - 7 PM Eastern Time.
  - Both your principal and any interest you earn are guaranteed by American General Life Insurance Company (American General Life).
  - The Instant Access Account is not insured by the Federal Deposit Insurance Corporation (FDIC). Its funds are guaranteed by the State Guaranty Associations. Please contact the National Organization of Life and Health Insurance Guaranty Associations ([www.nolhga.com](http://www.nolhga.com)) to learn more about coverage of your account.
  - Account balances are the liability of American General Life, and American General Life reserves the right to reduce account balances for any payment made in error.
  - Settlement options under any policy for which benefits are paid under a Instant Access Account are preserved until the entire Instant Access Account is withdrawn or the balance drops below \$10,000.00.
  - If an initial life insurance benefit is less than \$50,000, American General Life will send you a check for the total benefit amount.
  - Any value remaining in your Instant Access Account may be transferred to the appropriate state authority as unclaimed property if no activity occurs in the account within the time period specified by applicable state law.
- If you have questions regarding the Instant Access Account, please call 1-888-562-9158 (M-F) 8 AM - 7 PM Eastern Time or write to Instant Access Account, P.O. Box 534025, Pittsburgh, PA 15253-4025.

## Select one of the following choices:

- ☐ Proceeds left on deposit - the death benefit is left on deposit with us earning interest at a rate we determine. The funds are accessible through an Instant Access Account, as described above.
- ☐ Lump sum payment - the death benefit is paid in a single lump sum settlement; check.
- ☒ EFT Payment - the death benefit is paid in a single lump sum electronic fund transfer. The following is required for completion of the EFT:  
Bank Name: BANK OF AMERICA Account Type: CHECKING  
Routing Number: 121000358 Account Number: 328048902390
- ☐ Payments for a specific period - you will receive equal monthly payments for a specific period you select. The number of payments you wish to receive is: \_\_\_\_\_ (in months)
- ☐ Payments for a specific amount - you will receive equal monthly payments of an amount you selected until the death benefit, and any accrued interest, is paid in full. The amount of each payment you wish to receive is: \$ \_\_\_\_\_
- ☐ Payments for life - you will receive equal monthly payments for your life. Upon your death, payments will cease.
- ☐ Payments for life with a guaranteed period - you will receive equal monthly payments for at least the guaranteed period and payments will continue beyond that period until your death.\*

\*Any amount remaining upon your death would be paid according to the beneficiary designation established for the payments.

If you do not select one of the options above for payment, any proceeds payable will be paid by company check.

Note: The signature on this Claimant's Statement will be used as your signature card for the Instant Access Account, if selected.

Signature

Date: 12-27-17

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**WITHHOLDING ELECTION:**

Please read the Notice of Federal Withholding Election on the bottom of this page prior to completing this section.

I hereby accept full and sole responsibility for payment of federal and state taxes which may be associated with this claim.

Unless you check Option "A" below, "I DO NOT want to have Federal income tax withheld," we are required to withhold at least 10% of the taxable amount.

☐ A. I DO NOT want to have Federal income tax withheld.

☒ B. I DO want to have \_\_\_\_\_ % Federal income tax withheld (10% minimum).\*

Even if you elect not to have Federal income tax withheld, you are liable for payment of Federal income tax on the taxable portion of the distribution. You also may be subject to tax penalties under the estimated tax payment rules if your payments of estimated tax and withholding, if any, are not adequate.

\* Note: If you elect federal withholding, state income tax withholding is mandatory in the following states: CA, DE, GA, IA, KS, ME, MA, MS, NC, OK, OR, VT, and VA. Unless these states' laws require otherwise, or you request a different withholding amount by providing American General Life Insurance Company the applicable state form, we will withhold state income tax based on federal guidelines. In other states with a state income tax, state income tax withholding is voluntary. However, you may be liable for payment of state income tax on the taxable portion of your distribution.

**TAXPAYER IDENTIFICATION NUMBER**

This section must be completed and signed by the Claimant/Beneficiary identified on Page 1 of this form. Failure to do so may delay your request. Please enter your taxpayer identification number in the appropriate box. For individuals and sole proprietors, this is your social security number. For other entities, it is your employer identification number. If you do not have a number, see IRS Publication 505.

Social Security Number

5	7	1	-	1	9	-	9	8	6	1
---	---	---	---	---	---	---	---	---	---	---

OR

Taxpayer Identification Number

		-							
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**IRS Certification:** Under penalties of perjury, I certify that: 1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding (enter exempt payee code\*, if applicable: \_\_\_\_\_), OR (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3. I am a U.S. citizen or other U.S. person\*, and 4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct (enter exemption from FATCA reporting code, if applicable: \_\_\_\_\_). \*\* Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For contributions to an individual retirement arrangement (IRA) and, generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. \*See General Instructions provided on the IRS Form W-9 available from IRS.gov. \*\* If you can complete a Form W-9 and you are a U.S. citizen or U.S. resident alien, FATCA reporting may not apply to you. Please consult your own tax advisors. The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Claimant/Beneficiary Signature

Date 12-27-17

**NOTICE OF FEDERAL WITHHOLDING ELECTION**

The distributions you receive from American General Life Insurance Company are subject to Federal income tax withholding unless you elect not to have withholding apply. Withholding will only apply to the portion of your distribution that is included in your income subject to Federal income tax. Thus, for example, there will be no withholding on the return of your nondeductible contributions to the contract.

You may elect not to have withholding apply to your distribution by marking Option A under the Withholding Election section on Page 2 of this form. If you do not mark Option A, Federal income tax will be withheld from the taxable portion of your distribution.

If you elect not to have withholding apply to your distribution or if you do not have enough Federal income tax withheld from your distribution, you may be responsible for payment of estimated tax. You may incur penalties under the estimated tax rules if your withholding and estimated tax payments are not sufficient.



## APPENDIX "B"

- 1.) AIG's letter dated for Jan. 8, 2018 admission to value of Insurance Policy Value's. (Keyron L. Binns)
- 2.) AIG's letter dated for Feb. 21, 2018 admission that Insurance Policy #5433839134 is not interest bearing policy, and Insurance Application for Policy #5433839134

(\*NOT INFULL)

**EXHIBIT "B"**

**American General Life  
Insurance Company**

A member of American International Group, Inc.(AIG)  
PO Box 305800  
Nashville, TN 37230-5800



January 08, 2018

KEYRON BINNS  
300 PRISON RD  
REPRESA, CA 95671

PAMELA MORRIS  
Claim: 0018000859

We acknowledge the claim on PAMELA MORRIS.

For our further consideration of this claim, we need proof of death for PAMELA MORRIS.  
If the claim is fifty thousand dollars or more, we will need a certified death certificate mailed.

The death certificate we received does not provide the cause of death. We will need an amended death certificate listing the cause of death.

Life Claims - Mail Code 380S  
Phone Number (877)800-2418  
Fax Number (615)749-2257

BPS  
CC: SHARIF GENTRY, KEYRON BINNS



**American General Life  
Insurance Company**

A member of American International Group, Inc. (AIG)  
Life Claims 380S  
P. O. Box 305800  
Nashville, TN 37230-5800



February 21, 2018

KEYRON BINNS#e94600  
PO BOX 950  
FOLSOM, CA 95763

Insured: PAMELA MORRIS  
Claim Number: 0018000859

Dear Mr. Binns,

We acknowledge your request and inquiry received February 16, 2018.

There is only one policy we are aware of at this date, 10/5433839134, and it is on claim number 0018000859. If you would like any policies researched, please advise the policy numbers. We cannot send out copies of policies over ten years old, but enclosed is the copy of the application for you records.

We are no longer requesting the amended death certificate, as we received a short Proof of Death form listing the cause of death as natural and used it to process the claim.

Policy 10/5433839134 is a not an interest bearing policy, and the state regulated interest was calculated from the date of death from the insured to the date of the claim payment.

If you have any questions, please let us know.

Sincerely,

Life Claims  
Phone Number (877) 800-2418  
Fax Number (615) 749-2257



Form 18 Rev. 12-50

# APPENDIX "C"

1.) Federal Withholding Election  
dated for July 3, 2016

(\*NOT IN FULL)

**EXHIBIT "C"**

**American General Life  
Insurance Company**

A member of American International Group, Inc.(AIG)  
PO Box 305059  
Nashville, TN 37230-5059



July 03, 2016

800-888-2452

PAMELA MORRIS  
515 E 36TH ST  
LOS ANGELES CA 90011

Dear Policyholder:

(10) 5433839134 - PAMELA MORRIS

Congratulations! Your American General Life Endowment policy is maturing on Aug. 16, 2016. As a result of the Tax Equity and Fiscal Responsibility Act of 1982, we are required to give you an opportunity to have Federal Income Tax withheld from the taxable portion of this settlement. If an election is not made or if withholding is elected, the company will withhold 10%. Please check the appropriate box, complete the other information requested and return this letter to us at the above address.

**FEDERAL INCOME TAX WITHHOLDING ELECTION**  
**PLEASE MARK ONE.**

- ☐ I elect NOT to have Federal Income Tax withheld from the TAXABLE portion of my distribution check.
- ☐ I elect TO HAVE Federal Income Tax withheld from the TAXABLE portion of my distribution, which will reduce the amount of my distribution check.

Under penalty of perjury, I certify that the information provided below is true, correct and complete.

\_\_\_\_-\_\_\_\_-\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
PAMELA MORRIS  
Sign Above

\_\_\_\_\_  
Date

It has been a privilege to serve your insurance needs. We hope that we may continue to be of service to you and your family in the future.

cc: HO97/0003

SER-274

# APPENDIX "E"

1.) U.S. Court of Appeal for the  
Ninth Circuit Denial of  
Civil Complaint

**EXHIBIT "E"**

**Binns v. Am. Gen. Life**

United States Court of Appeals for the Ninth Circuit

August 10, 2023, Filed

No. 21-16854

**Reporter**

2023 U.S. App. LEXIS 20793 \*

KEYRON LAMONTE BINNS, Plaintiff-Appellant, v.  
AMERICAN GENERAL LIFE AND ACCIDENT  
INSURANCE COMPANY, AIG; CANDY JOHNSON,  
Analyst; SHARITA DOUGLAS-LANE, Analyst;  
ROSALIND BUSH, Analyst; ADRIENE WHITFIELD-  
SWINTON, Senior Analyst; BRIAN DUPERRAULT,  
President & CEO; MARIA DAY, Senior Executive  
Assistant, Defendants-Appellees.

**Notice:** Decision text below is the first available text from the court; it has not been editorially reviewed by LexisNexis. Publisher's editorial review, including Headnotes, Case Summary, Shepard's analysis or any amendments will be added in accordance with LexisNexis editorial guidelines.

**Core Terms**

subject matter jurisdiction, breach of contract, district court, fraud claim, asserting

**Opinion**

[\*1] Appeal from the United States District Court for the Eastern District of California

Troy L. Nunley, District Judge, Presiding

Submitted August 10, 2023\*\*

San Francisco, California

\*This disposition is not appropriate for publication and is

not precedent except as provided by Ninth Circuit Rule 36-3.

\*\*The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*.

Before: WALLACE, O'SCANNLAIN, and FERNANDEZ, Circuit Judges.

Plaintiff Keyron Binns appeals pro se from the district court's dismissal of

his action for lack of subject matter jurisdiction. We review the dismissal de novo.

*Robinson v. United States*, 586 F.3d 683, 685 (9th Cir. 2009). We affirm.

Binns brought breach of contract and fraud claims, asserting 42 U.S.C.

§ 1983 as a basis for subject matter jurisdiction. He did not allege his civil rights

were violated and never argued that he made § 1983 claims. *Cf. Easton v.*

*Crossland Mortg. Corp.*, 114 F.3d 979, 982 (9th Cir. 1997) (per curiam). His

citation to § 1983 did not transform his state law claims into federal claims. *See*

*Franklin v. Oregon*, 662 F.2d 1337, 1343-44 (9th Cir. 1981). Because his claims

did not arise under the United States Constitution or the laws of the United States,

there was no federal question jurisdiction. *See Steel Co.*

*v. Citizens for a Better*

Env't, 523 U.S. 83, 89, 118 S. Ct. 1003, 1010, 140 L. Ed. 2d 210 (1998); see also

Scott v. Pasadena Unified Sch. Dist., 306 F.3d 646, 664 (9th Cir. 2002); cf. Gilder

v. PGA Tour, Inc., 936 F.2d 417, 421 (9th Cir. 1991).

Binns failed to establish diversity jurisdiction because it is legally certain

[\*2] that his claims could not reach the requisite amount in controversy (\$75,000). See

28 U.S.C. § 1332(a)(1); Pachinger v. MGM Grand Hotel-Las Vegas, Inc., 802 F.2d

362, 363-64 (9th Cir. 1986); see also St. Paul Mercury Indem. Co. v. Red Cab Co.,

2 21-16854

303 U.S. 283, 288-89, 58 S. Ct. 586, 590, 82 L. Ed. 845 (1938). The maximum

insurance benefit of \$1,000 was clear on the face of the documents that Binns

attached to his complaint, and his assertions to the contrary are plainly frivolous.

Because the insurance policy limited recovery, dismissal on amount in controversy

grounds was appropriate. See Naffe v. Frey, 789 F.3d 1030, 1040 (9th Cir. 2015);

Pachinger, 802 F.2d at 364. Because there was no federal subject matter

jurisdiction, the district court did not retain supplemental jurisdiction over Binns's

breach of contract and fraud claims. See Scott, 306 F.3d at 664.

**AFFIRMED.** All pending motions are **DENIED.**

3 21-16854

## APPENDIX "F"

1.) U.S. Court of Appeals for the  
Ninth Circuit Court Denial  
of Civil Complaint Request  
En Banc & Rehearing

**EXHIBIT "F"**

21-16854

Keyron Lamonte Binns, #E-94600  
FSP - FOLSOM STATE PRISON  
P.O. Box 950  
Folsom, CA 95763

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UNITED STATES COURT OF APPEALS

OCT 23 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

KEYRON LAMONTE BINNS,

Plaintiff-Appellant,

v.

AMERICAN GENERAL LIFE AND  
ACCIDENT INSURANCE COMPANY,  
AIG; CANDY JOHNSON, Analyst;  
SHARITA DOUGLAS-LANE, Analyst;  
ROSALIND BUSH, Analyst; ADRIENE  
WHITFIELD-SWINTON, Senior Analyst;  
BRIAN DUPERREAULT, President &  
CEO; MARIA DAY, Senior Executive  
Assistant,

Defendants-Appellees.

No. 21-16854

D.C. No.

2:20-cv-01120-TLN-KJN

Eastern District of California,  
Sacramento

ORDER DENYING PETITION  
FOR REHEARING AND  
PETITION FOR REHEARING  
EN BANC

Before: WALLACE, O'SCANNLAIN, and FERNANDEZ, Circuit Judges.

The panel has unanimously voted to deny Appellant's petition for rehearing. The petition for rehearing en banc was circulated to the judges of the court, and no judge requested a vote for en banc consideration.

The petition for rehearing and the petition for rehearing en banc are  
DENIED.

# APPENDIX "G"

1.) U.S. District Court (Eastern)  
Magistrate Judge Kendall  
J. Newman Report & Recommendation

**EXHIBIT "G"**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEYRON LAMONTE BINNS,

Plaintiff,

v.

AMERICAN GENERAL LIFE AND  
ACCIDENT INSURANCE CO., et al.,

Defendants.

No. 2:20-cv-1120-TLN-KJN PS

FINDINGS AND RECOMMENDATIONS  
ANCILLARY ORDER

(ECF Nos. 17, 29, 41.)

Plaintiff, an incarcerated person proceeding without counsel, brings this action for breach of contract, fraud, and civil rights violations against defendant American General Life & Accident Insurance Co. ("AGL") and several named and unnamed employees thereof.<sup>1</sup> (ECF No. 12.)

Plaintiff also requests joinder of an involuntary plaintiff and judicial notice. (ECF Nos. 17, 41.)

AGL and defendant Duperreault waived service and filed the instant motion to dismiss. They raise a factual attack on the amount in controversy for purposes of subject matter jurisdiction, and assert the complaint fails to state a claim for breach of contract against AGL or any of its employees, fails to provide plausible facts to support his fraud claims under heightened pleading standards, and fails to establish personal jurisdiction over Duperreault. (ECF No. 29.)

For the reasons set forth below, the undersigned recommends plaintiff's claims be

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<sup>1</sup> This case proceeds before the undersigned by 28 U.S.C. § 636(b)(1), Federal Rule of Civil Procedure 72, and Local Rule 302(c)(21). See Local Rule 304.

1 dismissed and this case be closed.

2 **Background**

3 Plaintiff alleges that in 1954, his grandmother Elizabeth Daw purchased a life insurance  
4 policy (the "Policy") on the life of her daughter, Pamela Alice Morris, Binns's mother. Daw  
5 tendered a one-time payment at the Policy's inception, plus a premium on the Policy for the next  
6 twenty years. Daw passed in 1984. The Policy matured in 2016, and Morris passed in 2017.  
7 Thereafter, Binns and his brother Sharif Ali Gentry discovered Policy papers in Morris's  
8 belongings, then reached out to defendant AGL. AGL required a change of beneficiary form, and  
9 Gentry completed this so that he and Binns would be the Policy's beneficiaries.

10 On January 8, 2018, AGL informed Binns that it "acknowledge[d] the claim on Pamela  
11 Morris," but informed him that the company needed proof of Morris's death. Thereafter, AGL  
12 tendered payment of \$500.60 each to Binns and Gentry. Binns did not cash the check, but instead  
13 questioned the amount based on the Policy documents in his possession. On April 2, 2018, AGL  
14 informed Binns that it no longer needed the proof of death, cancelled the first check, and tendered  
15 payment to Binns and Gentry each for \$501.84. Binns did not cash this check either, but  
16 throughout 2018 continued to press his concerns with AGL over the Policy's terms. Binns  
17 believed that in 1955, his grandmother paid a \$220 up-front payment on the Policy, plus a weekly  
18 premium of \$55 over twenty years, for a Policy with 3% interest accruing. AGL's position was  
19 that Daw paid \$28.60 per year, or \$0.55 per week, from 1954-74, for a \$1,000 benefit with no  
20 accrued interest. Binns filed complaints with the state and Better Business Bureau, but no action  
21 was taken.

22 In June of 2020, Binns filed a complaint in this court against AGL, its President and CEO  
23 Brian Duperreault, five other named employees, and multiple Doe employees of AGL. (ECF No.  
24 1.) The currently-operative first amended complaint ("1AC") asserts claims for fraud, breach of  
25 contract, and Section 1983 liability. (ECF No. 12-1.) Binns claims Daw paid premiums of  
26 \$57,200, and AGL owes a total of \$838,085.04 in benefits and interest over 63 years plus \$150  
27 million in punitive damages. (ECF No. 12-1 at 16-17.) Included in plaintiff's original complaint  
28 (ECF No. 1) are communications between Binns and AGL—including documents for the Policy

(pp. 47-77), and (inexplicably) multiple of Binns's mental-health records (pp. 78-92).

**Legal Standards**

"When a defendant moves to dismiss a complaint or claim for lack of subject matter jurisdiction, the plaintiff bears the burden of proving that the court has jurisdiction to decide the claim." Cannon v. Harco Nat'l Ins. Co., 2009 WL 10725673, at \*2 (S.D. Cal. July 16, 2009) (citing Thornhill Publ'n Co. v. Gen. Tel. & Elecs. Corp., 594 F.2d 730, 733 (9th Cir. 1979)). A motion to dismiss for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1) "may be facial or factual." Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). "[I]n a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." Id. Courts may consider extrinsic evidence, including "affidavits and testimony, to resolve factual disputes concerning the existence of jurisdiction." McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988).

To establish federal subject matter jurisdiction under diversity rules, the proponent must allege (1) the parties are completely diverse, and (2) the amount in controversy exceeds \$75,000. See 28 U.S.C. § 1332(a)(1); McNutt v. Gen. Motors Acceptance Corp. of Ind., 298 U.S. 178, 189, (1936). To determine whether Section 1332(a)'s amount in controversy requirement is met, the court utilizes the "legal certainty" test. See Pachinger v. MGM Grand Hotel-Las Vegas, Inc., 802 F.2d 362, 363-64 (9th Cir. 1986). Under this test, "the sum claimed by the plaintiff controls if the claim is apparently made in good faith. It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal." St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288-89 (1938). The Ninth Circuit recognizes three situations that clearly meet the legal certainty standard: 1) when the terms of a contract limit the plaintiff's possible recovery; 2) when a specific rule of law or measure of damages limits the amount of damages recoverable; and 3) when independent facts show that the amount of damages was claimed merely to obtain federal court jurisdiction. Naffe v. Frey, 789 F.3d 1030, 1040 (9th Cir. 2015) (quoting Pachinger, 802 F.2d at 364). Simply, a court "must not blindly accept conclusory jurisdictional allegations." Smith v. Kraft Foods, Inc., 2008 WL 11337485, at \*2 (S.D. Cal. Sept. 12, 2008).

1            Analysis

2            Plaintiff's complaint states that he and his brother-in-law Gentry are the beneficiaries of  
 3            an insurance policy currently held by defendant AGL, purchased by his late grandmother, Daw,  
 4            on the life of his mother, Morris. (ECF No. 12.) Plaintiff's first amended complaint claims  
 5            compensatory damages of \$838,000, which allegedly includes a "net single premium of "\$57,200,  
 6            non-forfeiture benefits of "at least \$20,267.66, and interest of approximately \$830,000; plaintiff  
 7            also seeks \$150 million in punitive damages. (*Id.* at 39-41.) Facially, the complaint satisfied the  
 8            amount-in-controversy, and so the undersigned ordered it be served. (ECF No. 14.) Defendants,  
 9            however, raise a factual challenge to plaintiff's assertions of jurisdiction, arguing plaintiff cannot  
 10           claim in good faith his entitlement to these damages. To settle this matter, the court turns to the  
 11           extrinsic evidence submitted by both Binns and AGL. *McCarthy*, 850 F.2d at 560.

12           As denoted on Binns's copy of the Policy, submitted alongside his original complaint, the  
 13           "maximum amount of insurance" is \$1,000. (See ECF No. 1 at 56 (schedule from Nation Life  
 14           and Accident Insurance Co., the policy's originator, issued 8/16/1954, and stating "for ages [] 2  
 15           and over the maximum amount is in effect from date of issue [of Policy]"); see also *id.* at 50  
 16           (Daw's application for insurance, denoting policy amount and Morris's DOB at 9/15/1951).)  
 17           Thus, the contract amount is well below the \$75,000 threshold. *Naffe*, 789 F.3d at 1040 (legal  
 18           certainty test not used when the terms of a contract limit the plaintiff's possible recovery). This  
 19           information comports with the Policy documents submitted by AGL. (See ECF No. 29-8 and -  
 20           10.)

21           Plaintiff's arguments in his complaint and moving papers are either directly contradicted  
 22           by the plain language in the documents he submitted or are simply frivolous, such that it is clear  
 23           plaintiff is not acting in good faith, but instead has so alleged "merely to obtain federal court  
 24           jurisdiction." *Naffe* 789 F.3d at 1040; (*cf., e.g.*, ECF No. 12 at 9 (allegations regarding  
 25           nonforfeiture benefits and interest calculations); *with* ECF No. 1 at 54 (denoting limited  
 26           circumstances where nonforfeiture benefits would accrue after lapse in payment by insured) and  
 27           ECF No. 12 at 8 (alleging Day paid the premiums in full as of July 30, 1974).) To the extent  
 28           plaintiff challenges the authenticity of any documents, he fails to meet his burden of proof to

show other documents or plausible allegations factually support his assertion of damages for purposes of the amount-in-controversy requirement. Thornhill, 594 F.2d at 733; (cf., e.g., ECF No. 12 at 8 (asserting Daw paid \$220 up front plus \$55 per week—starting in 1954—on the Policy); with, e.g., ECF No. 1 at 60-77 (scans of Daw’s premium receipt book, wherein all weekly premium amounts demonstrate a payment of \$0.55).) Further, even assuming the availability of punitive damages (see, e.g., Mock v. Mich. Millers Mut. Ins. Co., 5 Cal. Rptr. 2d 594, 606 (Cal. App. 1992) (allowing for punitive damages in bad-faith insurance claim with clear and convincing evidence of malice, oppression or fraud)), they would be latched to the \$1,000 in compensatory damages allowed under the Policy. As the Supreme Court has noted, there are constitutional limitations on the amount of punitive damages awardable in relation to the available compensatory damages, meaning any potential punitive damages would still fail to bring plaintiff’s damages over the \$75,000 threshold. State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 416 (2003) (noting that, “in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.”). For these reasons, the court finds defendants’ factual attack on the amount-in-controversy requirement well taken, and finds plaintiff fails to maintain an action that satisfies the \$75,000 requirement for diversity jurisdiction.<sup>2</sup>

Further, the court notes plaintiff’s first amended complaint also attempts to assert claims against defendants—a private insurance company and employees thereof—under 42 U.S.C. Section 1983. (ECF No. 12 at 5.) This attempt despite the court’s explicit prior admonishments. (ECF Nos. 7, 14.) Section 1983 claims are generally inapplicable to private defendants because they do not act “under color of state law.” Rabieh v. Paragon Sys. Inc., 316 F. Supp. 3d 1103,

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<sup>2</sup> Defendants also raise defenses under Rules 12(b)(2) for lack of personal jurisdiction over defendant Duperreault, and failure to state a claim on the breach of contract and fraud claims under Rule 12(b)(6). However, where a court lacks subject matter jurisdiction over a claim, it has no power to rule on the issues in the complaint. See Steinaker v. Sw. Airlines, Co., 472 F. Supp. 3d 540, 546 (D. Ariz. 2020) (“Allegations raised under FRCP 12(b)(1) should be addressed before other reasons for dismissal because if the complaint is dismissed for lack of subject matter jurisdiction, other defenses raised become moot.”). Thus, the undersigned refrains from explicitly ruling on defendants’ other arguments—even though they are well-taken and would provide alternative bases for dismissal.

1 1109 (N.D. Cal. 2018) (“It is generally presumed that private individuals and entities do not act  
2 ‘under color of state law’ within the meaning of § 1983.”) For clarity, the court now recommends  
3 any such claims should be dismissed for failure to state a claim, and any such supplemental  
4 jurisdiction on the state-law claims attached thereto be declined. See 28 U.S.C. § 1367.

5 Because of this recommendation, the court also recommends plaintiff’s motion for joinder  
6 (ECF No. 17) be denied as moot, and recommends denying the request for judicial notice (ECF  
7 No. 41) as the documents are irrelevant to the undersigned’s findings.

8 **RECOMMENDATIONS and ORDER**

9 Accordingly, IT IS HEREBY RECOMMENDED that:

- 10 1. Defendants’ motion to dismiss (ECF No. 29) be GRANTED;
- 11 2. Plaintiff’s Section 1983 claims be DISMISSED WITH PREJUDICE, and his state law  
12 claims be DISMISSED for lack of subject matter jurisdiction and supplemental  
13 jurisdiction otherwise be DECLINED;
- 14 3. Plaintiff’s request for joinder (ECF No. 17) and request for judicial notice (ECF No.  
15 41) be DENIED as moot; and
- 16 4. The Clerk of Court be directed to CLOSE this case.

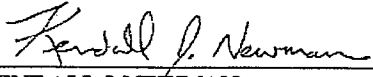
17 In light of these recommendations, the court also ORDERS that all pleading, discovery,  
18 and motion practice in this action are STAYED pending resolution of these findings and  
19 recommendations. Other than objections to the findings and recommendations or non-frivolous  
20 motions for emergency relief, the court will not entertain or respond to any pleadings or motions  
21 until the findings and recommendations are resolved.

22 These findings and recommendations are submitted to the United States District Judge  
23 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
24 days after being served with these findings and recommendations, any party may file written  
25 objections with the court and serve a copy on all parties. Such a document should be captioned  
26 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
27 shall be served on all parties and filed with the court within fourteen (14) days after service of the  
28 objections. The parties are advised that failure to file objections within the specified time may



1 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th  
2 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

3 Dated: July 14, 2021

4   
5 KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

6 binn.112

## APPENDIX "H"

- 1.) AIG's (Defendant's) letter/Motion Insurance Policy 5433839134 is unambiguous, Motion request dismissal.

**EXHIBIT "H"**

1 Jodi K. Swick No. 228634  
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2 **McDOWELL HETHERINGTON LLP**  
1 Kaiser Plaza, Suite 340  
3 Oakland, CA 94612  
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6 Attorneys for Defendants  
BRIAN DUPERREAULT and  
7 AMERICAN GENERAL LIFE INSURANCE COMPANY

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 KEYRON LAMONTE BINNS (PLT. #1) &  
12 SHARIF ALI GENTRY (PLT. #2),

13 Plaintiff,

14 v.

15 AMERICAN GENERAL LIFE & ACCIDENT  
INSURANCE COMPANY (AIG), et al.;  
16 ANALYST CANDY JOHNSON; ANALYST  
SHARITA DOUGLAS-LANE; ANALYST  
17 ROSALIND BUSH; ADRIENE WHITFIELD-  
SWINTON; BRIAN DUPERREAULT;  
18 MARIA DAY, and JANE & JOHN DOE (8-  
11),

19 Defendants.  
20

Case No: 2:20-cv-1120-TLN-KJN (PS)

**DEFENDANTS BRIAN DUPERREAULT  
AND AMERICAN GENERAL LIFE  
INSURANCE COMPANY'S REPLY TO  
PLAINTIFF'S OBJECTIONS TO  
MAGISTRATE JUDGE'S FINDINGS  
AND RECOMMENDATIONS**

Date/Time/Location: L.R. 230(1)

21  
22 **I. ARGUMENT**

23 Defendants Brian Duperreault and American General Life Insurance Company  
24 (collectively "Defendants") file this Reply to Plaintiff's Objections to the Honorable Magistrate  
25 Judge Newman's Findings and Recommendations in order to underscore that the recommended  
26 dismissal should be with prejudice as to all claims asserted in Plaintiff's First Amended  
27 Complaint ("FAC"). Like ships passing in the night, Plaintiff's filings have failed to squarely  
28 address the fundamental flaws in his arguments as identified by Defendants and Magistrate Judge

1 Newman. It is therefore appropriate, and within the Court's discretion, to dispose of Plaintiff's  
 2 state law claims with prejudice and relieve Defendants of the burden and expense of responding  
 3 to these meritless claims yet again.

4 A court may resolve contractual claims on a motion to dismiss if the terms of the contract  
 5 are unambiguous. *Ellsworth v. U.S. Bank, N.A.*, 908 F. Supp. 2d 1063, 1084 (N.D. Cal. 2012);  
 6 citing *Bedrosian v. Tenet Healthcare Corp.*, 208 F.3d 220 (9th Cir.2000). Here, Magistrate  
 7 Judge Newman applied the "legal certainty test" for federal subject matter jurisdiction and found  
 8 that the terms of the insurance contract expressly limit Plaintiff's possible recovery to the  
 9 "maximum amount of insurance" denoted on the face of Plaintiff's copy of the policy, which is  
 10 \$1,000.00 (or, at most, something closely tethered thereto). Dkt. 42 at 4. In fact, as Magistrate  
 11 Judge Newman also recognized and as Plaintiff admits, Plaintiff and his brother were actually  
 12 paid this money, further limiting their potential recovery. *Id.* at 2. All of these facts are evident  
 13 from the FAC itself and the unambiguous terms denoted on the face of the insurance policy.


14 Leave to amend is ordinarily granted "unless [the Court] determines that the pleading  
 15 could not possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122,  
 16 1127 (9th Cir.2000) (quoting *Cook, Perkiss and Liehe, Inc. v. Northern California Collection*  
 17 *Serv., Inc.*, 911 F.2d 242, 247 (9th Cir.1990)). Factors that weigh against leave to amend include  
 18 "bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by  
 19 amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of  
 20 the amendment, [and] futility of amendment[.]" *Eminence Capital, LLC v. Aspeon, Inc.*, 316  
 21 F.3d 1048, 1052 (9th Cir.2003) (per curiam) (quoting *Foman v. Davis*, 371 U.S. 178, 83 S.Ct.  
 22 227, 9 L.Ed.2d 222 (1962)).

23 All of these factors are present here. Plaintiff's attempt to contort clear policy terms and  
 24 irrelevant formulae into bases for exponential growth are properly viewed as a bad faith attempt  
 25 to secure federal jurisdiction. Plaintiff made no attempt to address Magistrate Judge Newman's  
 26 earlier order regarding his misguided Section 1983 claims. *See* Dkt. 42 at 5-6 (recommending  
 27 such claims be dismissed with prejudice). While it is true that Plaintiff has not yet violated  
 28 judicial admonishment regarding his state law claims, as he has with the Section 1983 claims, it

1 is abundantly clear that no additional facts could be alleged to salvage the state law claims.  
2 Permitting amendment would therefore be futile and would only serve to prejudice Defendants.  
3 This Court has within its discretion the ability to prevent such waste, and Defendants therefore  
4 respectfully urge that the FAC be dismissed with prejudice in its entirety.  
5

6 Dated: August 26, 2021

McDOWELL HETHERINGTON LLP

9  
10 By: 

11 Jodi K. Swick  
12 John T. Burnite

13 Attorneys for Defendants  
14 BRIAN DUPERRAULT and  
15 AMERICAN GENERAL LIFE INSURANCE  
16 COMPANY  
17  
18  
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**CERTIFICATE OF SERVICE**

*Binns, et al. v. American General Insurance Company, et al.*  
U.S. District Court, Eastern District of California, Case No2:20-cv-1120-TLN-KJN (PS)

At the time of service I was over 18 years of age and not a party to this action. I am employed by McDOWELL HETHERINGTON LLP. My business address is 1 Kaiser Plaza, Suite 340, Oakland, CA 94612. My business telephone number is (510) 628.2145; my business fax number is (510) 628.2146. On August 26, 2021, I served the following document(s):

**DEFENDANTS BRIAN DUPERREAU AND AMERICAN GENERAL LIFE  
INSURANCE COMPANY'S REPLY TO PLAINTIFF'S OBJECTIONS TO  
MAGISTRATE JUDGE'S FINDINGS AND RECOMMENDATIONS**

on the person(s) listed below, through their respective attorneys of record in this action, by placing true copies thereof in sealed envelopes or packages addressed as shown below by the following means of service:

Keyron Lamonte Binns CDCR #E94600 Folsom State Prison 1-A1-20U P.O. Box 950 Folsom, CA 95763	Plaintiff
Sharif Ali Gentry 13507 Mistle Toe Avenue Chino CA 91710	Plaintiff

**Via Mail**

☒ By enclosing a true and correct copy thereof in a sealed envelope and, following ordinary business practices, said envelope was placed for mailing and collection in the offices of McDowell Hetherington LLP in the appropriate place for mail collected for deposit with the United States Postal Service. I am readily familiar with the Firm's practice for collection and processing of correspondence/documents for mailing with the United States Postal Service and that said correspondence/documents are deposited with the United States Postal Service in the ordinary course of business on this same day.

I declare that I am employed in the office of the member of the bar of this court at whose direction the service was made.

EXECUTED on August 26, 2021, at Oakland, California.



Wilma Cabrera