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6 Cari-Anne Pitman Rodriguez, Administratrix
of the Estate of Dana F. Pitman
7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11
12 CARI-ANNE PITMAN RODRIGUEZ,)
Administratrix of the ESTATE OF)
13 DANA F. PITMAN,)
14 Plaintiff,)
15 v.)
16 ATG, INC., a Corporation, RELIANCE)
STANDARD LIFE INSURANCE)
17 COMPANY, a Corporation, and)
DOES 1 through 25,)
18)
19 Defendants.)

Case No. C 03-04189 CRB
SECOND AMENDED COMPLAINT
FOR BREACH OF FIDUCIARY
DUTIES AND VIOLATIONS OF THE
EMPLOYEE RETIREMENT INCOME
SECURITY ACT OF 1974, 29 USC
§§ 1001, ET SEQ.

20
21 Plaintiff, Cari-Anne Pitman Rodriguez, as Administratrix of the Estate of Dana F. Pitman
22 (“Pitman”), alleges as follows:
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24
25

GENERAL ALLEGATIONS

1
2 1. Cari-Anne Pitman Rodriguez (nee Cari-Anne Pitman) has been appointed
3 Administratrix of the Estate of Dana F. Pitman, deceased. As a result of this appointment,
4 Plaintiff has the legal right and full power to bring each of the claims alleged herein.

5 2. Defendant ATG, Inc. (“ATG”) is a corporation organized and
6 existing under the laws of the State of California, with its principal place of business in Fremont,
7 California.

8 3. Defendant Reliance Standard Life Insurance Company (“Reliance”) is a
9 corporation organized and existing under the laws of the State of Illinois, and is licensed to do
10 business, and is doing business, in the State of California.

11 4. Plaintiff is ignorant of the true names and capacities of the defendants designated
12 as Does 1 to 25, and has therefore sued them by such fictitious names. Upon discovery of their
13 true names and capacities, Plaintiff will seek leave to amend this Complaint to show their true
14 names and capacities.

15 5. Plaintiff is informed and believes, and on that basis alleges, that at all relevant
16 times, each of the defendants was the agent, servant and/or employee of the remaining
17 defendants and in doing the things herein alleged was acting within the course and scope of such
18 agency, service and/or employment and with the consent and permission of the remaining
19 defendants.

20 6. Plaintiff is informed and believes, and on that basis alleges, that each of the
21 defendants designated as Does 1 to 25 was responsible in some manner for the claims set forth
22 herein. Wherever in this Complaint any defendant is the subject of a charging allegation, Does 1
23 to 25 are likewise the subject of that charging allegation.

1 7. This court is the proper court for this action because: (a) the contract alleged
2 herein was entered into in this county; (b) the contract was to be performed in this county; and
3 (c) defendant ATG is a corporation and its principle place of business in in this county.

4 8. On or about May 17, 2000, ATG, by and through Benjamin Sklar, its Vice
5 President-Nuclear Services/Human Resources, gave a written offer of employment to Pitman. In
6 that offer, ATG promised Pitman that, in accordance with ATG’s policy, upon completion of a
7 90 day probation period Pitman would be eligible for the benefits provided by ATG to its
8 employees, including a life insurance policy

9 9. On or about May 17, 2000, in connection with the offer of employment, ATG
10 gave Pitman a copy of a Benefit Summary describing the promised life insurance benefit. On or
11 about May 25, 2000, ATG gave Pitman a copy of ATG’s Employment Policy. The Benefit
12 Summary states that the life insurance benefit would be a minimum of \$50,000. The
13 Employment Policy states that after completion of the 90 day trial period eligible employees will
14 receive the benefits described.

15 10. In reliance upon these representations and promises, Pitman accepted ATG’s offer
16 of employment, and signed a copy of the written offer of employment acknowledging receipt and
17 acceptance of the offer.

18 11. The Benefit Summary that was provided to Pitman stated that “Complete
19 coverage information will be distributed in the form of booklets by Reliance Standard Life.” In
20 fact, there were no such booklets, and Reliance never distributed such a booklet to Pitman.

21 12. Pitman commenced his employment with ATG on June 1, 2000, and successfully
22 completed the 90 day probation period on August 29, 2000. Pitman worked at ATG on August
23 30, 2000. On August 31, 2000, the ninety-second day of his employment, Pitman died.

1 13. Between the time of his employment and the time of his death, neither Reliance
2 nor ATG provided Pitman with any additional documents or information relating to the life
3 insurance he had been promised, or to his eligibility for that life insurance. He was given no
4 information that contradicted the statements in his written offer of employment, the Benefit
5 Summary and the Employment Policy that he would received a life insurance policy in a
6 minimum amount of \$50,000 when he completed his ninetieth day of employment.

7 14. In connection with investigating Pitman’s life insurance benefit, Plaintiff asked
8 ATG to send her any materials given to Pitman describing the eligibility requirements for the life
9 insurance, or describing when the life insurance would be effective. The only materials sent in
10 response to that request were the written offer of employment and a copy of the Employment
11 Policy that omitted several key pages.

12 15. Shortly after Pitman’s death, ATG, through April Narramore of ATG’s Human
13 Resources Department, prepared a “Proof of Loss Claim Statement Group Life/Accidental Death
14 Insurance” (the “Claim Statement”) for submission to Reliance to claim the proceeds of the life
15 insurance Pitman had been promised. In preparing the Claim Statement, Ms. Narramore made
16 numerous erroneous factual statements, and repeatedly ignored and disregarded Plaintiff’s
17 specific instructions to correct those errors, despite telling Plaintiff that she would correct them.
18 The Claim Statement was submitted to Reliance on or about November 3, 2000

19 16. On November 17, 2000, Reliance denied the claim for Pitman’s life insurance
20 benefit. Reliance stated that the claim was denied because, notwithstanding the fact that Pitman
21 was a “member of the Eligible Class,” he was not a member of the Eligible Class for “this
22 insurance,” and stated that, under the Group Life Insurance Policy issued by Reliance (“the
23 Policy”), Pitman’s life insurance was not scheduled to become effective until the day after he
24 died, which would have been the ninety-third day of his employment.
25

1 17. Neither Reliance nor ATG ever informed Pitman that, although he would be
2 eligible for all other benefits when he completed his ninetieth day of his employment, he would
3 not be eligible for the life insurance benefit until the ninety-third day of his employment. Neither
4 Reliance nor ATG ever provided a copy of the Policy to Pitman.

5 18. On January 19, 2001, Plaintiff sent Reliance a written request for a review of the
6 denial of the claim. On March 30, 2001, Reliance affirmed its denial, even though it
7 acknowledged that it had no reason to believe that Pitman did not satisfy the 90 day waiting
8 period.

9
10 **FIRST CLAIM**

11 (For Breach of Fiduciary Duties)

12 19. Paragraphs 1 through 18 are incorporated in this claim.

13 20. Commencing on June 1, 2000, and continuing until his death on August 31, 2000,
14 Pitman was a participant of an employee benefit plan (the “Plan”) within the meaning of the
15 Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, et seq. (“Erisa”).
16 Plaintiff, as Administratrix of Pitman’s Estate, at all times since the estate came into existence
17 has been both a participant and a beneficiary of the Plan within the meaning of Erisa.

18 21. At all relevant times Defendants were the administrators of the Plan within the
19 meaning of ERISA.

20 22. At all relevant times Defendants were fiduciaries of the Plan within the meaning
21 of Erisa.

22 23. From June 1, 2000, until he died on August 31, 2000, Pitman was entitled to
23 rights and benefits under the Plan. At all relevant times since Pitman’s death Plaintiff was and is
24 entitled to rights and benefits under the Plan.
25

1 24. The Policy contains a specific provision stating that the Policy is governed by the
2 laws of the State of California. Under California law Pitman was insured under the Policy
3 commencing on August 30, 2000.

4 25. At all relevant times, Defendants had fiduciary duties which required them to act
5 solely in the interests of the Plan’s participants and beneficiaries, and for the exclusive purpose
6 of of providing benefits to the Plan’s participants and beneficiaries, including Pitman and
7 Plaintiff.

8 26. Defendants breached these fiduciary duties:

9 A. By intentionally failing to provide complete and truthful information to
10 Pitman and to Plaintiff, including, *inter alia*, failing to furnish a summary plan description to
11 Pitman or to Plaintiff, as required by 29 U.S.C §§ 1021, 1022 and 1024, and failing to provide
12 the certificate required by Insurance Code §§ 10209 and 10209.1.

13 B. By providing a life insurance policy under the Plan that contained
14 ambiguous terms, and attempting to exploit the ambiguities by purporting to deny coverage;

15 C. By denying Plaintiff’s claim for the Policy benefits on spurious grounds
16 that Reliance knew were untrue, including the following statements that were made by Reliance
17 in its letter denying the life insurance benefit:

18 (1) Reliance’s false statement that Plaintiff had not provided any proof
19 that ATG had promised Pitman that he would be eligible for the life insurance when he
20 completed his 90 day probation period;

21 (2) Reliance’s false statement that, even if ATG had made such a
22 promise, ATG did not have the right to change the policy without the consent and approval of
23 Reliance.

1 D. By failing to pay the benefits due to Plaintiff under the Policy.

2 27. The information that Defendants failed to provide was material, and they knew or
3 should have known that Pitman and Plaintiff had not received that information. Plaintiff and
4 Pitman needed to know that information for their protection.

5 28. As a proximate result of Defendants' breaches of fiduciary duties, Plaintiff has
6 been injured and is entitled to the relief prayed for below.

7
8 **SECOND CLAIM**

9
10 (For Failure to Furnish a Summary Plan Description)

11 29. Paragraphs 1 through 28 are incorporated in this claim.

12 30. As the administrators of the Plan, Defendants were and are required under 29
13 U.S.C. §§ 1021 and 1024 to furnish to each participant and each beneficiary the summary plan
14 description described in 29 U.S.C. § 1022.

15 31. Pitman became a participant on June 1, 2000. Therefore, under 29 U.S.C. § 1024,
16 Defendants were required to furnish a summary plan description to Pitman by no later than
17 August 29, 2000. Defendants never furnished a copy of the required summary plan description to
18 Pitman.

19 32. On February 1, 2001, Plaintiff sent a written request to both Reliance and ATG
20 asking for a copy of the summary plan description. Defendants ignored that request, and have
21 failed and refused to furnish a copy of the required summary plan description to Plaintiff.

22 33. As a result of Defendants' failures and refusals, Plaintiff has been injured and is
23 entitled to the relief prayed for below.

1 **THIRD CLAIM**

2 (For Failure to Pay Benefits Due Under an an Employee Benefit Plan
3 and Failure to Comply with the Terms of an Employee Benefit Plan)

4 34. Paragraphs 1 through 33 are incorporated in this claim.

5 35. Reliance has failed and refused to pay Plaintiff the benefits due under the Policy,
6 and has failed and refused to comply with the terms of the Plan.

7 36. Plaintiff has exhausted all of her administrative remedies.

8 37. As a result of Reliance's failures and refusals, Plaintiff has been injured and is
9 entitled to the relief prayed for below.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays the Court for the following relief:

12 A. On the First Claim: Order Defendants to place Plaintiff in the position she would
13 have occupied if the fiduciary breaches had not occurred;

14 B. On the Second Claim: Pursuant to 29 U.S.C. § 1132(c)(1)(B), order Defendants
15 to pay Plaintiff one hundred dollars (\$100) per day, from August 29, 2000 until such date as the
16 summary plan description required by 29 U.S.C. §§ 1021, 1022 and 1024 is furnished to
17 Plaintiff;

18 C. On the Third Claim: Award Plaintiff the benefits due under the employee benefit
19 plan;

20 D. On all Claims:
21 1. Pursuant to 29 U.S.C. § 1132(g)(1) award Plaintiff reasonable attorney's
22 fees;
23 2. Award Plaintiff prejudgment interest on the amounts awarded, from
24 August 31, 2000 until paid;
25

3. Award Plaintiff the costs she incurred in prosecuting this action;
4. Award Plaintiff such other legal or equitable relief as the court deems

appropriate.

Dated:

CHILVERS & TAYLOR PC

By: _____
Robert M. Chilvers

Attorneys for Plaintiff Cari-Anne Pitman
Rodriguez, Administratrix of the Estate of
Dana F. Pitman