CAUSE NO. 352-265287-13

TODD MCCLAIN, Individually and f/b/o and in his capacity as owner and beneficiary of the Todd McClain Self-Directed IRA; KIRK KOHLER, Individually and f/b/o and in his capacity as owner and beneficiary of the Kirk Kohler Self-Directed IRA; JANET KOHLER, Individually and f/b/o and in her capacity as owner and beneficiary of the Janet Kohler Self-Directed IRA, *Plaintiffs,*	§	IN THE DISTRICT COURT
v.	§	352 JUDICIAL DISTRICT
LIFE PARTNERS, INC., LIFE PARTNERS HOLDINGS, INC., BRIAN D. PARDO, and R. SCOTT PEDEN, *Defendants.*	§	TARRANT COUNTY, TEXAS

FILED
TARRANT COUNTY
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THOMAS A. WILDER
DISTRICT CLERK

PLAINTIFFS' ORIGINAL PETITION

COME NOW PLAINTIFFS TODD MCCLAIN, Individually and f/b/o and in his capacity as owner and beneficiary of the Todd McClain Self-Directed IRA, KIRK KOHLER, Individually and f/b/o and in his capacity as owner and beneficiary of the Kirk Kohler Self-Directed IRA; JANET KOHLER, Individually and f/b/o and in her capacity as owner and beneficiary of the Janet Kohler Self-Directed IRA, complaining of and about Defendants LIFE PARTNERS, INC., LIFE PARTNERS HOLDINGS, INC., BRIAN D. PARDO, and R. SCOTT PEDEN, and for cause of action would show unto the Court as follows:

I. DISCOVERY CONTROL PLAN LEVEL

Plaintiffs intend that discovery be conducted under Level 3.

II. PARTIES

TODD MCLAIN, Individually and f/b/o and in his capacity as owner and beneficiary of the Todd McClain Self-Directed IRA ("McClain") is a citizen of Tarrant County, Texas who purchased fractional interests in life settlements from LPI in 2008.

KIRK KOHLER and JANET KOHLER, Individually and f/b/o and in their capacity as owners and beneficiaries of the Kirk Kohler Self-Directed IRA and Janet Kohler Self-Directed IRA ("Kohler") are citizens of Tarrant County, Texas who purchased fractional interests in life settlements from LPI in 2006, 2007, and 2008.

Defendant Life Partners, Inc. ("LPI") is a Texas corporation and citizen with its principal office at 204 Woodhew Drive, Waco, Texas 76712. LPI may be served with process by serving the citation and petition on LPHI's registered agent: R. Scott Peden, 204 Woodhew Drive, Waco, Texas 76712.

Defendant Life Partners Holdings, Inc. ("LPHI") is a Texas corporation and citizen with its principal office at 204 Woodhew Drive, Waco, Texas 76712. LPHI may be served with process by serving the citation and petition on LPHI's registered agent: R. Scott Peden, 204 Woodhew Drive, Waco, Texas 76712. LPHI is a publicly traded company and the parent company of LPI.

Defendant Brian D. Pardo ("Pardo") has been the CEO of LPI since 1991 and is also the CEO of LPHI. Defendant Pardo, according to LPHI's website, "is one of the pioneers of the life settlement industry having been instrumental in establishing life settlements as a viable financial investment alternative." Pardo may be served with process by serving the citation and petition on him at 204 Woodhew Drive, Waco, Texas 76712 or at 908 Arlington Drive, Woodway, Texas 76712.

Defendant R. Scott Peden ("Peden") serves as General Counsel and Secretary for LPHI and President of LPI. He served as Vice President and General Counsel for LPI since its incorporation in 1991. According to LPHI's website, Defendant Peden "designed the legal structure of the life settlement transaction that is widely used throughout the industry." Peden may be served with process by serving the citation and petition on him at 204 Woodhew Drive, Waco, Texas 76712 or at 1117 Charing Cross Drive, Woodway, Texas 76712.

III. JURISDICTION AND VENUE

The amount in controversy exceeds this Court's minimum jurisdictional requirements.

This Court has personal jurisdiction over Defendants because all of Defendants are either residents of Texas or Texas corporations. Also, Defendants LPI and LPHI maintain their principal place of business in Texas.

A substantial part of events or omissions giving rise to the claims set forth herein occurred in Tarrant County such that venue is proper in Tarrant County under Section 15.002(1) of Texas Civil Practice and Remedies Code.

IV. FACTUAL ALLEGATIONS

Defendant LPI, along with the other Defendants, is in the life settlement business. LPI acts as agent for others wanting to purchase an investment known as "life settlements." LPI has referred to itself on its website as the "Architect of Life Settlements." In this petition, Plaintiffs allege that a more accurate statement would be that LPI is the "Architect of a Massive Fraudulent Scheme" which has produced hundreds of millions of dollars in profits to Defendants. Defendants have orchestrated approximately 143,000 life settlement related transactions involving over 29,000 investors nationwide. Investors have entrusted over $1.5 billion in investment funds with Defendants.

Life settlement transactions involve the sale of an existing life insurance policy by the insured/owner to another party. By selling the policy, the policyholder receives an immediate cash payment. The purchaser, on the other hand, takes ownership of the policy and the right to receive the associated death benefits. Once the policy is purchased, the new owner must pay premiums going forward to keep the policy in force, and receives a cash payment from the death benefits of the policy when the insured dies. LPI claims that they don't actually buy and resell policies but that they act as their customers' agent in assisting them to buy life settlements.

The value or fair market price of a life settlement is primarily based on 3 factors: (1) the face amount of the policy (the death benefit); (2) the life expectancy of the insured; and (3) the premiums that will have to be paid to keep the policy in force.

Participants in a life settlement transaction typically include: (a) the insured individual or the owner of the policy (the "Seller"); (b) a broker who represents the Seller; (c) a licensed life settlement provider who offers the policy for sale and acts as a middle man between the Seller (or their broker) and the buyer of a life settlement (or their agent); (d) life expectancy estimate providers; (e) agents such as LPI who assist investors in identifying, negotiating, buying and maintaining policies; and (f) investors or buyers of the underlying policy (sometimes referred to herein as the "Purchaser") who may have financial planners (who in this case are LPI "Licensees" paid a commission by LPI). Plaintiffs were Purchasers of an interest in life settlement policies through LPI.

Typically, when a Seller offers a policy for sale, at least one and usually two life expectancy estimates are obtained from one of the companies in the business of providing such estimates. Three of the most commonly used life estimating companies over the last 10 years have been 21st Services, AVS and Fasano & Associates. These companies provide life expectancy estimates based on extensive mortality data, actuarial analysis and medical analysis. They keep track of and publish data related to the historical accuracy of their estimates. The life expectancy estimates are obtained to provide to Purchasers or their agents so that judgments can be made as to how much they are willing to offer to buy the policy.

LPI acting as agent for their customers would identify and negotiate a purchase price on policies. Most frequently, once they negotiated a price for a policy, multiple customers of LPI would be pooled together to each purchase a portion of the policy, i.e., a fractional ownership interest in the policy. While LPI claims that it only assisted its customers to purchase interests in policies, in reality, LPI is the only party listed as the owners and beneficiaries on the policies with the insurance companies once they are purchased. The insurance companies are never informed that allegedly LPI only assisted a group of its customers to buy the policies. Because LPI is the only party listed as owner, LPI customers have no right or ability to control the policies or obtain information from the insurance companies related to the policies. Purchasers have no contractual relationship with the insurance company and the insurance company does not recognize the Purchasers right to alter, transfer or otherwise participate in the policy.

Defendants structure their investment product so that the Purchasers have virtually no rights. LPI owns the policy and, as owner, has the power to change the beneficiaries. The alleged escrow agent, not the investors, is listed as the beneficiary, but LPI could change this at any time.

Purchasers through LPI, including Plaintiffs, are not informed of the actual amount paid to the Seller for policies, which would be an appropriate estimate of a policy's true value, and they are not informed of any life expectancy that Defendants used in determining whether to buy the policy from the Seller and at what price. Instead, LPI only provides Purchasers such as Plaintiffs what it calls the "acquisition price," which is not, as the name implies, the price at which LPI acquired the policy. In fact, it is a marked up selling price which LPI—in its sole discretion—sets. According to the results of a *Wall Street Journal* investigation that culminated in a December 21, 2010 article indicting LPI's business practices, the acquisition price paid by LPI customers averages approximately 2.4 times the price that was paid to the Seller of the Policy. The markup is kept by LPI as their profit and/or fee, less commissions they pay to LPI Licensees on the sale (10%-12%), an escrow fee (typically a fixed amount of $4,000-$5,000) and possibly other expenses.

Cassidy Life Expectancy Estimates

How does LPI convince investors to pay 2.4 times the price paid by the Seller? This is where Dr. Donald Cassidy comes in. Even though LPI usually already has life expectancy estimates from legitimate reputable life expectancy estimation firms, LPI starting back in 1999 began obtaining life expectancy assessments from a physician by the name of Dr. Donald Cassidy from Nevada.

When LPI convinces an investor to do business with it, the first step is for the Purchaser to enter into a standard, written, pre-printed, form contract that is entitled "Agency Agreement and Special Power of Attorney." Pursuant to the agency agreement, LPI agrees to "enter into a relationship of principal and agent" with each Purchaser such as Plaintiffs. As the agent for Plaintiffs, LPI agreed to "identify and assist" in the purchase of life insurance policies, and agreed to act at all times in the interest of Purchasers and to use its expertise as diligently as possible. LPI's public filings with the Securities and Exchange Commission likewise confirms: "We act as a purchasing agent for life settlement purchasers." *See* 2010 Form 10-K (filed May 12, 2010) at 4. As Plaintiffs' agent, LPI owed Plaintiffs a fiduciary duty. Not only did LPI not live up to this duty, but LPI instead engaged in an intentional scheme to defraud Plaintiffs and other Purchasers.

LPI, in its capacity as an agent, identifies life settlements and negotiates a price to be paid to the Seller. Upon information and belief, the life expectancy information used to negotiate a price for the policies is not from Dr. Cassidy, but is usually one or more life expectancy estimates from one of the commonly used companies in the business of providing such estimates. Once LPI negotiates a price to be paid to the Seller, LPI offers the policy to its Purchasers/customers, but provides the Purchasers with very little information about the policy or the insured. Instead of providing Purchasers with the legitimate life expectancy estimates, LPI provides the Purchasers a life expectancy estimate from Dr. Cassidy. Dr. Cassidy's life expectancy estimate, being much shorter than the legitimate life expectancy assessment, creates the illusion that the policy is worth far more than the policy is actually worth. As a result, LPI is able to convince its Purchasers to buy an interest in the policy at a price far in excess of the price that LPI negotiated to pay the Seller.

After the agency agreement is executed, the investor typically tenders investment money to an "escrow agent" to be held until policies become available. Once a Purchaser/investor decides to invest in a policy, the Purchaser and LPI enter into a standard, written, pre-printed, form contract that is entitled "Policy Funding Agreement" for each life settlement transaction.

Defendants publicly claim to provide reliable life expectancy assessments. In its May 16, 2008 Form 10-K, LPHI stated: "To foster the integrity of our pricing systems, we use both in-house and outside experts, including medical doctors and published actuarial data." In reality, to convince Purchasers to invest, LPI only uses Dr. Cassidy's life expectancy estimates. And he is far from an outside expert.

Cassidy served as LPI's one and only "independent medical doctor" who provided LPI with life expectancies that it, in turn, provided to Purchasers and used to support the outrageous prices it charged them. As to Cassidy's compensation specifically, until 2008, Cassidy received

$500 for each policy he reviewed if LPI's potential customers ultimately purchased the policy. On policies not purchased, Cassidy's work was not compensated. This arrangement clearly incentivized Dr. Cassidy to provide short life expectancies. LPI's business model was to negotiate a cheap price for policies and convince Purchasers to buy them for a high price. The shorter the life expectancy LPI could obtain from Cassidy, the more valuable LPI could make the policy appear to Purchasers, and the more likely it would be that they would want to invest. As a result, the shorter the life expectancy Dr. Cassidy would provide, the more likely the policy would be sold to investors, resulting in Cassidy getting paid. If Dr. Cassidy did not provide a life expectancy significantly shorter than the true life expectancy, then LPI would not be able to make the huge profit it was seeking and LPI would likely not offer that policy to Purchasers. In that event, Dr. Cassidy would not get paid for his assessment.

Beginning in 2008, in addition to the $500 Cassidy received for each policy that was purchased by LPI customers, Cassidy received an additional $15,000 per month. In other words, despite Cassidy's abysmal performance in 2007 (to be discussed below), starting in 2008, Defendants Pardo and/or Peden caused LPI to give him a $180,000 raise and continued paying the $500 bonus that incentivized him to provide inaccurately low life expectancy assessments. This compensation significantly exceeds what is typically charged by legitimate life expectancy estimators who, unlike Cassidy, have considerable actuarial and medical training and experience, and a documented track record.

Cassidy was deposed on November 21, 2008, in connection with a suit by Colorado regulators against LPI for selling unregistered securities. Cassidy testified that *he had no actuarial training*. Cassidy ended up performing alleged life expectancy assessments for LPI only because Defendant Pardo met Cassidy at the funeral for the physician that LPI used for such assessments before Cassidy. Cassidy had never performed a formal life expectancy assessment prior to being hired by Defendants. Once he started doing assessments, he has never used the correct methodology and data that is used by legitimate life expectancy evaluators. Upon information and belief, Cassidy still has not changed his methodology or accounted in any way for his consistent record of under-stating life expectancies. Cassidy stated at his November 21, 2008 deposition that he did not even know he had been understating life expectancies because he did nothing to check his assessments against actual performance.

When questioned about the inaccuracy of his life expectancy calculations, Cassidy noted that on his letters to LPI, there is a disclaimer indicating that no single source should be depended upon in making a life expectancy determination and that the calculations he provides are merely one source. Despite this disclaimer by Dr. Cassidy, that is exactly what LPI did on behalf of Purchasers in that they referenced only Dr. Cassidy's assessment in setting the price that Plaintiffs and other Purchasers would need to pay for the life settlement interests they purchased. But when negotiating the price to be paid the Seller, and in an effort to obtain an exorbitant profit, upon information and belief, they relied instead upon life expectancy assessments issued by legitimate and experienced life expectancy estimators.

LPI's annual filings with the Texas Department of Insurance demonstrate the inaccuracy of Cassidy's life expectancy assessments. As of December 31, 2010, LPI held 3,879 policies of which 3,152 were beyond the contrived life expectancy estimates provided to Purchasers (81%). On policies maturing between 2007 and 2009, for example, Cassidy provided life expectancy assessments averaging fewer than three years—but on average, the assessments were understated by five to six years.

The table below shows Cassidy's approximate performance on the 282 LPI policies that matured during this three-year period:

	Number of Policies Maturing	**Average Cassidy LE in Years**	**Avg. Years to Death**	**Avg. Understatement in Years**
2007	106	2.5	8.2	5.7
2008	97	2.6	8.7	6.1
2009	79	2.9	8.2	5.3
Total	282			

In short, what the table shows is three years worth of maturing policies—282 of them—on which the insureds lived an average of more than eight years, even though Cassidy had assessed life expectancies averaging fewer than three years. Plaintiffs believe that the statistics for policies maturing in the 3 years of 2010 through 2012 would be similar or worse in terms of the accuracy of Cassidy's life expectancies.

An investigation of Texas insurance records, according to the December 21, 2010, *Wall Street Journal* Article, showed that insureds "often" lived *beyond double or triple the projected life span* that Cassidy determined. Pardo is quoted in the article as admitting that LPI's life expectancy estimates "are probably wrong." Despite this fact, they still use him to this day. In a review of 1,197 LPI policies, the article noted that only 6.8% of insureds passed away at or before LPI's projected life expectancy. Thus, in over 93 out of each 100 of Defendants' life settlements, the insured lived longer than Cassidy's life expectancy assessment.

Independent analysis of life expectancies also shows how wrong the LPI life expectancy assessments were. A February 17, 2011 *Wall Street Journal* article entitled "Life Partners' Insureds Lived Twice as Long as Expected, Figures Show" reported:

> A [small] sample by The Life Settlement Institute, a trade group representing a handful of providers and one life expectancy provider, found that Life Partners' estimates were 55.8% to 75.7% shorter than estimates by other underwriters in the market. The trade group, which made the comparison on 16 policies, sent its findings to the Securities and Exchange Commission in October 2009, asking that it investigate Life Partners' life expectancies.

The *Wall Street Journal*'s investigative report also compared a small sample (20) of Cassidy's life expectancy assessments to "those of independent firms that specialize in making such estimates." The *WSJ* concluded that "[t]he independent firms' estimates were greater, generally by 50% to 100%" when compared to Cassidy's. To illustrate, the report provided additional details on one of these policies: In September 2008, for example, LPI sold its clients a $10.8 million policy on the life of a 78-year-old New York man, telling them he had a life expectancy of three to five years. Two independent firms earlier that year separately projected the man had about 11 years to live.

Similarly, the State of Texas retained a life insurance portfolio management firm to analyze the Cassidy life expectancies on 23 policies purchased through LPI where LPI had life expectancy assessments from legitimate companies such as AVS, 21st Services and Fasano & Associates. The firm found that the ISC estimates were 234% longer, the EMSI estimates were 232% longer, 21st Services estimates were 212% longer, the AVS estimates were 223% longer, and the Fasano estimates were 265% longer.

Defendants understood the effect of understating life expectancies. In LPHI's May 15, 2008 Form IO-K it stated: "If we underestimate the average life expectancies and price our transaction too high, our purchasers will not realize the returns they seek, demand may fall, and purchasers may invest their funds elsewhere. In addition, amounts escrowed for premiums may be insufficient to keep the policy in force and it is the responsibility of the purchasers to pay these additional premiums." Further, LPHI stated: "Our purchasers depend on our ability to predict life expectancies and set appropriate price . . . ."

Knowing that Purchasers depend on them to provide accurate life expectancies, Defendants violated the trust of the Purchasers. And they have attempted to conceal this violation of trust. For example, in response to an email discussing the fact that insureds were not dying by the LPI-provided Cassidy life expectancy estimate, Defendant Pardo instructed officers of the company that "this information is highly confidential" and "you should not disseminate this information to anyone.…"

In terms of life expectancies fraudulently concealed from Plaintiffs and the other Purchasers, for the period between 2006 through 2010, LPI files contained at least 209 policies for which AVS provided life expectancy assessments. The average Dr. Cassidy life expectancy for these 209 policies was just over 54 months, or a little longer than 4.5 years. The average AVS life expectancy for the same 209 policies was just over 115 months, or almost 9.5 years.

Similarly, LPI files contained approximately 256 policies for which 21st Services provided life expectancy evaluations. The average Dr. Cassidy life expectancy for these 256 policies was slightly over 54 months, or approximately 4.5 years. The average 21st Services life expectancy for the same 256 policies was almost 103 months, or approximately 8.5 years.

Due to the materially improper and inaccurate life expectancy assessments utilized by LPI, not only did LPI overcharge Plaintiffs and all Purchasers for their life settlement investments but they obligated them to additional post-purchase expenses in the form of premium payments. Plaintiffs believe that Defendants hired Dr. Cassidy with the knowledge and intent to obtain false life expectancy assessments. But even if Defendants did not do this, Defendants knew or should have known the Cassidy life expectancy assessments were inaccurate because of the fact that insureds were not dying when Dr. Cassidy said they would and because of the fact that when Defendants negotiated the price to pay the Seller on virtually all of the subject policies, upon information and belief, they were provided by the Seller, the Seller's broker or a Life Settlement Provider a life expectancy from a reputable life expectancy assessment provider that was substantially longer than the estimate eventually provided by Dr. Cassidy. In a February 2003 Audit Committee quarterly report to the LPHI Board of Directors concerns were raised over the number of policies that had failed to mature when Dr. Cassidy predicted. Despite all this knowledge, Defendants continued to use Cassidy, and still do so today.

<u>Other Misrepresentations</u>

In addition to providing Purchasers with false life expectancy estimates, LPI makes many other misrepresentations to convince Purchasers to invest and thus allow LPI to make the abusive profits they have enjoyed for at least the last 10 years. One of the areas of misrepresentation is regarding return on investment Purchasers can expect. Defendant Brian D. Pardo ("Pardo"), the founder and Chief Executive Officer of LPI, explained in an October 17, 2008 earnings conference call with analysts:

BRIAN PARDO: We like to tell our clients to be looking for a low double-digit return.

ANALYST: Okay. 11, 12%? That kind of return?

BRIAN PARDO: Yes. And I think if they are expecting

that, they will not be disappointed.

Defendants have represented that their product is priced to yield double digit annualized rate of return, and that there is the potential for a much higher rate of return. Defendants have represented that the historical average and median compounded return for the last 10 years has exceeded 10% (May 3, 2010 Memo from Scott Peden). This representation is false because it excludes unmatured policies. Most of LPI's policies are unmatured and past the Cassidy life expectancies, and the Purchasers will either earn a very small return substantially below 10% or they will receive no return or lose money.

Defendants have created and provided its Licensees marketing materials for use in selling their life settlement investments. Also, Defendants require that all marketing materials used to sell the investments be reviewed and approved by them. Defendants Peden and Pardo frequently have attended and personally participated in marketing seminars and radio programs. Defendants marketing materials and statements contain numerous material false representations regarding the expected return and the corresponding risk of investing with Defendants.

Defendants have created a façade of legitimacy by touting its transparency as a publicly-traded company. They represented that they were regulated by the Texas Department of Insurance, when in truth only the initial procurement of a policy is regulated. They represented that they are regulated by the Securities and Exchange Commission, when any regulation by the SEC would have nothing to do with Purchasers investing. They represented that their product offers the benefit of a "highly regulated company and transaction." They represented that

Purchasers "enjoy the same regulatory protection available to all life insurance policy holders." They represented that LPI would act merely as an instruction-driven agent, allowing investors great control over their investments, when in truth investors only control two decisions: 1) how much to invest; and 2) the targeted life expectancy range of insureds on the policies they want to invest in. Represented that all of the policies had actuarially or medically determined life expectancies of no more than 10 years, when in truth LPI has placed their Purchasers in at least 110 policies when LPI had life expectancies in their file greater than 10 years. And on at least 45 of these, there were two life expectancy assessments greater than 10 years. These were all material false representations.

Defendants also represented that exceptional returns can be realized without a parity of risk to investment capital. They represented that they have transparency. They represented that there is a free flow of easily accessible information. They represented their product was superior. They represented that they provided the highest quality of policy evaluation and purchasing services. They represented that they promote honesty, integrity and fairness. They represented that they are dedicated to the investor's financial future. They represented that their goal is to provide superior service in a professional manner. They represented that they provide Purchasers with adequate information about each policy and insured to make an informed decision whether or not to purchase. They represented they use a rigorous underwriting process. They represented that they had suitability for purchase standards. They represented that they are very careful in their underwriting process to ensure that the Purchaser is purchasing a quality, investment. These were all material false representations.

Defendants also committed fraud by omission. They failed to advise Plaintiffs and other Purchasers that policies may terminate when the insured reaches age 100. They failed to advise

Plaintiffs and other Purchasers that the policies may lapse if other investors who invested in the same policy fail to make premium payments. They failed to advise Purchasers beyond the age for contributing to an IRA that they may not be able to make premium payments if the insured lives past the Cassidy life expectancy. And of course, they failed to advise Purchasers that the true life expectancy of insureds was far longer than the Cassidy life expectancies and, as will be discussed below, they failed to advise Purchasers that they were overpaying premiums on the policies.

Failure to Optimize Premiums

The return that a Purchaser receives on a life settlement investment is basically the amount of the death benefit paid out at maturity minus the money paid by the Purchaser to acquire and maintain the policy until maturity. When the insured passes away, the Purchaser only receives the set amount of the level death benefit. Thus, the *less* a life settlement investor has to pay to acquire and keep the policy in force, the *greater* the profit the investor will make when the policy matures and the death benefit is paid. When a Purchaser invests in a life settlement through Defendants, part of the acquisition price paid by the Purchaser goes into an account for the payment of premiums during the Dr. Cassidy assessed life expectancy. Defendants decide the amount out of the acquisition price that is to be deposited into the account for the payment of premiums. Once these funds are placed in the account, Defendants control all post-purchase decision-making regarding the payment of premiums.

The life settlements at issue herein involve a type of life insurance known as a "universal life insurance" policy with a fixed (unchanging) death benefit. Because the payout will not increase, a reasonably prudent investor's goal is to pay as little as possible to keep the policy in force up until the policy matures. The investor's agent should have this same goal.

One feature of a universal life insurance policy is that it offers "flexible" premium payments: the premium payer can choose to "optimize" premiums by paying only the current "cost of insurance" (i.e., the minimum necessary to maintain the policy and keep it in force) or they can pay what is called a "level" or "planned" premium. Optimizing premiums is the industry standard. If more than the "cost of insurance" is paid as a premium, cash value will build in the policy which is kept by the insurance company upon death of the insured.

Plaintiffs and all Purchasers had a clear incentive to "optimize" premium payments down to the minimum necessary to keep the policies in force until maturity. No reasonably prudent life settlement company would do anything other than "optimize" premiums (i.e., pay the least amount needed) for their customers, as this is the only approach that is in the best interest of the customer. Any overpayment of premium is kept by the insurer upon the death of the insured.

In order to keep a policy in force, premium payments equal to the "cost of insurance" must be paid. Insurance companies don't issue premium notices for the cost of insurance. Instead, the amount of premium noted on premium notices is the "level premium." A level premium is an amount that can be paid which will keep the policy in force through the date of policy termination (usually at age 100 or 105). Essentially, paying a level premium builds up cash value so that the insured can use this cash value to cover the cost of insurance when the cost of insurance is high during the insured's advanced years of age and they may not have the financial wherewithal to pay enough in premiums to cover the cost of insurance.

"Optimizing premiums" describes the process of determining the minimum amount of premium that must be paid to keep the policy in force during the life expectancy of the insured. No reasonable investor would pay more in premiums in order to keep a policy in force and no reasonable agent such as LPI for an investor would pay more in premiums in order to keep a policy in force.

Purchasers are not advised by Defendants about the "level premiums" and "optimizing premiums." Purchasers are not able to independently determine the amount necessary to maintain the policy and instead must rely on their agent and attorney in fact, LPI. In each such life settlement transaction, LPI represents an amount as being the amount necessary annually to maintain the policy. Plaintiffs and the other Purchasers were dependent on LPI for the accuracy of the amount represented by LPI as necessary to maintain the policies, and dependent on LPI to determine how much and when to pay premiums to keep the policies in force.

On or about January 27, 2011, *The Life Settlement Report*, a source of news and analysis regarding the life settlement market, reported that:

> **[LPI] has been requiring investors to pay level or flat premiums unlike the rest of the market, which optimizes or pays the minimum amount of premiums to keep policies in force**. But now the provider also plans to optimize premiums, according to Tim Harper, a master licensee for Life Partners with BG&S Management Consultants in Grapevine, Texas.

(emphasis supplied). In other words, as to life settlement transactions which Plaintiffs and other Purchasers had entered into with LPI, it was revealed that LPI made, authorized and/or allowed excessive and unnecessary payments of the Purchasers' money to the various insurers over and above the amount required to maintain the polices—*i.e.*, the Plaintiffs was made to pay premiums that were not "optimized" to reflect the minimum amount of premiums needed to keep policies in force. Although Plaintiffs agreed to pay premiums to maintain the policies, they certainly never agreed to simply give extra money to the insurers that would provide them no added benefit whatsoever.

Although it now optimizes premiums for it clients on new transactions, LPI failed to optimize premiums on the life settlements at issue herein and continues to fail to optimize premiums. A reasonably prudent life settlement provider would have optimized the premiums, and, by failing to do so, LPI caused and is causing Plaintiffs to significantly overpay the insurance carriers to keep the life settlements in question in force.

Plaintiffs and the other Purchasers appointed LPI to be their agent and attorney in fact to instruct and direct LPI's alleged escrow agent concerning the disbursement of funds placed with LPI, including as to the payment of premiums for maintenance of the subject policies. LPI controls the amount and timing of the premium payments. On behalf of the Plaintiffs and other Purchasers, LPI instructs its alleged escrow agent regarding the payment of premiums to the insurance companies. Every premium payment that goes from LPI's escrow agent to the life insurance companies is paid pursuant to the instruction of LPI. LPI represented to Plaintiffs and the other Purchasers that its escrow agent would hold amounts escrowed for payment of premiums and pay those premiums from the escrow account "as they come due." LPI represented that they would only pay premiums to keep the policies in force.

Because it would obviously not be in the best interest of the Plaintiffs and the other Purchasers to overpay premiums, LPI should pay only premiums necessary to keep the policy in force. However, LPI overpaid premiums on the life settlements at issue herein by paying "level" premiums.

For LPI, paying level premiums means "[o]btaining an illustration generated by the insurance company for a period of time, which solves for the amount of premiums that would be necessary to carry or maintain the policy for that period of time at a level rate." The level premium amounts were apparently based on insurance company illustrations showing level premiums to age 100.

To calculate the amount of optimized premiums, there is a widely-used program in the industry called MAPS which reasonably and accurately estimates the cost of insurance so that premiums above the cost of insurance are not paid. LPI now uses the MAPS program to calculate optimized premiums. From an operational standpoint, Defendants have conceded that it's just as easy to optimize premiums, as it is to utilize level premiums. In fact, according to Peden, it may take even less time to determine optimized premiums than it would to determine level premiums. Optimized premiums are sufficiently predictable and relatively simple for a life settlement provider to compute. All reasonable and prudent life settlement providers should optimize premiums.

Using optimized premiums is the reasonably prudent approach to paying premiums on a policy that is the subject of a life settlement contract such as those involved here (which will only pay level death benefits). A reasonably prudent life settlement provider would use optimized premiums to determine the initial premium reserve, would pay optimized premiums to the insurance carrier, and would optimize premiums to determine amounts needed to meet any premium call in the event the initial reserves become depleted. Plaintiffs allege that, by failing to do so, LPI failed to act as a reasonably prudent life settlement provider would have acted in such circumstances.

LPI owed the Purchasers a Fiduciary Duty.

LPI was appointed by Plaintiffs and the other Purchasers for the very purpose of assisting with the subject life settlement investments and LPI specializes in just such transactions. LPI acted as agent for Plaintiffs and owed them a fiduciary duty. An agent has a duty to the principal to act with care, competence, and diligence. LPI was obligated, because of the fiduciary duty owed, to fully disclose to Plaintiffs all information relevant to Plaintiffs' life settlement investments.

As a fiduciary for Plaintiffs, LPI was obligated to exercise a high degree of care to conserve Plaintiffs' money and to pay that money only to those entitled to receive it. LPI was obligated to act with reasonable prudence and good faith towards Plaintiffs and whenever it made any expenditures of Plaintiffs' money.

A life settlement purchaser's "interest" and "manifested purpose" is to pay as little as possible for the life settlement in order to maximize the stated return on investment. LPI was employed to act as the agent for the Plaintiffs and thus owed a duty to be loyal to the principal's interests and to use reasonable care to obtain terms which best satisfy the manifested purposes of the principal—i.e., LPI owed a duty to use reasonable care to obtain terms, including price, that are most advantageous to the principal. Because the Plaintiffs and the other Purchasers were seeking economic gain and the very purpose of the agency was to help the client-principal achieve that objective, LPI was obligated to use reasonable efforts to maximize the economic benefit to the Purchasers in each transaction. This includes obtaining the best price for their customers to acquire the life settlement (and using the best information in connection with same) and paying as little in premiums as possible. This would have also included refraining from taking excessive fees out of the subject life settlement transactions.

LPI breached its duty to be loyal to the Plaintiffs' interests and to use reasonable care to obtain terms which best satisfy the manifested purposes of the agency. Defendants owed a duty to disclose all material facts that a reasonably prudent investor would want to know in the same or similar circumstances, and they failed to live up to this duty.

LPI reaped considerable profits, including fees and commissions paid for with the Plaintiffs' money, as a result of its failure to optimize premiums and its use of Cassidy life expectancy assessments and its failure to disclose other life expectancy assessments LPI was aware of or possessed.

<u>Plaintiffs' Life Settlement Investments</u>

Plaintiffs entered into an agency agreement with LPI. Plaintiffs entered into a policy funding agreement and was provided with a Confidential Case History on the insured under each policy he purchased. The Confidential Case History included a Summary of Medical History and a life expectancy estimate. Plaintiffs purchased a fractional interest in multiple policies from or through LPI. Plaintiffs purchased an interest in life settlement policies in reliance on Cassidy life expectancy assessments.

Plaintiffs purchased fractional interests in life settlements from or through LPI involving a universal life insurance policy with a level death benefit for which LPI overpaid premiums as a result of failing to pay the minimum necessary to maintain the policy.

Plaintiffs relied upon the many additional misrepresentations and fraudulent omissions described herein made by Defendants regarding LPI and the life settlements they offered which misrepresentations induced Plaintiffs to invest.

V. TOLLING/CONCEALMENT/DISCOVERY RULE

As described in this petition, Defendants controlled all information and decisions regarding both the life expectancies and the payment of premiums on the life settlements at issue herein. Defendants concealed their wrongful conduct related to the life expectancy of insureds and regarding overpaying premiums. They also concealed all of their misrepresentations and fraudulent omissions. As agent and/or as fiduciary for Plaintiffs for the life settlements at issue, Defendants owed a duty to disclose all material facts that a reasonably prudent investor would want to know in the same or similar circumstances.

Plaintiffs did not know and could not have known Defendants were providing false life expectancies. Plaintiffs did not know and should not have been expected to know LPI was overpaying premiums by failing to optimize premiums until the failure to do so was made public in January of 2011. Plaintiffs did not know of and should not have been expected to know of all of Defendants' false representations and fraudulent omissions. Defendants' misconduct as described in this petition was inherently undiscoverable. Defendants owed Plaintiffs a fiduciary duty and thus Plaintiffs were relieved of the responsibility of diligent inquiry into the fiduciary's conduct so long as that relationship existed. It was reasonable for Plaintiffs to trust that Defendants had been, were, and would be acting, as agent and fiduciary, in Plaintiffs' best interest with regard to the life settlements at issue.

Accordingly, the discovery rule, fraudulent concealment, and/or equitable estoppel apply here to bar Defendants from asserting the statute of limitations as a defense, and Plaintiffs hereby plead all of these doctrines.

Limitations has also been tolled by virtue of a nationwide class action, *Sean Turnbow et al. v. Life Parnters, Inc., et al*. ("*Turnbow*"), Civil Action No. 3:11-cv-1030-M, in the United States District Court for the Northern District of Texas, filed May 18, 2011; as to Plaintiffs who are Texas citizens, by virtue of a statewide class action, *John Willingham v. Life Partners, Inc.*, Cause No. DC-11-10639, in the 191st Judicial District, Dallas County, Texas, filed April 8, 2011; and as to any Plaintiffs who are California citizens by virtue of a statewide class action, *Marilyn Steuben v. Life Partners, Inc.,* Case No. BC472953, in the Superior Court of the State of California in and for the County of Los Angeles, filed March 11, 2011.

VI. CLAIMS FOR RELIEF

Breach of Fiduciary Duty

A fiduciary relationship existed between Defendants and Plaintiffs. All of the acts and omissions, wrongful conduct, misrepresentations and fraudulent omissions described in this petition constituted a breach of this fiduciary duty on the part of Defendants which caused injury or damages to Plaintiffs for which Plaintiffs hereby sue. Defendants continue to breach fiduciary duties owed to Plaintiffs.

Common Law Fraud

All of the false representations and fraudulent omissions described in this petition were material and Plaintiffs reasonably relied upon them in investing through Defendants. They are actionable under the cause of action of common law fraud, for which Plaintiffs hereby sue.

Civil Conspiracy

Defendants engaged in a civil conspiracy to breach fiduciary duties owed to Plaintiffs and Defendants engaged in a civil conspiracy to commit common law fraud. In this regard, Defendants had a meeting of the minds on an object or course of action, they engaged in one or more unlawful, overt acts and damages to Plaintiffs occurred as a proximate result. The object or course of action which was the object of the conspiracy were all of the breaches of fiduciary duty, misrepresentations and fraudulent omissions described in this petition, including without limitation, the objective of convincing Plaintiffs to invest in life settlements with Defendants and pay a price for their life settlements far in excess of their true value. The object of the civil conspiracy also included using false life expectancies, overcharging Plaintiffs for their life settlements, overpaying premiums and misrepresenting the life settlements offered by Defendants.

Aiding and Abetting Breach of Fiduciary Duty and Common Law Fraud

Defendants aided and abetting each other to breach fiduciary duties owed to Plaintiffs and Defendants aided and abetted each other to commit common law fraud on Plaintiffs. Defendants each committed wrongful acts in participation in the breaches of fiduciary duty, misrepresentations and fraudulent omissions described in this petition, including without limitation, wrongful acts towards the objective of convincing Plaintiffs to invest in life settlements with Defendants and pay a price for their life settlements far in excess of their true value. Defendants likewise participate and aided and abetted using false life expectancies, overcharging Plaintiffs for their life settlements, overpaying premiums and misrepresenting the life settlements offered by Defendants.

Negligence

Plaintiffs believe that Defendants conduct as alleged herein was intentional. However, at a minimum, it was negligent. As a result, Plaintiffs hereby sue for all damages caused by Defendants' negligence.

VII. DAMAGES, DISGOURGEMENT AND/OR RESTITUTION

Plaintiffs have suffered damages as a result of the wrongful conduct alleged herein. Plaintiffs hereby sue to recover all damages, past and future, caused by Defendants' actionable conduct. These damages include without limitation the amounts that Plaintiffs was overcharged for their life settlements, the amount of premiums that Plaintiffs had to pay when the insureds lived past the Cassidy life expectancy assessments, the amount of premiums that Plaintiffs were overcharged and/or Defendants overpaid because of the failure to optimize premiums, and the profits, fees and charges that Defendants wrongfully charged and collected from Plaintiffs as a result of the misconduct described herein.

Plaintiffs are entitled to, and the Court should order, profit disgorgement and/or fee forfeiture of the fees and commissions paid by Plaintiffs to any of the Defendants or profits taken or received by Defendants from Plaintiffs as a result of the transactions in question because of Defendants' breaches of fiduciary duty, or their aiding and abetting of same. The Court should order disgorgement of any and all monies received by Defendants because of their wrongful conduct described herein.

Because Defendants' conduct was intentional, reckless, committed with malice or was grossly negligent, Plaintiffs also sue for exemplary and punitive damages.

Plaintiffs also sue for attorney fees, costs, litigation expenses, and post and pre-judgment interest.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that Defendants be cited to appear, and that Plaintiffs have judgment against Defendants for relief pursuant to the causes of action set forth in this petition as follows:

A. Damages against Defendants and in favor of Plaintiffs as established by the evidence and as alleged herein;

B. Disgorgement of and judgment for ill-gotten gains, payments, profits, fees and commissions flowing from the conduct described in this petition;

C. Exemplary damages against Defendants and in favor of Plaintiffs;

D. Prejudgment interest on the damages awarded (except exemplary damages) in favor of Plaintiffs;

E. Post-judgment interest at the legal rate;

F. Attorneys' fees, costs of suit and expenses as provided under applicable law; and

G. Such other and further relief, in law or in equity, as the Plaintiffs may be entitled, including an injunction against Defendants prohibiting them from continuing to pay level premiums on Plaintiffs' life settlement investments.

IX. DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

Respectfully submitted,

/s/ James Craig Orr, Jr.
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