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Attorneys for Plaintiffs CHARLES SCHWAB & CO., INC. and THE CHARLES SCHWAB CORPORATION

STATE OF MICHIGAN

CIRCUIT COURT FOR THE 30th JUDICIAL DISTRICT

INGHAM COUNTY

ANITA G. FOX, DIRECTOR OF THE MICHIGAN DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES,

Petitioner,

vs.

PAVONIA LIFE INSURANCE COMPANY OF MICHIGAN,

Respondent.

CASE NO. 19-504-CR HON. WANDA M. STOKES

OBJECTIONS TO THE PAVONIA LIFE INSURANCE COMPANY'S PLAN OF REHABILITATION FILED BY CHARLES SCHWAB & CO., INC. AND THE CHARLES SCHWAB CORPORATION

Charles Schwab & Co., Inc. and The Charles Schwab Corporation hereby submit their objections to the Pavonia Life Insurance Company of Michigan's Plan of Rehabilitation.

I. INTRODUCTION

On January 10, 2019, Charles Schwab & Co., Inc. and The Charles Schwab Corporation

("Schwab") filed its Complaint in the Superior Court of the State of California against Pavonia Life

Insurance Company of Michigan ("Pavonia") and other defendants for contract, tort and statutory

claims arising from Corporate Owned Life Insurance policies owned by Schwab ("California

Action"). On April 4, 2019, Schwab filed its First Amended Complaint in the California Action, which added The Lincoln National Life Insurance Company ("Lincoln") as a defendant. (The First Amended Complaint is attached hereto as Exhibit A.)

On July 9, 2019, Pavonia was placed into rehabilitation by the Michigan Department of Insurance under the jurisdiction of this Court. Lincoln is not named as a party to the Pavonia rehabilitation. The Special Deputy Rehabilitator overseeing the rehabilitation asserts that the California Action is enjoined from proceeding against Lincoln because Pavonia agreed to defend Lincoln in the California Action. Beginning in September 2019, counsel for Schwab and counsel for the Special Deputy Rehabilitator entered into discussions to stay the California Action as to Pavonia and Lincoln pending the potential sale of Pavonia to Aspida Holdco LLC.¹ During those discussions, the Special Deputy Rehabilitator made the following representations (through his legal counsel):

- In the event the Pavonia sale to Aspida/ARES is finalized, the Pavonia rehabilitation will be terminated, the stay lifted, and Schwab can continue to pursue its litigation against Pavonia and Lincoln in the California Action as if the Pavonia Rehabilitation was never put in place; and
- In the event the Pavonia sale is not finalized, the Rehabilitator will decide whether to adjudicate the Schwab claims as to Pavonia and Lincoln through the rehabilitation in Michigan or to allow the claims to proceed in the California Action. (See September 25, 2019 E-mail attached as Exhibit B.)

While Schwab is agreeable to those terms, it maintains that it reserves and does not waive its right to contend that the claims asserted against Pavonia and Lincoln in the California Action should not be adjudicated through the rehabilitation in Michigan. Because Lincoln is a separate insuring entity with wholly distinct legal obligations to Schwab, the Pavonia rehabilitation and potential sale has no legal effect on Lincoln's obligations to Schwab.

II. OBJECTION

 $^{^{1}}$ To date, the terms of the stipulation have not been finalized.

Based on the foregoing, Schwab objects to the inclusion of Schwab's claims against Lincoln in the Pavonia Plan of Rehabilitation.

Dated: October ___, 2019

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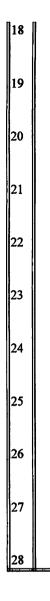
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VENUTO & ASSOCIATES, PLLC

By:_

FRANK VENUTO P36913 Attorneys for Plaintiffs CHARLES SCHWAB & CO., INC. and THE CHARLES SCHWAB CORPORATION

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CASE NAME: ANITA G. FOX, DIRECTOR OF THE MICHIGAN DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES v. PAVONIA LIFE INSURANCE COMPANY OF MICHIGAN

ACTION NO.: CIRCUIT COURT FOR THE 30th JUDICIAL DISTRICT INGHAM COUNTY, Case No. 19-504-CR

PROOF OF SERVICE

I am a resident of the State of Michigan. My business address is 334 Townsend, Lansing, MI 48933. I am employed in Ingham County where this service occurs. I am over the age of 18 years, and not a party to the within cause. I am readily familiar with the normal business practice for collection and processing of material for mailing with the U.S. Postal Service, and that practice is that material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

On the date set forth below, following ordinary business practice, I served a true copy of the foregoing document(s) described as:

OBJECTIONS TO THE PAVONIA LIFE INSURANCE COMPANY'S PLAN OF REHABILITATION FILED BY CHARLES SCHWAB & CO., INC. AND THE CHARLES SCHWAB CORPORATION

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(BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Lansing, Michigan.

James Gerber Special Deputy Rehabilitator Michigan Department of Insurance and Financial Services 530 W. Allegan Street, 7th Floor Lansing, MI 48933

,

Christopher L. Kerr Assistant Attorney General Michigan Department of Attorney General **Corporate Oversight Division** P.O. Box 30736 Lansing, MI 48909

(State) I declare under penalty of perjury under the laws of the State of Michigan that the above is true and correct.

Executed on October 4, 2019, at Lansing, Michigan.

Frenk Sento

Frank Venuto

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PROOF OF SERVICE - CASE CISCV161911

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EXHIBIT A

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1	STEPHEN A. SCOTT (SBN 67467)					
2	(sscott <u>@hayesscott.com</u>) CHARLES E. TILLAGE (SBN 177983)					
-	(ctillage@hayesscott.com)	ELECTRONICALLY FILED				
3	CHRISTOPHER K. WONG (SBN 300543) (cwong@hayesscott.com)	r I L L L				
4	HAYES SCOTT BONINO ELLINGSON GUSLANI SIMONSON & CLAUSE LLP	County of San Francisco 04/04/2019				
5	999 Skyway Road, Suite 310	Clerk of the Court By:DAVID YUEN				
6	San Carlos, CA 94070 Telephone: (650) 637-9100	Deputy Clerk				
-	Facsimile: (650) 637-9101					
7	LOWELL HAKY (SBN 178526)					
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9	BARRY D. BROWN JR (SBN 233544) (barry.brown@schwab.com					
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11	Telephone: 415.667.9158 Facsimile: 800.977.3220					
12						
13	Attorneys for Plaintiffs CHARLES SCHWAB & CO., INC. and	1				
14	THE CHARLES SCHWAB CORPORATIO	N				
	SUPERIOR COURT OF THE STATE OF CALIFORNIA					
15	COUNTY OF	F SAN FRANCISCO				
16	CHARLES SCHWAB & CO., INC. a	CASE NO. CGC-19-572711				
17	California corporation, and THE					
18	CHARLES SCHWAB CORPORATION, a	FIRST AMENDED COMPLAINT FOR				
19	Delaware corporation,	DAMAGES AND EQUITABLE RELIEF				
	Plaintiffs,	DEMAND FOR JURY TRIAL				
20						
21	VS.					
22	PAVONIA LIFE INSURANCE					
	COMPANY OF MICHIGAN, a Michigan					
23	Corporation; ENSTAR (US) INC., a Delaware Corporation; ANDESA					
24	SERVICES, INC., a Pennsylvania					
25	Corporation; THE LINCOLN NATIONAL LIFE INSURANCE COMPANY, an					
26	Indiana Corporation; and DOES 1 through					
	50,					
27	Defendants.					
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Plaintiffs Charles Schwab & Co., Inc. ("CS&Co.") and The Charles Schwab Corporation 1 ("CSC") (collectively "Schwab") herein allege as follows: 2 3 I. NATURE OF THE ACTION 4 1. Through this lawsuit, Schwab seeks to recover death benefits and interest payments 5 due on death claims, along with other obligations that are due under two group life insurance 6 policies known as Corporate Owned Life Insurance ("COLI") policies. 7 2. A COLI policy is a life insurance policy that is purchased and paid for by a 8 corporation and insures the lives of the corporation's designated employees with the corporation 9 being the owner and beneficiary of the policy. In addition to certain tax advantages, COLI policies 10 have been utilized to offset the cost of employee benefits. The Schwab COLI policies also financed 11 a \$5,000 death benefit payable to the personal beneficiary designated by each employee insured 12 under the COLI policies in the event that that employee died. 13 3. Although the Schwab COLI policies are structured as a means to assist with the 14 payment of employee benefits, the policies are an asset of the corporation and are not regulated by 15 ERISA laws. 16 4. COLI policies are governed by general insurance principals and applicable insurance 17 laws and regulations. Under these standards, an insurer is obligated to pay the death claims in 18 connection with insured deaths that occur while the COLI policies remain in force along with 19 interest on death claims that are not paid within 30 days of the date of death of the insured. The 20 insurer is also required to assure that there is a transfer of insurance risk to the insurer under the 21 COLI policies. And finally, an insurer is prohibited from violating its contractual commitments 22 under the governing documents of the COLI policies, including its commitment to distribute to the 23 policy owner (Schwab in this case) the cash surrender values (and reserves if the policy owner 24 waives its right to claims for currently unreported deaths that occurred during the term of the COLI 25 policies) upon surrender of the COLI policies. 26 5. Hawai'i and Delaware law govern Schwab's recovery of COLI policy benefits and 27 28 reserves unlawfully withheld as more fully described and identified in this Complaint.

II. 1 THE PARTIES 2 6. Plaintiff CSC is a Delaware corporation, with its principal place of business at 211 3 Main Street, San Francisco, California 94105. Plaintiff CS&Co. is a California corporation with its 4 principal place of business at 211 Main Street, San Francisco, California 94105. 5 7. Defendant Pavonia Life Insurance Company of Michigan ("Pavonia") is a Michigan 6 life insurance corporation with its principal place of business at 180 Mount Airy Road, Suite 101, 7 Basking Ridge, New Jersey 07920. Pavonia is authorized to do business in many states, including 8 California, and does business in California. Pavonia is a successor company to Household Life 9 Insurance Company. Pavonia was directly involved in the investigation of death benefits due under 10 Schwab's COLI policies, the payment of claims, the evaluation and denial of policy benefits, claims 11 handling decisions, and the bad faith conduct giving rise to the claims stated herein. 12 8. Defendant Enstar (US) Inc. is a Delaware Corporation with its principal office in 150 13 2nd Avenue North, 3rd Floor, St. Petersburg FL 33701. Enstar (US) is licensed by the California 14 Department of Insurance and conducts business in California as an insurance administrator. Enstar 15 (US) also designated a California Corporation as its agent for service of process. As further 16 alleged below, corporate officers for Enstar (US) were directly involved in the investigation of 17 death benefits due under the COLI policies, the evaluation and denial of policy benefits, claims 18 handling decisions, and the bad faith conduct giving rise to the claims stated herein. Enstar (US) 19 also directed the wiring of a payment of COLI policy assets to Schwab on April 4, 2016 after 20 Schwab surrendered the COLI policies on October 27, 2015. 21 9. By engaging in the unilateral conduct as herein alleged, Enstar (US) aided and 22 abetted Pavonia's breach of contract and breach of the implied covenant of good faith and fair 23 dealing. 24 10. Defendant Andesa is a Pennsylvania corporation doing business in many states, 25 including California, with its principal place of business at 6575 Snowdrift Road, Suite 108, 26 Allentown, PA 18106. On information and belief, at or around the time the COLI policies were 27 issued to Schwab, Andesa entered into a contract whereby it was retained by Alexander Hamilton, 28

and subsequently by Pavonia, to administer the COLI policies. That administration included the 1 2 calculation of the amounts owing to Schwab by Pavonia under the COLI policies, and providing monthly COLI financial reports to Schwab on behalf of Pavonia that were the responsibility of 3 Pavonia. Andesa also was responsible for identifying the occurrence of deaths, obtaining death 4 certificates, and assembling the proofs of claims on behalf of Pavonia to be given to Schwab for 5 submission to Pavonia. Andesa was required to do so in a non-negligent manner and in compliance 6 with all governing laws. Schwab is an intended third-party beneficiary to the contract between 7 Andesa and Pavonia. 8

11. Plaintiff is informed and believes, and on that basis alleges, that defendant Lincoln 9 National Life Insurance Company ("Lincoln National") is an Indiana corporation with its principal 10 place of business located at 1300 South Clinton Street, Fort Wayne, IN 46802. Lincoln National is 11 qualified to do business in the State of California and conducts business in California. Lincoln 12 National is a successor company to Alexander Hamilton in fact and in law and Lincoln National 13 retained the contractual obligations as the insurer on the two COLI policies after it became a 14 successor insurance company. 15

12. In October 1995, Lincoln National's predecessor company (Jefferson Pilot Financial 16 Insurance Company) entered into a reinsurance agreement with Pavonia's predecessor company 17 (Household Life Insurance Company) whereby Household Life became a reinsurer and coinsurer 18 with Jefferson Pilot on the COLI policies and agreed that it would equally assume and be 19 responsible for all policy obligations, including the, but not limited to, the obligation to handle and 20 pay policy benefits. The reinsurance agreement further provided that Lincoln National would 21 equally assume and be responsible for all policy obligations to handle and pay policy benefits. 22 Subsequently, Household Life changed its name to Pavonia and Pavonia thereafter assumed the 23 obligations and liabilities under the reinsurance agreement. Jefferson Pilot was acquired by Lincoln 24 National and Lincoln National thereafter assumed the obligations and liabilities under the 25 reinsurance agreement. 26 /// 27 $\parallel \parallel$

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1 13. On information and belief, under the terms of the reinsurance agreement, Pavonia
 and Lincoln National were acting as agents for each other as it pertained to obligations owning to
 Schwab under the COLI policies.

4 14. Pursuant to the reinsurance agreement, Pavonia and Lincoln National were
5 coinsurers under the COLI policies and each had equal obligations to pay all claims as herein
6 alleged.

7 15. Schwab is an intended third-party beneficiary to the reinsurance agreement between
8 Pavonia and Lincoln National.

9 16. Pavonia and Lincoln National are also estopped from asserting that they are not
10 obligated to pay claims as insurers under the COLI policies based on their respective conduct as
11 herein alleged.

17. The true names and capacities, whether corporate, associate, individual, or
otherwise, of defendants DOES 1 through 50, inclusive, are unknown to plaintiff, who therefore
sues such defendants by such fictitious names. Each of the defendants designated here as a DOE is
legally responsible in some manner for the events and happenings referred to in this complaint and
caused injuries and damages proximately thereby to plaintiff, as alleged in this complaint. Plaintiff
will ask leave of court to amend this complaint to show their names and capacities when they have
been ascertained.

18. Plaintiffs are informed and believe, and thereby allege, that at all times herein
 mentioned, Defendants, including DOES 1 through 50, were the principals, agents, joint venturers,
 alter egos, and/or co-conspirators of each of the other defendants, and in doing the things herein
 described, were acting in the course and scope of such agency and/or conspiracy with the
 knowledge, permission and/or consent of the other defendants.

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III. JURISDICTION AND VENUE

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 19. This Court has general subject matter jurisdiction over the claims alleged in this
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20. Venue is proper in this Court pursuant to California Code of Civil Procedure section
 395(a) because none of the Defendants reside in California and Schwab can designate the
 appropriate County under such circumstances. The COLI policies were assets of Schwab that were
 held in California, which is the location of Schwab's headquarters.

IV.

CHOICE OF LAW

21. As alleged in more detail below, Hawai'i law applies in the interpretation of the 7 COLI policy issued to CS&Co. in Hawai'i because that policy form was filed with and approved by 8 the Hawai'i Department of Insurance for sale in Hawai'i. The application for the Hawai'i policy 9 identified Hawai'i as the governing law. The Hawai'i policy was delivered to CS&Co. in Hawai'i 10 by a local Hawai'i agent licensed in Hawai'i. The application for the Hawai'i policy was executed 11 by an officer of CS&Co. in Hawai'i. The application was endorsed by the contracting parties and 12 the application was incorporated into the Policy by the contracting language. The insurable interest 13 laws and other laws of Hawai'i govern the Hawai'i policy. Furthermore, one of the six unpaid 14 death claims pertains to an insured who lived and died in Hawai'i, and all six of the current 15 disputed unpaid death claims pertain to persons insured under the policy. 16

22. Delaware law applies in the interpretation of the Delaware policy issued to CSC 17 because the Delaware policy form was filed with and approved by the Delaware Department of 18 Insurance and was approved for sale in Delaware. In addition, the application for the insurance 19 identified Delaware as the governing law, the Delaware policy was delivered to Schwab in 20 Delaware by a local Delaware agent licensed in Delaware. The application for the Delaware policy 21 was executed by an officer of Schwab in Delaware. The application was endorsed by the 22 contracting parties and the application was incorporated into the Policy by the contracting language. 23 In addition, Delaware insurable interest and other laws govern the Delaware policy. 24 $\parallel \mid$ 25 26 ///

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V. 1 THE FACTS 2 Procurement of the Hawai'i and Delaware Policies 3 A. In or around December 1994, Alexander Hamilton issued one COLI policy to 23. 4 CS&Co. in Hawai'i ("HI Policy") and another COLI policy to CSC in Delaware ("DE Policy"), 5 collectively the "Policies." Following a series of name changes, transfers and/or acquisitions, the 6 insurer's obligation under the two Policies were subsequently transferred to Pavonia and Lincoln 7 National and were administered by Andesa on behalf of Pavonia and Lincoln National. 8 24. The HI Policy is a fixed premium, group whole life insurance policy providing for 9 fixed premium payments payable for the lifetime of each insured under the HI Policy pursuant to 10 which a death benefit was payable to CS&Co. at the insured's death. The 5,514 CS&Co. 11 employees who were insured under the HI Policy at inception were entitled to designate a 12 beneficiary to receive a \$5,000.00 benefit payable in the event of the insured's death, such benefit 13 being paid by Schwab and funded by the HI Policy. The HI Policy and the application for the HI 14 Policy are attached as Exhibit A. 15 The HI Policy was one policy obtained under one application and the HI Policy was 25. 16 issued to insure the lives of all of the employees who were insureds under the one Policy. 17 26. The HI Policy was issued with Hawai'i expressly stated in the application as the 18 applicable jurisdiction. Hawai'i was selected because the Hawai'i Department of Insurance had 19 collaborated with Alexander Hamilton to make Hawai'i the applicable jurisdiction for the explicit 20 purpose of generating significant premium tax revenues for the benefit of Hawai'i as an offset to a 21 guarantee fund obligation that Alexander Hamilton owed to Hawai'i. 22 27. The HI Policy was issued and delivered to CS&Co. in Hawai'i by Alexander 23 Hamilton on December 1, 1994. The HI Policy was a COLI because CS&Co. was the sole premium 24 payer, owner, and beneficiary of the HI Policy. The HI Policy is a retail group life insurance 25 contract falling in the class of COLI used to offset the cost of employee benefits for employees of 26 companies like CS&Co. 27 /// 28

28. CS&Co. paid premiums on the HI Policy in the amounts of \$39,416,110 and
 \$38,643,746, in 1994 and 1995 respectively.

29. The DE Policy is a fixed premium, group whole life insurance policy providing for 3 fixed premium payments payable for the lifetime of each insured under the DE Policy pursuant to 4 which a death benefit was payable to CSC at the insured's death. The DE Policy was issued and 5 delivered to CSC in Delaware on December 1, 1994. The DE Policy also was a COLI because CSC 6 was the sole premium payer, owner, and beneficiary of the DE Policy. CSC paid premiums on the 7 DE Policy in the amount of \$2,268,297 and \$1,993,901, in 1994 and 1995 respectively. The 8 employees who were insured under the DE Policy were entitled to designate personal beneficiaries 9 who would receive a \$5,000.00 benefit paid in the event of the insured's death, such benefit being 10 paid by Schwab and funded by the DE Policy. The DE Policy and its application are attached as 11 Exhibit B. 12

30. The DE[']Policy was one life insurance policy obtained under one application and the
DE Policy was issued to insure the lives of all of the employees who were insureds under the one
DE Policy.

16 31. Each of the HI and DE Policies provide that death benefits are payable to the
17 beneficiary (CS&Co. and CSC respectively) upon the death of the insured.

32. Neither the HI Policy nor the DE Policy featured a "separate account" segregated
from the Pavonia and Lincoln National general accounts solely for the benefit of either CS&Co. or
CSC. See HRS §431:10D-118(a) and 11 Del.C. §2932(a).

33. The laws in Hawai'i and Delaware provide for a statutory scheme that regulates life
insurance policies that are delivered in those States. Such laws are incorporated into the HI Policy
and the DE Policy by virtue of the *Compliance With Law* provision in the Policies.

34. In addition to the express terms of the Policies, Schwab purchased the Policies in
reliance upon a letter from Alexander Hamilton to Schwab dated November 28, 1994 in which
Alexander Hamilton gave certain warranties and agreed to certain pricing terms (the "Guarantee
Letter"). The Guarantee Letter governed the relationship when Schwab applied for the Policies,
paid the premiums at inception, and throughout the almost twenty-year relationship. Schwab relied

on the terms and representations contained in the Guarantee Letter. The Guarantee Letter is
 attached as Exhibit C.

3 35. Alexander Hamilton warranted in its Guarantee Letter that it issued the HI Policy
and the DE Policy in reliance upon information submitted by Schwab relating to the considerable
costs in the event of the death of Schwab employees, and specifically waived Alexander Hamilton's
rights to assert the defense of lack of insurable interest with regard to any death claims presented by
Schwab.

36. The Guarantee Letter warranted that the Policies satisfied the definition of life
insurance under Section 7702 of the Internal Revenue Code ("Code"), and that administration
procedures and computer software would be monitored and updated continuously to assure
continued compliance of the Policies with the "various federal tax qualification requirements." One
of those "various federal tax qualification requirements" included the definition of a Qualified
Nonguaranteed Contract under Section 419 of the Code and its requirement that stabilization
reserves be reasonable.

15 37. The Guarantee Letter also provided that there would be a claims stabilization reserve 16 ("Reserve") that "will assist in management of the mortality charge rate level and will be considered 17 cash value not available for policy loans" and that "[u]pon plan termination, the reserve will reserve 18 will [*sic*] be returned as cash value subject to release from Schwab on incurred but unreported 19 claims." Incurred but not reported ("IBNR") claims pertain to the deaths of insureds which have 20 occurred but about which neither the policyholder nor the insurer have current knowledge.

38. The Guarantee Letter made numerous representations regarding the limited number 21 of charges that could be imposed on the Policies including, among other things, the statements in 22 the Guarantee Letter and confirmed in Andesa monthly financial reports, guaranteeing that those 23 charges would be limited to a 3% premium expense charge after year one; a monthly 24 administration fee of \$1.50 per insured in the first seven policy years and \$2.00 per insured 25 thereafter (the percent of premium charge and the per insured charge collectively, "Expense 26 Charges"); a policy loan interest rate indexed to a specified Moody's Baa corporate bond yield 27 average, cost of insurance ("COI", referred to as "mortality charge" in the Guarantee Letter) to be 28

charged against the cash surrender value ("Surrender Value") for transfer to the insurer's general
 account (and to be tracked by Andesa on behalf of the insurer); and a 3% retention factor as a
 percentage of each death claim payment.

39. The Policies featured Surrender Values which accrued interest and were guaranteed
by the insurer's general account.

40. The Reserve pertaining to the HI Policy and the Reserve pertaining to the DE Policy
were accounting entries tracked by Andesa on behalf of Pavonia and Lincoln National for the
purpose of monitoring their profitability from COI charges under the Policies, and provided
assurance to Schwab that Alexander Hamilton and Pavonia would not be able to take "excess"
mortality-related profits (*i.e.*, profits over and above what was stipulated in the Guarantee Letter to
be 3% "retention...of each death claim payment").

41. Each of the Schwab employees insured under the Policies at inception were informed
by letter that Schwab intended to insure their lives and that "Schwab will purchase, own, and be the
beneficiary of, an insurance policy on the life of each employee." The employees were further
informed by that same letter that they would have the right to name the beneficiary of a death
benefit in the amount of \$5,000 payable in the event of the employee's death (the "Death Benefit
Only Plan" or "DBO Plan") if they did not object to Schwab purchasing life insurance with Schwab
as the owner and the beneficiary.

42. Each employee was given the right to withhold his or her consent to Schwab
purchasing the Policies with Schwab as the owner and the beneficiary. Furthermore, consenting
employees had a right of revocation that remained a continuing contractual right after issuance of
the HI Policy by virtue of the *Compliance With Law* provision which incorporated HRS § 431:10D202(b)(2) into the Policy.

43. The intent of both parties at contract inception was that the insurer would bear the
risk of death claims exceeding COI charges deducted from the Policies' Surrender Value, consistent
with the legal requirement that Reserves be "reasonable" and, consequently, that there would be a
transfer of risk to the insurer in order for the Policies to qualify as life insurance under the Code.
///

44. The intent of the parties was documented in the Guarantee Letter sent to Schwab
 shortly before inception of the Program and the reports prepared by Andesa on behalf of the insurers
 from inception, among other things. Neither the Policies nor the Guarantee Letter has a provision
 stating that Pavonia and Lincoln National would not bear the risk of death claims exceeding COI
 charges, or that Pavonia and Lincoln National would not bear certain expense and investment risk.

45. Upon information and belief, Andesa was retained by Alexander Hamilton and its 6 successors, including Pavonia and Lincoln National, pursuant to a contract under which Andesa 7 agreed to provide administrative services with respect to the COLI policies. Schwab is an intended 8 third party beneficiary of this contract. Pursuant to the contract, Andesa was responsible for 9 computing policy values so that all benefits due under the policies were paid to Schwab, providing 10 reports to the policy owners (Schwab), maintaining records of policy transactions, identifying the 11 occurrence of insured deaths, obtaining death certificates required to process death claims, 12 calculating the amount of life insurance death benefits payable to Schwab, preparing the death claim 13 submission form for signature by an officer of Schwab, submitting the "proofs of claim" (the death 14 certificate and claim form) to the insurance company, and advising the insurance company of the 15 amount of death benefit payable to Schwab. 16

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B.

1.

Delayed Claim Interest

46. Under Hawai'i law, interest at the minimum rate of six percent accrues on life
insurance benefits that are not paid within 30 days of the insured's death. (Hawai'i Revised Statute
§ 431:10-243.) This is known in the industry as Delayed Claim Interest ("DCI"). Pavonia, Lincoln
National and their predecessors concealed the requirement of DCI payments and failed to pay any
DCI on any death benefits since inception of the COLI Policies despite the fact that many claims
were not paid until a year or more after the insureds' deaths.

Administration of the Policies: Processing of Death Claims and Financial Reporting

47. As part of its contractual responsibility, Andesa provided Schwab monthly financial
accounting reports on behalf of Pavonia and Lincoln National and for the benefit of Schwab. Those
reports described the HI Policy as the "Charles Schwab & Co., Inc." policy and the DE Policy as
"The Charles Schwab Corporation" policy. Andesa concealed the requirement of DCI and failed to

calculate any DCI accumulated on the death claims and the Andesa reports failed to identify any
 DCI that had accrued on unpaid death claims.

48. 3 Acting at the direction and under the supervision of Pavonia and Lincoln National. Andesa also administered the tasks of identifying insured deaths under the Policies, obtaining death 4 certificates required to process death claims, calculating the amount of life insurance death benefit 5 payable to Schwab, preparing the death claim submission form for signature by an officer of 6 Schwab, submitting the "proofs of claim" (the death certificate and claim form) to the insurance 7 company, and advising the insurance company of the amount of death benefit payable to Schwab. 8 49. On December 2, 2014, Schwab's insurance consultant, HessMorganHouse 9 Consulting, LLC dba HMH Consulting ("HMH"), made inquiry with Andesa regarding DCI for two 10 death claims (the "Sik and Young Claims"). Andesa admitted that its programming system was not 11 calculating accrued DCI because "The monthly processing system is not programmed to add 12 delayed claim interest on death claims. Different states have different rates." 13 50. The next day, on December 3, 2014, HMH requested Andesa to follow-up with 14 Pavonia to see if they had determined the DCI for the Sik and Young Claims under consideration at 15 the time. Andesa forwarded the HMH request to Pavonia later that same day. Pavonia responded 16 two days later on December 5, 2014 stating "I'm not familiar with the specifics of interest on claims 17 so I've passed along to our claims area." 18 51. On January 5, 2015, Richard Zebleckas from Pavonia represented that DCI would be 19 paid on the Sik and Young Claims: 20 I've received word that we will be submitting the delayed interest to 21 Schwab for the Sik and Young claim. We just received the claim 22 documentation from Andesa on the Young claim which our claims area is in the process of reviewing. Once they are done with the 23 review we will include the delayed interest payment on both claims along with the Young claim payment and make note of it when the 24 wire is sent.

52. Because Pavonia failed to address the DCI due on past claims, on or about January
20, 2015, HMH requested an update and asked "what are the total amounts of interest?" HMH
stated further that "[w]e know of 3 other known deaths not paid that will have the same issue."
Pavonia responded later that same day: "Attached the amount [*sic*] will be 71,306.99 [*sic*] per the

attached. We will be sending a wire out on Thurs [sic] that will include this and the Young claim."
 Pavonia admitted Schwab was entitled to the DCI by agreeing to pay \$71,306.99 as reflecting the
 accrued interest on the Sik and Young Claims.

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53. Pavonia never paid any DCI on the Sik or Young Claims.

5 54. On January 28, 2015, HMH requested Pavonia provide an accounting of DCI due on
6 the 150 other death claims from the inception of the Policies. On or about February 4, 2015,
7 Andesa sent HMH's request to Pavonia.

8 55. On March 11, 2015, Ronald Yawger with Pavonia responded that "We have not paid
9 any delayed claim interest on the death claims," and "I'm assuming you may need the date of
10 payment to calculate the interest for certain states. I will keep you posted on the status."

56. On May 21, 2015, Pavonia provided a calculation of interest on the majority of past
claims on which DCI had not been paid. The minimum amount calculated by Pavonia was \$2.026
million in DCI owed to Schwab as of that date (May 21, 2015).

14 57. On June 26, 2015, HMH requested Pavonia inform Schwab regarding when the DCI
15 will be paid. Pavonia responded three days later on June 29, 2015: "We are still in the process of
16 discussing this on our end. I am copying John Moran who is the appropriate person to contact on
17 this matter."

1858.Although it had previously agreed to pay DCI on death claims, and even calculated19the amount of the DCI owed, on August 4, 2015, Pavonia's Chief Financial Officer, John Moran,

20 informed HMH that Pavonia would not pay the DCI on the previous death claims:

After consultation with our legal department it has been determined
that the vast majority of the claims are well past the statute of
limitations in the state of Hawaii. Additionally, the insurance contract
obligates Pavonia to pay death claims on "due proof of the Insured's
death". Until such time, Pavonia has no obligation to pay the claim,
and as such would not incur a contractual interest obligation. In order
to resolve this matter expeditiously for both of our benefits, we would
be willing to discuss a settlement for those claims that are not yet
time-barred. Please let me know if you wish to discuss.

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1	Mr. Moran made these statements despite knowing that Andesa was responsible for				
2	determining whether insureds under the Policies had passed away and obtaining death certificates				
3	required to process death claims pursuant to the above-referenced contract between Pavonia and				
4	Andesa.				
5	59. In his August 4, 2015 correspondence, Mr. Moran admits that the COLI "insurance				
6	contract obligates Pavonia to pay death claims." Furthermore, at no time during the				
7	communications did Mr. Moran, or anyone affiliated with Pavonia, inform Schwab that Pavonia				
8	was not an obligor under the COLI policies.				
9	60. On October 26, 2015, Schwab sent an email to Pavonia and Enstar (US) and				
10	requested payment of all DCI for which Defendants were not asserting a statute of limitations				
11	defense. Schwab had calculated that amount as \$423,039.				
12	61. In a December 10, 2015 correspondence from Pavonia to Schwab, the CFO for				
13	Pavonia, John Moran, identified Pavonia as the insurer on the COLI policies:				
.14	"I write in response to your letter dated October 27, 2015 in which				
15	you provided notice that you will be surrendering the Charles Schwab & Co., Inc. and the Charles Schwab Corporation (collectively				
16	"Charles Schwab") COLI policies (originally issued in Hawaii and Delaware, respectively by Alexander Hamilton Life Insurance of				
17	America) currently insured by Pavonia Life Insurance Company of				
18	 <u>Michigan ("PLICMI"</u>)." [Emphasis added. 62. On December 10, 2015, after Schwab had surrendered all the Policies, Pavonia 				
19	offered to settle all issues including the surrender payment to Schwab on the condition that Schwab				
20	release Pavonia for any payment of DCI.				
21	63. On January 14, 2016, Schwab informed Pavonia that Schwab was entitled to				
22	payment of the surrender value of the Policies without any precondition of release of the DCI claim:				
23	"Schwab will not waive a claim to delayed claim interest in exchange for a surrender value it is				
24	contractually entitled to receive."				
25	64. On February 9, 2016, Mr. Moran, on behalf of Pavonia, provided a different reason				
26	for the denial of DCI when he stated that the separate reserve account accumulates 4% interest and				
27	the interest from that reserve account would offset any interest due on the death claims. Despite				
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contending that no interest payments were owing, Mr. Moran made unreasonable and lowball offers 1 on behalf of Pavonia to settle the DCI claim without providing any explanation or justification as to 2 how that number was calculated. 3

65. On April 4, 2016, Robert Redpath, Senior Vice President and Corporate Counsel for 4 Enstar (US), sent a letter to Schwab revoking the February 9, 2016 offer of policy benefits. The 5 letter failed to provide any explanation for the denial of policy benefits. 6

66. On July 7, 2016, Schwab responded to the February 9 and April 4, 2016 letters by 7 requesting payment on the unpaid death claims and refuting Pavonia and Enstar's contention that 8 interest paid on the reserve account is the equivalent of DCI. 9

67. On July 28, 2016, Schwab followed up with Enstar (US) requesting a response to its 10 July 7 letter. Mr. Redpath responded by confirming that Enstar (US) was not offering any payment 11 of DCI on unpaid death claims. Enstar failed to provide any explanation for its denial 12 determination. 13

68. Pavonia's decision to reverse course and refuse to pay any DCI as mandated by HRS 14 §431:10-243, and by the HI Policy by virtue of its incorporation of Hawai'i law into the terms of the 15 HI Policy, was a unilateral decision consistent with Enstar (US)'s corporate strategy of commuting 16 liabilities at a discount through the use of buy-backs. 17

69. The Andesa monthly financial accounting reports failed to disclose that DCI was not 18 being paid to CS&Co. Furthermore, neither Pavonia nor Lincoln National ever informed Schwab 19 that it was not being paid DCI. Until Schwab discovered DCI was not being paid in December 20 2014, it did not know, nor should it have reasonably discovered, that Pavonia, Lincoln National and 21 their predecessors were withholding payment of DCI. In fact, even Andesa, a highly regarded life 22 insurance administration expert, admitted in an email that it did not know about the mandate to pay 23 DCI, nor, apparently, did Pavonia, Lincoln National or their predecessors know of their obligation 24 to pay DCI. At a minimum, Schwab is owed over \$3,000,000 in DCI under the HI Policy, 25 according to proof. 26 27 ///

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70. Pavonia, Lincoln National and their predecessors' failure to compute and pay DCI at
 a rate of interest that is at least six percent a year is a continuing violation of Schwab's rights.
 Schwab's claims for failure to pay DCI also continued to accrue as a result of Pavonia's failure to
 pay DCI.

- 71. At all times during the handling of the claims on the COLI policies, including the
 handling of Schwab's claim for unpaid DCI, Pavonia represented that it was the insurer for the
 COLI policies and at all times led Schwab to believe that it was the insurer on the COLI policies.
 All representations made by Pavonia regarding its obligations, duties and conditions under the
 COLI policies were made for the benefit of Lincoln National and Lincoln National is thereby bound
 by Pavonia's representations.
- 11

2. <u>Failure to Pay Surrender Value and Reserve Upon Surrender of the DE</u> and HI Policies

12 72. Schwab surrendered the DE Policy and HI Policy on October 27, 2015 ("Surrender
13 Date") pursuant to a letter on that date. Upon surrender, Pavonia and Lincoln National were
14 required to distribute the Surrender Values and, if Schwab were to waive its right to receive IBNR
15 Claims, the Reserves existing at that time on the HI and DE Policies as well as known unpaid death
16 claims and all accrued DCI.

17 73. According to the final Andesa Report for October 2015, the HI Policy had a
 18 Surrender Value of \$567,450 and the DE Policy had a Surrender Value of \$25,952, for a total of
 19 \$593,401.38. The October 2015 Andesa Report also stated that the Reserve held in the general
 20 account for the DE Policy was \$811,010.83. The Andesa Report also revealed a negative balance of
 21 minus \$240,548.89 in the Reserve held in the Pavonia general account for the HI Policy.

74. On or about April 4, 2016, Robert Redpath, on behalf of Enstar (US), stated in
correspondence to Schwab that Enstar (US) had calculated the total amount due CS&Co. and CSC
from surrender of both Policies was \$1,163,863, which was thereafter wired to Schwab ("Surrender
Payment"). As described herein, the Surrender Payment did not reflect the correct amounts due
Schwab under either the DE Policy or the HI Policy for Surrender Value, Reserve, DCI and unpaid
death claims.

75. At the time of surrendering the Policies, Pavonia, Lincoln National and Enstar (US)
 were required to distribute the Surrender Values from the two different Policies and the Reserves
 from the DE Policy. Schwab should have received the \$567,450 Surrender Value from the HI
 Policy, the \$25,952 Surrender Value for the DE Policy, and the \$811,010 Reserve from the DE
 Policy – a total of \$1,404,412 as the Surrender Payment. The surrender payment should not have
 been affected in any way by the known outstanding death claims under the HI Policy.

76. Consistent with their corporate policies to discount liabilities at their policyholder's 7 expense, the amount distributed to Schwab was understated by at least \$240,549 due to an unlawful 8 diversion from the DE Policy Reserve to defray the negative balance under the HI Policy Reserve. 9 This was confirmed when "Charles Schwab & Co Inc," received Form 1099R sent by Pavonia, 10 which demonstrated that Pavonia offset the negative \$240,548.89 balance in the Reserve account of 11 the HI Policy with the \$811,010.83 balance in the Reserve of the DE Policy. This payment of funds 12 to "Charles Schwab & Co Inc" from the DE Policy owned by CSC was improper, violated the 13 Policies, and violated the Code. There should have been two Forms 1099R, one for the \$567,450 14 Surrender Value from the HI Policy sent to CS&Co. and another Form 1099R for \$836,962 (the 15 \$25,952 Surrender Value and the \$811,010 Reserve from the DE Policy) sent to CSC. 16

77. Pavonia, Lincoln National and their predecessors historically paid life insurance 17 death benefits to Schwab under the HI Policy even though the Reserve in the HI Policy was 18 negative while, at the same time, the Reserve in the DE Policy was positive. When Pavonia did so, 19 it did not, and legally and contractually could not, reduce the DE Policy Reserve to offset its loss. 20 There were 24 instances from the inception of the Policies until Schwab's surrender of the Policies 21 where Pavonia, Lincoln National and their predecessors paid life insurance death benefits to 22 Schwab under the HI Policy even though the Reserve in the HI Policy was negative while, at the 23 same time, the Reserve in the DE Policy was positive, all without reducing the Reserve in the DE 24 Policy by the amount of those life insurance death benefits paid under the HI Policy. This was 25 consistent with the warranty in the Guarantee Letter that there was a transfer of risk from Schwab to 26 27 $\parallel \mid$ /// 28

Pavonia and Lincoln National and their predecessors, thereby complying with the definition of life
 insurance under section 7702 and the definition of a Guaranteed Nonqualified Contract under
 Section 419 of the Code.

78. Pavonia and Lincoln National's failure to pay the Reserve of \$811,011 in the DE
Policy at time of policy surrender was unlawful because it was not a "reasonable" reserve within the
meaning of Section 419 of the Code, was inconsistent with historical administration of the Policies,
and was in violation of the terms of the Guarantee Letter, and improperly drew excessive reserves
from the DE Policy Cash Surrender Value.

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3. Failure to Pay Death Claims On the HI Policy Incurred Before Surrender of the Policies

79. The HI Policy required the payment of claims related to the deaths of insureds
occurring while the HI Policy was in force and before it was surrendered.

80. Pavonia and Lincoln National were aware of outstanding claims under the HI Policy
 on the deaths of four individuals prior to the Surrender Date and prior to the Surrender Payment. At
 the time of the Surrender Date, Andesa was attempting on behalf of Pavonia and Lincoln National
 and Schwab to gather the appropriate documentation to process the claims.

16 81. A fifth death claim under the HI Policy occurring prior to the Surrender Date was 17 discovered in July 2016 and communicated to Andesa and Pavonia and Lincoln National. A sixth 18 death claim under the HI policy occurring prior to the Surrender Date was discovered in March 19 2018 and communicated to Andesa and Pavonia. The policy benefits due on those additional two 20 death claims are \$361,484. The policy benefits due on these six death claims are \$1,055,725. 21 82. Although the HI Policy and Guarantee Letter required payment of claims upon 22 deaths occurring prior to the Surrender Date, Pavonia and Lincoln National, in consultation with 23 and at the direction of Enstar (US), acting in disregard of their contractual obligations, failed to pay 24 the full amount of those claims, wrongfully contended that the reason was that Schwab had not 25

provided proof of death before the Surrender Date, and wrongfully contended CS&Co. released the claims upon acceptance of the discounted (and disputed) Surrender Payment. Pavonia admitted its obligation to pay the full disputed death claims by sending Schwab the Form 1099R with respect to

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the April 4, 2016 Surrender Payment which included \$570,462 in non-taxable payments that could 1 only be accounted for as payment on a portion of those outstanding death claims. 2

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83. Because death benefits are nontaxable, whereas any other distribution from the policies would have been taxable, Pavonia and Lincoln National's nontaxable treatment of 4 \$570,462 as reflected in the Form 1099R is an admission that the "Remaining Death Claims" 5 incurred prior to the surrender of the Policies were due and payable even though the proofs of 6 claims were received by Pavonia after the Surrender Date. It also means that the \$570,462 amount 7 characterized as "Claim Stabilization Reserve" in Pavonia's February 9, 2016 letter was not 8 distributed to CS&Co. and that amount should also be paid to account for that shortfall since any 9 distribution of a Reserve would be a taxable distribution. 10

84. In the Surrender Letter, Charles Schwab exercised its right under the Guarantee 11 Letter not to waive its right to the payment of death claims under the HI policy when it specifically 12 demanded payment of the four reported claims and disclosed that Schwab exercised its right under 13 the Guarantee Letter not to waive its right to the payment of IBNR ("all deaths that occurred prior to 14 today's date") under the HI Policy 15

On August 4, 2017, Enstar (US) responded to Schwab's July 28, 2016 letter by 85. 16 making a further unreasonable and lowball offer for policy benefits related to all outstanding issues. 17 Enstar (US) did not provide any explanation for its calculation of the \$82,500 offer. 18

86. On September 7, 2017, Schwab responded to Enstar (US) by advising it that its offer 19 was less than the amount of benefits due under the Policies. Specifically, Schwab was entitled to 20 \$475,200 in unpaid death claims under the HI Policy and more than \$3.4 million in DCI under the 21 HI Policy. 22

87. On October 5, 2017, Enstar (US) responded by making a further unreasonable and 23 lowball offer for unpaid death claims and the DCI to resolve unpaid HI Policy benefits. Enstar 24 (US)'s letter stated that the full amount of the death claims under the HI Policy would not be paid 25 because of a deficiency in the HI Policy Reserve. This is tantamount to an assertion that there was 26 no transfer of risk under the Policies. Enstar (US) also reiterated its position that interest was paid 27 on the Reserve and that the interest was the equivalent of a DCI payment. Enstar (US)'s position is 28

incorrect because the amount of the Reserve has no bearing on the amount of outstanding unpaid
 death claims.

88. Enstar (US) took the further erroneous position in the October 5, 2017 letter that 3 "Had Schwab timely reported the claims, the COI adjustment paid from the LCV (Loanable Cash 4 Value) would have funded this shortfall." That position is erroneous for several reasons. First, 5 Andesa was responsible for determining the existence of death claims. Second, Andesa was aware 6 of the four death claims that were known but unpaid at policy surrender within at most 35 days of 7 the date of death. Andesa was still attempting to complete the paperwork necessary to process the 8 death claims at time of to surrender. Third, these claims had been known by Pavonia and Lincoln 9 National for several months (and in some cases years) before the surrender. Pavonia and Lincoln 10 National should have used its knowledge of these known deaths along with a reasonable estimate of 11 the number of unknown claims when setting the COI rates and the Reserve. Pavonia and Lincoln 12 National had the opportunity to adjust the COI charges being deducted from cash value for more 13 than a year to fund the Reserve shortfall prior to policy surrender since the Reserve under the HI 14 Policy had been negative beginning in September, 2014. The fact that they did not do so is not 15 Schwab's problem. 16

89. On November 7, 2017, Schwab responded to Enstar (US) by advising that policy
benefits under the HI Policy were due and owing regardless of the Reserve deficiency under the HI
Policy and any interest credited on the Reserve account did not offset interest due on death benefits
under the HI Policy. That was a reassertion of Schwab's having waived any right to receive IBNR
death claims under the DE Policy. Enstar (US) never responded to Schwab's November 7, 2017
letter. Enstar (US)'s failure to respond was an acknowledgement of Schwab's never having waived
its continuing right to receive IBNR death claims under the HI Policy.

90. Consistent with Enstar (US)'s policy of employing commutations and policy buybacks on its insurance liabilities to allow the company to exit exposures to certain liabilities and
insureds generally at a discount to the ultimate liability and provide the ability to eliminate exposure
to further losses, Pavonia, Lincoln National and Enstar (US) imposed on CS&Co. a unilateral buyback of their liabilities under the Policies at a discount by refusing to pay any DCI and by paying a

- 19 -

mere portion of the HI Policy known claims and none of the IBNR Claims even after they became
 known and proofs of claim were tendered. Also consistent with their corporate policy of reducing
 exposures at the expense of their policyholders, Pavonia, Lincoln National and Enstar failed to pay
 all of the Surrender Value and Reserve owed to CSC from the DE Policy. The foregoing events
 occurred when Enstar was trying to sell Pavonia to a third party and maximize the market value of
 Pavonia.

7 C. <u>Tolling Agreement</u>

91. Schwab entered into a tolling agreement ("Tolling Agreement") with Pavonia 8 through Pavonia Holdings (US) Inc. dated December 3, 2015 that tolled any and all defenses based 9 on statutes of limitation, statutes of repose, laches, or any other principle of law or equity, however 10 denominated, whether based on statute or not, with respect to days between October 13, 2015 and 11 the date of termination of the Tolling Agreement. Pavonia was acting as an agent of Lincoln 12 National under the reinsurance agreement when it entered into the tolling agreement and Lincoln 13 National is thereby bound by the tolling agreement in the same manner as Payonia. Similarly, 14 Enstar (US) was acting as an agent of Pavonia and Lincoln National and it is also bound by the 15 tolling agreement in the same manner as Pavonia. 16

17		92.	Schwab terminated the Tolling Agreement pursuant to its letter dated December 14,
18	2018.		
19			VI.
20			CLAIMS FOR RELIEF
21			COUNT ONE
22			BREACH OF CONTRACT OF THE HAWAI'I POLICY
23			Against Pavonia and Lincoln National
24		93.	Schwab repeats and realleges each of the allegations contained in paragraphs 1
25	throug	h 92 ab	ove as if fully set forth herein.
26		94.	A contract existed between CS&Co. on the one hand and Pavonia and Lincoln
27	Nation	al as th	e coinsurers on the other, whereby they agreed to pay life insurance death benefits to
28	CS&C	o. in ar	y case under the HI Policy where an insured passed away while the Policy was in full
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96	- 20 -		
FIRST	AMENDED COMPL	AINT CASE NO). CGC-19-572711

force and effect (had neither lapsed nor been surrendered) and whereby Andesa calculated the
amount of the death benefits pursuant to the supervision and direction of the coinsurers, Andesa
obtained the proofs of claims for those deaths pursuant to the supervision and direction of the
coinsurers, Andesa obtained the signature of Schwab on the proofs of claims pursuant to the
supervision and direction of Pavonia, and Andesa presented the death benefit calculation and signed
proofs of claims to the coinsurers on behalf of Schwab for payment of the life insurance proceeds to
Schwab.

8 95. The terms of the HI Policy were set forth in the HI Policy and Guaranty Letter.
9 CS&Co. purchased the HI Policy in reliance upon the warranties and pricing terms governing the HI
10 Policy as set forth in the Guarantee Letter, the Code, and Hawai'i law.

96. CS&Co. performed all of its obligations under the contract and satisfied all
conditions precedent from inception of the Policies through October, 2015, including without
limitation the payment to the coinsurers of over \$81 million in premiums, over \$3 million in
Expense Charges, nearly \$28 million in COI charges, and more than \$800,000 in retention charges.

97. The contract required the coinsurers to provide CS&Co. sufficient information to
enable CS&Co. to make informed decisions regarding payments of premiums, payments of interest
on policy loans, the payments of death benefits and DCI, making loans against surrender value, the
lapse of individual coverages under the contract, and the surrender of the Policies.

98. The contract also required the coinsurers to assure Schwab continued satisfaction of
the definition of life insurance under Section 7702 of the Code, continued satisfaction of the
definition of a Guaranteed Nonqualified Contract under Section 419 of the Code, favorable income
tax treatment under Section 72 of the Code (tax free growth of the surrender value under the
Policies), and Section 101 of the Code (tax free receipt of death benefits from the Policies), as well
as continued compliance with Hawai'i law.

99. Absent a release for and waiver of its continuing right to receive IBNR Claims under
the HI Policy, the coinsurers committed to the payment of those IBNR Claims under the HI Policy
in full once the requisite proofs of claims were submitted, rather than unlawfully taking the reserves
from the DE Policy.

1 100. The coinsurers breached the HI Policy and contract by paying only a portion of the
 known outstanding HI Policy death claims pertaining to insureds who died before the Policies were
 surrendered and the Policies were in full force and effect in order to avoid incurring a mortality related loss, thereby nullifying the transfer of risk to the coinsurers necessary to comply with the
 requirements of the definition of life insurance, and by refusing to pay any amount on those death
 claims under the HI Policy that were IBNR on the date of policy surrender since Schwab expressly
 asserted that it was not waiving its continuing right to those HI Policy claims.

8 101. The coinsurers breached the contract with Schwab when they failed to pay the four
9 known death claims under the HI Policy following submission of the requisite proofs of claims and
10 at a time when the Reserve under the HI Policy was negative, a practice in which the coinsurers had
11 never engaged prior to surrender of the Policies, thereby negating the transfer of risk to the
12 coinsurers mandated by Sections 7702 and 419 of the Code.

- 13 102. As insurers of the HI Policy and under Hawai'i law, the coinsurers had contractual
 14 obligations to administer the HI Policy in the best interests of CS&Co., to not interfere with
 15 Schwab's rights and benefits under the Policies, and to provide information to CS&Co. to enable it
 16 to make itself aware that DCI was mandated by law.
- 17 103. The coinsurers breached the HI Policy and contract by failing to pay CS&Co. any of
 18 the DCI that had accrued on the death claims under the HI Policy. From the date the coinsurers and
 19 their predecessors issued the first payment of death benefits under the HI Policy, they have failed
 20 and continue to fail to pay any DCI that was due and owing on deaths of insureds that occurred
 21 during the life of the Policies.
- 104. Because the HI Policy constitutes one, undivided insurance policy, separate and apart
 from the DE Policy, the coinsurers' failure to pay the DCI for the death claims under the HI Policy
 results in ongoing and continuous breaches of the HI Policy and contract.

105. The coinsurers breached the HI Policy and contract by offering to pay CS&Co.
policy benefits that were due and payable on the condition that it accept a settlement of other policy
benefits that were in dispute.

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106. As a direct and proximate result of the coinsurers' contractual breaches, Schwab has 1 suffered damages in an amount to be determined at trial. These damages include, among others, (i) 2 the loss of unpaid death claims of at least \$485,263 under the HI Policy; (ii) the loss of unpaid DCI 3 in excess of \$3,000,000 under the HI Policy; (iii) the costs incurred from consultants' representation 4 of Schwab with respect to Schwab claims against the coinsurers; (iv) the value of IBNR Claims 5 under the HI Policy; and (v) consequential and incidental damages, including out-of-pocket 6 expenses, attorneys' fees and court costs. 7 8 **COUNT TWO** 9 BREACH OF CONTRACT OF THE DELAWARE POLICY **Against Pavonia and Lincoln National** 10 107. CSC repeats and realleges each of the allegations contained in paragraphs 1 through 11 106 above as if fully set forth herein. 12 A contract existed between CSC on the one hand and Pavonia and Lincoln National 108. 13 as the coinsurers on the other, whereby the coinsurers agreed to pay life insurance death benefits to 14 CSC in any case under the DE Policy where an insured passed away while the DE Policy was in full 15 force and effect (had neither lapsed nor been surrendered) and whereby Andesa calculated the 16 amount of the death benefits pursuant to the supervision and direction of the coinsurers, Andesa 17 obtained the proofs of claims for those deaths pursuant to the supervision and direction of the 18 coinsurers Andesa obtained the signature of CSC on the proofs of claims pursuant to the 19 supervision and direction of the coinsurers, and Andesa presented the death benefit calculation and 20 signed proofs of claims to the coinsurers for payment of the life insurance proceeds to CSC. 21 109. The terms of the DE Policy were set forth in the DE Policy and the Guarantee 22 Letter. CSC purchased the DE Policy in reliance upon the warranties and pricing terms governing 23 the DE Policy as set forth in the Guarantee Letter, and confirmed in the monthly financial 24 accounting reports that Andesa provided to CSC pursuant to the supervision and direction of the 25 coinsurers, the Code, and Delaware law. 26 110. CSC performed all of its obligations under the DE Policy and contract and satisfied 27 all conditions precedent from inception of the DE Policy through October 2015, including without 28

limitation the payment to the coinsurers of all premium payments, required Expense Charges, COI
 charges and retention charges.

111. The DE Policy and Delaware law also required the coinsurers to provide CSC
sufficient information to enable CSC to make properly informed decisions regarding payments of
premiums, payments of interest on policy loans, making withdrawals from surrender value, the
lapse of individual coverages under the contract, payment of death benefits and DCI, and the
surrender of the Policies.

112. The contract also required the coinsurers to assure continued satisfaction of the 8 definition of life insurance under Section 7702 of the Code, favorable income tax treatment under 9 Section 72 of the Code (tax free growth of the surrender value under the Policies), Section 101 of 10 the Code (tax free receipt of death benefits from the Policies), and Section 419 of the Code 11 (maintenance of "reasonably and actuarially necessary amounts to fund" the Reserve that are not 12 excessive and avoidance of "fund" status by assuring a transfer of risk with respect to the Reserve). 13 113. The reserve the coinsurers were holding was excessive. The coinsurers breached the 14 contract by its failure to comply with its obligation to CSC to hold a reasonable reserve. 15

16 114. The contract also required the coinsurers to assure continued compliance with the
17 law, including the standard provisions that any sum becoming due by reason of the death of the
18 individual insured shall be payable to the beneficiary designated by the owner of the Policy (CSC).

19 115. The contract further required the coinsurers to obtain a "release from CSC on
incurred but unreported claims" as a condition precedent to the return of the reserves to CSC "as
cash value" as specified in the Guarantee Letter, which the coinsurers never attempted to do. CSC
implicitly provided the requisite waiver of its continuing right to receive IBNR claims with respect
to the DE Policy when it demanded payment of the reserve. If the coinsurers wanted the waiver
provided in a different form, it could have requested such but did not, and therefore CSC was
entitled to payment of the Reserve as cash value, as specified in the Guarantee Letter.

116. The coinsurers breached the DE Policy and contract when the DE Policy was
surrendered by aggregating the negative reserve under the HI Policy with the reserve of the DE
Policy, thereby subsidizing the negative reserve under the HI Policy and transferring assets owned

by CSC to CS&Co., a practice that is a confiscation of a CSC asset and in which Pavonia had never
 engaged prior to surrender of the Policies.

3 117. The coinsurers breached the contract by failing to pay "any residual" reserve under
4 the DE Policy as demanded by the Surrender Letter.

5 118. The coinsurers breached the DE Policy and contract by offering to pay CSC a
6 significant discount on policy benefits that were due and payable on the condition that CSC accept
7 only the DE Policy Cash Surrender Value.

8 119. As a direct and proximate result of the coinsurers' contractual breaches, CSC has 9 suffered damages in an amount to be determined at trial. These damages include, among others, (i) 10 the loss of unpaid DE Policy reserve in the amount of \$811,011; (ii) the loss of unpaid interest on 11 delayed claims payments; (iii) the costs incurred from consultants' representation of Schwab with 12 respect to Schwab claims against the coinsurers; and (iv) consequential and incidental damages, 13 including out-of-pocket expenses, attorneys' fees and court costs.

COUNT THREE

STATUTORY VIOLATIONS FOR UNPAID DCI Against Pavonia and Lincoln National

16
120. CS&Co. repeats and realleges each of the allegations contained in paragraphs 1
17
17 through 119 above as if fully set forth herein.
18

121. The sale of life insurance in Hawai'i is governed by Hawai'i Insurance Code, HRS

§§ 431:10D-201 et seq., along with other statutes and administrative regulations.

20 122. HRS § 431:10D-213 provides that any sum due by reason of the death of an insured
21 shall be payable to the beneficiary.

HRS § 431:10-243 provides that interest is due and payable in an amount not less
than 6% on any death benefit that was not paid within 30 days from the date of death.

124
124. The acts and omissions of Pavonia and Lincoln National set forth above violate the
duties imposed on those Defendants under the Hawai'i statutory provisions, along with other
statutes and administrative regulations.

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125. As a direct and proximate result of Pavonia's contractual and statutory breaches, 1 CS&Co. has suffered damages in an amount to be determined at trial. These damages include, 2 among others, (i) the loss of unpaid death claims; (ii) the loss of millions of dollars in unpaid DCI; 3 (iii) the costs incurred from consultants' representation of CS&Co. with respect to CS&Co. claims 4 against the coinsurers; and (v) consequential and incidental damages, including out-of-pocket 5 expenses, attorneys' fees and court costs. 6 **COUNT FOUR** 7 BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING 8 **Against Pavonia and Lincoln National** 9 126. Schwab repeats and realleges each of the allegations contained in paragraphs 1 10 through 125 above as if fully set forth herein. 11 Pavonia and Lincoln National as coinsurers under the COLI policies had and have 127. 12 the legal duty of good faith and fair dealing implied by the relationship established by the Policies 13 and expressly mandated by law. 14 128. As part of their good faith obligations, the coinsurers were required at a minimum to 15 (i) provide full disclosure to Schwab with respect to the Policies; (ii) provide good faith advice in 16 the best interest of Schwab; (iii) consistently monitor the performance of the Policies and take 17 appropriate actions with respect to the management of the Reserve and death claims as warranted 18 by the circumstances and as needed to comply with law; (iv) pay all policy benefits, including DCI, 19 due and owing under the terms of the Policies and applicable laws; and (iv) otherwise act in good 20 faith and in the best interests of Schwab at all relevant times in connection with the Policies. 21 129. As further part of their contractual obligations, the coinsurers were required at a 22 minimum to provide full disclosure to Schwab with respect to the Hawai'i statutory mandate to pay 23 DCI. 24 130. The coinsurers breached their duty of good faith and fair dealing in multiple respects. 25 Among other things, (a) the coinsurers breached the express covenant to pay death claims and DCI 26 promptly; and (b) the coinsurers breached the express covenant to pay the DE Reserve upon 27 receiving the Schwab waiver of IBNR Claims under the DE Policy. 28

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FIRST AMENDED COMPLAINT-- CASE NO. CGC-19-572711

131. 1 The coinsurers further acted in bad faith with positions during the claim handling that were unsupportable, false, and done for the sole purpose of delaying and ultimately denying 2 CS&Co. and CSC benefits due under the Policies and their statutory rights: (a) the coinsurers failed 3 to disclose the full amount of benefits that were due under the Policies and by law, including the 4 5 benefit of DCI payments; (b) the coinsurers acted in bad faith when they initially said they would pay the DCI under the HI Policy and then reversed that decision without providing any valid 6 justification for refusing to pay; (c) the coinsurers acted in bad faith when they claimed that they 7 paid interest on the HI Policy Reserve and that those payments offset DCI due on the death claims 8 9 under the HI Policy; (d) the coinsurers acted in bad faith through their erroneous calculation of DCI payments due and owing and amount of surrender value and Reserve due and owing under the two 10 separate Policies; (e) the coinsurers failed to have any reasonable basis for denying policy benefits 11 due to Schwab under the Policies; (f) the coinsurers acted in bad faith by offering to pay Schwab 12 policy benefits that were due and payable on the condition that it accept a settlement of other policy 13 benefits that were in dispute; (g) the coinsurers acted in bad faith by engaging in unfair claims 14 handling and making lowball and unreasonable offers of policy benefits; (h) the coinsurers acted in 15 bad faith by failing to disclose that Pavonia and Lincoln National had entered into a reinsurance 16 17 agreement whereby they assumed the obligations under the COLI policies as coinsurers but that Pavonia or Lincoln National would subsequently assert no obligations under the COLI policies; and 18 (i) the coinsurers failed to provide a reasonable explanation and basis for its denial of policy 19 benefits due under the Policies. 20

132. The coinsurers acted willfully, wantonly, oppressively, and maliciously with a spirit
of mischief and indifference to its civil obligations, by virtue of its asserting that death claims
incurred prior to the surrender of the HI Policy were not payable due to the coinsurers' failure to
receive proofs of claims prior to the surrender of the HI Policy, notwithstanding the fact that the
coinsurers actually paid a portion of those death claims as reported on the Form 1099R given to
Schwab.

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1 133. The acts and omissions of the coinsurers in breaching the duty of good faith and fair
 2 dealing were intentional, wrongful, malicious, and oppressive, warranting punitive damages to act
 3 as a deterrence to such behavior.

In doing the things herein alleged, the coinsurers violated Hawai'i's statutory law
regarding the unfair or deceptive act or practice of making and issuing any statement which
misrepresents the benefits, advantages, payment amounts, claims handling, conditions, or terms of
any insurance policy

8 135. As a result of the coinsurers' bad faith conduct, Schwab has incurred substantial
9 attorneys' fees, costs and expenses to obtain policy benefits and bring this Complaint to enforce its
10 rights under the policies mentioned herein.

11 136. As a direct and proximate result of the coinsurers' bad faith conduct, Schwab has 12 suffered damages in an amount to be determined at trial. These damages include, among others, (i) 13 the loss of unpaid death claims; (ii) the loss of unpaid DE Policy reserve; (iii) the loss of millions of 14 dollars in unpaid DCI; (iv) the costs incurred from consultants' representation of Schwab with 15 respect to Schwab claims against the coinsurers; and (v) consequential and incidental damages, 16 including out-of-pocket expenses, attorneys' fees and court costs.

COUNT FIVE

<u>DING AND ABETTING PAVONIAAND</u> ICOLN NATIONAL'S BREACH OF THE

Against Enstar (US) and Andesa

IED COVENANT OF GOOD FAITH AND

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137. Schwab repeats and realleges each of the allegations contained in paragraphs 1
22
through 136 above as if fully set forth herein.

138. As herein alleged, the coinsurers breached the contract with Schwab by failing to pay
 policy benefits including statutory DCI due and owing and it further breached the implied covenant
 of good faith and fair dealing that caused harm to Schwab.

26
139. Beginning in or around April 2016, Enstar (US) became involved and made
27
decisions regarding the nonpayment of DCI, Reserves, and death benefits due under the Policies.
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At this time, Enstar (US) had knowledge of the coinsurers' wrongful conduct whereby the
 coinsurers were refusing to pay DCI, Reserves, and unpaid death benefits to Schwab.

140. Enstar (US) provided the coinsurers with substantial assistance to unreasonably deny
Schwab policy benefits when it sent the letter on April 4, 2016 stating that it was revoking the
February 9, 2016 offer made by Pavonia and that it was wiring the \$1,163,863 with no payment of
DCI or the unpaid death benefits.

Enstar (US) continued to provide substantial assistance to the coinsurers from 2016 141. 7 through 2017 by making lowball offers of policy benefits to Schwab that were based on 8 misrepresentations of policy benefits and statutory DCI due and owing, mischaracterizations of the 9 calculations of death benefits due under the Policies, mischaracterizations of the calculations of 10 interest on Reserves, and unreasonable and unfair denial of policy benefits due under the Policies. 11 At all times alleged herein, Enstar (US) was acting on its own behalf and in its own 142. 12 interest to assist the coinsurers in their bad faith conduct. Enstar (US) was motivated to assist the 13 coinsurers with unreasonably denying Schwab policy benefits and statutory DCI because such 14 assistance was consistent with Enstar (US)'s corporate objectives of growing its net book value and 15 reducing the amount of policy benefits paid on insurance policies at the expense and to the 16 detriment of policyholders such as Schwab. Enstar (US) was further motivated to assist the 17 coinsurers in denying policy benefits because it sought to reduce Pavonia's debt load and make 18 19 Pavonia more financially attractive because it was negotiating the sale of Pavonia at or about the same time it was assisting Pavonia in the unreasonable denial of policy benefits that were due and 20 owing to Schwab. 21

143. As a result of Enstar (US)'s bad faith conduct in which it engaged with such
frequency as to indicate a general business practice, Schwab has incurred substantial attorneys' fees,
costs and expenses to obtain policy benefits and bring this Complaint to enforce its rights under the
Policies mentioned herein.

144. During the time it was processing claims for the coinsurers, Andesa was aware that
the coinsurers were not paying the DCI.

28 ///

145. Andesa provided substantial assistance to the coinsurers' unreasonable denial of
 policy benefits by failing to include DCI obligations with the policy benefits that were owed on the
 death claims.

4 146. As a direct and proximate result of Enstar and Andesa's bad faith conduct, Schwab
5 has suffered damages in an amount to be determined at trial. These damages include, among
6 others, (i) the loss of unpaid death claims under the HI Policy; (ii) the loss of unpaid DE Policy
7 Reserves; (iii) the loss of millions of dollars in unpaid DCI; (iv) the costs incurred from consultants'
8 representation of Schwab with respect to Schwab claims against the coinsurers; and (v)
9 consequential and incidental damages, including out-of-pocket expenses, attorneys' fees and court
10 costs.

COUNT SIX

BREACH OF CONTRACT Against Enstar (US)

14 147. Schwab repeats and realleges each of the allegations contained in paragraphs 1
15 through 146 above as if fully set forth herein.

16 148. Upon information and belief, a contract existed between Enstar (US) and coinsurers
17 Pavonia and Lincoln National whereby Enstar (US) agreed to provide certain administrative
18 services that were designed to assist the coinsurers with the management and processing of
19 insurance benefits due under the Policies.

149. As part of its contractual obligations, Enstar (US) assisted in the calculation of the
amount of the death benefits, obtaining the proofs of claims for those deaths, obtaining the signature
of Schwab on the proofs of claims, and presenting the death benefit calculation and signed proofs of
claims to the coinsurers for payment of the life insurance proceeds to Schwab.

150. Upon information and belief, Enstar (US) was contractually required to perform its
contractual services with a high degree of professional care so as to ensure Schwab received
payment for all benefits due under the Policies and to ensure Schwab was not harmed by Enstar
(US)'s performance under the contract.

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1	151. Schwab is a third-party intended beneficiary under the Enstar (US) and the				
2	coinsurers' contract. Enstar (US) breached the contract and caused Schwab to suffer harm by				
3	failing to properly determine and report the deaths of insureds under the Policies, its admitted				
4	failure to implement calculation of DCI functionality into its administrative systems and procedures,				
5	and its failure to calculate the amount of DCI as part of the benefits due under the Policies.				
6	152. As a direct and proximate result of Enstar (US)'s contractual breaches, CS&Co. and				
7	CSC have suffered damages in an amount to be determined at trial. These damages include,				
8	among others, (i) the loss of unpaid death claims; (ii) the loss of millions of dollars in unpaid DCI;				
9	(iii) the loss of the DE Policy Reserve, (iv) the costs incurred from consultants' representation of				
10	CS&Co. and CSC with respect to their claims against the coinsurers; and (v) consequential and				
11	incidental damages, including out-of-pocket expenses, attorneys' fees and court costs.				
12	<u>COUNT SEVEN</u>				
13	BREACH OF CONTRACT Against Andesa				
14	Agamst Anucsa				
15	153. Schwab repeats and realleges each of the allegations contained in paragraphs 1				
16	through 152 above as if fully set forth herein.				
17	154. Upon information and belief, a contract existed between Andesa and coinsurers				
18	Pavonia and Lincoln National whereby Andesa agreed to provide certain administrative services				
19	that were designed to assist the coinsurers with the management and processing of insurance				
20	benefits due under the Policies.				
21	155. As part of its contractual obligations, Andesa calculated the amount of the death				
22	benefits, obtained the proofs of claims for those deaths, obtained the signature of Schwab on the				
23	proofs of claims, and presented the death benefit calculation and signed proofs of claims to the				
24	coinsurers for payment of the life insurance proceeds to Schwab.				
25	156. Upon information and belief, Andesa was contractually required to perform its				
26	contractual services with a high degree of professional care so as to ensure Schwab received				
27	payment for all benefits due under the Policies and to ensure Schwab was not harmed by Andesa's				
28	performance under the contract.				

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1	157. Schwab is a third-party intended beneficiary under the Andesa and the coinsurers'				
2	contract. Andesa breached the contract and caused Schwab to suffer harm by failing to properly				
3	determine and report the deaths of insureds under the Policies, its admitted failure to implement				
4	calculation of DCI functionality into its administrative systems and procedures, and its failure to				
5	calculate the amount of DCI as part of the benefits due under the Policies.				
6	158. As a direct and proximate result of Andesa's contractual breaches, CS&Co. and				
7	CSC have suffered damages in an amount to be determined at trial. These damages include,				
8	among others, (i) the loss of unpaid death claims; (ii) the loss of millions of dollars in unpaid DCI;				
9	(iii) the loss of the DE Policy Reserve, (iv) the costs incurred from consultants' representation of				
10	CS&Co. and CSC with respect to their claims against the coinsurers; and (v) consequential and				
11	incidental damages, including out-of-pocket expenses, attorneys' fees and court costs.				
12	<u>COUNT EIGHT</u>				
13	PROMISSORY ESTOPPEL				
14	Against Pavonia and Lincoln National				
15	159. Schwab repeats and realleges each of the allegations contained in paragraphs 1				
13	157. Dentwo repeats and realleges each of the anegations contained in paragraphs i				
15 16	through 158 above as if fully set forth herein.				
16	through 158 above as if fully set forth herein.				
16 17	through 158 above as if fully set forth herein. 160. As set forth above, the rights and obligations of the parties in connection with the				
16 17 18	 through 158 above as if fully set forth herein. 160. As set forth above, the rights and obligations of the parties in connection with the Policies were set forth in the DE Policy and the HI Policy, the Guarantee Letter, and confirmed in 				
16 17 18 19	 through 158 above as if fully set forth herein. 160. As set forth above, the rights and obligations of the parties in connection with the Policies were set forth in the DE Policy and the HI Policy, the Guarantee Letter, and confirmed in the Andesa monthly financial reports. 				
16 17 18 19 20	 through 158 above as if fully set forth herein. 160. As set forth above, the rights and obligations of the parties in connection with the Policies were set forth in the DE Policy and the HI Policy, the Guarantee Letter, and confirmed in the Andesa monthly financial reports. 161. To the extent it is determined that the rights and obligations set forth in the Policies 				
16 17 18 19 20 21	 through 158 above as if fully set forth herein. 160. As set forth above, the rights and obligations of the parties in connection with the Policies were set forth in the DE Policy and the HI Policy, the Guarantee Letter, and confirmed in the Andesa monthly financial reports. 161. To the extent it is determined that the rights and obligations set forth in the Policies and/or the Guarantee Letter and/or the Andesa monthly financial reports and/or the law are not 				
16 17 18 19 20 21 22	 through 158 above as if fully set forth herein. 160. As set forth above, the rights and obligations of the parties in connection with the Policies were set forth in the DE Policy and the HI Policy, the Guarantee Letter, and confirmed in the Andesa monthly financial reports. 161. To the extent it is determined that the rights and obligations set forth in the Policies and/or the Guarantee Letter and/or the Andesa monthly financial reports and/or the law are not contractual in nature and thus not enforceable as such, the statements made in those documents 				
 16 17 18 19 20 21 22 23 	 through 158 above as if fully set forth herein. 160. As set forth above, the rights and obligations of the parties in connection with the Policies were set forth in the DE Policy and the HI Policy, the Guarantee Letter, and confirmed in the Andesa monthly financial reports. 161. To the extent it is determined that the rights and obligations set forth in the Policies and/or the Guarantee Letter and/or the Andesa monthly financial reports and/or the law are not contractual in nature and thus not enforceable as such, the statements made in those documents were clear and unambiguous promises made by Alexander Hamilton to Schwab, for which the 				
 16 17 18 19 20 21 22 23 24 	 through 158 above as if fully set forth herein. 160. As set forth above, the rights and obligations of the parties in connection with the Policies were set forth in the DE Policy and the HI Policy, the Guarantee Letter, and confirmed in the Andesa monthly financial reports. 161. To the extent it is determined that the rights and obligations set forth in the Policies and/or the Guarantee Letter and/or the Andesa monthly financial reports and/or the law are not contractual in nature and thus not enforceable as such, the statements made in those documents were clear and unambiguous promises made by Alexander Hamilton to Schwab, for which the coinsurers assumed responsibility, that the insurance policies being sold to Plaintiffs had the 				
 16 17 18 19 20 21 22 23 24 25 	through 158 above as if fully set forth herein. 160. As set forth above, the rights and obligations of the parties in connection with the Policies were set forth in the DE Policy and the HI Policy, the Guarantee Letter, and confirmed in the Andesa monthly financial reports. 161. To the extent it is determined that the rights and obligations set forth in the Policies and/or the Guarantee Letter and/or the Andesa monthly financial reports and/or the law are not contractual in nature and thus not enforceable as such, the statements made in those documents were clear and unambiguous promises made by Alexander Hamilton to Schwab, for which the coinsurers assumed responsibility, that the insurance policies being sold to Plaintiffs had the characteristics and would operate as described in those materials.				

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numerous details, rights and obligations in connection with the characteristics and operation of the
 COLI Policies.

163. Plaintiffs relied on the written and oral promises in the Policies and Guarantee
Letter, as well as the law governing the Policies, in purchasing the Policies in 1994, and continued
to rely thereon and upon the Andesa monthly financial reports, throughout the life of the
enforcement of the Policies.

7 164. Plaintiffs' reliance on these written and oral promises was reasonable, justifiable
8 and foreseeable by the coinsurers.

9 165. The coinsurers breached those written and oral promises by expressly refusing to pay 10 all of the death claims incurred under the HI Policy while the HI Policy was in full force and effect 11 on the pretext that the proofs of claims were not received before the HI Policy was surrendered and 12 even though the coinsurers paid a portion of those claims despite still claiming not to have received 13 the proofs of claims before the HI Policy was surrendered.

14 166. The coinsurers breached those written and oral promises by illegally netting the
15 Reserve under the HI Policy against the Reserve under the DE Policy, contrary to the coinsurers'
16 historical practice of not using the Reserve under one of the Policies to subsidize a deficit in the
17 Reserve under one of the other Policies, all as reflected in the Andesa monthly financial reports
18 comprising an essential term of the Policies and all as essential to the transfer of risk needed to
19 comply with Sections 7702 and 419 of the Code.

167. The coinsurers breached those written and oral promises by ignoring Plaintiffs'
waiver of its right to IBNR Claims and right to receive the Reserve under the DE Policy by failing
to distribute the DE Policy reserve to Schwab.

168. The coinsurers breached those written and oral promises by failing to disclose
anything about DCI in the Andesa monthly financial reports to Plaintiffs and thereby intentionally
withholding any disclosures that would have put Schwab on notice that it had a right to receive
DCI.

27 169. The coinsurers breached those written and oral promises by failing to pay DCI on
28 any claims since inception of the Policies up to and including the date of surrender of the Policies.

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1	170. The coinsurers breached those written and oral promises by calculating DCI on the
2	Sik and Young claims, representing that the DCI on those claims would be paid, and then failing to
3	pay the DCI on those claims.
4	171. As a direct and proximate result of the Defendants' contractual breaches, Schwab
5	has suffered damages in an amount to be determined at trial. These damages include, among
6	others, (i) the loss of unpaid death claims under the HI Policy; (ii) the loss of unpaid DE Policy
7	Reserve; (iii) the loss of millions of dollars in unpaid DCI; (iv) the costs incurred from consultants'
8	representation of Schwab with respect to Schwab claims against the coinsurers; and (v)
9	consequential and incidental damages, including out-of-pocket expenses, attorneys' fees and court
10	costs.
11	<u>COUNT NINE</u>
12	CONCEALMENT
13	Against Pavonia, Lincoln National, Enstar (US) and Andesa
14	172. Schwab repeats and realleges each of the allegations contained in paragraphs 1
15	through 171 above as if fully set forth herein.
16	173. At the time of contracting and throughout the course of paying benefits due under the
17	Policies, Defendants Pavonia, Lincoln National, Enstar (US) and Andesa failed to disclose to
18	Schwab basic facts related to the insurance transaction regarding the nonpayment of DCI, the
19	nonpayment of death benefits, and the method by which the coinsurers would offset funds from
20	separate Surrender Values and Reserves at the time of surrendering the HI and DE Policies.
21	Schwab was not aware of these undisclosed facts.
22	174. During the time of paying benefits on claims under the COLI policies and
23	negotiating settlement of all claims, Defendants Pavonia, Lincoln National, Enstar (US) and Andesa
24	also failed to disclose that Pavonia and Lincoln National had entered into a reinsurance agreement
25	whereby Pavonia and Lincoln National assumed the obligations under the COLI policies as
26	coinsurers but that Pavonia or Lincoln National would subsequently assert no obligations under the
27	COLI policies. Schwab was not aware of these undisclosed facts.
28	///

1 175. Based on the nature of the relationship between Schwab and Defendants Pavonia,
 2 Lincoln National, Enstar (US) and Andesa, Defendants had a duty to truthfully disclose these basic
 3 facts regarding the characteristics of, operation of, and obligations under the Policies.

176. Defendants Pavonia, Lincoln National, Enstar (US) and Andesa knew that the
concealment of these facts would justifiably induce Schwab to enter into the life insurance
transaction and accept Policy benefit payments. In fact, Defendants intended to deceive Schwab
with the undisclosed facts and they knew that Schwab would rely on the concealment of these basic
facts in deciding to purchase the Policies and deciding that it would continue to maintain the
Policies. Schwab would have behaved differently had it been aware of these undisclosed facts.

10 177. As a result of the concealment as alleged herein, the statute of limitations on each
11 and every claim was tolled.

12 178. As a direct and proximate result of Pavonia, Lincoln National, Enstar (US) and 13 Andesa's concealment, Schwab relied on the concealment to its detriment and has suffered damages 14 in an amount to be determined at trial. These damages include, among others, (i) the loss of unpaid 15 death claims; (ii) the loss of the unpaid DE Policy Reserve; (iii) unpaid DCI under the HI Policy; 16 and (v) consequential and incidental damages, including out-of-pocket expenses, attorneys' fees 17 and court costs.

19 <u>VIOLATION OF HAWAI'I UNFAIR AND DECEPTIVE TRADE PRACTICES ACT</u> Against All Defendants

COUNT TEN

21 179. Schwab repeats and realleges each of the allegations contained in paragraphs 1
22 through 178 above as if fully set forth herein.

180. The Hawai'i Unfair and Deceptive Trade Practices Act, HRS § 480-2 et seq. (the
"UDTPA") prohibits unfair methods of competition and unfair or deceptive acts or practices in the
conduct of any trade or commerce.

181. The Hawai'i Unfair Methods of Competition and Unfair and Deceptive Acts and
Practices in the Business of Insurance Act, HRS §431:13-101 et seq. (the "UCIA") prohibits all
acts, methods, and practices which constitute unfair methods of competition or unfair or deceptive

acts or practices in accordance with the intent of the Congress of the United States as expressed in
 the act of Congress of March 9, 1945 (Public Law 15, 79th Congress).

182. The coinsurers and Enstar (US) committed and performed unfair and deceptive acts
or practices, including unfair claim settlement practices, in the conduct of trade and commerce in
the State of Hawai'i with such frequency as to indicate a general business practice of doing so in
violation of HRS §431:13-103(a)(11).

183. As part of its contractual obligations, Pavonia, Lincoln National, their predecessors, 7 Andesa and Enstar (US) were required at a minimum to provide full disclosure to CS&Co. with 8 respect to the Hawai'i statutory mandate to pay DCI but failed to do so by omitting any reference to 9 DCI in either the Andesa monthly financial reports or the statements (setting forth the coverage 10 under which the payments are being made) that were required to accompany the payment of claims. 11 184. Pavonia, Lincoln National, Andesa and Enstar (US) violated the UDTPA and the 12 UCIA in multiple respects. Among other things, the coinsurers and Enstar (US) engaged in an 13 unfair and deceptive business practice by failing to pay death claims and DCI promptly. 14

15 185. Pavonia, Lincoln National, Andesa and Enstar (US) engaged in the unfair or
16 deceptive act or practice of making, disseminating, or placing before the public, in the form of a
17 letter, a statement containing any assertion, representation, or statement with respect to the business
18 of insurance, which is untrue, deceptive, or misleading.

19 186. Pavonia, Lincoln National, Andesa and Enstar (US) engaged in the unfair or
20 deceptive act or practice of misrepresenting pertinent facts or insurance policy provisions relating to
21 coverages and benefits due under the Policies.

187. The coinsurers and Enstar (US) engaged in the unfair claim settlement practice of
engaging in unfair claims handling and making lowball and unreasonable offers of policy benefits
with no reasonable basis or explanation for the offers.

188. The coinsurers and Enstar (US) engaged in the unfair claim settlement practice of
failing to promptly settle claims where liability has become reasonably clear.

27 189. The coinsurers and Enstar (US) engaged in the unfair claim settlement practice of
28 failing to disclose that Pavonia and Lincoln National had entered into a reinsurance agreement

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whereby they assumed the obligations under the COLI policies as coinsurers but that Pavonia or
 Lincoln National would subsequently assert no obligations under the COLI policies.

190. The coinsurers, their predecessors and Andesa engaged in the unfair or deceptive act
or practice of making claims payments to insureds or beneficiaries not accompanied by a statement
setting forth the coverage under which the payments are being made by virtue of having omitted any
mention of DCI in that statement.

7 191. In doing the things herein alleged, Pavonia, Lincoln National, Andesa and Enstar
8 (US) violated Hawai'i's statutory law regarding the unfair or deceptive act or practice of making
9 and issuing any statement which misrepresents the benefits, advantages, payment amounts, claims
10 handling, conditions, or terms of any insurance policy. See HRS §431:13-103 et seq. and HRS
11 §431:13-101 et seq.

As part of its good faith obligations, Pavonia, Lincoln National, their predecessors, 192. 12 Andesa and Enstar (US) were required at a minimum to (i) provide full disclosure to Schwab with 13 respect to the HI Policy including the payment of DCI; (ii) provide good faith advice in the best 14 interest of Schwab; (iii) consistently monitor the performance of the Policies and take appropriate 15 actions with respect to the management of the Reserves and death claims as warranted by the 16 circumstances and as mandated by law; and (iv) disclose the existence of the reinsurance agreement 17 and nature of the coinsurance relationship between Pavonia and Lincoln National; (v) otherwise act 18 in good faith and in the best interests of Schwab at all relevant times in connection with the 19 Policies. 20

193. From the date of first making a payment of death benefits under the Policies through
October 2015, Pavonia, Lincoln National, Andesa and Enstar (US) engaged in a pattern and practice
of continuing violations of the UDTPA and the UCIA by failing to pay the DCI and the full amount
of death benefits accompanied by statements setting forth the coverage under which the payments
were being made by virtue of having omitted any mention of DCI in those statements.

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1	194. Pursuant to the numerous, intentional, malicious, negligent and continuing violations	
2	of the UDTPA and the UCIA, Schwab has been harmed by Pavonia, Lincoln National, Andesa and	
3	Enstar (US)'s conduct in an amount exceeding \$3,000,000 and it is therefore entitled to	
4	compensatory damages, treble damages, attorneys' fees and costs of suit incurred.	
5	COUNT ELEVEN	
6	<u>ESTOPPEL AND WAIVER</u> Against Pavonia, Lincoln National, and Enstar (US)	
7	195. Schwab repeats and realleges each of the allegations contained in paragraphs 1	
8	through 194 above as if fully set forth herein.	
9	196. As set forth fully above, Pavonia and Enstar (US) made affirmative representations	
10	that it was the insurer on the COLI policies, Pavonia and Enstar (US) participated in the handling of	
11	Schwab's claims for benefits under the COLI policies, Pavonia and Enstar (US) promised to settle	
12	all claims under the COLI policies in amount that was offered by Pavonia to Schwab, Pavonia made	
13	partial payments on claims on the COLI policies leaving some claims unpaid and owing, and	
14	Pavonia entered into a tolling agreement so that the parties could continue to negotiate a possible	
15 16	informal resolution and which caused Schwab to defer filing its lawsuit. All amount to estoppel	
10	and waiver precluding Pavonia from claiming it is not an insurer under the COLI policies.	
17	197. Schwab reasonably relied on Pavonia and Enstar (US)'s representations that Pavonia	
10	was an insurer under the COLI policies. Plaintiffs' reliance on Pavonia and Enstar (US)'s	
20	representations was reasonable, justifiable and foreseeable by Pavonia and Enstar (US). Had the	
20	Pavonia informed Schwab that it would eventually take the position that it was not an insurer under	
22	the COLI policies, Schwab would have proceeded in a different manner in resolving the underlying	
23	claims. However, because of Pavonia's misrepresentation and concealment of material facts,	
24	Schwab had no knowledge that Pavonia would claim it was a mere reinsurer under the COLI	
25	policies.	
25 26	198. On information and belief, Lincoln National was aware of Pavonia's representations	
20	that it was an insurer under the COLI policies but Lincoln National failed to take any steps to	
28	inform Schwab that Pavonia would eventually claim that it was not an insurer. Schwab reasonably	

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1	relied on Lincoln National's silence. Plaintiffs' reliance on such was reasonable, justifiable and
2	foreseeable by Lincoln National. Had Lincoln National informed Schwab that Pavonia would
3	eventually take the position that it was not an insurer under the COLI policies, Schwab would have
4	proceeded in a different manner in resolving the underlying claims.
5	199. Enstar (US) was aware of the representations made by Pavonia that it was the insurer
6	under the COLI policies and Enstar (US) itself represented that Pavonia was the insurer. Enstar
7	(US) made the representations in its individual capacity and on its own behalf. However, Enstar
8	(US) knew that its representations were not true and accurate when made.
9	200. As a direct and proximate result of Pavonia, Lincoln National and Enstar (US)'s
10	misrepresentation and concealment of material facts, Schwab has suffered damages in an amount to
11	be determined at trial. Defendants Pavonia, Lincoln National and Enstar (US) should be estopped
12	from asserting that Pavonia or Lincoln National is not an insurer under the COLI policies.
13	COUNT TWELVE
14	BREACH OF CONTRACT Against Pavonia and Lincoln National
15	<u> </u>
16	201. Schwab repeats and realleges each of the allegations contained in paragraphs 1
17	through 200 above as if fully set forth herein.
18	202. Upon information and belief, a reinsurance contract existed between Pavonia and
10	Lincoln National whereby they agreed to be coinsurers on the COLI policies and to separately
20	assume the duties, obligations, and liabilities for the claims and money owed under the COLI
20	policies, included claims for unpaid DCI.
21	203. As part of its contractual obligations, Pavonia acted on its own behalf and as a
22	coinsurer with Lincoln National when it calculated the amount of the death benefits, obtained the
23 24	proofs of claims for those deaths, obtained the signature of Schwab on the proofs of claims, and
	made the payment of the life insurance proceeds to Schwab.
25	204. Under the terms of the reinsurance agreement, Pavonia and Lincoln National were
26	contractually required to pay Schwab all benefits due under the COLI policies and to ensure Schwab
~~ 1	contractually required to pay Schwab an benefits due under the COLA policies and to ensure Schwab
27 28	was not harmed by the coinsurers' performance under the contract.

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1	205. Schwab is a third-party intended beneficiary under the coinsurers' reinsurance						
2	contract. The coinsurers' breached the contract and caused Schwab to suffer harm by failing to						
3	properly determine and report the deaths of insureds under the Policies and the failure to calculate						
4	the amount of DCI as part of the benefits due under the Policies.						
5	206. As a direct and proximate result of the coinsurers' contractual breaches, CS&Co.						
6	and CSC have suffered damages in an amount to be determined at trial. These damages include,						
7	among others, (i) the loss of unpaid death claims; (ii) the loss of millions of dollars in unpaid DCI;						
8	(iii) the loss of the DE Policy Reserve, (iv) the costs incurred from consultants' representation of						
9	CS&Co. and CSC with respect to their claims against the coinsurers; and (v) consequential and						
10	incidental damages, including out-of-pocket expenses, attorneys' fees and court costs.						
11	VII.						
12	PRAYER FOR RELIEF						
13	WHEREFORE, Plaintiffs CS&Co. and CSC seek judgment against Defendants as follows:						
14	Compensatory damages in an amount to be determined at trial, but not less than						
15	\$4,228,880.34;						
16	Consequential and incidental damages, including out-of-pocket expenses, attorney's fees						
17	and costs;						
18	Punitive or treble damages in an amount to be determined at trial;						
19	Pre- and post-judgment interest; and						
20							
21	Such other and further relief as the Court may deem necessary or appropriate.						
22	Dated: April 4, 2019 HAYES SCOTT BONINO ÊLLINGSON						
23	GUSLANI SIMONSON & CLAUSE LLP						
24	By:						
25	CHARDES-E. TILLAGE Attorneys for Plaintiffs CHARLES SCHWAB & CO., INC. and						
26	THE CHARLES SCH WAB & CO., INC. and THE CHARLES SCHWAB CORPORATION						
27							
28							

935896

- 40 -FIRST AMENDED COMPLAINT-- CASE NO. CGC-19-572711

1		DEMAND FOR JURY TRIAL						
2	Plaintiffs hereby demand a jury trial.							
3	Dated: April 4, 2019	HAYES SCOTT BONINO ELLINGSON GUSLANI SIMONSON & CLAUSE LLP						
4								
5		By:						
6 7		CHARLES E/TILLAGE Attorneys for Plaintiffs CHARLES SCHWAB & CO., INC. and THE CHARLES SCHWAB CORPORATION						
8		THE CHARLES SCHWAB CORPORATION						
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EXHIBIT A

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GUIDE TO POLICY PROVISIONS

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	OWNER AND BENERCIARY:		INSUREDS: See Page 2.01
:	DEATH BENEFIT OPTION:	В	ISSUE DATE: December 1, 1994
	GUARANTEED MINIMUM INTEREST RATE;	4%	PREMIUM FACTOR: One minus 3.0% in
: •		- <i>N</i>	policy years 2 and after
		•	RATE CLASS: Standard
	INITIAL LOAN INTEREST RATE: . <u>.</u>	10.7%	
	MAXIMUM MONTHLY FEE:	\$1.50 for policy years 1 through	
•		7 and \$2.00 thereafter	
	MORTALITY TABLE USED IN 130% OF COMMISSI	THE GUARANTEED COST OF INS ONSER'S 1980 STANDARD ORD!	SURANCE RATES TABLES:
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DEFINITIONS

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These Definitions apply to this Policy.

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Means attained age, that is the insured's age as of the Effective Date and each Monthly Processing Date.

The Application The Application or Participation Agreement for Life Insurance under this Policy made by You.

Cash Surrender Value The Cash Value less any indebiedness.

Cash Value (See Policy provision for definition.)

Contract Year The twelve month period commencing with the Policy Date or any Policy Anniversary.

Coverage Amount (See Policy provision for definition.)

Credited Loaned Interest Rate The rate of interest applicable to the portion of Cash Value that equals Indebtedness to Us.

Deduction Amount (See Policy provision for definition.)

Effective Date of Coverage The Effective Date of Coverage under this Policy for any insured shall be as specified in The Application.

Endorsement . An attachment to the Policy which modifies the contract.

Indebtedness All outstanding Loans on this Policy adjusted for unpaid interest.

Insured

Insured means each person in the Insured Group as specified in The Application whose life this Polley insures.

In Writing

In Writing means in a written form satisfactory to Us and filed at Our Home Office. Our address is 103/5 HAMILTON COURT - FARMINGTON HILLS, MI 44334-3335

RC

The United States Internal Revenue Code of 1986 as amended or as may be superceded.

Monthly Processing Date

The Effective Date and the same day as the Policy Date for each succeeding month. It is deemed to start at 12:01 A.M. local time at Your address. All transactions are deemed to have occurred on the Monthly Processing Date.

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Page 3

Policy Anniversary The same day and month as the Effective Date for each succeeding year. Policy Years and Policy Months are measured from the Effective Date.

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Policy Data

(See The Application for definition.)

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An attachment to the Policy which provides additional benefits.

GENERAL PROVISIONS

Entire Contract

The entire contract consists of this Policy, attached Riders, Endorstements, and The Application, a copy of which is attached. We will not use any statement to vold this Policy or to defend a claim under it, unless that statement is contained in The Application. All statements in The Application will, in the absence of fraud, be decored representations and not warranties.

Compliance With Law

If any provision of this Policy is in conflict with any applicable statute, it is bareby amended to conform to the minimum requirements of such statute. We will make every reasonable effort to periodically review the Policy to assure continuing compliance with applicable law and regulation, and We will notify You of any smeandment to this Policy which may occur by operation of this provision.

Modification of Contract

Except for purposes of implementing the Compliance With Law provision, any changes must be in Writing and signed by You and by Our President or one of Our Vice Presidents.

Nonparticipating

This Policy is nonparticipating. It does not share in Our earnings, You will not seceive any dividends.

Ago and Sex

If the age and/or sex of the insured is incorrectly stated. We will adjust all benefits to the amount that would have been provided using the correct age and sex.

Incontestability

We cannot contest this Policy after it has been in force.

Change of Owner or Beneficiary

The Owner and Beneficiary will be those named in The Application until You change them. To change the Owner or Beneficiary, notify Us in Writing while the Insured is alive. After We receive written notice, the change will be effective as of the date You signed such notice, whether or not the insured is living when We receive it. However, the change will be subject to any payment We made or aginns We may have taken before We received the request.

Assignment

You may assign the benefits of this Pollcy for any Insured. Until You notify Us in Writing, no assignment will be effective against Us. We are not responsible for the validity of any assignment.

Owner's Rights

While the insured is alive and no Beneficiary is irrevocably named, You may:

- 1. creatise all the rights and options that this Policy provides or We permit;
- 2. assign the benefits; and
- 3, agree with Us to any change to this Policy.

No Named Beneficiary If no named Beneficiary survives the insured, then You will be the beneficiary.

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All coverage for any insured under this Policy shall terminate when any one of the following evenus occurs:

1. You request that coverage terminate.

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- 2. The insured dies.
- 3. The Cash Surrendes Value on any Monthly Processing Date is less than the required Deduction Amount.

PREMIUM PAYMENTS

General

The mount of the annual premium shall be according to The Application and the following Table of Premium Factors and is payable for at least seven years. Each premium is due and payable, while the Insured is living, on or before the due date. A receipt for the premium will be issued upon request. Any parties of any premium paid during a Contract Year which will cause this Policy to fail the 7-pay test specified in IRC Section 7702A(b) will be returned with interest within 60 days following the end of the Contract Year.

Payment Frequency

Payments may be made monthly, quarterly, annually, and any other frequency acceptable to Us.

Grace Period

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A grace period of 31 days will be allowed for the payment of premiums. All insurance coverage — continues during this grace period.

If the insured dies during the grace period, the required payment will be deducted from the proceeds.

TABLE OF ANNUAL PREMIUM FACTORS

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(Per \$1.000 of Initial Coverage Amount)

Age	Malo	Female	Ago	Male	Female	Age	Male	Female
20	25.52	21.39	45	57.34	48.92	70	124.56	106.55
21	26.28	22.10	46	59.20	50.49	71	128.80	110.26
22	27.07	22.83	47	61.12	52.11	72	133.28	114.20
23	27.89	23.59	48	63.09	53.78	73	137.99	118.37
24	28.76	24.38	49	65.12	55.50	74	142.88	122.75
25	29.67	25.20	50	67.21	57.26	75	147.96	127.33
26	30.62	26.05	51	69.36	59.07	76	153.23 .	132,14
27	31.62	26,93	52	71.57	60.94	77	158.75	137.23
28	32.66	27.85	53	73.34	62,85	78	164.62	142.69
29	33.75	28,79 、	54	76.17	64.80	79	170.96	148.61
30	34.88	29.77 י	55	78.54	66.BO	80	177,85	155.11
31	36.06	30,79	56	80.98	68.85	81	185.37	162.23
32	37.29	31.84	57	B3.47	70,97	82	193.53	170.03
33	38.56	32.93	58	86.04	73.11	83	202.26	178.50
34	39.87	34.05	5 9	88.68	75,38	84	211.50	187.65
35	41.23	35.22	60	91.42	77.75	-85	221.18	197.49
36	42.64	36.43	61	94.25	80.23	86	231.33	208.09
37	44.09	37.68	62	97.18	82.80	87	242.01	219.57
38	45.59	38,96	63	100.20	85A6	88	253A1	232.15
39	47.14	40.28	64	103.30	88,18	89	276.89	257.75
40	48.72	41.63	65	106.49	90.96	90	307.45	290.82
41	50.36	43.02	66	109.79	93.82	91	150.91	337,16
42	52.03	44,43	67	113.21	96.76	92	420.89	410,43
43	53.76	, 45,89	68	116.78	99.83	93	\$58.30	551,77
44	5 5.52	47.38	69	120.56	103.09	94	966.9 6	966.71

Extended Insurance **N** •

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. If premium payments are not made as required, coverage under this Policy will continue in force as extended insurance until the Cash Surrender Value on any Monthly Processing Date is less than the required Deduction Amount.

While coverage under this Policy is in force as extended insurance:

1. You may not make a premium payment; and

2. You may surrender it on any Monthly Processing Date for the Cash Surrender Value available at that time.

DEATH BENEFIT

We will pay the Death Benefit to the Beneficiary promptly. 1. tipper interpret at the Home Office of the Insured's death, while this Policy is inforce: and

2. subject to the provisions of this Policy.

The Denth Benefit under this Policy will be the Coverage Amount plus the Cash Value less any Indebtedness.

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Coverage Amount

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; ÷. 2 The Coverage Amount will be in accordance with The Death Benefit Option You have elected as specified on The Application and will be adjusted each Monthly Processing Date as appropriate. The Coverage Amount will be the greatest of

1. The sum of (a) the initial Coverage Amount if You have elected Option B or the Initial Coverage Amount less Cash Value if You have elected Option A. and (b) any one month term insurance elected under the Excess Earnings provisions ; or 2. The amount required by IRC Section 7702(a) (1), Cash Value Accomulation Test, or other

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- Federal income tax laws or regulations to qualify as Life insurance; or
- 3. The amount required by IRC Section 7702A to meet the 7-pay test of 7702A(b), or other Federal income tax laws or regulations to avoid being classified as a Modified Endowment Contract.

CASH VALUE PROVISIONS

Guaranieed Cash Value

- On each Monthly Processing Date, the Quaranteed Cash Value equals;
 - 1. The Cash Value on the preceding Monthly Processing Date: plus
 - 2. One month's interest on the Cash Value on the preceding Monthly Processing Date at the Guaranteed Minimum Interest Rate as specified on The Application; plus
 - 3. All premiums received since the preceding Monthly Processing Date multiplied by the Premium Factor as shown on The Application; less
 - 4. Any Partial Suttenders made since the preceding Monthly Processing Date: less
 - The Deduction Amount for the month following the Monthly Processing Date; less 5.
 - 6. The Maximum Monthly Fee as specified on The Application.

Deduction Amount

The Deduction Amount is equal to (a) multiplied by (b) divided by (c) where:

(a) is the monthly cost per \$1,000 of Coverage Amount as specified in the following Table of Guaranteed Monthly Cost of Insurance Rates divided by 1,000; and

(b) is the Coverage Amount for that month; and

(c) is 1.00327374.

The Table of Oussanteed Monthly Cost of Insurance Rates will be adjusted for any applicable Percentage Rating Factor and Flat Rating Amount as specified on The Application.

TABLE OF GUARANTEED MONTHLY COST OF INSURANCE RATES (PER \$1,000 of Coverage Amount)

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Age	Male	Female	Age	Male	Female	Are	Male	Female
20	0.206067	0.114906	47	0.601066	0,455054	74	6.873124	3.991905
21	0.206067	0.117075	48	0.649062	0.486634	75	7.594763	4.503911
22	0.203895	0.119245	49	0.702542 -	0.520404	76	8.35785B	5.062349
23	0.199552	0.121414	50	0.761515	0.557456	77-	9.153833	5.663456
24	0.195209	0.124669	51	0.830365	0.597795	78	9.990774	6.316198
25	0.189781	0,126838	52	0.906927	0.643607	79	10.895433	7.045090
26	0.186525	0,130093	53	0.994505	0.693805	80	11.900691	7.880315
27	0.185439	0.134433	54	1.090939	0.745129	81	13.038647	8.849888
28	0.184353	0.138773	55	1.195158	0.797573	82	14.339675	9,982306
29	0.186525	0.143115	56	1.306092	0.848953	83	15.803036	11.279986
30	0.189781	0.148538	57	1.423763	0.931002 0.15	1 84	17.402358	12,730037
31	0,195209	0,153964	58	1.549301	0.947421	85	19.108494	14.324437
32	0.202809	0.159390	59	1.686048	1.002172	86	20.898462	16.058980
33	0.211496	0.166987	60	1.838477	1.067917	87.	22.765632	17.937484
34	0.222355	0.174584	61	2.011096	1.149068	88	24.712825	19.969900
35	0.235388	0.184353	62	2.206242	1.253354	89	26.756286	22.182771
36	0.251681	0.197381	63	2.425171	1.378656	. 90	28,934806	24.615869
37	0.270151	0.212582	64	2.668056	1.520654	91	31.312834	27.340714
38	0.290798	0.231043	65	2.930612	1.671702	92	34.016462	30,489563
39	0.314711	0.251681	66	3.211886	1.828528	93	37.360864	34.330901
40	0.341892	0.274497	67	3.510926	1.985625	94	42.070477	39.545343
41	0.371257	0.298406	68	3.833555	2.147432	95	49.675086	47.642342
42	0.402808	0,323408	. 69	4.191368	2.329533	96:	63.907899	62.329936
43	0.437635	0,347329	70	4.596175	2.544304	97	96-295064-	-95:064057
44	0.474654	0.373433	71	5.060058	2.808736	98	250.736674	247.718900
45	0.513867	0.399543	72	5.594292	3.137841	99		1000:000000
46	0.556366	0,425662	73	6.202439	3.533450		1131	

Cash Value

On each Monthly Processing Date, the Cash Value equals the Guaranteed Cash Value plus any Excess Earnings since the preceding Monthly Processing Date applied to option 1 of the Excess Earnings provision.

Excess Earnings

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During any Policy year. We may at Our discretion, apply factors more favorable than those used to calculate the Guaranteed Cash Value. The application of these more favorable factors will produce Excess Earnings. You may apply Excess Earnings as of any Monthly Processing Date to one or more of the following Options:

Option I. Add to Cash Value.

Option 2. Receive as cash.

Option 3. Purchase one month term additions up to limits We may determine,

If You do not choose an Option prior to any Monthly Processing Date. We will credit the Excess Earnings under Option 1. Any Option You choose will remain in effect until You change it.

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The rate of interest is guaranteed never to be less than the Guaranteed Minimum Interest Rate of 4%. We may declare a higher rate of interest during any Policy Year in accordance with the Interest Rate Endorsement.

1.2.

Basis of Values

The Guaranteed Monthly Cost of Insurance Rates are based on the Commissioner's 1980 Standard Ordinary Mortality Table (1980CSO). Cash Values and reserves provided by this Policy are not less than the minimum required by the statute in the state where this Policy is issued.

SURRENDER

Option L Cash Surrender. This Policy may be surrendered for its Cash Surrender Value on any Monthly Processing Date. Upon surrender, all insurance in force under this Policy and any additional benefits provided by Rider will terminate.

Option II. Partial Surrender. You can make a Partial Surrender of this Policy without Our consent in an amount for any Policy Year not to exceed:

1. If You elected Death Benefit Option A, the lesser of;

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a. 10% of the Cash Sutrender Value; or

b. \$10,000.

2. If You elected Death Benefit Option B, 100% of Cash Surrender Value,

We will reduce the Cash Value by the amount of any Partial Surrender.

Ceneral

To exercise any Surrender Option, notify Us in Writing. We may defer payment for the period permitted by law for not more than 6 months from the date of request.

POLICY LOANS

General

While this Policy is in full force, Loans may be obtained up to the amount of the Loan Value. To obtain a Loan, the Policy must be properly assigned to Us as security. We need no other collateral. We have the right to delay granting a Loan for up to 6 months from the date of request unless the Loan is to pay a premium due on a Policy.

Loan Value

The Loan Value on any Monthly Processing Date equals:

1. The Cash Value on that date; plus

2." One month's interest at the Guaranteed Minimum Interest Rate; plus

3. Current Excess Earnings applied to Option 1 of the Excess Earnings provision; less

- 4. Loan interest to be charged on the following Monthly Processing Date ; less
- 5. Any unpaid Loan.

Loan Interest

Loan Interest, which is payable monthly in arrears, will accree at the Loan Interest Rate. Any interest not paid when due will be added to indebtedness and bear interest at the same rate.

Loan Interest Rate

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The Initial Loan Interest Rate will be a variable Loan Interest Rate and shall be effective for the initial Contract Year. You may elect to pay Loan Interest for any subsequent Contract Year according to a fixed Loan Interest Rate or a variable Loan Interest Rate. You must notify Us in Writing of any election to change the Loan Interest Rate then in effect at least 60 days prior to start of the Contract Year the change is to be effective.

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The fixed Loan Interest Rate will be 6% per annum.

The variable Loan Interest Rate will be based on a Provisional Loan Interest Rate We will determine every twelve months. If the Provisional Loan Interest Rate is 0.5% or more above the Loan Interest Rate in effect, the Loan Interest Rate may be increased to reflect this. If the Provisional Loan Interest Rate is 0.5% or more below the Loan Interest Rate in effect, the Loan Interest Rate will be decreased to reflect this.

Provisional Loan Interest Rate"

The Provisional Loan Interest Rate will be the lesser of:

- 1. 18% per annum; or
- 2. the greater of
 - a, the Credited Loaned Interest Rate during the applicable period plus 0.40% for the first seven Policy Years and 0.20% thereafter.
 - b. the Moody's corporate bond yield average monthly average corporates for the calendar month ending two months before the date on which the Provisional Loan Interest Rate is determined as published by Moody's Investors Service, Inc., or in the event that this average is no longer published, a substantially similar average as determined by the insurance commissioner of the state within which the Policy is issued.

The Provisional Loan Interest Rate will not be higher than allowed by applicable law governing the maximum allowable rate that may be charged on any Policy Loan obtained against a given Policy.

Notification of Loan Interest Rate Changes

We will notify You at the time the Loan is made of the initial rate of interest on the Loan. In addition. We will notify You of any change in the rate of interest at least 30 days prior to the effective date of the change.".

SETTLEMENT

The proceeds of this Policy will be paid in one sum.

All payments under this Policy are payable at Our Home Office.

ALEXANDER HAMILTON LIFE INSURANCE COMPANY OF AMERICA

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A CARACTER STORE STORE

A'Housenold International Company

Interest Rate Endorsement

In lieu of the Guaranteed Minimum Interest Rate, We agree to declare:

- 1. A Credited Loaned Interest Rate for a Contract Year equal to the greater of:
 - a. if the fixed Loan Interest Rate is in effect,
 - (1). then 7.5% per annum,

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- (2). otherwise the Moody's Corporate Bond Yield Average --- Monthly Average Corporates for the calendar month ending two months before the rate is determined for the Contract Year.
- b. the Guaranteed Minimum Interest Rate.

2. For any portion of Cash Value in excess of indebindness to Us, a rate of interest each calendar quarter not to be less than:

- a. The 2-year U.S. Treasury Constant Maturity Note (2-Year Note) Yield less one (1) percentage point; or
- b. The Guaranteed Minimum Interest Rate,

The 2-Year Note Yield applicable for each calendar quarter will be established through the Federal Reserve statistical releases averaged over the most recent three (3) month period available at the beginning of each calendar quarter. If such program is discontinued. We reserve the right to substitute an index which We determine is comparable.

This Endorsement takes effect on the Effective Date. It expires community with the Policy. It is subject to all provisions, limitations and expectations of the Policy and inconsistent herewith.

3304 HAMETON COURT + PARMINGTON HELLS, MI 4432-3358

64060 END

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ALEXANDER HAMILTON LIFE INSURANCE COMPANY OF AMERICA A Household International Company

APPLICATION FOR GROUP LIFE INSURANCE

Application is hereby made to Alexander Hamilton Life Insurance Company of America ("Hamilton") for the purpose of insuring employees under the Fixed Premium Whole Life Insurance Policy for the amounts of insurance set forth below.

Insurance Policy: Fixed Premium Whole Life Insurance, Form 64061

1. Constant and the constant of the second second

Owner and Beneficiary:

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CHARLES SCHWAB & CO. . INC. , and beneficiary of the insurance applied for. is to be owner

Insured Group:

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÷ . Insurance under the policy is to be provided on the life of (define insured group; attach census if available);

All full time benefit-eligible malaried and hourly employees of the Owner having a date of hire on or before October 31, 1994, as set forth on the attached Schedule of Proposed Insureds.

Death Benefit Opdon:

- Initial Covarage Amount: (define amounts of insurance for group)

B

The initial face amount of the coverage being applied for is set forth on the attached Schedule of Proposed Insureds.

Initial Payment:

\$39,416,110

IT IS UNDERSTOOD that acceptance of this application is subject to final underwriting review by Alexander Hamilton Life Insurance Company of America, the outcome of which may affect the terms of issue including the final Insured Group acceptable to Hamilton and may result in a refund of promium, if any has been made. Until final approval is given on each individual to be insured, no polley of insurance is inforce on any specific individual.

Date:	12-1-94
State of	
	tion: Hawaii
Witnes	S: Call youn

Applicant: CHARLES SCHWAR Preside +- Taxation

Title:

Agent: Ch.O.Q BY: CHARLTON C GRASPAR

Accepted: ALEXANDER HAMILTON LIFE OF AMERICA INSURANCE COMPANY By: Title:

ALEXANDER HAMILTON LIFE

A Household International Company

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Fixed Premium Group Whole Life Insurance Policy Fixed premium payments payable for lifetime of Insured Death Benefit payable at Insured's Death Nonparticipating-No Annual Dividends

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EXHIBIT B

Corporation Div 2

Fixed Premium

Group Whole Life Insurance Policy Fixed premium payments payable for Efficienc of Insured Desth Benefit payable at Insurefis death Nonparticipating-No Annual Dividends

"We," "Us," or "Out" means the Alexander Hamilton Life Insurance Company of America. "You" or "You" means the Owner of this Policy.

We promise to pay the Death Benefit to the Beneficiary when We receive due proof of the insured's death while this Policy is in force.

We make this promise and issue this Policy in consideration of the application for this Policy and the payment of the premium.

> Signed for Alexander Hamilton Life Insurance Company of America.

Notice of Your Right to Example This Policy for Ten Days: It is important to Us that You are patisfied with this Policy. If You are not satisfied, You may return the Policy to Us within ten days of its method. You will acceive a full refund of any premiums You have paid, and this Policy will be void from its beginning.

ALEXANDER HAMILTON LIFE

INSURANCE COMPANY OF AMERICA A Household Internetional Company

HORS HAMILTON COURT = FARMENIGTON HALS, MI 4833-3151

GUIDE TO POLICY PROVISIONS

PAGE

PROVISION

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PROVISION

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Guaranteed Cash Value
Deduction Amount
Guaranteed Monthly Cast of
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Interest Rato
Basis of Values
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Option I Cash Surrender
Option II Partial Surrender
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Loan Interest
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Notification of Loan Interest Rate Changes . 10
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Policy Schedule

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owner and beneficiary:	The Charles Schweb Corporation	INSUREDS: See Page 2.01
DEATH BENEFIT OPRON;	B	ISSUE DATE: December 1, 1994
GUARANTEED MINIMUM INTEREST RATE:	4%	PREMIUM FACTOR: One minus 3.0% in policy years 2 and after
INITIAL LOAN INTEREST RATE:	10.7%	RATE CLASS: Standard
Maximum Monthly Fee:	\$1.50 for policy years 1 through 7 and \$2.00 thereafter	

MORTALITY TABLE USED IN THE GUARANTEED COST OF INSURANCE RATES TABLES: 130% OF COMMISSIONSER'S 1980 STANDARD ORDINARY

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DEFINITIONS

These Definitions apply to this Policy.

Age Means attained ups, that is the Insured's ups as of the Rifferthre Date and each Monthly Processing Date.

The Application

The Application or Participation Agreement for Life Insurance under this Policy made by You.

Cash Summer Volue The Cash Value less any indebtedness.

Cash Value (See Polley anything for definition.)

Contract Yest

The twelve month pediod commencing with the Policy Date or any Policy Antiversity.

Coverage Amount (See Policy provision for definition.)

Credited Louned Interest Rate The rate of interest applicable to the portion of Cash Value that equals Indekindness to Us.

Deduction Account (See Policy provision for definition.)

Effective Date of Coverage

The Effective Date of Coverage under this Policy for any landed shall be as meetind in The Application.

Badoment ۰. An attendment to the Policy which modifies the contract.

Indebindents

All ortstanding Losses on this Policy adjusted for unpeid intenest.

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lowned means each person in the lowned Grane as specified in The Arabertan whore life this Policy insure.

. In Writing

In Writing means in a verticen from automatory to Us and find at Our House Office. Our relative is 1946 HARDEN COURT - RABER GOOD RELLA SI GENARIT

BC

The United States Internal Revenue Code of 1986 as amended or as may be supercoded.

Monthly Proceeding Date The Biliscine Date and the same day as the Policy Date for each succeeding month. It is demand to mant at 12:01 A.M. local time at Your address. All transactions are denned to have accurate on the Monthly Processing Date.

Policy Antivenny

7 4

The same day and month as the Effective Date for each succeeding year. Policy Years and Policy Months are measured from the Rifective Date.

Policy Date (See The Application for definition.)

Rider An attachment to the Policy which provides additional benefits.

GENERAL PROVISIONS

Roffee Contract

The entire contract consists of this Policy, stituched Riders, Endonements, and The Application, a copy of which is attached. We will not use any statement to wold this Polky or to defend a claim under it, unless that statement is contained in The Application, All statements in The Application will, in the absence of fraud, be descend more sentations and not warrantics.

Compliance With Law

If any purvision of this Policy is in conflict with any applicable statute, it is hereby anoraded to conform to the minimum requirements of such statute. We will make every statunable effort to periodically neriew the Policy to assume continuing compliance with applicable law and regulation, and We will notify You of any enanciment to this Policy which may occur by operation of this provision.

Medification of Contract

Empt for purposes of implementing the Compliance With Law provision, any changes must be in Writing and signed by You and by Our Passident or one of Our Vice Presidents.

Normaticipating

This Policy is nonparticipating. It does not share in Our carnings. You will not receive any dividends.

Ago and Sex. If the arm and/or sex of the imported is incontrativy stated. We will adduct all benefits to the amount that would have been provided using the connect ago and sex.

Facesteris billity

We cannot ensued this Policy after it has been in form.

Citerra of Owner or Beneficiery

The Owner and Beneficiny will be those samed in The Application until You change them. To change the Owner or Beneficiary, notify Us In Writing while the launted is slive. After We receive written notion, the change will be effective as of the date You simed main whatar or not the. Interest is fiving when We main it. However, the chemin will be embied to any remnant We made or actions We may have taken before We received the request.

Anignment

You may easing the benefits of this Policy for any hourset. Until You notify Us in Webing, no entrounent will be effective excient Us. We are not responsible for the validity of any anigment.

Omar's Rights

While the housed is slive and no Baneficiary is interactivy named. You may:

1. marries all the risks and ondons that this Policy provides or We pennit;

2. entire the benefits; and

3. agete with Us to any change to this Policy.

No Named Beneficiary

" If no named Beneficiary survives the Insured, then You will be the beneficiary.

Termination

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All coverage for any launed under this Policy shall terminate when any one of the following events COST

L You request that coverage terminate.

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2. The Immed dies.

3. The Cash Surresder Value on any Monthly Proceeding Date is less than the required Deduction Amount

PREMIUM PAYMENTS

Ceneral

The amount of the annual premium shall be according to The Application and the following Table of Premiurs Factors and is payable for at least seven years. Bash premium is due and payable, while the insured is living, on or before the due date. A receipt for the premium will be insured upon request. Any portion of any premium paid during a Contract Year which will cause this Folicy to fail the 7-pay test specified in IRC Section 7702A(b) will be extended with interest within 60 days following the end of the Contract Year,

Payment Propagacy

Payments may be made monthly, quartedy, annually, and any other frequency acceptable to Us.

Grace Period

A grace period of \$1 days will be allowed for the payment of preminum. All insurance coverage continues during this grace period.

If the insured dies during the game period, the required payment will be deducted from the proceeds.

TABLE OF ANNUAL PREMIUM FACTORS

(Per \$1,000 of Initial Coverage Amount)

<u>A</u> ₽°	Male	Female	App	Male	Female	Åæ	Malo	Female
20	25.52	21.39	45	57.34	48.92	70	124.56	106.55
21	26.28	22.10	46	59.20	50.49	71	128.80	119.25
22	27.97	22.83	47	61.12	52.11	71	133.28	114.20
23	27.39	23.59	48	63.09	53,78	73	137.99	118.37
24	28.76	24.38	49	65,12	55 <i>.</i> 59	74	142.88	122.75
25	29.67	25.20	50	67.21	57.26	75	147.96	127.33
26	30.62	26.05	51	69.36	59.97	76	151.23	132.14
27	31.62	26.93	52	7L 5 7	60.94	· 77	158.75	137.23
28	32.66	27.85	53	73.84	62.85	78	164.62	142.69
29	33.75	23.79	- 54	76.17	64.80	79	170.96	148.61
30	34.88 .	29.71	55	78.54	66.80	80	177.85	155.11
31	36.06	30.79	56	80,98	68.85	81	185.37	162.23
32	37.29	31.54	57	B3.47	70.97	82	193.53	170,03
33	38.56	32.93	5 8	86.04	73.11	83	202.26	178.50
34	39 .5 7	34.05	59	88.68	75.38		211.50	187.65
35	41.23	35.22	60	91.42	77.75	85	221.18	197.49
36	42.64	36.43	61	94.25	80.23	56	231.33	208.09
37	44.09	37.68	62	97.18	82.80	87	242.01	219.57
38	45.59	38.96	63	100.20	85.46	88	253.41	232.15
39	47.14	40.28	64	103.30	88.18	89	276.89	257.75
40	48.72	41.63	ଣ	105A9	90.96	90 .	307A5	290.82
41	50.36	43.02	66	109.79	93.82	91	150.91	. 337,16
42	52.03	44A3	67	113.21	96.76	92	420.89	410À3 ·
43	53.76	45.89	65	116.78	99.1 3	93	558.30	551.77
- 44	55,52	47.38	69	120,56	103.09	94	9 66.96	966.71

Extended Immance

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If premium payments are not made as required, coverage under this Policy will continue in force as entended insurance until the Cash Sumender Value on any Monthly Processing Date is less than the required Deduction Amount.

While coverage under this Policy is in force as extended insurance:

1. You may not make a premium payment; and

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2. You may summader it on any Monthly Processing Date for the Cash Somendar Value available at that time.

DEATH BENEFIT

We will pay the Death Benefit to the Beneficiary promptly:

- 1. upon receipt at the Home Office of due proof of the Insured's death, while this Policy is in force, and
- 2. subject to the provisions of this Policy.

The Denth Benefit under this Policy will be the Coverage Amount plus the Cash Value less any Indebtedness.

· Coveres Assess

The Coverage Amount will be in accordance with The Desith Banefit Option You have elected as specified on The Application and will be adjusted each Monthly Processing Date as appropriate. The Coverage Amount will be the greatest of.

- 1. The sum of (a) the initial Coverage Amount if You have elected Option B or the Initial Coverage Amount less Cash Value if You have elected Option A, and (b) any one month term insurance elected under the Errors Estrings provisions ; or 2. The amount required by IRC Sociem 7702(a)(1), Cash Value Accomulation Test, or other
- Redand income tax laws or regulations to qualify as Life insurance; or
- 3. The second required by IRC Section 7707A to meet the 7-pay test of 7702A(b), or other Federal income that laws or segulations to avoid being classified at a Modified Radowment Continent.

CASH VALUE PROVISIONS

Guaranteed Cish Value

On each Monthly Processing Data, the Unartanteed Casis Value equals:

- 1. The Cash Value on the preceding Monthly Processing Date plus 2. One month's interest on the Cash Value on the proceeding Monthly Processing Date at the Customend Minimum Interest Rate as specified on The Application; plus
- 3. All presidents received since the preceding Monthly Processing Data multiplied by the Premium Factor as shown on The Application; less
- 4. Any Patiel Summer made since the preceding Monthly Proceeding Date; less
- 5. The Defaction Amount for the month following the Monthly Processing Date; less
- 6. The Marinan Monthly Fee as specified on The Application.

Deduction Amount

The Deduction Amount is equal to (a) multiplied by (b) divided by (c) where

- (a) is the monthly cost per \$1,090 of Coverage Amount as specified in the following Table of Guaranteed Monthly Cost of Insurance Rates divided by 1,000; and
- (b) is the Coverage Amount for that month; and
- (c) is 1.08327374.

The Table of Guaranteed Monthly Cost of Insurance Rates will be adjusted for any applicable Percentage Rating Factor and Flat Rating Amount as specified on The Application.

TABLE OF GUARANDEED MONTELY COST OF INSURANCE RADES (PER \$1,000 of Coveres Amount)

Ago	Male	Female	Aga	Male	Female	Age	Mala	Penade
20	0.205057	0.114906	47	0.601066	0.455054	74	6.873124	3.991905
21	0.205067	0.117075	48	0.649062	0.486634	75	7.594763	4.503911
22	0.203895	0.119245	49	0.702542	0.520404	76	8.357858	5.062349
23	0.199552	0.121414	50	0.761515	0.557456	π^{-}	9.153833	5.663456
· 24	0.195209	0.124669	51	0.830365	0.597735	75	9.990774	6.316198
25	0.189781	0.126838	52	0.906927	0.643607	79	10.895433	7.045090
26	0.186525	0.130093	53	0.994505	0.693808	80	11.900691	7,880315
27	0.185439	0.134433	54 54	1.090939	0.745129	81	13.038647	1.849888
28	0.184353	0.138773	55	1.195153	0,797573	81	14_539675	9.982386
29	0.186525	0.141113	56	1.306092	0.0.000	8 .0	15.803036	11.279986
30	0.189781	0.148538	57	1.423763	0.931092.0.8	INTH 84	17.402358	12/30037
31	0.195209	0.153964	58	1.549301	0.947421	85	19.108494	14.324437
12	0.202809	0.159390	59	1.686048	1.002172	86	20.898462	16.058980
13	0.211496	0.169987	60	1.838477	1.067917	87	22.765632	17.937484
34	0.222355	0.174584	61	2.011096	1.149863	88	24.712825	19.969900
35	0.235388	0.184353	62	2.206242	1251354	89	26.756236	72.182771
36	0.251611	0.197381	ន	2.425171	1.378656	90	28.934805	24.615169
37	0.270151	0.212582	64	2.668056	1.520654	91	31.312834	27.340714
38	0.290798	0.231043	65	2,930612	1.671702	92	34.016462	30.483563
39	0.314711	0.251681	6	3.211886	1.878928	93	37.360864	34.330901
40	0.341892	0.274497	67	3.510926	1.985625	94	42.070477	39.545343
41	0.371257	0.298406	68	3.833555	2.147432		49.675086	47.642342
42	0.402808	0.323408	69	4.191368	2 329533			62.329936
43	0.437635	0.347329		4.596125	2.544304	97	96295464-	-95164057
44	0,474654	0.373433	71	5.060058	2.544304	• 98	-150-736674-	-247.71890D
45	0.513867	0.399543		5.594292	3.137841	- 70 99	1000.000000-	
			72			77	- The second sec	2000300000
46	0.556366	0 <i>A</i> 25561	73	6.202439	3.533450			
		*				•		

Casin Value

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On each Manthly Processing Date, the Cash Value equals the Guaranteed Cash Value plus any Excess Barnings since the preceding Monthly Processing Date applied to option 1 of the Excess Earnings provision.

Ences Earnings

Detting any Policy year, We may at Our discussion, apply factors more favorable than those used to calculate the Generanteed Cash Veine. The application of these more favorable factors will produce Bacess Berningt. You may apply Bacess Bernings as of any Manfaly Processing Data to one or more of the following Options:

Option 1. Add to Cash Value.

Option 2. Receive as cash.

Option 3. Purchase one mouth term additions up to Emits We may determine.

If You do not choose an Option prior to any Monthly Processing Date, We will credit the Excess Examings under Option 1. Any Option You choose will remain is effect until You change it.

. Interest Rete

The rate of interest is guaranteed never to be less than the Guaranteed Minimum Interest Rate of 4%. We may declare a higher rate of interest during any Policy Year in accordance with the Interest Rate Hadomement.

Basis of Values

The Guaranteed Monthly Cost of Insurance Rates are based on the Commissioner's 1980 Standard Ordinary Montality Table (1980CSO). Cash Values and reserves provided by this Policy are not less than the minimum required by the statute in the state where this Policy is issued.

SURRENDER

Option L Cash Summender. This Policy may be summendered for its Cash Summender Value on any Monthly Processing Date. Upon summender, all insurance in force under this Policy and any additional benefits provided by Rider will terminate.

Option II. Partial Summerce. You can make a Partial Summercer of this Policy without Our consent in an amount for any Policy Year not to exceed:

- 1. If You elected Death Benefit Option A, the lesser of
 - a. 10% of the Cash Surrender Value; or

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h. \$10,000.

2. If You elected Death Benefit Option B, 100% of Cash Summader Value.

We will reduce the Cash Value by the amount of any Partial Surrender.

General

To exercise any Sustender Option, notify Us In Writing. We may defer payment for the period perioditied by law for not more than 6 months from the date of request.

POLICY LOANS

General

While this Policy is in full force, Losns muy be obtained up to the amount of the Loan Value. To obtain a Loan, the Policy must be properly assigned to Us as accurity. We need no other collecteral. We have the right to delay granting a Loan for up to 6 maniha from the date of request unless the Loan is to pay a premium due on a Policy.

Loan Value

The Loan Value on my Monthly Processing Date equals:

- 1. The Cash Value on that cate; plus
- 2. One month's interest at the Guaranteed Minimum Interest Rate; plus
- 3. Content Excess Earnings applied to Option 1 of the Excess Earnings provision; less
- 4. Logn Interest to be charged on the following Monthly Processing Date ; less
- 5. Any appoid Loss.

Loan Interest

Losn interest, which is payable measibly in arreaus, will accret at the Losn interest Rate. Any interest not paid when due will be added to indebtedness and bear interest at the same rate. Losn Interest Rate

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The Initial Loan Interest Rate will be a veriable Loan Interest Rate and shall be effective for the initial Contrast Year. You may close to pay Loan Interest for any subsequent Contrast Year according to a fixed Loan Interest Rate or a variable Loan Interest Rate. You must notify Us In Writing of any chection to damage the Loan Interest Rate than in effect at least 60 days prior to start of the Contrast Year the change in to be effective.

The fixed Loss Interest Rate will be \$% per amount.

The variable Loan Interest Rate will be based on a Provisional Loan Interest Rate We will determine every twelve months. If the Provisional Loan Interest Rate is 0.5% or more above the Loan Interest Rate in effect, the Loan Interest Rate may be increased to reflect this. If the Provisional Loan Interest Rate is 0.5% or more below the Loan Interest Rate in *effect*, the Loan Interest Rate will be decreased to reflect this.

Provisional Loan Interest Rate

- The Provisional Loan Interest Rate will be the lesser of:
- 1. 18% per stanting or
- 2. the greater of
 - the Ordited Lourod Interest Rate during the applicable period plus 0.40% for the first area Policy Year and 0.20% throather.
 - b. the Moody's corporate band yield wrange monthly swarge corporates for the celender month carding two manufas before the date on which dis Provisional Lean interest Rate is determined as published by Moody's Investors Service, Inc., or in the event that this scenage is no longer published, a subtantially similar swearge as determined by the insurance commissioner of the state widen which the Policy is insurf.

The Provisional Learn Interest Rate will not be higher than allowed by applicable law governing the munimum allowable rate that may be charged on any Policy Learn obtained against a given Policy.

Natification of Lean Internet Rate Classes

We will notify You at the time the Loun is made of the initial rate of interest on the Loun. In addition, We will notify You of any change in the rate of interest at least 30 days mior to the effective date of the change.

SETTLEMENT

The proceeds of this Policy will be paid in one sum.

All represents under this Policy are payable at Our Home Office.

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ALEXANDER HAMILTON LIFE

A flavoubold international Company

Interest Rate Endorsement

In lieu of the Guaranteed Minimum Interest Rate, We agree to declare:

- 1. A Credited Lowed Interest Rate for a Contract Year equal to the prester of:
 - a. If the fixed Loan Interest Rate is in effect.
 - (1). then 7.5% per annum,

;

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- (2). Otherwise the Moody's Corporate Bond Yield Average --- Monthly Average Corporates for the calendar munth ending two months before the rate is detormined for the Contract Year.
- b. the Guaranteed Miniamon Interest Rate.
- 2. For any parties of Cash Value in success of Indebtedness to Us, a rate of interest. each calendar quarter not to be lass than;
 - 2. The 2-year U.S. Treasury Constant Maintily Note (2-Year Note) Yield less one (1) percentage point; or
 - b. The Guaranteed Minimum Interest Rate,

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The 2-Year Nois Yield applicable for each calendar quarter will be established through the Federal Reserve statistical releases averaged over the most recent three (3) month period available at the beginning of each calendar quarter. If such program is discontinued, We reserve the right to substitute an index which We determine is comparable.

This Budemenent takes effect on the Effective Date. It expires concurrently with the Policy. It is subject to all providens, Emissions and expectations of the Policy not inconsistent kerwith.

1305 HAMILTON COURT + FARMINGTON HILLS, MI 4119-105

ALEXANDER HAMILTON LIFE

DISURANCE COMPANY OF AMERICA

A Hausehold International Company

APPLICATION FOR GROUP LIFE INSURANCE

Application is hereby made to Alexander Hamilton Life Insurance Company of America ("Hamilton") for the parpose of insuring employees under the Fixed Premium Whole Life insurance Policy for the amounts of insurance set forth below.

Insurance Policy:	Fixed Premium Whole Life Insurance, Form 64061

Owner and Beneficiary: THE CHARLES SCHWAB CORPORATION is to be owner and beneficiary of the insurance applied for.

Insured Group:

Insurance under the policy is to be provided on the life of (define insured group; attach census if available);

All full time benefit-eligible salaried and hourly employees of Charles Schwab Investment Management, Inc., Mayer & Schweitzer, Inc., Performance Technologies, Inc., and Charles Schwab (UK), Ltd., having a date of hire on or before October -31, 1994, as set forth on the attached Schedule of Proposed Insureds:

Death Benefit Option:

Initial Coverage Amount:

(define amounts of insurance for group)

\$2,268,297

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The initial face amount of the coverage being applied for is set forth on the attached Schedule of Proposed Insureds.

Initial Payment

IT IS UNDERSTOOD that acceptance of this application is subject to final underwriting review by Alexander Hamilton Life Insurance Company of America, the outcome of which may affect the terms of issue including the final insured Group acceptable to Hamilton and may result in a refund of premium, if any has been made. Until final approval is given on each individual to be insured, no policy of insurance is inforce on any specific individual.

1,!74 Dates Applicant THE CHARLES CORPORATION SCHWAR

State of . Jurisdiction: DELAWARE

Witness

By:

Senior Vice President, Controller Title:

Accepted: ALEXANDER HAMILTON LIFE INSURANCE COMPANY OF AMERICA

Agen Withan Carae

EXHIBIT C

Alexander Hamilton Life

Richard F. McCerter Vice President Special Markets

November 28, 1994

Michael Bentivoglio Vice President - Taxation Charles Schwab, The Schwab Bidg, 101 Montgomery Street San Francisco, CA 94104

RE: Corporate Owned Life Insurance policy Issued to Charles Schwab

Dear Mr. Bentivoglio;

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With respect to the Corporate Owned Life Insurance policy ("COLI") that will be issued by Alexander Hamilton Life ("Hamilton") to Charles Schwab ("Schwab"), Hamilton warrants the following:

- Hamilton warrants that COLI satisfies the definition of life insurance under Sec. 7702 of the Internal Revenue Code of 1986, as amended, and, accordingly, amounts paid by reason of an Insured's death should be excluded from Schwab's federal taxable income under Sec. 101 of the code.
 - The COLI is not to be a modified endowment contract (MEC) under Sec.
 7702A of the code provided the premiums under the COLI do not exceed the seven pay limits of the Sec. 7702A of the code.
 - Hamilton will perform actuarial evaluations of the COLI prior to and subsequent to its issue to make sure there is continued compliance with the tax provisions in Sec. 7702 and 7702A of the code.
- Hamilton warrants with in the requirements of Sec. 7702A of the code the COLI policy loans would not be treated as cash distributions for income tax purposes.

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 Hamilton warrants that cash withdrewals, as illustrated on the attached Exhibit A, under the COLI will be treated as non-taxable distributions under Sec. 72(e) of the code to the extent of cost basis in the policy within the constraints of the recapture ceiling as defined in Sec. 7702(f)(7) of the code.

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- 6. Hamilton warrants that the COLI satisfies the requirements of the code if the COLI is administered in accordance with such rules, as filustrated on the attached Exhibit A, and that interest expanse on policy loans will be deductible to Schwab under Seo. 264 of the code.
- 7. Hamilton will continuously monitor and update its administration procedures and computer software to assure that the OOLI continues to meet the various federal tax qualification requirements. Hamilton will notify Schwab in a timely manner if actions or elections on Schwab's part are needed in order to continue to meet such requirements.

With respect to the COLI, Alexander Hamilton Life agrees to the following pricing terms:

- 1. A premium expanse charge of 0% in policy year one and 3% in all subsequent premium paying years without regard to the applicable state premium taxes and DAC tax.
- A monihity administration fee of \$1.50 per policy for policy years one through seven and \$2.00 per policy thereafter.
- 3. The policy loan interest rate will be indexed to the Moody's Baa corporate bond yield average for the calendar month ending two months before the rate is determined for the contract year. The creciting rate to borrowed cash values will be the policy loan rate less 40 basis points for policy years one through seven and less 20 basis points thereafter.

4. With respect to mortality claim experience, the policy will have a 3% retention factor as a percentage of each death claim payment. Additionally, ... a claim stabilization reserve will be accumulated over the first five policy years to approximate 25% of expected claims. The maximum aggregate amount of this reserve shall be \$6,000,000. (Please note that this maximum has not been incorporated into Exhibit A, although the COLI will be administered with this maximum imposed.) The reserve will assist in management of the mortality charge rate level and will be considered cash value not available for policy loans. Upon plan termination, the reserve will reserve will be returned as cash value subject to release from Schwab on incurred but unreported claims.

Alexander Hamilton Life has reviewed the census data and other information submitted by Schwab relating to estimated costs in the event of the death of the Insured employees including a letter from Brian Burke to Michael Bentivogilo dated November 23, 1994. The information analyzes the various economic losses attributed to Schwab's exposure through its welfare plans, hiring and training expenses, and lost productivity arising from the death of any insured. Hamilton has relied on this information to complete its underwriting requirements, and Hamilton waives its right to assert the defense of tack of insurable interest with regard to any claims presented by Schwab for any such insureds.

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Any references to federal tax law or any other applicable laws or regulations are to such laws or regulations as they exist on the effective date of the policies.

We are pleased to work with Schwab on this Corporate Owned Life insurance Program and expect a mutually profitable venture.

Sincerely

Richard E. McCarter

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cc: B, Burke

1	CASE NAME:	-	INC. and THE CHARLES SCHWAB			
2		MICHIGAN, ENSTAR (US)	A LIFE INSURANCE COMPANY OF INC., ANDESA SERVICES, INC., THE			
3		LINCOLN NATIONAL LIFE through 50	E INSURANCE COMPANY, and DOES 1			
4	ACTION NO.:	San Francisco County Super	ior Court Case No. CGC-19-5727			
5	PROOF OF SERVICE					
6						
7	I am a resident of the State of California. My business address is 999 Skyway Road, Suite 310, San Carlos, California 94070. I am employed in the County of San Mateo where this service occurs. I am over the age of 18 years, and not a party to the within cause. I am readily familiar with my employer's normal business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.					
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9						
10	On the date set forth below, following ordinary business practice, I served a true copy of the foregoing document(s) described as:					
11	the foregoing document(s) described as:					
12	FIRST		DR DAMAGES AND EQUITABLE RELIEF FOR JURY TRIAL			
13			i			
14		MAIL) I caused such enveloped ed in the United States mail at S	(s) with postage thereon fully prepaid to be an Carlos, California.			
15 16	(BY EMAIL) by transmitting via email the document(s) listed above to the corresponding email address(es), or as stated on the attached service list, on this date before 5:00 p.m.					
17	dale	before 5.00 p.m.				
18	Bronwyn Pollock Alexander C. Ro		Attorneys for Pavonia Life Insurance of Michigan			
10	MAYER BROW	NLLP	Michigan			
	350 S. Grand Av 25 th Floor					
20	Los Angeles, CA 90071 P: 213-229-5194					
21	C: 213-594-0888 Email: <u>bpollock@mayerbrown.com</u>					
22	ARobinson@ma	yerbrown.com				
23	Elliott J. Stein David R. Richie		Attorneys for Andesa Services, Inc.			
24	David R. Richie STEVENS & LEE					
25						
26						
27	Email: <u>ejs@stevenslee.com</u> <u>DRR@stevenslee.com</u> >					
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1	Shawn L. Kelly Attorneys for ENSTAR (US) INC.
2	I DENTONS
3	101 John F. Kennedy Parkway Short Hills, NJ 07078-2708 P: 973.912.7107
4	shawn.kelly@dentons.com
5	 (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
6	Executed on April 4, 2010, at San Caular, California
7	Executed on April 4, 2019, at San Carlos, California.
8	Carol S. Karwatt
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	PROOF OF SERVICE

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EXHIBIT B

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Frank Venuto

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From:	Gerber, Jim (DIFS) <gerberj@michigan.gov></gerberj@michigan.gov>
Sent:	Wednesday, September 25, 2019 10:28 AM
То:	Kerr, Christopher (AG); Stephen A. Scott
Cc:	Charles E. Tillage; lowell.haky@schwab.com; Barry.Brown@Schwab.com;
	venuto.frank@comcast.net; Gregg, Randall (DIFS); Long, James (AG); Robinson,
	Alexander C.; Pollock, Bronwyn F.
Subject:	Re: Charles Schwab & Co., Inc., et al. v. Pavonia Life Ins. Co., et al.

Mr. Scott,

I have read Mr. Kerr's points below and I confirm that the positions stated by Mr. Kerr in his e-mail to you are those of the Deputy Rehabilitator as well.

Thank you

James Gerber, CFE Director of Receiverships Department of Insurance and Financial Services -State of Michigan (517)-284-8664 e-mail: <u>gerberj@michigan.gov</u> NOTICE: This message is intended for the named recipient(s) only and may contain confidential, privileged, or private information exempt from disclosure under Michigan law. If you have received this message in error, do not forward, share, save or duplicate it. Please reply and notify me of the error in transmission and then delete the message. Thank

From: Kerr, Christopher (AG) <KerrC2@michigan.gov> Sent: Wednesday, September 25, 2019 10:22 AM To: Stephen A. Scott <sscott@hayesscott.com>; Gerber, Jim (DIFS) <gerberj@michigan.gov> Cc: Charles E. Tillage <CTillage@hayesscott.com>; lowell.haky@schwab.com <lowell.haky@schwab.com>; Barry.Brown@Schwab.com <Barry.Brown@Schwab.com>; venuto.frank@comcast.net <venuto.frank@comcast.net>; Gregg, Randall (DIFS) <GreggR2@michigan.gov>; Long, James (AG) <LongJ@michigan.gov>; Robinson, Alexander C. <ARobinson@mayerbrown.com>; Pollock, Bronwyn F. <BPollock@mayerbrown.com> Subject: RE: Charles Schwab & Co., Inc., et al. v. Pavonia Life Ins. Co., et al.

Mr. Scott:

you.

This e-mail confirms, with limited exception, your attached letter summarizing our telephone conversation on Friday, September 20, 2019.

Specifically, if the sale of Pavonia to Ares/Aspida is finalized as contemplated by the current Plan of Rehabilitation, the rehabilitation and associated stay will terminate and Schwab will be able to proceed with the California Action against Pavonia and Lincoln in due course. We have been advised by Ares/Aspida counsel that because they are aware of the California Action that represents a Scheduled Liability (although disputed), Ares/Aspida intends to assume the defense of California Action in the California Superior Court upon the termination of the rehabilitation/stay and closing of the sale.

Conversely, if the sale of Pavonia to Ares/Aspida is not finalized as contemplated by the current Plan of Rehabilitation, the rehabilitation and associated stay will continue in effect and preclude the California Action from proceeding against Pavonia, and according to Special Deputy Rehabilitator James Gerber's (the "Special Deputy's") position, Lincoln as

well. In this situation, the Special Deputy will ultimately make a decision as to whether to adjudicate Schwab's claims in the Michigan rehabilitation court (which is the normal practice) or instead agree to allow the adjudication of Schwab's claims in the California Superior Court. Negotiations to settle Schwab's claims would also be a possibility in this situation.

Further, the Special Deputy does consider Schwab's claims in the California Action to be a Scheduled Liability but those claims are disputed. Although we cannot advise Schwab whether to file a Proof of Claim, under the Procedural Order, the Proof of Claim Instructions and Form, and other governing rehabilitation documents, disputed claims such as Schwab's (even if a Scheduled Liability) are required to file a Proof of Claim to formally register/record those claims against Pavonia in the rehabilitation proceeding. Your intention to file a Proof of Claim on behalf of Schwab therefore comports with the governing rehabilitation documents and would be a prudent measure to fully protect Schwab's rights.

Finally, you are correct that the Special Deputy takes no position regarding application of the rehabilitation stay to the other defendants to the California Action, Andesa and Enstar (US). With respect to Schwab's intention to re-add Pavonia to the California Action following its 8/26/19 dismissal without prejudice (2nd attachment), the Pavonia Rehabilitation Order prohibits the <u>institution</u> or continuation of any actions against Pavonia, so in other cases we would challenge this action. However, here Pavonia was already a party to the California Action as of the date of the rehabilitation, was only recently dismissed, and we now have clarified the procedural aspects of when and how Schwab's claims against Pavonia/Lincoln may proceed. Under these circumstances, as long as Schwab re-adds Pavonia to the California Action in a stipulated order that simultaneously stays the California Action against both Pavonia and Lincoln until at least 3/31/20 (when we expect the Ares/Aspida sale to close by), we will not object to re-adding Pavonia to the California Action.

The Special Deputy will review my points above and, assuming he agrees, provide written confirmation of the same. At that time, we would ask that you and Pavonia's counsel at Mayer Brown work diligently toward entry of a stipulated order that re-adds Pavonia to the California Action while staying that action against both Pavonia and Lincoln until at least 3/31/20.

Thank you.

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Christopher L. Kerr Assistant Attorney General Michigan Department of Attorney General Corporate Oversight Division P.O. Box 30736 Lansing, MI 48909 (517) 335-7632 (*please note new phone number*)

From: Stephen A. Scott <sscott@hayesscott.com> Sent: Tuesday, September 24, 2019 7:26 PM To: Kerr, Christopher (AG) <KerrC2@michigan.gov>; Gerber, Jim (DIFS) <gerberj@michigan.gov> Cc: Charles E. Tillage <CTillage@hayesscott.com>; lowell.haky@schwab.com; Barry.Brown@Schwab.com; venuto.frank@comcast.net Subject: RE: Charles Schwab & Co., Inc., et al. v. Pavonia Life Ins. Co., et al.

Messrs. Kerr and Gerber,

Attached is my letter following my call with Mr. Kerr last Friday. We look forward to confirmation of the points in our letter at your earliest convenience so we can move forward with the stay of the California Action. Thank you.

HAYES SCOTT BONINO ELLINGSON GUSLANI SIMONSON CLAUSE Stephen A.Scott 999 Skyway Road, Suite 310 San Carlos, CA 94070 <u>sscott@hayesscott.com</u> Direct: 650.486.2867 Mobile: 408.204.1716

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From: Stephen A. Scott Sent: Tuesday, September 17, 2019 3:48 PM To: Kerr, Christopher (AG) <<u>KerrC2@michigan.gov</u>> Cc: Gregg, Randall (DIFS) <<u>GreggR2@michigan.gov</u>>; Gerber, Jim (DIFS) <<u>gerberj@michigan.gov</u>>; Burke, Felicia (DIFS) <<u>BurkeF2@michigan.gov</u>>; Knickerbocker, Tina (DIFS) <<u>knickerbockert@michigan.gov</u>>; Long, James (AG) <<u>LongJ@michigan.gov</u>>; Charles E. Tillage <<u>CTillage@hayesscott.com</u>>; lowell.haky@schwab.com; Barry.Brown@Schwab.com; venuto.frank@comcast.net; Carol S. Karwatt <<u>CKarwatt@hayesscott.com</u>> Subject: RE: Charles Schwab & Co., Inc., et al. v. Pavonia Life Ins. Co., et al.

Mr. Kerr,

Attached is our letter regarding Mr. Gerber's letter of September 12th. Please feel free to contact me to discuss on my direct number below. We look forward to your response. Thank you.

HAYES SCOTT BONINO ELLINGSON GUSLANI SIMONSON CLAUSE

Stephen A.Scott 999 Skyway Road, Suite 310 San Carlos, CA 94070 <u>sscott@hayesscott.com</u> Direct: 650.486.2867 Mobile: 408.204.1716

From: Stephen A. Scott Sent: Thursday, September 12, 2019 12:51 PM To: Kerr, Christopher (AG) <<u>KerrC2@michigan.gov</u>> Cc: Gregg, Randall (DIFS) <<u>GreggR2@michigan.gov</u>>; Gerber, Jim (DIFS) <<u>gerberj@michigan.gov</u>>; Burke, Felicia (DIFS) <<u>BurkeF2@michigan.gov</u>>; Knickerbocker, Tina (DIFS) <<u>knickerbockert@michigan.gov</u>>; Long, James (AG) <<u>LongJ@michigan.gov</u>>; Charles E. Tillage <<u>CTillage@hayesscott.com</u>>; lowell.haky@schwab.com; <u>Barry.Brown@Schwab.com</u>; venuto.frank@comcast.net; Carol S. Karwatt <<u>CKarwatt@hayesscott.com</u>> Subject: RE: Charles Schwab & Co., Inc., et al. v. Pavonia Life Ins. Co., et al.

Mr. Kerr,

Thank you for your response. We will review with our client and contact you to further discuss.

HAYES SCOTT BONINO ELLINGSON GUSLANI SIMONSON CLAUSE 11.1" Stephen A.Scott 999 Skyway Road, Suite 310 San Carlos, CA 94070 <u>sscott@hayesscott.com</u> Direct: 650.486.2867 Mobile: 408.204.1716 From: Kerr, Christopher (AG) [mailto:KerrC2@michigan.gov] Sent: Thursday, September 12, 2019 12:16 PM To: Stephen A. Scott <<u>sscott@hayesscott.com</u>> Cc: Gregg, Randall (DIFS) <<u>GreggR2@michigan.gov</u>>; Gerber, Jim (DIFS) <<u>gerberi@michigan.gov</u>>; Burke, Felicia (DIFS) <<u>BurkeF2@michigan.gov</u>>; Knickerbocker, Tina (DIFS) <<u>knickerbockert@michigan.gov</u>>; Long, James (AG) <<u>LongJ@michigan.gov</u>>; Charles E. Tillage <<u>CTillage@hayesscott.com</u>>; lowell.haky@schwab.com; Barry.Brown@Schwab.com; venuto.frank@comcast.net; Carol S. Karwatt <<u>CKarwatt@hayesscott.com</u>> Subject: RE: Charles Schwab & Co., Inc., et al. v. Pavonia Life Ins. Co., et al.

Mr. Scott:

Attached please find the response of Special Deputy Rehabilitator James Gerber to your letter dated September 6, 2019, together with Exhibits A and B thereto. Hard copies of these documents were also mailed to you today.

Thank you.

Christopher L. Kerr Assistant Attorney General Michigan Department of Attorney General Corporate Oversight Division P.O. Box 30736 Lansing, MI 48909 (517) 335-7632 (*please note new phone number*)

From: Carol S. Karwatt <<u>CKarwatt@hayesscott.com</u>> Sent: Friday, September 6, 2019 4:52 PM To: Kerr, Christopher (AG) <<u>KerrC2@michigan.gov</u>>; Burke, Felicia (DIFS) <<u>BurkeF2@michigan.gov</u>> Cc: Stephen A. Scott <<u>sscott@hayesscott.com</u>>; Charles E. Tillage <<u>CTillage@hayesscott.com</u>>; lowell.haky@schwab.com; Barry.Brown@Schwab.com; venuto.frank@comcast.net Subject: Charles Schwab & Co., Inc., et al. v. Pavonia Life Ins. Co., et al.

Mr. Kerr & Mr. Gregg-

Please find attached a revised letter correcting a typographical error that supersedes the previous letter sent on today's date.

Feel free to contact Mr. Scott with any questions concerning this matter.

Sincerely,

Carol S. Karwatt Legal Assistant to Stephen A. Scott, Lawrence M. Guslani, Vivian V. Countryman, Christopher K. Wong and Emma Lloyd

HAYES SCOTT BONINO ELLINGSON GUSLANI SIMONSON & CLAUSE, LLP 999 Skyway Road, Suite 310 San Carlos, CA 94070 Direct: (650) 486-2894 Telephone: (650) 637-9100 Facsimile: (650) 637-8071