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10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 HARLEY FRANK,

13 Plaintiff,

14 vs.

15 GWG HOLDINGS, INC., and WELLS
16 FARGO BANK, N.A.,

17 Defendants.
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19

) Case No.:
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**COMPLAINT FOR (1) RECOVERY
OF INSURANCE PROCEEDS, AND
(2) UNJUST ENRICHMENT**

JURY TRIAL DEMANDED
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21 **COMPLAINT**

22 Plaintiff Harley Frank, through undersigned counsel, hereby files and submits
23 this Complaint pursuant to 18 Del. C. § 2704(b) and Delaware law, against Defendant
24 GWG Holdings, Inc. (“GWG”), a citizen of Delaware, and Defendant Wells Fargo
25 Bank, N.A., as Securities Intermediary and/or Trustee (“Wells Fargo”) and in support
26 thereof, alleges as follows. This Court has subject matter jurisdiction pursuant to 28
27 U.S.C. § 1332 because there is complete diversity of citizenship between the Plaintiff
28 (a citizen of California) and Defendant GWG (a citizen of the State of Delaware), and

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1 Defendant Wells Fargo (a citizen of the state of South Dakota) and because the amount
2 in controversy exceeds \$75,000. Plaintiff bases the allegations on personal knowledge
3 of his own actions and on information and belief as to all other matters.

4 **PARTIES**

5 1. Plaintiff Harley Frank, a resident of Los Angeles County and a citizen of
6 the State of California, is one of the two children of Norman Frank, who was during his
7 lifetime a resident of Los Angeles County and a citizen of the State of California.
8 Plaintiff is undertaking proceedings under California law to open the Estate of Norman
9 Frank (the “Estate”) in Los Angeles County and to have himself appointed as its
10 Executor, after which this Complaint will be amended to add the Estate as a Plaintiff in
11 this matter. Norman Frank was at all times relevant to this Complaint a resident of Los
12 Angeles County and a citizen of the State of California.

13 2. Upon information and belief, GWG is a corporation organized under the
14 laws of Delaware with its principal office and headquarters in Minneapolis, Minnesota.
15 Upon information and belief, GWG is a citizen of the State of Delaware.

16 3. Upon information and belief, Wells Fargo is a national banking association
17 with its principal office and headquarters in Sioux Falls, South Dakota. Wells Fargo is
18 being named solely in its capacity as Securities Intermediary and/or Trustee. Wells
19 Fargo is a citizen of the state of South Dakota.

20 **JURISDICTION AND VENUE**

21 4. This Court has subject-matter jurisdiction under 28 U.S.C. § 1332 because
22 there is complete diversity of citizenship between Plaintiff, a citizen of California, and
23 Defendants, GWG, a citizen of Delaware, and Wells Fargo, a citizen of South Dakota,
24 and because the amount in controversy exceeds \$75,000.

25 5. This Court possesses specific personal jurisdiction with respect to
26 Defendants in this action pursuant to U.S.C. Code § 38-61-10, *et. seq.* and § 36-2-803,
27 *et. seq.* because, among other things, Defendants have had extensive personal contact
28 with the forum that relates to the core subject-matter of this action, including action

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1 within the forum to monitor, service, maintain, and collect or assist in collecting on a
2 life insurance policy that insured the life of a California resident (the now deceased
3 Norman Frank). Upon information and belief, these activities of Defendants, included
4 contacting Mr. Frank within the forum while he was living to monitor his health, and—
5 after he passed away—obtaining a copy of Mr. Frank’s death certificate in California.
6 Upon information and belief, these activities of Defendants also included Defendants
7 using the California death certificate to collect or assist in collecting the death benefit
8 proceeds from the policy on the life of Norman Frank, who was at all relevant times a
9 resident of Los Angeles County and a California citizen.

10 6. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because
11 a substantial part of the events giving rise to Plaintiff’s claims occurred within the
12 Central District of California. In addition to the allegations above, this cause of action
13 arose within the forum and relates to a life insurance policy that insured the life of Mr.
14 Frank, who was at all relevant times a resident of Los Angeles County and a citizen of
15 California. Moreover, Plaintiff Harley Frank resides in this forum, and the Estate is
16 being opened in Los Angeles County, California. Relevant witnesses and sources of
17 information and documents relating to the application for the policy and its issuance are
18 believed to be located within this forum. Additionally, upon information and belief,
19 witnesses, documents and sources of information relating to Defendants’ efforts to
20 obtain and use the California death certificate for Mr. Frank are believed to be located
21 within this forum.

22 **FACTS COMMON TO ALL CLAIMS**

23 7. This action concerns a life insurance policy that is controlled by and
24 subject to Delaware law, including because, upon information and belief, the policy was
25 applied for by and delivered to a Delaware statutory trust in Delaware, and thus was a
26 Delaware trust owned policy as defined in Delaware’s insurable interest statute, 18 *Del.*
27 *C.* § 2704.

1 8. As stated by the Supreme Court of Delaware, it is well recognized that,
2 “[s]ince the initial creation of life insurance during the sixteenth century, speculators
3 have sought to use insurance to wager on the lives of strangers.” *PHL Variable Ins. Co.*
4 *v. Price Dawe 2006 Ins. Trust*, 28 A.3d 1059, 1069 (Del. 2011). Insurance policies
5 which are procured as a wager on the life of the person insured not only violate
6 Delaware public policy and its constitutional prohibition on wagering, but they also
7 violate the state’s insurable interest requirement, which precludes investors from
8 manufacturing life insurance policies for the purpose of resale. *Id.*

9 9. Although human life speculators have been a problem for hundreds of
10 years, never has this problem been more wide-spread or involved such vast amounts of
11 money than in recent years. In the early 2000s, institutional investors began pooling
12 large blocks of high-value life insurance policies into special purpose vehicles, such as
13 tax-exempt entities or trusts, the interests of which were effectively securitized and sold
14 to other investors.

15 10. It is well established, however, that in the early 2000s, there was not a
16 sufficient supply of existing life insurance policies to satisfy investor demand. In
17 particular, investors were interested in high face amount policies insuring the lives of
18 senior citizens, but there were only “a limited number of seniors who had unwanted
19 policies of sufficiently high value.” *Price Dawe*, 28 A.3d at 1070. “As a result, STOLI
20 promoters sought to solve the supply side shortage by generating new, high value
21 policies.” *Id.* These policies are often referred to as STOLI—meaning stranger
22 origination life insurance. *Id.*

23 11. One such STOLI promoter was family of interrelated Delaware entities
24 known generally as Coventry.

25 12. Entities such as Coventry—known in the STOLI industry as “funders”—
26 worked with a nationwide network of insurance producers, who, acting as the funders’
27 agents, assisted the funders by, among other things, identifying senior citizens meeting
28

1 the funders’ investment criteria and influencing those seniors to become involved in the
2 STOLI transactions the funders were orchestrating.

3 13. The STOLI transactions orchestrated by funders like Coventry and its
4 agents were presented to hand-selected senior citizens in rosy terms that camouflaged
5 the transactions’ impropriety as being a “risk-free” opportunity, “just a good deal,” or
6 as being similar to “hitting the lottery” or acquiring a winning “bingo” card.

7 14. The specific mechanisms by which each funder’s STOLI program operated
8 could and often did vary in one respect or another. But each shared basic similarities
9 including that the policies at issue were procured by third parties that lacked an
10 insurable interest in the insureds and that sought to wager on the life of the insureds.

11 15. Not only do these STOLI policies violate public policy and constitutional
12 bans on wagering and insurable interest laws, but they take advantage of insurers and
13 their senior citizen insureds and otherwise convert a legitimate life insurance product
14 into an illegitimate cash machine whereby a stranger to the insured is more interested
15 in seeing the insured dead than alive.

16 16. In or about 2005, Coventry procured the life insurance policy (the
17 “Policy”) that is at issue in this action insuring the life of Mr. Frank.

18 17. To induce Mr. Frank to allow the Policy to be procured on his life,
19 Coventry and those acting on its behalf may have represented that the Policy was being
20 procured through a legitimate and legal transaction, or further induced Mr. Frank with
21 the promise of financial compensation if he permitted the Policy to be procured.

22 18. In reality, however, Coventry procured the Policy through an illegal
23 STOLI scheme and Coventry lacked a valid insurable interest in the life of Mr. Frank.

24 19. Upon information and belief, Coventry acted through its agent(s) to have
25 an application for the Policy submitted to the insurance company that ultimately issued
26 the Policy as a Delaware life insurance policy.

27 20. To facilitate these transactions, Coventry created the Norman Frank
28 Insurance Trust dated August 18, 2005 (the “Trust”), as a Delaware statutory trust,

1 installed Wilmington Trust Company (“Wilmington Trust”) as the trustee of the Trust,
2 and used the Trust as a cover to procure the Policy without a valid insurable interest.

3 21. Upon information and belief, Coventry further created a sub-trust (the
4 “Sub-Trust”) to the Trust. The Sub-Trust was also established as a mere cover to
5 procure the Policy without a valid insurable interest.

6 22. Upon information and belief, the Policy insuring the life of Mr. Frank was
7 issued and delivered in Delaware to the Trust.

8 23. Upon information and belief, in connection with originating the Policy,
9 Coventry, acting through Lasalle Bank, N.A., entered into a non-recourse “loan”
10 arrangement with the Trust, with the Policy serving as the sole collateral for the
11 purported “loan.”

12 24. This purported “loan” was secured solely by a security interest in the Trust
13 and Sub-Trust that held the Policy.

14 25. As a result of this purported “loan,” neither Mr. Frank nor anyone with an
15 insurable interest in his life ever paid any premiums on the Policy. Rather, the loan was
16 used to conceal the fact that such premiums were paid by Coventry for the purpose of
17 creating a wager on Mr. Frank’s life.

18 26. Moreover, the purpose of the Policy was not to provide estate protection
19 for Mr. Frank, but rather he was used as an instrumentality to procure the Policy so that
20 strangers with no insurable interest could wager on his early demise.

21 27. Upon information and belief, in connection with the purported “loan”
22 becoming due, stranger investors unrelated to Mr. Frank took formal control of the
23 Policy.

24 28. Wells Fargo, solely in its capacity as securities intermediary, is a
25 common bank used by STOLI investors to serve as record owner of STOLI policies so
26 that, when they invariably sell and resell the policies, the investors’ identities need not
27 be disclosed to the insurance carriers and no change of ownership is needed at the
28 carrier level.

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1 29. Upon information and belief, Defendants undertook to actively conceal
2 their identity from Mr. Frank and members of his family, including through the use of
3 agent intermediaries.

4 30. On December 24, 2018, Mr. Frank passed away.

5 31. Upon information and belief, without notifying Plaintiff or other members
6 of the family of Mr. Frank, a claim for the Policy's death benefit was made by or on
7 behalf of Defendants, and the death benefit was then paid by the issuing insurance
8 company to Defendants, and/or others acting in concert with them.

9 32. Upon information and belief, following Mr. Frank's death, Defendants
10 continued to actively conceal their identity from Plaintiff or other members of Mr.
11 Frank's family, including through the use of agent intermediaries.

12 33. To the extent that other entities or individuals may also be proper
13 defendants with respect to the claims set forth herein, they have, upon information and
14 belief, actively concealed themselves from Plaintiff or other members of Mr. Frank's
15 family. As a result, any such potential additional proper defendants that may exist
16 remain unknown to Plaintiff.

17 **FIRST CAUSE OF ACTION: RECOVERY OF INSURANCE PROCEEDS DUE**
18 **TO LACK OF INSURABLE INTEREST**

19 34. Plaintiff hereby incorporates by reference each and every allegation
20 contained in the preceding paragraphs as if set forth herein at length.

21 35. The Policy is controlled by and subject to Delaware law, including because
22 the Policy was applied for and delivered to the trustee of the Trust in Delaware, and is
23 thus a Delaware trust owned policy as defined in Delaware's insurable interest statute,
24 18 *Del. C.* § 2704.

25 36. The Delaware insurable interest statute provides, among other things, that
26 "no person shall procure or cause to be procured any insurance contract upon the life or
27 body of another individual unless the benefits under such contract are payable to the
28 individual insured or his or her personal representatives or to a person having, at the

1 time when such contract was made, an insurable interest in the individual insured.” 18
2 *Del. C. § 2704.*

3 37. The Delaware Supreme Court has clarified that this insurable interest
4 requirement is not satisfied where a third party without an insurable interest uses an
5 insured as an instrumentality to procure a policy for itself as a wager on the insured’s
6 life. *PHL Variable Ins. Co. v. Price Dawe 2006 Ins. Trust*, 28 A.3d 1059 (Del. 2011).

7 38. Where an insurance company pays the death benefit on a policy lacking
8 insurable interest, the “executor or administrator” of the insured is entitled to recover
9 such benefits from the beneficiary, assignee, or payee that received the benefits as a
10 matter of common law and statute. 18 *Del. C. § 2704 (b)*. See, e.g., *Estate of Malkin*
11 *v. Wells Fargo Bank, N.A.*, 379 F. Supp. 3d 1263 (S.D. Fla. 2019).

12 39. Upon information and belief, the Policy at issue in this case was procured
13 without an insurable interest as a wager on Mr. Frank’s life.

14 40. Regardless of whether Mr. Frank knew the details of this scheme or his
15 identity was merely used as an instrumentality to procure the Policy, as set forth above,
16 stranger investors were wagering on the life of Mr. Frank and hoping to trigger a
17 secondary market cash-in on the Policy’s death benefit.

18 41. Upon information and belief, the Policy’s death benefit was paid,
19 transferred, or otherwise assigned to Defendants, or another entity working in concert
20 with them.

21 42. As a consequence, Plaintiff is entitled to recover those death benefit
22 proceeds (plus applicable interest, attorneys’ fees, and other costs and damages) from
23 Defendants.

24 **SECOND CAUSE OF ACTION: IN THE ALTERNATIVE, UNJUST**
25 **ENRICHMENT**

26 43. Plaintiff hereby incorporates by reference each and every allegation
27 contained in Paragraphs 1 through 33 above as if set forth herein at length, and set forth
28 this cause of action in the alternative to Plaintiff’s preceding claim.

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1 44. Defendants’ acceptance, retention and/or distribution of the Policy’s death
2 benefit proceeds has enriched Defendants to the detriment of Plaintiff. Given the
3 circumstances surrounding the procurement of the Policy, allowing Defendants to retain
4 the proceeds of the Policy is inequitable and without justification including because,
5 among other things, the Policy was procured without insurable interest to wager on the
6 life of Mr. Frank, in violation of applicable law and public policy.

7 45. Accordingly, Plaintiff is entitled to an award of the Policy’s entire death
8 benefit proceeds (plus applicable interest, attorneys’ fees, and other costs and damages)
9 from Defendants.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for the following relief:

- 12 1. Judgment in Plaintiff’s favor and against Defendants, jointly and severally,
13 in the amount of the Policy’s entire death benefit proceeds (plus applicable
14 interest, attorneys’ fees, and other costs and damages), to be determined at
15 trial subject to proof.

16 Dated: December 23, 2021 COZEN O’CONNOR

17
18 By: /s/ Matthew E. Lewitz
19 Matthew E. Lewitz
20 Attorneys for Plaintiff Harley Frank
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JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues upon which trial may be had.

Dated: December 23, 2021

COZEN O’CONNOR

By: /s/ Matthew E. Lewitz
Matthew E. Lewitz
Attorneys for Plaintiff
HARLEY FRANK

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