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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Glenda Moreno,)	No. CV 14-2022-TUC-FRZ
)	
Plaintiff,)	ORDER
)	
vs.)	
)	
Minnesota Life Insurance Company; et. al,)	
)	
Defendants.)	
<hr style="border: 0.5px solid black;"/>		

Before the Court for consideration are the Defendants’ Motion to Dismiss Plaintiff’s First Amended Complaint and the Report and Recommendation of the Magistrate Judge, recommending the motion be granted in part and denied in part.

This matter was referred to the United States Magistrate Judge for all pretrial proceedings and report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) and LRCiv 72.1 and LRCiv 72.2, Rules of Practice of the United States District Court for the District of Arizona.

Defendants removed this action from state court and thereafter moved to dismiss the Complaint. In response, Plaintiff conceded that the original Complaint was deficient and filed the First Amended Complaint.

Pursuant to the stipulation of the parties, Magistrate Judge Charles R. Pyle denied Defendants’ first motion to dismiss without prejudice as moot.

The First Amended Complaint, arising out of an accidental death and dismemberment insurance policy purchased by Plaintiff’s now deceased father, alleges the following five

1 claims for relief: (1) consumer fraud under A.R.S. Section 44-1521, *et seq.*; (2) insurance
2 fraud under A.R.S. Section 20-443, *et. seq.*; (3) negligent misrepresentation; (4) fraudulent
3 concealment; and (5) estoppel.

4 Before the Court for consideration is Defendants' Motion to Dismiss Plaintiff's
5 Amended Complaint.

6 Magistrate Judge Pyle issued his Report and Recommendation, filed January 20, 2015,
7 recommending "that the District Court grant in part and deny in part Defendants' Motion to
8 Dismiss Plaintiff's Amended Complaint . . . to the extent that Plaintiff's common law and
9 estoppel claims, set out at Claims Three through Five, should be dismissed with leave to
10 amend. The Motion should be denied as to Plaintiff's claims for statutory fraud, set out at
11 Claims One and Two."

12 The Report and Recommendation sets forth a thorough factual and procedural
13 background and analysis of the claims under the applicable legal standards.

14 The Report and Recommendation advised the parties that they may file written
15 objections within fourteen (14) days from the date of service of a copy of the Report and
16 Recommendation. *See* 28 U.S.C. § 636(b)(1) and Rules 72(b) of Federal Rules of Civil
17 Procedure.

18 Defendants' Objections to U.S. Magistrate Judge Charles R. Pyle's Report and
19 Recommendation Regarding Defendants' Motion to Dismiss the First Amended Complaint
20 were timely filed. Defendants urge the Court to dismiss the entire First Amended Complaint,
21 based on Defendants' contentions that Magistrate Judge Pyle erred in recommending that the
22 Court deny the dismissal of the Plaintiff's claims, reasserting their arguments that Plaintiff
23 failed to plead reliance and lacks standing, and thus, the First Amended Complaint should
24 be dismissed without leave to amend..

25 Upon review and consideration of all matters presented and an independent review
26 of the record herein, including Defendants' Objections to U.S. Magistrate Judge Charles R.
27 Pyle's Report and Recommendation Regarding Defendants' Motion to Dismiss the First
28 Amended Complaint (26), the Court finds that the findings of the Magistrate Judge as set

1 forth in the Report and Recommendation, shall be accepted and adopted as the findings of
2 fact and conclusions of law of this Court.

3 Based on the forgoing,

4 **IT IS HEREBY ORDERED** that the Report and Recommendation of the Magistrate
5 Judge (Doc. 25) is **ACCEPTED and ADOPTED** as the findings of fact and conclusions of
6 law by this Court; accordingly

7 **IT IS ORDERED** that Defendants' Motion to Dismiss Plaintiff's Amended
8 Complaint (Doc. 22) is **GRANTED in part and DENIED in part**;

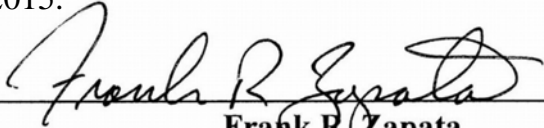
9 **IT IS ORDERED** that Plaintiff's Third, Fourth and Fifth Claims of the First
10 Amended Complaint are **DISMISSED** with leave to amend;

11 **IT IS ORDERED** that Defendants' Motion to Dismiss Plaintiff's Amended
12 Complaint (Doc. 22) is **DENIED** as to Plaintiffs First and Second Claims;

13 **IT IS FURTHER ORDERED** that this case is referred back to Magistrate Judge
14 Charles R. Pyle for all pretrial proceedings and report and recommendation in accordance
15 with the provisions of 28 U.S.C. § 636(b)(1) and LRCiv 72.1 and LRCiv 72.2 of the Rules
16 of Practice of the United States District Court for the District of Arizona, Local Rules of
17 Civil Procedure.

18 All filings shall be designated: **CV 14-2022 TUC-FRZ (CRP)**

19
20 DATED this 30th day of March, 2015.

21 
22 **Frank R. Zapata**
23 **Senior United States District Judge**