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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ADA SHENON,
Plaintiff,
v.
NEW YORK LIFE INSURANCE
COMPANY AND DOES 1
THROUGH 10,
Defendants.

Case No. 2:18-cv-00240 CAS (AGRx)

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Trial Held:
Date: Oct. 19 – Nov. 2, 2021
Time: 10:00 a.m.
Ctrm: 8D, 8th Floor
Hon. Christina A. Snyder

On November 2, 2021, the jury returned a verdict in favor of Defendant New York Life Insurance Company (“Defendant” or “New York Life”). The jury found, in part, that New York Life was not obligated to pay Shenon’s claim because it was not covered by the Policy, and because “Shenon knowingly and intentionally misstated material facts in making her claim for insurance benefits.” Special Verdict Form, Questions 2 and 3 [Doc. 194]

The Court makes the following Findings of Fact and Conclusions of Law. These Findings¹ follow a careful review of the record and the evidence, and are consistent with the jury’s verdict.

¹ To the extent that any findings of fact are included in the conclusions of law section, they shall be deemed findings of fact. To the extent that any conclusions of law are included in the findings of fact section, they shall be deemed conclusions of law.

1 **FINDINGS OF FACT**

2 1. New York Life issued Long-term Care insurance, Policy No. 5634501
3 (“the Policy”) to Plaintiff Ada Shenon on January 1, 2001. (Trial Exhibit “Exh.” 1)²

4 2. Shenon initiated a claim for benefits under the Policy on June 26,
5 2017. (Exh. 65)

6 **Policy**

7 3. An insured is entitled to Long-term Care (“LTC”) insurance benefits
8 under the Policy when she needs, receives, and pays for covered care. “If the
9 insured meets the defined requirements with respect to her DL limitations, she must
10 then show that received care covered by the Policy and paid for care covered by the
11 Policy.” (Trial Testimony “TT” 11/2/21, testimony of Valerie Besserman
12 “Besserman” 16:17-24) (Pretrial Order, Stipulated Facts “SF” 5)

13 4. As a first requirement for benefits, the policy requires that an
14 individual be certified as “Chronically Ill” by a licensed medical practitioner. To be
15 certified as “Chronically Ill,” an insured must meet the following requirements:

16 “You will be eligible for the Benefits provided by this
17 Policy when we determine that you...are unable to
18 perform without continual **Substantial Assistance** from
19 another individual 2 or more of the following 6 Activities
20 of Daily Living [“ADL”]: Dressing, Eating, Continence,
21 Toileting, Transferring and Bathing due to a loss of
22 functional capacity.”

23 “**Substantial Assistance** means **Hands-On**
24 **Assistance** and **Standby Assistance**.”

25 “**Hands-On Assistance** means the physical
26 assistance of another person without which
27 you would be unable to perform the Activity

28 ² All of the referenced trial exhibits have been admitted into evidence.

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of Daily Living.

“**Standby Assistance** means the presence of another person within arm’s reach of you that is necessary to prevent, by physical intervention, injury to you while you are performing the Activity of Daily Living. An example of such assistance is being ready to catch you if you fall while getting into or out of the bathtub or shower as part of bathing, or being ready to remove food from your throat if you choke while eating.” (Exh. 1)

5. The “**Activities of Daily Living**” are defined by the Policy as follows:

1. *Dressing* - which shall mean putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.
2. *Eating* - which shall mean feeding oneself by getting food in the body from a receptacle (such as a plate, cup, or table) or by a feeding tube or intravenously.
3. *Continence* - which shall mean the ability to maintain control of bowel and bladder function; or when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for a catheter or colostomy bag).
4. *Toileting* - which shall mean getting to and from the toilet; getting on or off the toilet, and performing associated personal hygiene.
5. *Transferring* - which shall mean the ability to move into or out of bed, a chair or wheelchair.

1 6. *Bathing* - which shall mean washing oneself by sponge
2 bath or in either a tub or shower, including the act of
3 getting into or out of a tub or shower. (Exh. 1)

4 6. The Policy did not contain a provision addressing whether New York
5 Life would be entitled to void or terminate the Policy in the event Shenon
6 committed fraud in her application for insurance or in a claim for benefits under the
7 Policy. (Exh. 1)

8 7. Toileting assistance under the policy requires “Hands-on” or
9 “Standby” assistance “getting to and from the toilet; getting on or off the toilet, and
10 performing associated personal hygiene.” (Exh. 1) Likewise, use of a cane or
11 walker may assist in maintaining independence, but does not qualify as “Hands-on”
12 or “Standby” assistance under the terms of the Policy, which requires assistance
13 from another person. (Exh. 1; TT 10/29/21, Beiter 33:2-8).

14 8. The Policy is tax-qualified and states: “Effect of Federal Law: No
15 benefits are payable under this Policy which would cause this Policy to fail to
16 qualify as a Qualified Long-Term Care Insurance Contract under Section 7702B(b)
17 of the Internal Revenue Code [Treatment of qualified long-term care insurance].”
18 (Exh. 1)

19 9. If the insured meets the defined requirements with respect to her need
20 for covered ADL assistance, the Policy will reimburse the insured for care that is
21 received and paid for. Specifically, the Policy provides as follows: “We will pay
22 your charges for Home Health Care up to the Home and Community Based Care
23 Maximum Daily Benefit shown on the Schedule of Benefits.” (Exh. 1)

24 10. The Policy provides that “Proof of Loss must be given to us in writing
25 at New York Life Insurance Company” (Exh. 1)

26 11. The Policy also provides a 90-day Elimination Period and states as
27 follows: “you must satisfy the Elimination Period before we will pay any benefits
28 under that Benefit provision. We will count only days on which you receive care or

1 services covered under this Policy, and you meet all of the Policy requirements to
2 be eligible for benefits, except that you have not yet met the Elimination Period.”

3 (Exh. 1)

4 12. The Policy does not reimburse for care provided by family members.

5 (Exh. 1)

6 **Shenon’s Claim for LTC Insurance Benefits**

7 13. In 2004, Shenon applied for and received disability benefits under a
8 disability policy issued by New York Life, and in 2005 or 2006 she was awarded
9 Social Security disability insurance benefits. She continues to receive disability
10 insurance benefits from New York Life and Social Security. (TT 10/28/21,
11 testimony of Ada Shenon “Shenon” 73:17-74:19)

12 14. On June 26, 2017, Shenon called New York Life to file an LTC claim.
13 (SF 8; Exh. 6) She said she was scheduled for knee replacement surgery in August
14 2017.

15 15. During that first call, to support her claimed need for assistance with
16 bathing, Shenon also claimed that she had fallen in the shower four months earlier
17 and hurt her shoulder. (Exh. 6) She reaffirmed during her trial testimony that she
18 fell in the shower. (TT 10/28/21, Shenon 118:24-119:3) However, her treating
19 physician (Stephen Kay, M.D.) recorded in his records and testified at trial that
20 Shenon told him, ten days after her claimed fall, that she fell in her bedroom, on the
21 hardwood floor, not in the shower. (TT 10/26/21, testimony of Stephen Kay, M.D.
22 “Kay” 61:6-17)

23 **New York Life’s LTC Claim Review Process**

24 16. Shenon returned claim forms dated July 5, 2017. These included a
25 Provider Questionnaire from her caregiver Galyna Naratovska (“Naratovska”)
26 stating that Naratovska provided caregiving services for bathing, showering,
27 dressing, toileting, light housekeeping, meal preparing, and massage. (Exh. 2)
28 Shenon dictated the information that Naratovska included in the caregiver form,

1 and Naratovska copied the information into the form and signed the form. (TT
2 10/28/21, Shenon 134:6-22; TT 10/20/21, Naratovska 70:4-71:16) Naratovska
3 never gave Shenon permission to sign any documents for her. (TT 10/20/21
4 Naratovska 73:21-74:1)

5 17. Valerie Besserman was the claims leader for the New York Life long-
6 term care claims division, and the manager of the long-term care team throughout
7 the duration of Shenon's claim. (TT 11/2/21 Besserman 11:3-9)

8 18. To determine the appropriate level of investigation for new claims, the
9 LTC group has developed a process –the Business Integrity Unit (“BIU”) review.
10 Pursuant to this process, the information received from insureds is reviewed for
11 identification of the following potential “red flags”:

12 “1) *Diagnoses* - Is the physical or cognitive deficit
13 consistent with the diagnoses?

14 2) *Treatment Plan* - Is the medical treatment consistent
15 with the diagnoses and the level of physical or cognitive
16 deficit? Are specialists involved?

17 3) *Level of Care* - Is the assistance requested or provided
18 consistent with the diagnoses, prognoses, and level of
19 physical or cognitive deficit?

20 4) *Age* - Are the diagnoses, prognoses, and degree of
21 deficit consistent with the claimant's age?

22 5) *Prognosis* - Is an expected recovery progressing as
23 would be expected for a similar person with similar
24 deficits?

25 6) *Consistent Information* - Are there marked differences
26 with the information obtained from various professional
27 sources (medical, care, observational)? Is there a marked
28 difference between the care needs indicated by the

1 claimant at intake and subsequent reported needs on the
2 BEA and care provider records?

3 7) *Policy Effective Date* - Has the policy been effective
4 less than three years?

5 8) *Care Provider Details* - Do non-licensed or informal
6 caregivers provide the majority of the care?

7 9) *Contact with the Claimant* - Is the claimant difficult to
8 contact or often away from their home or facility? Does
9 the claimant or family constantly request updates or push
10 for benefit eligibility approval?

11 10) *Contact with the Caregiver(s)* - Is the caregiver rarely
12 available or do they live a long distance from the
13 claimant? Does the caregiver constantly request updates
14 or push for benefit eligibility approval?" (Exh. 21)

15 19. Less than 1% of new claims filed during the time beginning with the
16 onset of Shenon's claim (June 26, 2017) through September 2021 were identified as
17 having at least three red flags. (TT 11/2/21 Besserman 11:13-12:11)

18 20. Three red flags were identified for Shenon's claim, so the claim was
19 investigated further after the initial review. The three flags were as follows: "Age
20 (is the diagnosis, prognosis, and degree of deficit consistent with the claimant's
21 age?)" ; "Diagnosis (is the physical or cognitive deficit consistent with the
22 diagnosis?)" ; and "Care Provider Details (the care was provided by an unlicensed
23 caregiver)." (Exh. 22)

24 **New York Life's Investigation of Shenon's Claim**

25 21. On July 11, 2017, Ann Doyle, R.N. ("Doyle") visited and interviewed
26 Shenon at her home in Tarzana to perform an in-person assessment, and then
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1 completed a detailed report. (Exh. 132) Doyle was retained through a vendor
2 utilized by New York Life – Dimensions, Inc.³

3 22. Shenon made a number of representations to Doyle. Shenon described
4 continual and extensive limitations. She said that she experienced 10+++ out of 10
5 pain on a constant basis, and that between her caregiver and husband, she received
6 almost 24-hour care, 7 days per week.⁴ She said that because of her condition and
7 her inability to bend and reach, and her loss of range of motion, she required
8 assistance “every time” with bathing and dressing and more than half of the time
9 with transferring, mobility, and toileting. (Exh. 132)

10 23. Shenon told Doyle (and confirmed during her trial testimony) that she
11 used a lift chair to get up to a standing position because she could not get up by
12 herself, and that she spent most days in the lift chair. (Exh. 132) During her trial
13 testimony, Shenon confirmed her statements to Doyle. (TT 10/28/21, Shenon
14 127:4-20; 128:4-12) However, surveillance shows Shenon standing independently
15 from a sitting position both before and after her knee surgery. (Exh. 40.12; 40.13)

16 24. Doyle also had Shenon demonstrate certain actions. When asked to
17 walk, Shenon leaned to the side and favored her left knee; she walked slowly and
18 shuffled. (Exh. 132) Shenon also testified that prior to her knee replacement
19 surgery, she “barely walked.” (TT 10/28/21, Shenon 119:25-120:3)

20 25. Doyle asked Shenon to demonstrate the use of her arms and she
21 observed, “[i]nsured is unable to lift arms above shoulder level, she is not able to
22 reach her feet at all – about to shin area only.” (Exh. 132) Shenon confirmed these
23 claimed limitations regarding the inability to raise her arms and difficulty bending
24 during her trial testimony and in her presentation to her retained expert, Glenna
25 Tolbert, M.D. (TT 10/28/21, Shenon 120:24-121:5, 122:3-6; TT 10/27/21,

26 ³ Portions of Doyle’s videotaped deposition testimony were read into the record,
27 and she authenticated her report of July 11, 2017 (Exh. 132). (TT 10-20-21 at 45)

28 ⁴ Shenon told Doyle that her caregiver had provided services 4 hours per day, 6
days a week since May 21, 2017, and that her husband provided 18 hours of care
per day, 7 days a week. (Exh. 132)

1 testimony of Glenna Tolbert, M.D. 212:18-213:14) However, surveillance showed
2 her raising her arms above shoulder level on multiple occasions. (Exhs. 40.5, 40.6,
3 40.7) Surveillance also showed Shenon bending at the waist on multiple occasions
4 and maintaining that position. (Exhs. 40.8, 40.9, 40.10)

5 26. Surveillance from the date and time of Doyle's interview also showed
6 that Shenon submitted an incorrect invoice for that day. Specifically, the
7 surveillance at Shenon's residence started before 7 in the morning – it showed that
8 Naratovska did not arrive Shenon's home until almost 11:00 a.m. and stayed until
9 2:00 p.m. (Exh. 40.3; 40.22; 45.) In other words, Naratovska was only at Shenon's
10 home during the interview period. However, Shenon submitted an invoice stating
11 that Naratovska had provided services from 7:00 a.m. to 11:00 a.m. on July 11,
12 2017. (Exh. 45.11)

13 27. Dr. Kay submitted a brief Attending Physician Statement ("APS"),
14 stating that Shenon also had a recurring right rotator cuff tear with an onset date of
15 February 20, 2017. (Exh. 67) To support her claim for assistance with bathing,
16 Shenon had stated that she injured her shoulder when she fell in the shower.
17 However, Dr. Kay testified that on March 2, 2017, ten days after her claimed fall,
18 Shenon told him she had fallen in her bedroom, not in the shower. (TT 10/26/21,
19 Kay 61:9-17) Indeed, his notes state that Shenon experienced "A RECENT FALL
20 10 DAYS AGO IN HER BEDROOM ON HARDWOOD FLOOR." (Exh. 65,
21 emphasis in original)

22 28. Also, during her March 2, 2017 visit with Dr. Kay, Shenon had
23 elevation of her arms of 170° (she could raise her arms almost straight up [180°]
24 above her head). (TT 10/26/21, Kay 62:10-63:9) This contrasts with her claim to
25 Doyle and to her retained expert, Glenna Tolbert, M.D., that she could not raise her
26 arms at all. (Exh. 132; TT 10/27/21⁵, testimony of Glenna Tolbert, M.D. "Tolbert"
27 213:2-11)

28 ⁵ The referenced testimony of Dr. Tolbert and of Dr. Oney was given on October

1 29. Shenon had an MRI of her right shoulder and Dr. Kay testified that a
2 person with the same findings as she did could have virtually normal function or
3 could have limitations. (TT 10/26/21, Kay 66:23-67:11) The only restriction
4 Dr. Kay imposed on Shenon as of June of 2017 was no heavy lifting. (TT 10/26/21,
5 Kay 70:3-5) There is no evidence that Dr. Kay ever saw any surveillance of
6 Shenon.

7 30. Shenon was seen on surveillance during 2017 showing levels of
8 functionality that were inconsistent with what she reported to her treating
9 physicians. (Exhs. 40.3-40.5, 40.8, 40.9, 40.12, 40.21 through 40.24, 40.26) For
10 example, on August 29, 2017, Shenon was observed out of the house from 1:45
11 p.m. to 6:45 p.m. on a shopping and lunch excursion with a female companion.
12 During that afternoon, she was observed using both arms and hands at head level
13 (even though she demonstrated to Nurse Doyle that she could not go above
14 shoulder level). She used her hands to push off and rise from her chair unassisted
15 and she carried her large purse in her right hand, opening heavy doors and entering
16 stores without assistance. (Exh. 26)

17 **Surveillance and an Independent Medical Review from 2017 Did Not Support**
18 **Shenon's Claim**

19 31. Shenon's knee surgery was rescheduled from August 29, 2017 to
20 October 11, 2017, due to her surgeon's scheduling conflict. (Exh. 205)

21 32. New York Life then requested that Shenon attend an Independent
22 Medical Evaluation ("IME") to further evaluate her condition and claim. After
23 receiving Shenon's medical records on October 3, 2017, New York Life scheduled
24 an IME for October 10, 2019, so that it could be completed and a decision could be
25 made for the period prior to the knee surgery. (Exh. 125)

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27, 2021. However, the cover page of the Trial Transcript for that day erroneously
referenced October 20, 2021.

1 33. Meanwhile, surveillance from September 18, 2017 showed Shenon
2 walking around a shopping center. She entered and exited a vehicle without
3 assistance and was seen bending into the back seat of her car and working on
4 something with her hands. (Exh. 40.26) On October 7, 2017, Shenon was observed
5 entering a restaurant, without a cane, and walking, sitting and standing without
6 assistance. (Exh. 40.4) On October 10, 2017, Shenon was seen shopping at a market
7 – she bent at the waist reached for items and walked around the store unassisted.
8 (Exh. 40.9)

9 34. The IME was cancelled by the examining physician for personal
10 reasons. Meanwhile, Shenon was requesting a decision on her claim. (TT 10/29/21
11 Beiter 61:12-15) To proceed with evaluation of the claim despite the IME
12 cancellation, New York Life arranged for an independent physician to review
13 Shenon’s medical records for the time period prior to the surgery. (Exh. 126; TT
14 10/29/21, Beiter 62:21-63:18) It sought assistance from its vendor, Dane St., and
15 the review was scheduled with Theresa Oney, M.D., a physiatrist, Board-certified
16 in Physical Medicine and Rehabilitation. (Exh. 15, 16; TT 10/27/21 testimony of
17 Teresa Oney, M.D. “Oney” 103:10-12)

18 35. New York Life sent Shenon a letter, on October 12, 2017, advising her
19 that because the IME could not be completed prior to her surgery, an independent
20 physician would conduct a peer review of her medical records to assist in
21 evaluating her claim. The letter also reminded Shenon that she would need to meet
22 the Policy’s elimination period and incur charges for 90 days before she would be
23 eligible for benefits. (Exh. 128)

24 36. New York Life’s Clinical Case Manager, Lucy Beiter, compiled
25 medical records related to Shenon, and they were provided to Dr. Oney for review.
26 (TT 10/29/21, Beiter 64:20-65:7)

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1 37. Dr. Oney completed her medical review and provided a single-spaced,
2 nine page report dated November 14, 2017. (Exh. 16; TT 10/27/21 testimony of
3 Teresa Oney, M.D. “Oney” 114:17-21)

4 38. She summarized the medical records and surveillance she reviewed,
5 and ultimately observed that the information provided did not support Shenon’s
6 claimed restrictions and limitations or a need for assistance with ADLs. Dr. Oney
7 opined that “[o]verall the insured was able to perform her usual daily activities. She
8 did not appear to be limited by pain or any other musculoskeletal deficits.” Dr.
9 Oney also noted that Shenon maintained “only mildly limited range of motion and
10 weakness in the right upper extremity.” (Exh. 16) Dr. Oney observed that even
11 before her left knee replacement, Shenon did not need assistance from another
12 individual to walk or transfer. (TT 10/27/21, Oney 122:11-123:6; Exh.16)

13 39. In addition to her report, Dr. Oney also completed a questionnaire
14 asking about each potential ADL and stated: “[t]he claimant is not negatively
15 impacted by range of motion or flexibility.” Dr. Oney concluded that her review
16 and analysis did not support limitations that would restrict Shenon from performing
17 her ADLs independently. (Exh. 15) Dr. Oney confirmed her findings in her trial
18 testimony. (TT 10/27/21 Oney 122:11-123:6; Exh. 16)

19 40. On December 4, 2017, New York Life sent Shenon a letter explaining
20 that the peer reviewer had concluded that the records did not support a need for
21 substantial assistance with two or more ADLS, and that her claim could not be
22 approved at that time. However, New York Life requested that Shenon sign an
23 authorization to obtain the records relating to her October 11, 2017 surgery, and
24 offered to have an IME conducted once she had fully recovered from the surgery.
25 The letter asked Shenon to “[p]lease contact Julie Nice when you are ready for the
26 examination, and we will arrange to have someone contact you to schedule the
27 IME”, and it provided Shenon with Julie Nice’s direct extension. (Exh. 130; SF 8)
28 Shenon never contacted Nice.

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2 **Shenon Submitted Inaccurate Caregiver Invoices**

3 41. New York Life also asked Shenon to return completed invoices (with
4 the required information regarding dates and times of care and type of care
5 provided). (Exh. 130)

6 42. Shenon testified that she kept track of Naratovska's hours on scrap
7 paper when the services were provided and that she would then throw away the
8 scraps of paper after completing the New York Life invoices. (TT 10/28/21 Shenon
9 137:1-8)

10 43. Shenon faxed New York Life a letter on October 20, 2017 with
11 invoices for June 26, 2017 through October 20, 2017 which provided detailed
12 information regarding the dates, times and types of care provided. (TT 10/28/21
13 Shenon 137:9-138:23) Shenon signed each invoice, attesting "Personal Care
14 Services listed above were provided to me, the insured, at the below address, on the
15 dates indicated above." The invoices also included Naratovska's signature
16 certifying "the services listed on this Personal Care Invoice were provided by me in
17 the insured's home on the dates indicated." The invoices stated that Naratovska
18 provided assistance with bathing, dressing and toileting. (Exh. 45)

19 44. When the invoices were received, Valerie Besserman, Claim Manager
20 for New York Life, in accordance with her custom and practice, had a comparison
21 completed between the dates and times stated by Shenon in her invoices and the
22 information reflected in the surveillance. (TT 11/2/21, Besserman 22:2-21)

23 45. The comparison showed that Shenon had not received the care claimed
24 on her invoices. The surveillance showed more than fifteen instances between June
25 and October of 2017 when Shenon was not receiving care on the dates and times
26 she said she was receiving and paying for care. (Exh. 45; Exh. 26, 28, 30) In some
27 instances, the surveillance showed that the caregiver had never gone to Shenon's
28 home on the date and time claimed. In other instances, Shenon and the caregiver

1 were seen in different locations at the time care was being claimed. (Exh. 45; Exh.
2 26, 28, 30; TT 11/2/21 Besserman 22:22-25:13)

3 46. The surveillance was produced to Shenon and she saw that it directly
4 conflicted with her invoices on multiple occasions. (TT 10/28/21 Shenon 138:24-
5 139:5) After seeing these conflicts, Shenon sent to New York Life a new set of
6 invoices that matched the surveillance during the July to October 2017 period. (TT
7 10/28/21 Shenon 139:6-13; Exh. 222) The new invoices had different times and
8 different amounts (both in terms of hours and money) and included photocopied
9 signatures of Naratovska. (TT 10/28/21 Shenon 139:22-141:19; TT Besserman
10 11/2/21 25:14-27:9)

11 47. On September 3, 2019, New York Life determined that a Suspected
12 Fraud Referral to the California Department of Insurance was required, and it made
13 the referral. (Exh. 49)

14 **Information Obtained During Litigation Showed Further Inconsistencies**
15 **Regarding Shenon's Claim**

16 48. Rather than responding to New York Life's letter of December 4, 2017
17 offering to provide an IME, Plaintiff filed a Complaint in this action on
18 December 11, 2017, one week after the December 4, 2017 letter. The Complaint
19 cites to the December 4, 2017 letter, and alleges that New York Life wrongfully
20 denied Shenon's claim for benefits under the Policy. During litigation, New York
21 Life continued to review claim information. (TT 11/2/21 Besserman 21:8-13) It
22 also conducted further surveillance in 2018 and 2021. (Exh. 34, 36, 38)

23 49. The 2018 surveillance conducted by New York Life showed Shenon
24 walking without a cane while going to a salon to get a manicure, walking and
25 shopping for hours at a mall without a cane, walking and shopping for groceries for
26 hours without a cane, and driving herself to meet others for lunch at a restaurant,
27 where she was mobile and able to walk, sit, stand and move without any assistance.
28 She also drove on other occasions and needed no assistance entering or exiting her

1 vehicle. Shenon bent at the waist repeatedly, reached for items and lifted items
2 without assistance. On one occasion while shoe-shopping, she bent down
3 repeatedly at the waist, from both a standing and seated position, and balanced on
4 one foot while changing shoes. (Exh. 34, 36)

5 50. New York Life also conducted further updated surveillance in 2021
6 which continued to show Shenon's ability to function independently. She was seen
7 using her arms above her head, pulling, bending at the waist, walking
8 independently, and driving. (Exh. 38) Moreover, even though she claimed to be in
9 an extremely debilitated condition, requiring care for her most basic functions, she
10 was seen on surveillance, not only driving and shopping independently, but doing
11 so while her young granddaughter was in her care. (Exh. 38; 40.2) Presumably,
12 Shenon would not drive and shop alone with her young granddaughter if she did not
13 believe she could do so safely.

14 51. The parties both engaged experts. Dr. Tolbert was hired by Shenon's
15 counsel. (TT 10/27/21 Tolbert 198:14-16) Dr. Tolbert examined Shenon three times
16 and provided four reports between January of 2019 and August of 2021. (TT
17 10/27/21, Tolbert 198:14-16) Dr. Tolbert was of the opinion that Shenon needed
18 hands-on or standby assistance with all of her ADLs except eating. (TT 10/27/21
19 Tolbert 231:8-17)

20 52. On August 7, 2019, a medical examination was conducted at New
21 York Life's request by Kevin Ehrhart, M.D., a Board-certified orthopedic surgeon.
22 (TT 10/28/21 Ehrhart 9:22-25) He "completely disagreed" with Dr. Tolbert. (TT
23 10/28/21 Ehrhart 35:24-36:22)

24 53. Based on his two examinations of Shenon on August 7, 2019 and
25 October 4, 2021, Dr. Ehrhart opined that Shenon could perform all of her ADLs
26 independently. (TT 10/28/21 Ehrhart 28:24-29:2) Dr. Ehrhart specifically opined
27 that Shenon's diagnosis with fibromyalgia and depression, and her complaints of
28

1 chronic pain would not affect her ability to perform her ADLs independently. (TT
2 10/28/21 Ehrhart 27:20-28:17)

3 **Special Verdict Form**

4 54. In the Special Verdict Form, the jury answered the questions as set
5 forth below:

6 **Question 1.** Did New York Life breach the insurance contract by not
7 paying policy benefits to Ms. Shenon?

8 **Answer to Question 1.** No.

9 **Question 2.** Do you find that New York Life was not obligated to pay Ms.
10 Shenon’s claim because it was not covered by her insurance policy?

11 **Answer to Question 2.** Yes.

12 **Question 3.** Do you find that New York Life was not obligated to pay Ms.
13 Shenon’s claim because Ms. Shenon knowingly and intentionally misstated
14 material facts in making her claim for insurance benefits?

15 **Answer to Question 3.** Yes.

16 (Special Verdict Form [Doc. 194]) Based on a careful review of all of the
17 evidence, this Court finds this jury finding to be supported by the evidence.

18 **CONCLUSIONS OF LAW**

19 55. Pursuant to the legal framework outlined in Lincoln Benefit Life Co. v.
20 Dallal, 520 F. Supp. 3d 1237 (C.D. Cal. 2021), aff’d, No. 21-55152, 2022 WL
21 605709 (9th Cir. Mar. 1, 2022), and the jury’s finding that “Ms. Shenon knowingly
22 and intentionally misstated material facts in making her claim for insurance
23 benefits,” the Court has the equitable power to void the Policy.

24 56. However, the Court declines to exercise its equitable power to void the
25 Policy, because Dallal is distinguishable, and because voiding the Policy on the
26 record now before the Court would be inappropriate

27 57. In Dallal, a fraud claim was affirmatively before the Court and
28 submitted to the jury, which found that the Dallals “engage[d] in fraud against

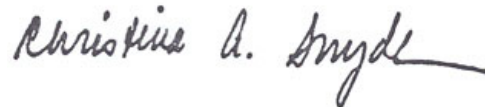
1 Lincoln in connection with the long-term care policy[.]” See Lincoln Benefit Life
2 Company v. Alexander Dallal et al, No. 2:16-cv-09307-MWF-E, Dkt. 172.

3 Moreover, the Dallals “deceitfully and systematically cheated [the insurer] out of
4 hundreds of thousands of dollars in a several-years-long scheme. Dallal, 520 F.
5 Supp. 3d at 1246.

6 58. Here, although the jury found that Shenon “knowingly and
7 intentionally misstated material facts in making her claim for insurance benefits,”
8 there was no affirmative fraud claim at issue. As a result, Shenon did not conduct
9 discovery or raise affirmative defenses with respect to New York Life’s allegations
10 of fraud. Moreover, unlike Lincoln Benefit Life in Dallal, New York Life was not
11 cheated out of substantial sums of money in a long-running scheme, because it
12 never paid any benefits to Shenon under the Policy.

13 59. Accordingly, on the record before it, the Court concludes that
14 exercising its equitable power to void the Policy would be inappropriate. If New
15 York Life intends to pursue the voiding of the policy, it may a bring a fraud claim
16 against Shenon, who in turn will be entitled to assert defenses to that claim.

17 DATED: April 15, 2022

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20 HON. CHRISTINA A. SNYDER
21 UNITED STATES DISTRICT JUDGE
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