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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

	)	
	)	Case No.
	)	EDCV 13-00211 JGB (OPx)
SUSAN PATTERSON	)	
Plaintiff,	)	<b>ORDER GRANTING</b>
v.	)	<b>PLAINTIFF'S MOTION FOR</b>
	)	<b>SUMMARY ADJUDICATION</b>
	)	
RELIANCE STANDARD LIFE	)	
INSURANCE COMPANY;	)	
REDLANDS COMMUNITY	)	
HOSPITAL VOLUNTARY GROUP	)	
LIFE INSURANCE PLAN	)	
Defendants.	)	

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Before the Court is Plaintiff's Motion for Summary Adjudication to Establish Defendant Reliance Standard Life Insurance Company's Liability to Pay Benefits. (Doc. No. 19.) After considering the papers timely filed and the arguments presented at the November 18, 2013 hearing, the Court GRANTS Plaintiff's Motion for Summary Adjudication.

1 I. BACKGROUND

2  
3 A. Procedural Background

4  
5 Plaintiff Susan Patterson filed her Complaint on  
6 February 1, 2013 naming Reliance Standard Life  
7 Insurance Company ("Reliance Standard") and Redlands  
8 Community Hospital Voluntary Group Life Insurance Plan  
9 as Defendants. (Doc. No. 1.) On September 30, 2013,  
10 the Court approved the parties' stipulation to file the  
11 First Amended Complaint ("FAC"). (Doc. Nos. 17, 18.)  
12 On October 30, 2013, Reliance Standard and Redlands  
13 Hospital filed their respective answers. (Doc. Nos.  
14 30, 31.)

15  
16 Plaintiff filed her Motion for Summary Adjudication  
17 on October 17, 2013. (Doc. No. 19.) In support of her  
18 Motion, Plaintiff filed:

- 19 • Plaintiff's Statement of Uncontroverted,  
20 Material Facts ("Pl. SUF," Doc. No. 19-2);
- 21 • Declaration of Glenn R. Kantor ("Kantor Decl.,"  
22 Doc. No. 20); and
- 23 • Declaration of Alan E. Kassan ("Kassan Decl.,"  
24 Doc. No. 21) attaching Exhibit 1.

1 On October 28, 2013, Reliance Standard filed its  
2 Opposition to Plaintiff's Motion. (Doc. No. 26.) In  
3 support of its Opposition, Reliance Standard filed:

- 4 • Defendant Reliance Standard's Statement of  
5 Genuine Disputes of Material Fact ("Def. SGD,"  
6 Doc. No. 27);
- 7 • Declaration of Peter Sailor ("Sailor Decl.,"  
8 Doc. No. 28) attaching Exhibits 1-11; and
- 9 • Defendant Reliance Standard's Objections to  
10 Evidence ("Def. Obj.," Doc. No. 29).

11  
12 On November 4, 2013, Plaintiff filed her Reply.  
13 (Doc. No. 32.)

14  
15 **B. First Amended Complaint**

16  
17 In her FAC, Plaintiff alleges that her sister, Cara  
18 Dietrich, was employed by Redlands Community Hospital  
19 ("Redlands Hospital"). (FAC, ¶ 6.) As a benefit of  
20 her employment, Ms. Dietrich was afforded the  
21 opportunity to purchase Voluntary Group Life Insurance.  
22 (Id.) In 2006, Ms. Dietrich applied for Voluntary  
23 Group Life Insurance in the amount of \$260,000. (FAC,  
24 ¶ 7.) Reliance Standard is the insurer of the benefits  
25 under the Life Insurance Plan. (FAC, ¶ 3.) From  
26 October 2006 through her death in March 2010, the  
27 correct amount of premium payments for her voluntary  
28

1 life insurance coverage were deducted from her  
2 paycheck. (FAC, ¶ 7.)

3  
4 Ms. Dietrich passed away in March 2010. (FAC, ¶  
5 8.) Subsequently, Plaintiff submitted a claim for  
6 benefits which was denied on February 9, 2011. (Id.)  
7 Reliance Standard denied Plaintiff's claim because at  
8 the time of the application, Reliance Standard had not  
9 received proof of Ms. Dietrich's good health. (Id.)  
10 Plaintiff timely appealed the denial of benefits.  
11 (FAC, ¶ 9.) On July 22, 2011, Reliance Standard denied  
12 the appeal. (Id.)

13  
14 Plaintiff's action arises under the Employee  
15 Retirement Income Security Act of 1974 ("ERISA"), 29  
16 U.S.C. § 1132. Plaintiff requests relief in the form  
17 of payment of life insurance proceeds in the amount of  
18 \$260,000, disgorgement of profits from Defendant's use  
19 of life insurance proceeds rightfully belonging to  
20 Plaintiff, attorney's fees and costs, and payment of  
21 prejudgment and post-judgment interests allowed under  
22 ERISA. (See FAC.)



1 Where the party moving for summary judgment does not  
2 bear the burden of proof at trial, it may show that no  
3 genuine issue of material fact exists by demonstrating  
4 that "there is an absence of evidence to support the  
5 non-moving party's case." Id. at 325. The moving  
6 party is not required to produce evidence showing the  
7 absence of a genuine issue of material fact, nor is it  
8 required to offer evidence negating the non-moving  
9 party's claim. Lujan v. National Wildlife Fed'n, 497  
10 U.S. 871, 885 (1990); United Steelworkers v. Phelps  
11 Dodge Corp., 865 F.2d 1539, 1542 (9th Cir. 1989).

12  
13 However, where the moving party bears the burden of  
14 proof at trial, the moving party must present  
15 compelling evidence in order to obtain summary judgment  
16 in its favor. United States v. One Residential  
17 Property at 8110 E. Mohave, 229 F. Supp. 2d 1046, 1047  
18 (S.D. Cal. 2002) (citing Torres Vargas v. Santiago  
19 Cummings, 149 F.3d 29, 35 (1st Cir. 1998) ("The party  
20 who has the burden of proof on a dispositive issue  
21 cannot attain summary judgment unless the evidence that  
22 he provides on that issue is conclusive.")). Failure  
23 to meet this burden results in denial of the motion and  
24 the Court need not consider the non-moving party's  
25 evidence. One Residential Property at 8110 E. Mohave,  
26 229 F. Supp. 2d at 1048.

1           Once the moving party meets the requirements of  
2 Rule 56, the burden shifts to the party resisting the  
3 motion, who "must set forth specific facts showing that  
4 there is a genuine issue for trial." Anderson, 477  
5 U.S. at 256. The non-moving party does not meet this  
6 burden by showing "some metaphysical doubt as to the  
7 material facts." Matsushita Elec. Indus. Co., Ltd. v.  
8 Zenith Radio Corp., 475 U.S. 574, 586 (1986). The  
9 United States Supreme Court has held that "[t]he mere  
10 existence of a scintilla of evidence in support of the  
11 non-moving party's position is not sufficient."  
12 Anderson, 477 U.S. at 252. Genuine factual issues must  
13 exist that "can be resolved only by a finder of fact  
14 because they may reasonably be resolved in favor of  
15 either party." Id. at 250. When ruling on a summary  
16 judgment motion, the Court must examine all the  
17 evidence in the light most favorable to the non-moving  
18 party. Celotex, 477 U.S. at 325. The Court cannot  
19 engage in credibility determinations, weighing of  
20 evidence, or drawing of legitimate inferences from the  
21 facts; these functions are for the jury. Anderson, 477  
22 U.S. at 255. Without specific facts to support the  
23 conclusion, a bald assertion of the "ultimate fact" is  
24 insufficient. See Schneider v. TRW, Inc., 938 F.2d  
25 986, 990-91 (9th Cir. 1991).

1 III. DISCUSSION

2  
3 A. Evidentiary Objections

4  
5 The majority of Reliance Standard's objections to  
6 Plaintiff's evidence are on the grounds that they are  
7 irrelevant, speculative, or constitute an improper  
8 legal conclusion. (See Def. Obj.) "Objections to  
9 evidence on the ground that it is irrelevant,  
10 speculative, and/or argumentative, or that it  
11 constitutes an improper legal conclusion are all  
12 duplicative of the summary judgment standard itself"  
13 and are thus "redundant" and unnecessary to consider  
14 here. Burch v. Regents of Univ. of California, 433 F.  
15 Supp. 2d 1110, 1119 (E.D. Cal. 2006); see Anderson, 477  
16 U.S. at 248 ("Factual disputes that are irrelevant or  
17 unnecessary will not be counted."). Thus, the Court  
18 does not rule on any of the parties' relevance  
19 objections or objections as to improper legal  
20 conclusions.

21  
22 Reliance Standard also objects to some of  
23 Plaintiff's facts on the ground that they  
24 mischaracterize the evidence. Plaintiff alleges that  
25 Ms. Dietrich "exercised her right under the Policy to  
26 receive . . . Supplemental Life insurance benefits in  
27 the amount of \$260,000." (Pl. SUF, ¶ 4.) Plaintiff  
28



1 cites to the Group Benefit Enrollment Form that Ms.  
2 Dietrich completed for basic and supplemental life  
3 insurance coverage in support of that assertion. (Exh.  
4 1 to Kassan Decl., RS0103, RS0147.)<sup>2</sup> Therefore, the  
5 evidence submitted demonstrates that Ms. Dietrich  
6 completed the application for Supplemental Life  
7 insurance coverage. The dispute is whether merely  
8 completing the Group Benefit Enrollment Form is  
9 sufficient to demonstrate that Ms. Dietrich exercised  
10 her right to receive the supplemental life insurance  
11 coverage.

12  
13 Reliance Standard also objects to the evidence  
14 cited in support of Plaintiff's assertion that Ms.  
15 Dietrich met all premium obligations from October 2006  
16 to her death in March 2010. (Pl. SUF, ¶ 22.) Reliance  
17 Standard objects that Plaintiff mischaracterizes the  
18 evidence cited in support of that fact. (Def. Obj., ¶  
19 22.) The evidence Plaintiff cites in support of her  
20 assertion is Reliance Standard's letter to Plaintiff  
21 upholding its decision to deny her claim for  
22 supplemental life insurance benefits, in which Reliance  
23 Standard lists representations Plaintiff made in her  
24 appeal request, including her statement that Ms.  
25 Dietrich made the premium payments every pay period

26  
27 <sup>2</sup> Evidence denoted by the initials "RS" refer to the  
28 numbered pages in the insurance claim file, which are  
submitted by the parties in support of their papers.

1 from October 2006 to her death in March 2010. (Exh. 1  
2 to Kassan Decl., RS0144-0149.)

3  
4 "When evidence is not presented in an admissible  
5 form in the context of a motion for summary judgment,  
6 *but it may be presented in an admissible form at trial,*  
7 a court may still consider that evidence." Burch v.  
8 Regents of Univ. of Cal., 433 F. Supp. 2d 1110, 1120  
9 (E.D. Cal. 2006) (citing Fraser v. Goodale, 342 F.3d  
10 1032, 1037 (9th Cir. 2003)) (emphasis in original).  
11 Here, the Court finds that evidence of Ms. Dietrich's  
12 payment of premiums can be introduced in an admissible  
13 form at trial. Plaintiff claims that the premium  
14 payments were taken from Ms. Dietrich's paychecks every  
15 pay period since her October 2006 initial enrollment  
16 application through the date of her death in March  
17 2010. (Exh. 1 to Kassan Decl., RS0146.) Therefore,  
18 Ms. Dietrich's payroll record can be presented at trial  
19 to demonstrate that she made the premium payments on  
20 the supplemental insurance benefits plan. In addition,  
21 Reliance Standard does not provide any evidence to  
22 demonstrate that Ms. Dietrich did not make premium  
23 payments for the supplemental insurance benefits  
24 coverage. Therefore, the court overrules Reliance  
25 Standard's objection as to Plaintiff's evidence of Ms.  
26 Dietrich payment of premiums.

1 Reliance Standard objects to evidence Plaintiff  
2 cites in support of her assertion that “[t]here is no  
3 evidence in any of the records produced by Reliance  
4 Standard to suggest that Ms. Dietrich was ever asked to  
5 provide evidence of insurability at the time of her  
6 application, or any time thereafter.” (Pl. SUF, ¶ 8.)  
7 Reliance Standard also objects to Plaintiff’s assertion  
8 that she explained to Reliance Standard “that her  
9 sister was in excellent health at the time she enrolled  
10 for the supplemental insurance . . .” (Pl. SUF, ¶ 16.)  
11 Since the Court does not rely on these facts to reach  
12 its decision, the Court does not rule on Reliance  
13 Standard’s objection as to the evidence cited in  
14 support of these facts.

15  
16 Finally, Reliance Standard objects to statements in  
17 the Declaration of Alan E. Kassan and the Declaration  
18 of Glenn R. Kantor on the basis that these statements  
19 constitute hearsay. (Def. Obj. at 10-12.) Since the  
20 Court does not rely on these statements in reaching its  
21 decision, the Court does not rule on Reliance  
22 Standard’s hearsay objections.

23  
24 **B. Uncontroverted Facts**

25  
26 Both sides cite facts that are not relevant to  
27 resolution of the Motion. To the extent certain facts  
28

1 are not mentioned in this Order, the Court has not  
2 relied on them in reaching its decision. The Court  
3 finds the following material facts are supported  
4 adequately by admissible evidence and are  
5 uncontroverted. They are "admitted to exist without  
6 controversy" for the purposes of this Motion. L.R. 56-  
7 3; see generally Fed. R. Civ. P. 56.

8  
9 **1. The Insurance Policy**

10  
11 In 2003, Reliance Standard issued group policy  
12 number GL 134915 (the "Plan" or "Policy") to Redlands  
13 Hospital. (Exh. 1 to Sailor Decl., RS0001.) Redland  
14 Hospital's Group Benefit Enrollment Form specifies that  
15 it provides basic life insurance to all eligible  
16 employees. (Exh. 4 to Sailor Decl., RS0103.) In  
17 addition, supplemental life insurance is available to  
18 "all eligible employees on a voluntary basis, through  
19 after tax payroll deductions." (Id.) The Policy  
20 specifies a waiting period of 90 days of continuous  
21 employment for employees in the eligible class. (Exh.  
22 1 to Kassan Decl., RS0009.)

23  
24 The Plan provides:

25 If an eligible person pays a part of the  
26 premium, he/she must apply in writing for the  
27 insurance to go into effect. He/she will

1           become insured on the date stated on the  
2           Schedule of Benefits, except that the  
3           insurance will go into effect: (1) on the date  
4           he/she applies, if he/she applies within  
5           thirty-one (31) days of the date he/she is  
6           first eligible; or (2) on the date we approve  
7           any required proof of good health. We require  
8           proof of good health if a person applies: (a)  
9           after thirty-one (31) days from the date  
10          he/she first becomes eligible . . .

11 (Exh. 1 to Sailor Decl., RS0015.) The policy states  
12 that it is "delivered in California and is governed by  
13 its laws." (Exh. 1 to Kassan Decl., RS0001.)

14  
15          The Plan contains an incontestability clause which  
16 states, in part:

17          Any statement made in your application will be  
18          deemed a representation, not a warranty. We  
19          cannot contest this Policy after it has been in  
20          force for two (2) years from the date of issue,  
21          except for non-payment of premium.

22 (Id. at RS0013.)

23  
24           **2. Ms. Dietrich's Employment**

25  
26          Ms. Dietrich commenced her employment with Redlands  
27 Hospital on June 12, 2006. (Exh. 1 to Kassan Decl.,

28

1 RS0147.) Through her employment, Ms. Dietrich was  
2 eligible to apply for life insurance coverage under the  
3 Policy. (Exh. 1 to Kassan Decl., RS0147; Sailor Decl.,  
4 ¶ 6.) On October 30, 2006, Ms. Dietrich completed the  
5 Group Benefit Enrollment Form for basic and  
6 supplemental life insurance coverage. (Exh. 1 to  
7 Kassan Decl., RS0103, RS0104.) Ms. Dietrich completed  
8 the application for Supplemental Life insurance  
9 coverage in the amount of \$260,000. (Id. at RS0103,  
10 RS0104, RS0147.) The Group Benefit Enrollment Form  
11 identified Plaintiff as the beneficiary of the Plan.<sup>3</sup>  
12 (Id.) Ms. Dietrich did not submit any evidence of  
13 insurability or proof of good health with the Group  
14 Benefit Enrollment Form in support of the application  
15 for supplemental life insurance coverage. (Id. at  
16 RS0139.) Even though the Plan specified that proof of  
17 good health is required if a person applies after the 31  
18 days from the date he/she first becomes eligible,  
19 neither Defendant explicitly requested that Ms.  
20 Dietrich provide evidence of insurability. (See Exh. 1  
21 to Kassan Decl.)

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<sup>3</sup> Plaintiff is also the administrator of Ms.  
27 Dietrich's trust, which provides for Ms. Dietrich's two  
28 children. (Exh. 1 to Kassan Decl., RS0173, RS0102.)

1           **3. Insurance Claim**

2

3           Ms. Dietrich died on March 28, 2010 from issues and  
4 complications related to Acute Lymphoblastic Leukemia.  
5 (Exh. 1 to Kassan Decl., RS0105.) On October 27, 2010,  
6 Reliance Standard requested information from Redlands  
7 Hospital about Ms. Dietrich. (Sailor Decl., ¶ 12; Exh.  
8 3 to Sailor Decl., RS0159-0160.) On December 9, 2010,  
9 Redlands Hospital provided a copy of Ms. Dietrich's  
10 Group Benefit Enrollment Form to reliance Standard.  
11 (Sailor Decl., ¶ 13; Exh. 4 to Sailor Decl., RS0093,  
12 RS0103.)

13

14           On December 16, 2010, Reliance Standard emailed  
15 Redlands Hospital noting that Ms. Dietrich became  
16 eligible to apply for coverage under the Plan on  
17 September 10, 2006. (Exh. 3 to Sailor Decl., RS0153.)  
18 Reliance Standard advised Redlands Hospital that there  
19 was no documentation showing that Ms. Dietrich provided  
20 written proof of good health to obtain supplemental  
21 coverage. (Id. at RS0154.) Reliance Standard asked  
22 Redlands Hospital to provide any information it might  
23 have to support supplemental life insurance coverage,  
24 explaining that otherwise only basic life insurance  
25 coverage was in force. (Id. at RS0155.)

1           Following Ms. Dietrich's death, Plaintiff, as the  
2 beneficiary of the life insurance benefits, filed a  
3 claim for both basic life insurance benefits and  
4 supplemental life insurance benefits. (Exh. 1 to  
5 Kassan Decl., RS0056, RS0057.) Upon receipt of proof  
6 of claim, Reliance Standard paid Plaintiff \$97,810.39,  
7 representing the \$95,000 basic life insurance benefit  
8 plus interest. (Exh. 9 to Sailor Decl., RS0045.) On  
9 February 9, 2011, Reliance Standard denied the \$260,000  
10 supplemental benefit stating that "Ms. Dietrich did not  
11 satisfy the policy requirements in order to obtain the  
12 supplemental life insurance coverage" because she  
13 failed to submit proof of her good health. (Exh. 1 to  
14 Kassan Decl., RS0164-0167.) Reliance Standard asked  
15 Redlands Hospital to confirm the premiums it paid on  
16 Ms. Dietrich's behalf for supplemental coverage,  
17 stating that it would issue a refund of that amount.  
18 (Exh. 7 to Sailor Decl., RS0166.) Reliance Standard  
19 also asked that Redlands Hospital refund to Plaintiff  
20 any premium Ms. Dietrich paid via payroll deduction for  
21 such coverage. (Id.)

22  
23           On May 18, 2011, Plaintiff appealed Reliance  
24 Standard's denial of her claim for supplemental life  
25 insurance benefits. (Exh. 1 to Kassan Decl., RS0173-  
26 0175.) On July 22, 2011, Reliance Standard upheld its  
27 denial of Plaintiff's claim based on the finding that  
28



1 since Ms. Dietrich failed to submit proof of good  
2 health, her coverage never went into effect. (Id. at  
3 RS0144-0149.)

4  
5 **C. Standard of Review**

6  
7 “[A] denial of benefits challenged under §  
8 1132(a)(1)(B) is to be reviewed under a *de novo*  
9 standard unless the benefit plan gives the  
10 administrator or fiduciary discretionary authority to  
11 determine eligibility for benefits or to construe the  
12 terms of the plan.” Firestone Tire and Rubber Co. v.  
13 Bruch, 489 U.S. 101, 115 (1989). “If the plan gives  
14 the administrator or fiduciary discretionary authority,  
15 [the court] review[s] the denial of benefits for abuse  
16 of discretion.” Burrey v. Pac. Gas and Elec. Co., 159  
17 F.3d 388, 391 (9th Cir. 1998) (internal citation  
18 omitted). “[F]or a plan to alter the standard of  
19 review from the default of *de novo* to the more lenient  
20 abuse of discretion, the plan must unambiguously  
21 provide discretion to the administrator.” Abatie v.  
22 Alta Health & Life Ins. Co., 458 F.3d 955, 963 (9th  
23 Cir. 2006) (en banc) (internal citation omitted).

24  
25 Here, the parties do not dispute that the Plan  
26 confers discretion on Reliance Standard. The Plan  
27 provides:

1 [Reliance Standard] shall serve as the claims  
2 review fiduciary with respect to the insurance  
3 policy and the Plan. The claims review  
4 fiduciary has the discretionary authority to  
5 interpret the Plan and the insurance policy and  
6 to determine eligibility for benefits.

7 Decisions by the claims review fiduciary shall  
8 be complete, final and binding on all parties.

9 (Exh. 1 to Sailor Decl., RS0023.) The grant of  
10 discretionary authority would, normally, require an  
11 abuse of discretion review.

12  
13 However, the issue before the Court on this Motion  
14 for Summary Judgment is whether the incontestability  
15 clause bars Reliance Standard from denying payment of  
16 life insurance benefits. Since this is a question of  
17 law, the Court applies a de novo review and the summary  
18 judgment standard applies. See Burrey, 159 F.3d at 392  
19 (applying de novo review where there is a question of  
20 law); Tremain v. Bell Industries, Inc., 196 F.3d 970,  
21 977-78 (9th Cir. 1999) (where the plaintiff sued under  
22 ERISA and the court determined that there was a  
23 conflict of interests warranting a de novo review and  
24 decided the case by summary judgment).

25  
26  
27  
28

1 **D. Incontestability Provision**

2  
3 The gravamen of Plaintiff's Motion is that the  
4 incontestability clause in the Plan precludes Reliance  
5 Standard from denying payment of the supplemental life  
6 insurance benefits. Reliance Standard responds that  
7 the incontestability clause does not bar the denial of  
8 supplemental benefits since the supplemental life  
9 insurance coverage never went into effect.

10  
11 "A condition precedent refers to an act, condition  
12 or event that must occur before the insurance contract  
13 becomes effective or binding on the parties." American  
14 Way Cellular, Inc. v. Travelers Property Casualty Co.  
15 of Am., 216 Cal. App. 4th 1040, 1054 (2013) (internal  
16 citations and quotations omitted). "In general,  
17 conditions neither confer nor exclude coverage for a  
18 particular risk but, rather, impose certain duties on  
19 the insured in order to obtain the coverage provided by  
20 the policy." Id. (internal citations and quotations  
21 omitted). "Good health provisions are enforceable  
22 conditions precedent." Willard v. Valley Forge Life  
23 Ins. Co., 218 F. Supp. 2d 1197, 1201 (C.D. Cal. 2002)  
24 (finding that a good health provision in a life  
25 insurance policy, which required a prospective  
26 insured's health condition remain the same between  
27 application and policy delivery dates, to be an

1 enforceable condition precedent to coverage under  
2 California law).

3  
4 Based on the language of the Plan, the required  
5 proof of good health qualifies as a condition  
6 precedent. The Plan provides that supplemental life  
7 insurance will go into effect on the date an individual  
8 applies, if within 31 days of becoming eligible. (Exh.  
9 1 to Sailor Decl., RS0015.) The Plan contains a 90-day  
10 waiting period of continuous employment for employees  
11 in the eligible class. (Exh. 1 to Kassan Decl.,  
12 RS0009.) The Plan explicitly states that the  
13 individual effective date is the date immediately  
14 following completion of the waiting period. (Id.) If  
15 an individual applies after the expiration of the 31  
16 days, the Policy will go into effect on the date  
17 Reliance Standard approves any required proof of good  
18 health. (Exh. 1 to Sailor Decl., RS0015.)

19  
20 Here, Ms. Dietrich commenced her employment with  
21 Redlands Hospital on June 12, 2006. (Exh. 1 to Kassan  
22 Decl., RS0147.) The Plan's 90-day waiting period ended  
23 on September 10, 2006. (See Exh. 1 to Sailor Decl.,  
24 RS0009.) Ms. Dietrich applied for supplemental life  
25 insurance coverage on October 30, 2006, more than 31  
26 days after September 10, 2006. (Exh. 1 to Kassan  
27 Decl., RS0103, RS0104.) Therefore, Ms. Dietrich was  
28 required to submit proof of good health. (Exh. 1 to

1 Sailor Decl., RS0015.) Pursuant to the plain language  
2 of the Plan, the Policy would only go into effect on  
3 the date Reliance Standard approves the required proof  
4 of good health. (Id.) There is no dispute here that  
5 Ms. Dietrich never submitted proof of good health.  
6 (Exh. 1 to Kassan Decl., RS0139.) Based on these  
7 facts, Ms. Dietrich did not fulfill a condition  
8 precedent required by the Plan.

9  
10 In Amex Life Assurance Co. v. Super. Ct., 14 Cal.  
11 4th 1231 (1997), the plaintiff brought an action  
12 against Amex Life Assurance Company ("Amex"), the life  
13 insurance company that denied his claim. Amex, 14 Cal.  
14 4th 1234-35. The plan contained an incontestability  
15 clause that barred any contest after the policy has  
16 been in force for two years. Id. at 1233. The insured  
17 knew that he was HIV positive when he applied for life  
18 insurance but lied on his application for insurance and  
19 sent an imposter to take the mandatory medical  
20 examination. Id. at 1234. Amex collected premiums for  
21 more than two years until the insured died. Id.  
22 Thereafter, Amex discovered the fraud after the  
23 beneficiary filed a claim, and it denied the claim.  
24 Id.

25  
26 Amex argued that it can contest the existence of  
27 the contract because the medical examination was a  
28 condition precedent to its formation. Id. at 1245.

1 The court held that Amex's defense that the insured was  
2 not in good health at the time of the delivery of the  
3 policy was "within the scope of the [incontestability]  
4 clause which makes the policy incontestable after one  
5 year from its date if all due premiums shall have been  
6 paid, without by its terms excluding any ground of  
7 defense." Id. at 1245-46. The Court noted that "the  
8 incontestability clause protects the insured against  
9 any defense of a breach of a condition precedent where  
10 he has paid premiums beyond the period of  
11 contestability." Id. at 1246 (internal citations and  
12 quotations omitted).

13  
14 Here, the Plan contains an incontestability clause  
15 which states, in part:

16 Any statement made in your application will be  
17 deemed a representation, not a warranty. We  
18 cannot contest this Policy after it has been in  
19 force for two (2) years from the date of issue,  
20 except for non-payment of premium.

21 (Exh. 1 to Kassan Decl., RS0013.) Ms. Dietrich  
22 completed the Group Benefit Enrollment Form for basic  
23 and supplemental life insurance coverage on October 30,  
24 2006. (Id. at RS0103-0104.) Plaintiff claims that Ms.  
25 Dietrich made all premium payments from October 2006 to  
26 her death in March 2010. (Id. at RS0146-0147.) While  
27 Reliance Standard objects to Plaintiff's claim and  
28 evidence cited in its support, Reliance Standard does

1 not offer any evidence to show that Ms. Dietrich did  
2 not make the premium payments. (Def. SGD, ¶ 22.) On  
3 the contrary, Reliance Standard admits that upon denial  
4 of Plaintiff's claim for supplemental life insurance  
5 benefits, it advised Redlands Hospital to confirm the  
6 premiums remitted on Ms. Dietrich's behalf for  
7 supplemental coverage so that any applicable refund  
8 could be issued. (Id., Exh. 11 to Sailor Decl.,  
9 RS0147.) Reliance Standard does not deny that it  
10 collected premiums for more than three years until Ms.  
11 Dietrich died. Accordingly, Plaintiff's claim that Ms.  
12 Dietrich made all the premium payments between October  
13 2006 and March 2010 is uncontroverted.

14  
15 Based on the standard set forth in Amex, Reliance  
16 Standard's claim that Ms. Dietrich failed to provide  
17 proof of good health qualifies as a defense of a breach  
18 of a condition precedent that falls within the scope of  
19 the incontestability clause. Since the contestability  
20 period expired and Ms. Dietrich fulfilled her  
21 obligation to pay the required premium payments, the  
22 incontestability clause applies in this case and bars  
23 Reliance Standard from contesting the Policy. As the  
24 court in Amex stated, "[t]o hold otherwise would be to  
25 permit such a clause in its unqualified form to remain  
26 in a policy as a deceptive inducement to the insured."  
27 Amex, 14 Cal. 4th at 1246.

1           The Court's decision comports with the public  
2 policy considerations behind incorporating the  
3 incontestability clause in life insurance policies.  
4 The purpose of the incontestability clause is to give  
5 "the insured a guaranty against possible expensive  
6 litigation to defeat his claim after the lapse of many  
7 years, and at the same time gives the company time and  
8 opportunity for investigation, to ascertain whether the  
9 contract should be in force." Amex, 14 Cal. 4th at  
10 1238 (internal citations and quotations omitted). "The  
11 need for such protection becomes especially clear for  
12 life insurance policies, where the contest is usually  
13 made after the named insured has died, robbing the  
14 beneficiaries of their most potent witness." Id.  
15 (internal quotations omitted).

16  
17           Here, Reliance Standard had more than three years  
18 to investigate whether the Policy should be in force as  
19 to Ms. Dietrich. Reliance Standard did not conduct any  
20 such investigation and only investigated the  
21 eligibility of Ms. Dietrich for supplemental life  
22 insurance coverage after her death. (See Exh. 3 to  
23 Sailor Decl., RS0153-0155.) Therefore, the need for  
24 the protection afforded by the incontestability clause  
25 is highest here, where Ms. Dietrich fulfilled her  
26 obligation to pay the insurance premiums for more than  
27 three years, the beneficiary's most potent witness is  
28



1 deceased, and Reliance Standard had ample opportunity  
2 to conduct an investigation.

3  
4 Reliance Standard argues that the incontestability  
5 provision is inapplicable because there is no "contest"  
6 within the meaning of the provision. (Opp. at 16-17.)  
7 First, Reliance Standard contends that it is not  
8 contesting the validity of the underlying Group Plan.  
9 Second, Reliance Standard contends that it is not  
10 contesting Ms. Dietrich's supplemental coverage within  
11 the meaning of the incontestability clause because it  
12 did not deny liability by reason of fraud or  
13 misrepresentation. However, as the court in Amex held,  
14 the incontestability clause applies to a contest based  
15 on breach of a condition precedent. Amex, 14 Cal. 4th  
16 at 1246. Accordingly, Reliance Standard's argument  
17 that its denial of benefits is not a "contest" within  
18 the meaning of the incontestability clause fails.

19  
20 For the reasons set forth above, the Court finds  
21 that the incontestability clause precludes Reliance  
22 Standard from denying Plaintiff's claim for  
23 supplemental life insurance benefits.

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**IV. CONCLUSION**

For the reasons set forth above, the Court GRANTS Plaintiff's Motion for Summary Adjudication.



Dated: 12/4/13

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Jesus G. Bernal  
United States District Judge