



1 dismissed and this case be closed.

2 **Background**

3 Plaintiff alleges that in 1954, his grandmother Elizabeth Daw purchased a life insurance  
4 policy (the “Policy”) on the life of her daughter, Pamela Alice Morris, Binns’s mother. Daw  
5 tendered a one-time payment at the Policy’s inception, plus a premium on the Policy for the next  
6 twenty years. Daw passed in 1984. The Policy matured in 2016, and Morris passed in 2017.  
7 Thereafter, Binns and his brother Sharif Ali Gentry discovered Policy papers in Morris’s  
8 belongings, then reached out to defendant AGL. AGL required a change of beneficiary form, and  
9 Gentry completed this so that he and Binns would be the Policy’s beneficiaries.

10 On January 8, 2018, AGL informed Binns that it “acknowledge[d] the claim on Pamela  
11 Morris,” but informed him that the company needed proof of Morris’s death. Thereafter, AGL  
12 tendered payment of \$500.60 each to Binns and Gentry. Binns did not cash the check, but instead  
13 questioned the amount based on the Policy documents in his possession. On April 2, 2018, AGL  
14 informed Binns that it no longer needed the proof of death, cancelled the first check, and tendered  
15 payment to Binns and Gentry each for \$501.84. Binns did not cash this check either, but  
16 throughout 2018 continued to press his concerns with AGL over the Policy’s terms. Binns  
17 believed that in 1955, his grandmother paid a \$220 up-front payment on the Policy, plus a weekly  
18 premium of \$55 over twenty years, for a Policy with 3% interest accruing. AGL’s position was  
19 that Daw paid \$28.60 per year, or \$0.55 per week, from 1954-74, for a \$1,000 benefit with no  
20 accrued interest. Binns filed complaints with the state and Better Business Bureau, but no action  
21 was taken.

22 In June of 2020, Binns filed a complaint in this court against AGL, its President and CEO  
23 Brian Duperreault, five other named employees, and multiple Doe employees of AGL. (ECF No.  
24 1.) The currently-operative first amended complaint (“1AC”) asserts claims for fraud, breach of  
25 contract, and Section 1983 liability. (ECF No. 12-1.) Binns claims Daw paid premiums of  
26 \$57,200, and AGL owes a total of \$838,085.04 in benefits and interest over 63 years plus \$150  
27 million in punitive damages. (ECF No. 12-1 at 16-17.) Included in plaintiff’s original complaint  
28 (ECF No. 1) are communications between Binns and AGL—including documents for the Policy

1 (pp. 47-77), and (inexplicably) multiple of Binns’s mental-health records (pp. 78-92).

2 **Legal Standards**

3 “When a defendant moves to dismiss a complaint or claim for lack of subject matter  
4 jurisdiction, the plaintiff bears the burden of proving that the court has jurisdiction to decide the  
5 claim.” Cannon v. Harco Nat’l Ins. Co., 2009 WL 10725673, at \*2 (S.D. Cal. July 16, 2009)  
6 (citing Thornhill Publ’n Co. v. Gen. Tel. & Elecs. Corp., 594 F.2d 730, 733 (9th Cir. 1979)). A  
7 motion to dismiss for lack of subject matter jurisdiction pursuant to Federal Rule of Civil  
8 Procedure 12(b)(1) “may be facial or factual.” Safe Air for Everyone v. Meyer, 373 F.3d 1035,  
9 1039 (9th Cir. 2004). “[I]n a factual attack, the challenger disputes the truth of the allegations  
10 that, by themselves, would otherwise invoke federal jurisdiction.” Id. Courts may consider  
11 extrinsic evidence, including “affidavits and testimony, to resolve factual disputes concerning the  
12 existence of jurisdiction.” McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988).

13 To establish federal subject matter jurisdiction under diversity rules, the proponent must  
14 allege (1) the parties are completely diverse, and (2) the amount in controversy exceeds \$75,000.  
15 See 28 U.S.C. § 1332(a)(1); McNutt v. Gen. Motors Acceptance Corp. of Ind., 298 U.S. 178, 189,  
16 (1936). To determine whether Section 1332(a)’s amount in controversy requirement is met, the  
17 court utilizes the “legal certainty” test. See Pachinger v. MGM Grand Hotel–Las Vegas, Inc., 802  
18 F.2d 362, 363–64 (9th Cir. 1986). Under this test, “the sum claimed by the plaintiff controls if  
19 the claim is apparently made in good faith. It must appear to a legal certainty that the claim is  
20 really for less than the jurisdictional amount to justify dismissal.” St. Paul Mercury Indem. Co. v.  
21 Red Cab Co., 303 U.S. 283, 288–89 (1938). The Ninth Circuit recognizes three situations that  
22 clearly meet the legal certainty standard: 1) when the terms of a contract limit the plaintiff’s  
23 possible recovery; 2) when a specific rule of law or measure of damages limits the amount of  
24 damages recoverable; and 3) when independent facts show that the amount of damages was  
25 claimed merely to obtain federal court jurisdiction. Naffe v. Frey, 789 F.3d 1030, 1040 (9th Cir.  
26 2015) (quoting Pachinger, 802 F.2d at 364). Simply, a court “must not blindly accept conclusory  
27 jurisdictional allegations.” Smith v. Kraft Foods, Inc., 2008 WL 11337485, at \*2 (S.D. Cal. Sept.  
28 12, 2008).

1            **Analysis**

2            Plaintiff's complaint states that he and his brother-in-law Gentry are the beneficiaries of  
3            an insurance policy currently held by defendant AGL, purchased by his late grandmother, Daw,  
4            on the life of his mother, Morris. (ECF No. 12.) Plaintiff's first amended complaint claims  
5            compensatory damages of \$838,000, which allegedly includes a "net single premium of "\$57,200,  
6            non-forfeiture benefits of "at least \$20,267.66, and interest of approximately \$830,000; plaintiff  
7            also seeks \$150 million in punitive damages. (Id. at 39-41.) Facially, the complaint satisfied the  
8            amount-in-controversy, and so the undersigned ordered it be served. (ECF No. 14.) Defendants,  
9            however, raise a factual challenge to plaintiff's assertions of jurisdiction, arguing plaintiff cannot  
10           claim in good faith his entitlement to these damages. To settle this matter, the court turns to the  
11           extrinsic evidence submitted by both Binns and AGL. McCarthy, 850 F.2d at 560.

12           As denoted on Binns's copy of the Policy, submitted alongside his original complaint, the  
13           "maximum amount of insurance" is \$1,000. (See ECF No. 1 at 56 (schedule from Nation Life  
14           and Accident Insurance Co., the policy's originator, issued 8/16/1954, and stating "for ages [] 2  
15           and over the maximum amount is in effect from date of issue [of Policy]"); see also id. at 50  
16           (Daw's application for insurance, denoting policy amount and Morris's DOB at 9/15/1951).)  
17           Thus, the contract amount is well below the \$75,000 threshold. Naffe, 789 F.3d at 1040 (legal  
18           certainty test not used when the terms of a contract limit the plaintiff's possible recovery). This  
19           information comports with the Policy documents submitted by AGL. (See ECF No. 29-8 and -  
20           10.)

21           Plaintiff's arguments in his complaint and moving papers are either directly contradicted  
22           by the plain language in the documents he submitted or are simply frivolous, such that it is clear  
23           plaintiff is not acting in good faith, but instead has so alleged "merely to obtain federal court  
24           jurisdiction." Naffe 789 F.3d at 1040; (cf., e.g., ECF No. 12 at 9 (allegations regarding  
25           nonforfeiture benefits and interest calculations); with ECF No. 1 at 54 (denoting limited  
26           circumstances where nonforfeiture benefits would accrue after lapse in payment by insured) and  
27           ECF No. 12 at 8 (alleging Day paid the premiums in full as of July 30, 1974).) To the extent  
28           plaintiff challenges the authenticity of any documents, he fails to meet his burden of proof to

1 show other documents or plausible allegations factually support his assertion of damages for  
2 purposes of the amount-in-controversy requirement. Thornhill, 594 F.2d at 733; (cf., e.g., ECF  
3 No. 12 at 8 (asserting Daw paid \$220 up front plus \$55 per week—starting in 1954—on the  
4 Policy); with, e.g., ECF No. 1 at 60-77 (scans of Daw’s premium receipt book, wherein all  
5 weekly premium amounts demonstrate a payment of \$0.55).) Further, even assuming the  
6 availability of punitive damages (see, e.g., Mock v. Mich. Millers Mut. Ins. Co., 5 Cal. Rptr. 2d  
7 594, 606 (Cal. App. 1992) (allowing for punitive damages in bad-faith insurance claim with clear  
8 and convincing evidence of malice, oppression or fraud)), they would be latched to the \$1,000 in  
9 compensatory damages allowed under the Policy. As the Supreme Court has noted, there are  
10 constitutional limitations on the amount of punitive damages awardable in relation to the  
11 available compensatory damages, meaning any potential punitive damages would still fail to  
12 bring plaintiff’s damages over the \$75,000 threshold. State Farm Mut. Auto. Ins. Co. v.  
13 Campbell, 538 U.S. 408, 416 (2003) (noting that, “in practice, few awards exceeding a single-  
14 digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due  
15 process.”). For these reasons, the court finds defendants’ factual attack on the amount-in-  
16 controversy requirement well taken, and finds plaintiff fails to maintain an action that satisfies the  
17 \$75,000 requirement for diversity jurisdiction.<sup>2</sup>

18 Further, the court notes plaintiff’s first amended complaint also attempts to assert claims  
19 against defendants—a private insurance company and employees thereof—under 42 U.S.C.  
20 Section 1983. (ECF No. 12 at 5.) This attempt despite the court’s explicit prior admonishments.  
21 (ECF Nos. 7, 14.) Section 1983 claims are generally inapplicable to private defendants because  
22 they do not act “under color of state law.” Rabieh v. Paragon Sys. Inc., 316 F. Supp. 3d 1103,

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23  
24 <sup>2</sup> Defendants also raise defenses under Rules 12(b)(2) for lack of personal jurisdiction over  
25 defendant Duperreault, and failure to state a claim on the breach of contract and fraud claims  
26 under Rule 12(b)(6). However, where a court lacks subject matter jurisdiction over a claim, it has  
27 no power to rule on the issues in the complaint. See Steinaker v. Sw. Airlines, Co., 472 F. Supp.  
28 3d 540, 546 (D. Ariz. 2020) (“Allegations raised under FRCP 12(b)(1) should be addressed  
before other reasons for dismissal because if the complaint is dismissed for lack of subject matter  
jurisdiction, other defenses raised become moot.”). Thus, the undersigned refrains from explicitly  
ruling on defendants’ other arguments—even though they are well-taken and would provide  
alternative bases for dismissal.

1 1109 (N.D. Cal. 2018) (“It is generally presumed that private individuals and entities do not act  
2 ‘under color of state law’ within the meaning of § 1983.”) For clarity, the court now recommends  
3 any such claims should be dismissed for failure to state a claim, and any such supplemental  
4 jurisdiction on the state-law claims attached thereto be declined. See 28 U.S.C. § 1367.

5 Because of this recommendation, the court also recommends plaintiff’s motion for joinder  
6 (ECF No. 17) be denied as moot, and recommends denying the request for judicial notice (ECF  
7 No. 41) as the documents are irrelevant to the undersigned’s findings.

8 **RECOMMENDATIONS and ORDER**

9 Accordingly, IT IS HEREBY RECOMMENDED that:

- 10 1. Defendants’ motion to dismiss (ECF No. 29) be GRANTED;
- 11 2. Plaintiff’s Section 1983 claims be DISMISSED WITH PREJUDICE, and his state law  
12 claims be DISMISSED for lack of subject matter jurisdiction and supplemental  
13 jurisdiction otherwise be DECLINED;
- 14 3. Plaintiff’s request for joinder (ECF No. 17) and request for judicial notice (ECF No.  
15 41) be DENIED as moot; and
- 16 4. The Clerk of Court be directed to CLOSE this case.

17 In light of these recommendations, the court also ORDERS that all pleading, discovery,  
18 and motion practice in this action are STAYED pending resolution of these findings and  
19 recommendations. Other than objections to the findings and recommendations or non-frivolous  
20 motions for emergency relief, the court will not entertain or respond to any pleadings or motions  
21 until the findings and recommendations are resolved.

22 These findings and recommendations are submitted to the United States District Judge  
23 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
24 days after being served with these findings and recommendations, any party may file written  
25 objections with the court and serve a copy on all parties. Such a document should be captioned  
26 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
27 shall be served on all parties and filed with the court within fourteen (14) days after service of the  
28 objections. The parties are advised that failure to file objections within the specified time may

1 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th  
2 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

3 Dated: July 14, 2021

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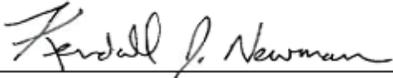
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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE