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8
9 **IN THE UNITED STATES DISTRICT COURT**
FOR THE CENTRAL DISTRICT OF CALIFORNIA
10 **EASTERN DIVISION—RIVERSIDE**

11 BARBARA LINHART,
on behalf of herself and all others similarly
12 situated,

13 Plaintiff,

14 v.

15 NEW YORK LIFE INSURANCE
COMPANY; NEW YORK LIFE
16 INSURANCE AND ANNUITY
CORPORATION; and DOES 1 TO 50,
17 inclusive,

18 Defendants.

Case No. 5:21-cv-01640-JWH-KK

**DEFENDANT NEW YORK LIFE
INSURANCE AND ANNUITY
CORPORATION'S ANSWER TO
FIRST AMENDED CLASS
ACTION COMPLAINT**

1 Defendant New York Life Insurance and Annuity Corporation (“Defendant”)¹
 2 submits this Answer and Affirmative Defenses to the First Amended Class Action
 3 Complaint (ECF No. 38 [“FAC”]) filed by Plaintiff Barbara Linhart, individually and on
 4 behalf of the proposed class (“Plaintiff”). Unless expressly admitted in this Answer,
 5 Defendant denies the material allegations of the FAC and demands strict proof thereof.
 6 Defendant responds to the individually numbered allegations of the FAC as follows:

7 **ANSWER**

8 **I. NATURE OF THE CASE**

9 1. Denied. Defendant specifically denies all allegations that it has violated any
 10 statute, regulation, law, or insurance policy provision in any way. Defendant denies all
 11 other allegations in paragraph 1.

12 2. The allegations of paragraph 2 include legal conclusions to which no
 13 response is required; to the extent that a response is deemed necessary, Defendant denies
 14 the allegations in paragraph 2. California Insurance Code §§ 10113.71–10113.72 (“the
 15 Statutes”) speak for themselves. Defendant denies each and any characterization of the
 16 Statutes that is inconsistent with the Statutes themselves. Defendant specifically denies
 17 any implied allegation that it has violated any statute, regulation, law, or insurance policy
 18 provision in any way. Defendant denies all other allegations in paragraph 2.

19 3. Denied. Defendant specifically denies all allegations that it has violated any
 20 statute, regulation, law, or insurance policy provision in any way. Defendant further
 21 denies that Plaintiff, and the other persons that Plaintiff purports to represent, are entitled
 22

23 ¹ To be clear: As used in this Answer and Affirmative Defenses, “Defendant” does
 24 *not* refer to New York Life Insurance Company. The term “Defendant” also does *not*
 refer to “New York Life” as that term is used in the FAC.

1 to any relief whatsoever. Defendant denies all other allegations in paragraph 3.

2 4. The allegations of paragraph 4 include legal conclusions to which no
3 response is required; to the extent that a response is deemed necessary, Defendant denies
4 the allegations in paragraph 4. The Statutes speak for themselves. Defendant specifically
5 denies all allegations that it has violated any statute, regulation, law, or insurance policy
6 provision in any way. Defendant denies all other allegations in paragraph 4.

7 5. The allegations of paragraph 5 include legal conclusions to which no
8 response is required; to the extent that a response is deemed necessary, Defendant lacks
9 knowledge or information sufficient to form a belief about whether the “author” of the
10 Statutes actually made the statement listed in paragraph 5, and therefore denies it. The
11 Statutes speak for themselves. Defendant denies each and any characterization of the
12 Statutes that is inconsistent with the Statutes themselves. Defendant specifically denies
13 all allegations that it has violated any statute, regulation, law, or insurance policy
14 provision in any way. Defendant denies any other allegations in paragraph 5.

15 6. The allegations of paragraph 6 include legal conclusions to which no
16 response is required; to the extent that a response is deemed necessary, Defendant denies
17 the allegations in paragraph 6.

18 7. The allegations of paragraph 7 include legal conclusions to which no
19 response is required; to the extent that a response is deemed necessary, Defendant denies
20 the allegations in paragraph 7. The Statutes speak for themselves. Defendant specifically
21 denies all allegations that it has violated any statute, regulation, law, or insurance policy
22 provision in any way. Defendant denies all other allegations in paragraph 7.

23 8. Denied. Defendant specifically denies all allegations that it has violated any
24

1 statute, regulation, law, or insurance policy provision in any way. Defendant denies all
2 other allegations in paragraph 8.

3 9. The allegations of paragraph 9 include legal conclusions to which no
4 response is required; to the extent that a response is deemed necessary, Defendant denies
5 that the Statutes in their entirety apply to “all policies.” The California Supreme Court’s
6 decision in *McHugh v. Protective Life Insurance Co.*, 12 Cal. 5th 213 (2021), speaks for
7 itself.

8 10. The allegations of paragraph 10 include legal conclusions to which no
9 response is required; to the extent that a response is deemed necessary, Defendant denies
10 that the California Supreme Court’s decision in *McHugh v. Protective Life Insurance*
11 *Co.*, 12 Cal. 5th 213 (2021), “followed” (except temporally) the decisions cited in
12 paragraph 10. The trial-court decisions cited in paragraph 10 speak for themselves and
13 are not precedential. Defendant specifically denies all allegations that it has violated any
14 statute, regulation, law, or insurance policy provision in any way.

15 11. The allegations of paragraph 11 include legal conclusions to which no
16 response is required; to the extent that a response is deemed necessary, Defendant denies
17 that the Ninth Circuit’s unpublished, non-precedential memorandum in *Thomas v. State*
18 *Farm Life Insurance Co.*, No. 20-55231, 2021 WL 4596286 (9th Cir. Oct. 6, 2021),
19 “followed” (except temporally) the California Supreme Court’s decision in *McHugh*.
20 The Ninth Circuit’s unpublished, non-precedential memorandum in *Thomas* speaks for
21 itself.

22 12. Defendant denies that the so-called “renewal principle” applies to life-
23 insurance policies. Defendant admits it is a member of the Association of California Life
24

1 & Health Insurance Companies. Defendant lacks knowledge or information sufficient to
2 form a belief about the truth of the remaining allegations in paragraph 12, and therefore
3 denies them.

4 13. Denied. Defendant specifically denies all allegations that it has violated any
5 statute, regulation, law, or insurance policy provision in any way. Defendant denies all
6 other allegations in paragraph 13.

7 14. Denied. Defendant specifically denies all allegations that it has violated any
8 statute, regulation, law, or insurance policy provision in any way. Defendant further
9 denies that Plaintiff, and the other persons that Plaintiff purports to represent, have
10 suffered any damage whatsoever. Defendant denies all other allegations in paragraph 14.

11 15. Defendant lacks knowledge or information sufficient to form a belief about
12 the truth of the allegations in paragraph 15 about James Linhart's death, and therefore
13 denies them. Defendant denies all other allegations in paragraph 15. Defendant
14 specifically denies all allegations that it has violated any statute, regulation, law, or
15 insurance policy provision in any way.

16 16. Denied. Defendant specifically denies all allegations that it has violated any
17 statute, regulation, law, or insurance policy provision in any way. Defendant further
18 denies that Plaintiff, and the other persons that Plaintiff purports to represent, have
19 suffered any harm whatsoever. Defendant denies all other allegations in paragraph 16.

20 **II. JURISDICTION AND VENUE**

21 17. Defendant does not contest that this Court has subject-matter jurisdiction
22 under 28 U.S.C. § 1332 to hear Plaintiff's claims against Defendant. Defendant denies
23 all other allegations in paragraph 17. Defendant specifically denies that this Court has
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1 subject-matter jurisdiction over the claims against New York Life Insurance Company;
2 Plaintiff lacks Article III standing to sue that entity.

3 18. Defendant admits that, at the time this civil action was filed, Plaintiff was a
4 citizen and domiciliary of the State of California. Defendant lacks knowledge or
5 information sufficient to form a belief about the truth of the remaining allegations in
6 paragraph 18, and therefore denies them.

7 19. Defendant admits that its corporate headquarters are located at 51 Madison
8 Avenue, New York, NY, and that Defendant is incorporated under the laws of the State
9 of Delaware. Defendant denies that New York Life Insurance Company is incorporated
10 in New York but admits that New York Life Insurance Company is a mutual insurance
11 company with principal place of business located at 51 Madison Avenue, New York,
12 NY. Defendant admits that the National Association of Insurance Commissioners
13 (“NAIC”) has assigned both Defendant and New York Life Insurance Company to NAIC
14 Group #826, and that the NAIC has sometimes labeled group code #826 as “NEW
15 YORK LIFE GRP.” Defendant is a subsidiary of New York Life Insurance Company.
16 Defendant lacks knowledge or information sufficient to form a belief about the truth of
17 the remaining allegations in paragraph 19, which includes ambiguous terms, and
18 therefore denies them.

19 20. Defendant does not contest that the amount in controversy exceeds \$75,000,
20 exclusive of interest and costs.

21 21. Defendant does not contest that venue is proper in this Court with respect
22 to the claims against Defendant. Defendant lacks knowledge or information sufficient to
23 form a belief about the truth of the allegations in paragraph 21 about Mr. Linhart’s
24

1 residence, and therefore denies them. The remaining allegations of paragraph 21 include
2 legal conclusions to which no response is required; to the extent that a response is
3 deemed necessary, Defendant denies those allegations in paragraph 21.

4 22. Defendant does not contest that this Court has personal jurisdiction to hear
5 Plaintiff's claims against Defendant. Defendant denies that this Court has personal
6 jurisdiction over New York Life Insurance Company with respect to this civil action.
7 Defendant specifically denies all allegations that it has violated any statute, regulation,
8 law, or insurance policy provision in any way. Defendant denies any other allegations in
9 paragraph 22.

10 **III. THE PARTIES**

11 23. Defendant admits Plaintiff was named a beneficiary of the life-insurance
12 policy bearing policy number 62970515 that was issued to James Linhart by New York
13 Life Insurance and Annuity Corporation ("the Policy"). The Policy speaks for itself.
14 Defendant denies each and any characterization of the Policy that is inconsistent with
15 the Policy itself. Defendant denies that "New York Life" issued the Policy. Defendant
16 denies that any other party to this civil action issued the Policy. Defendant lacks
17 knowledge or information sufficient to form a belief about the truth of the allegations in
18 paragraph 23 about Plaintiff's and James Linhart's residence, and therefore denies them.
19 Defendant denies any other allegations in paragraph 23.

20 24. Defendant admits it is incorporated under the laws of the State of Delaware,
21 is licensed to do business in the State of California, and issues life-insurance policies to
22 policyholders that are in the State of California. Defendant admits that New York Life
23 Insurance Company is a mutual insurance company, is licensed to do business in the
24

1 State of California, and issues life-insurance policies to policyholders that are in the State
2 of California. Defendant lacks knowledge or information sufficient to form a belief about
3 the truth of the allegation in paragraph 24 about “administer[ing] life insurance policies
4 in the state of California,” as that allegation is ambiguous, and therefore denies it.
5 Defendant denies the remaining allegations in paragraph 24.

6 **IV. FACTUAL ALLEGATIONS**

7 25. Admitted. The Statutes speak for themselves.

8 26. The allegations of paragraph 26 include legal conclusions to which no
9 response is required. The Statutes speak for themselves. Defendant denies each and any
10 characterization of the Statutes that is inconsistent with the Statutes themselves.

11 27. The allegations of paragraph 27 include legal conclusions to which no
12 response is required; to the extent that a response is deemed necessary, Defendant denies
13 the allegations in paragraph 27. The Statutes speak for themselves. Defendant denies
14 each and any characterization of the Statutes that is inconsistent with the Statutes
15 themselves. Defendant specifically denies all allegations that it has violated any statute,
16 regulation, law, or insurance policy provision in any way. Defendant denies all other
17 allegations in paragraph 27.

18 28. The allegations of paragraph 28 include legal conclusions to which no
19 response is required. The Statutes speak for themselves. Defendant denies the allegation
20 that only the quoted portions of the Statutes are “pertinent.”

21 29. Denied. Defendant specifically denies all allegations that it has violated any
22 statute, regulation, law, or insurance policy provision in any way. Defendant denies all
23 other allegations in paragraph 29.

1 Defendant denies that the cover letter is part of the Policy. Defendant denies that the
2 Policy jointly refers to Defendant and New York Life Insurance Company as “New York
3 Life.” The Policy speaks for itself. Defendant denies each and any characterization of
4 the Policy that is inconsistent with the Policy itself. Defendant and New York Life
5 Insurance Company are distinct entities. Defendant denies that New York Life Insurance
6 Company issued the Policy. Defendant denies that New York Life Insurance Company
7 is a party to the Policy. Defendant denies any remaining allegations in paragraph 34.

8 35. Defendant denies that the Policy jointly refers to Defendant and New York
9 Life Insurance Company as “New York Life.” The Policy speaks for itself. Defendant
10 denies each and any characterization of the Policy that is inconsistent with the Policy
11 itself. Defendant and New York Life Insurance Company are distinct entities. Defendant
12 denies that New York Life Insurance Company issued the Policy. Defendant denies that
13 New York Life Insurance Company is a party to the Policy. Defendant denies that New
14 York Life Insurance Company undertook policy obligations to Mr. Linhart. Defendant
15 denies that the Policy uses the term “New York Life” to identify the obligor under the
16 Policy. Defendant denies that the Policy uses the term “New York Life” to identify the
17 entity to which premiums should be paid. Defendant denies that the Policy uses the term
18 “New York Life” to identify the entity to which notice of death should be provided.
19 Defendant denies that the informational notice entitled “Some basics about your policy”
20 (ECF No. 38-1 at 60–62) is part of the Policy. That informational notice speaks for itself.
21 Defendant denies each and any characterization of the informational notice that is
22 inconsistent with the informational notice itself. Defendant denies that the informational
23 notice jointly refers to Defendant and New York Life Insurance Company as “New York
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1 Life”; the informational notice separately refers to “New York Life Insurance Company”
2 and “New York Life Insurance and Annuity Corporation,” and it uses the trade name
3 “New York Life” to refer separately to New York Life Insurance Company or Defendant,
4 as appropriate. Defendant denies any remaining allegations in paragraph 35.

5 36. Defendant admits the Policy’s “Policy Date” is August 1, 2007. Defendant
6 denies the remaining allegations in paragraph 36. Defendant specifically denies that the
7 Policy could “renew” by payment of premiums.

8 37. Defendant admits that a letter was sent to James Linhart on or about August
9 3, 2021. The letter speaks for itself; Defendant denies Plaintiff’s characterization of the
10 letter. Defendant denies that the Policy “renewed each year.” Defendant denies that the
11 Policy remained in force without interruption at all times. Defendant lacks knowledge or
12 information sufficient to form a belief about the truth of the allegation in paragraph 37
13 about who made premium payments, and therefore denies them. Defendant denies all
14 other allegations in paragraph 37.

15 38. Defendant lacks knowledge or information sufficient to form a belief about
16 the truth of the allegation in paragraph 38, and therefore denies it.

17 39. Denied. Defendant specifically denies all allegations that it has violated any
18 statute, regulation, law, or insurance policy provision in any way. Defendant denies all
19 other allegations in paragraph 39.

20 40. Denied. Defendant specifically denies all allegations that it has violated any
21 statute, regulation, law, or insurance policy provision in any way. Defendant denies all
22 other allegations in paragraph 40.

23 41. Denied. Defendant specifically denies all allegations that it has violated any
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1 statute, regulation, law, or insurance policy provision in any way. Defendant denies all
2 other allegations in paragraph 41.

3 42. Denied. Defendant specifically denies all allegations that it has violated any
4 statute, regulation, law, or insurance policy provision in any way. Defendant denies all
5 other allegations in paragraph 42.

6 43. Denied. Defendant specifically denies all allegations that it has violated any
7 statute, regulation, law, or insurance policy provision in any way. Defendant denies all
8 other allegations in paragraph 43.

9 44. Defendant lacks knowledge or information sufficient to form a belief about
10 the truth of the allegations in paragraph 44, and therefore denies them. Defendant denies
11 any implied allegation that it has violated any statute, regulation, law, or insurance policy
12 provision in any way.

13 45. Denied. Defendant specifically denies all allegations that it has violated any
14 statute, regulation, law, or insurance policy provision in any way. Defendant denies all
15 other allegations in paragraph 45.

16 46. Defendant admits counsel for Plaintiff requested benefits under the Policy.
17 Defendant denies that Plaintiff fully completed the claims process required by the Policy.
18 Defendant denies any remaining allegations in paragraph 46.

19 47. Defendant admits that the court decisions in *McHugh v. Protective Life*
20 *Insurance Co.*, *Bentley v. United of Omaha Life Insurance Co.*, and *Thomas v. State*
21 *Farm Life Insurance Co.* are matters of public record. Defendant denies any implied
22 allegation that it has violated any statute, regulation, law, or insurance policy provision
23 in any way. Defendant denies any other allegations in paragraph 47.

1 48. The allegations of paragraph 48 include legal conclusions to which no
2 response is required; to the extent that a response is deemed necessary, Defendant admits
3 that no death benefits are payable under the Policy and that Plaintiff has not been paid
4 death benefits under the Policy. Defendant denies that Plaintiff fully completed the
5 claims process required by the Policy. Defendant denies any other allegations in
6 paragraph 48.

7 49. Defendant admits that Plaintiff has not been paid death benefits under the
8 Policy; no such benefits are payable. Defendant specifically denies all allegations that it
9 has violated any statute, regulation, law, or insurance policy provision in any way.
10 Defendant further denies that Plaintiff, and the other persons that Plaintiff purports to
11 represent, are entitled to any relief whatsoever. Defendant denies all other allegations in
12 paragraph 49.

13 **V. CLASS ACTION ALLEGATIONS**

14 50. The description of the proposed class speaks for itself. The definitions of
15 the proposed class speak for themselves. Defendant specifically denies that certification
16 of any class is appropriate under applicable law. Defendant further denies the implied
17 allegation that it has violated any statute, regulation, law, or insurance policy provision
18 in any way. Defendant denies all other allegations in paragraph 50.

19 51. The allegations of paragraph 51 do not require a response. Defendant
20 specifically denies that certification of any class is appropriate under applicable law.
21 Defendant denies all other allegations in paragraph 51.

22 52. Denied. Defendant specifically denies that certification of any class is
23 appropriate under applicable law. Defendant denies all other allegations in paragraph 52.

1 53. Denied. Defendant specifically denies that certification of any class is
2 appropriate under applicable law. Defendant denies all other allegations in paragraph 53.

3 54. Denied. Defendant specifically denies that certification of any class is
4 appropriate under applicable law. Defendant denies all other allegations in paragraph 54.

5 55. Denied. Defendant specifically denies that certification of any class is
6 appropriate under applicable law. Defendant denies all other allegations in paragraph 55.

7 56. Denied. Defendant specifically denies that certification of any class is
8 appropriate under applicable law. Defendant denies all other allegations in paragraph 56.

9 57. Denied. Defendant specifically denies that certification of any class is
10 appropriate under applicable law. Defendant denies all other allegations in paragraph 57.

11 58. Denied. Defendant specifically denies that certification of any class is
12 appropriate under applicable law. Defendant denies all other allegations in paragraph 58.

13 59. Denied. Defendant specifically denies that certification of any class is
14 appropriate under applicable law. Defendant denies all other allegations in paragraph 59.

15 **VI. CAUSES OF ACTION**
16 **FIRST CAUSE OF ACTION**
17 **BREACH OF CONTRACTUAL DUTY TO PAY A COVERED CLAIM²**

18 60. Defendant incorporates its responses to the foregoing paragraphs as if set
19 forth in full in this paragraph.

20 61. Defendant admits that Defendant issued the Policy to James Linhart. The
21 Policy speaks for itself. Defendant denies each and any characterization of the Policy

22 ² The First Cause of Action of the FAC includes a heading (summarizing Plaintiff's
23 legal argument) to which no response is required. To the extent that a response is
24 required, Defendant denies the allegations in the heading and denies that Plaintiff, and
those other persons that Plaintiff purports to represent, are entitled to any relief
whatsoever.

1 that is inconsistent with the Policy itself. Defendant specifically denies that “New York
 2 Life” issued the Policy; Defendant issued the Policy. Defendant lacks knowledge or
 3 information sufficient to form a belief about the truth of the remaining allegations in
 4 paragraph 61, and therefore denies them. Defendant specifically denies that certification
 5 of any class is appropriate under applicable law.

6 62. Denied. Defendant specifically denies all allegations that it has violated any
 7 statute, regulation, law, or insurance policy provision in any way. Defendant denies all
 8 other allegations in paragraph 62.

9 a. Denied. Defendant specifically denies all allegations that it has
 10 violated any statute, regulation, law, or insurance policy provision in any way.
 11 Defendant denies all other allegations in subparagraph 62(a).

12 b. Denied. Defendant specifically denies all allegations that it has
 13 violated any statute, regulation, law, or insurance policy provision in any way.
 14 Defendant denies all other allegations in subparagraph 62(b).

15 c. Denied. Defendant specifically denies all allegations that it has
 16 violated any statute, regulation, law, or insurance policy provision in any way.
 17 Defendant denies all other allegations in this subparagraph 62(c).³

18 c. Denied. Defendant specifically denies all allegations that it has
 19 violated any statute, regulation, law, or insurance policy provision in any way.
 20
 21
 22

23 ³ The FAC has two subparagraphs “c.” within paragraph 62. This subparagraph of
 24 the Answer responds to the subparagraph of the FAC that begins on line 25 of page 21
 of the FAC.

1 Defendant denies all other allegations in this subparagraph 62(c).⁴

2 63. The allegations of paragraph 63 include legal conclusions to which no
3 response is required; to the extent that a response is deemed necessary, Defendant denies
4 the allegations in paragraph 63. The Statutes speak for themselves. Defendant denies
5 each and any characterization of the Statutes that is inconsistent with the Statutes
6 themselves. Defendant specifically denies all allegations that it has violated any statute,
7 regulation, law, or insurance policy provision in any way. Defendant denies all other
8 allegations in paragraph 63.

9 64. Denied. Defendant specifically denies all allegations that it has violated any
10 statute, regulation, law, or insurance policy provision in any way. Defendant further
11 denies that Plaintiff, and the other persons that Plaintiff purports to represent, are entitled
12 to any relief whatsoever. Defendant further denies that Plaintiff, and the other persons
13 that Plaintiff purports to represent, have suffered any damage whatsoever. Defendant
14 denies all other allegations in paragraph 64.

15 **SECOND CAUSE OF ACTION**
16 **BREACH OF THE IMPLIED COVENANT**
OF GOOD FAITH AND FAIR DEALING⁵

17 65. Defendant incorporates its responses to the foregoing paragraphs as if set
18 forth in full in this paragraph.

20 ⁴ The FAC has two subparagraphs “c.” within paragraph 62. This subparagraph of
21 the Answer responds to the subparagraph of the FAC that begins on line 3 of page 22 of
the FAC.

22 ⁵ The Second Cause of Action of the FAC includes a heading (summarizing
23 Plaintiff’s legal argument) to which no response is required. To the extent that a response
is required, Defendant denies the allegations in the heading and denies that Plaintiff, and
24 those other persons that Plaintiff purports to represent, are entitled to any relief
whatsoever.

66. The allegations of paragraph 66 include legal conclusions to which no response is required.

67. Denied. Defendant specifically denies all allegations that it has violated any statute, regulation, law, or insurance policy provision in any way. Defendant denies all other allegations in paragraph 67.

68. Denied. Defendant specifically denies all allegations that it has violated any statute, regulation, law, or insurance policy provision in any way. Defendant denies all other allegations in paragraph 68.

a. Denied. Defendant specifically denies all allegations that it has violated any statute, regulation, law, or insurance policy provision in any way. Defendant denies all other allegations in subparagraph 68(a).

b. Denied. Defendant specifically denies all allegations that it has violated any statute, regulation, law, or insurance policy provision in any way. Defendant denies all other allegations in subparagraph 68(b).

c. Denied. Defendant specifically denies all allegations that it has violated any statute, regulation, law, or insurance policy provision in any way. Defendant denies all other allegations in subparagraph 68(c).

d. Denied. Defendant specifically denies all allegations that it has violated any statute, regulation, law, or insurance policy provision in any way. Defendant denies all other allegations in subparagraph 68(d).

e. Denied. Defendant specifically denies all allegations that it has violated any statute, regulation, law, or insurance policy provision in any way. Defendant denies all other allegations in subparagraph 68(e).

1 69. Denied. Defendant specifically denies all allegations that it has violated any
2 statute, regulation, law, or insurance policy provision in any way. Defendant further
3 denies that Plaintiff, and the other persons that Plaintiff purports to represent, are entitled
4 to any relief whatsoever. Defendant further denies that Plaintiff, and the other persons
5 that Plaintiff purports to represent, have suffered any damage whatsoever. Defendant
6 denies all other allegations in paragraph 69.

7 70. Denied. Defendant specifically denies all allegations that it has violated any
8 statute, regulation, law, or insurance policy provision in any way. Defendant further
9 denies that Plaintiff, and the other persons that Plaintiff purports to represent, are entitled
10 to any relief whatsoever. Defendant further denies that Plaintiff, and the other persons
11 that Plaintiff purports to represent, have suffered any damage whatsoever. Defendant
12 denies all other allegations in paragraph 70.

13 71. Denied. Defendant specifically denies all allegations that it has violated any
14 statute, regulation, law, or insurance policy provision in any way. Defendant denies all
15 other allegations in paragraph 71.

16 72. Denied. Defendant specifically denies all allegations that it has violated any
17 statute, regulation, law, or insurance policy provision in any way. Defendant further
18 denies that the so-called “renewal principle” applies to life-insurance policies. Defendant
19 denies all other allegations in paragraph 72.

20 73. The allegations of paragraph 73 include legal conclusions to which no
21 response is required. Defendant lacks knowledge or information sufficient to form a
22 belief about the truth of the statement quoted in paragraph 73, and therefore denies it.
23 Defendant denies any implied allegation that it has violated any statute, regulation, law,
24

1 or insurance policy provision in any way.

2 **PRAYER FOR RELIEF**

3 Defendant denies that Plaintiff, and those other persons that Plaintiff purports to
4 represent, are entitled to any of the relief sought in the FAC, or any relief whatsoever.

5 **JURY DEMAND**

6 Plaintiff's demand for a jury trial does not require a response.

7 **AFFIRMATIVE DEFENSES**

8 Having answered the individually numbered paragraphs of the First Amended
9 Class Action Complaint, Defendant asserts the following defenses. By setting forth these
10 defenses, Defendant does not assume the burden of proving any fact, issue, or element
11 of a cause of action where such burden properly belongs to Plaintiff and those persons
12 Plaintiff purports to represent. Further, no defense is intended or shall be construed as an
13 admission that any particular issue or subject matter is relevant to Plaintiff's allegations.

14 1. The FAC, and each purported claim therein, fails to state a claim against
15 Defendant on which relief can be granted.

16 2. Defendant denies the material allegations of the FAC and demands strict
17 proof thereof.

18 3. The so-called "renewal principle" discussed in *Thomas v. State Farm*
19 *Insurance Co.*, 424 F. Supp. 3d 1018 (S.D. Cal. 2019), *Bentley v. United of Omaha Life*
20 *Insurance Co.*, 371 F. Supp. 3d 723 (C.D. Cal. 2019), and other decisions, does not apply
21 to any life-insurance policies.

22 4. The so-called "renewal principle" discussed in *Thomas v. State Farm*
23 *Insurance Co.*, 424 F. Supp. 3d 1018 (S.D. Cal. 2019), *Bentley v. United of Omaha Life*
24

1 *Insurance Co.*, 371 F. Supp. 3d 723 (C.D. Cal. 2019), and other decisions, does not apply
2 to universal life-insurance policies.

3 5. Plaintiff's claims, and those of some or all of the other persons Plaintiff
4 purports to represent, are barred and/or limited because the Statutes do not protect against
5 intentional or voluntary lapses or terminations of insurance policies.

6 6. Plaintiff's claims, and those of some or all of the other persons Plaintiff
7 purports to represent, are barred because it is unconstitutional under the Contracts
8 Clauses of the United States Constitution and/or the California Constitution to apply the
9 Statutes to life-insurance policies issued or delivered before the Statutes' January 1,
10 2013, effective date. U.S. Const., Art. I, § 10, cl. 1 ("No State shall ... pass any ... ex
11 post facto law, or law impairing the obligation of contracts."); Cal. Const., Art. I, § 9 ("A
12 bill of attainder, ex post facto law, or law impairing the obligation of contracts may not
13 be passed.").

14 7. Plaintiff's claims, and those of some or all of the other persons Plaintiff
15 purports to represent, are barred because it is unconstitutional under the Due Process
16 Clauses of the United States Constitution and/or the California Constitution to apply the
17 Statutes to life-insurance policies issued or delivered before the Statutes' January 1,
18 2013, effective date. U.S. Const., amend. XIV, § 1 ("No State shall ... deprive any person
19 of life, liberty, or property, without due process of law[.]"); Cal. Const., Art. I, § 7(a)
20 ("A person may not be deprived of life, liberty, or property without due process of
21 law[.]").

22 8. Plaintiff's claims, and those of some or all of the other persons Plaintiff
23 purports to represent, are barred because it is unconstitutional under the Takings Clauses
24

1 of the United States Constitution and/or the California Constitution to apply the Statutes
2 to life-insurance policies issued or delivered before the Statutes' January 1, 2013,
3 effective date. U.S. Const., amend. V; Cal. Const., Art. I, § 19.

4 9. Plaintiff's claims, and those of some or all of the other persons Plaintiff
5 purports to represent, are barred because it is an unconstitutional burden on interstate
6 commerce to apply the Statutes to life-insurance policies issued or delivered before the
7 Statutes' January 1, 2013, effective date.

8 10. Plaintiff's claims, and those of some or all of the other persons Plaintiff
9 purports to represent, are barred because the Statutes do not create a private right of
10 action for recovery against insurers like Defendant.

11 11. Plaintiff's claims, and those of some or all of the other persons Plaintiff
12 purports to represent, are barred because Plaintiff and/or members of the proposed class
13 lack standing to sue.

14 12. Plaintiff's claims, and those of some or all of the other persons Plaintiff
15 purports to represent, are barred or limited by one or more provisions, terms, exclusions,
16 definitions, limitations, and/or conditions of the policies at issue.

17 13. Plaintiff's claims, and those of some or all of the other persons Plaintiff
18 purports to represent, are barred because Defendant has fully performed and/or complied
19 with all contractual, statutory, and other duties and requirements.

20 14. Plaintiff's claims, and those of some or all of the other persons Plaintiff
21 purports to represent, are barred because Defendant has substantially performed and/or
22 complied with all contractual, statutory, and other duties and requirements.

23 15. Plaintiff's claims, and those of some or all of the other persons Plaintiff
24

1 purports to represent, are barred by the failure to satisfy one or more necessary conditions
2 precedent.

3 16. Plaintiff's claims, and those of some or all of the other persons Plaintiff
4 purports to represent, are barred by the failure to satisfy one or more necessary conditions
5 subsequent.

6 17. Plaintiff's claims, and those of some or all of the other persons Plaintiff
7 purports to represent, are barred or limited by the failure to satisfy one or more terms
8 and/or conditions of the policies at issue.

9 18. Plaintiff's claims, and those of some or all of the other persons Plaintiff
10 purports to represent, are barred or limited because Plaintiff and/or members of the
11 proposed class consented to, authorized, ratified, and/or allowed all acts and/or omission
12 of Defendant alleged in the FAC.

13 19. Plaintiff's claims, and those of some or all of the other persons Plaintiff
14 purports to represent, are barred because they are based on alleged breach of obligations
15 not found in the policies at issue, which are fully integrated agreements.

16 20. Plaintiff's claims, and those of some or all of the other persons Plaintiff
17 purports to represent, are barred, in whole or in part, because Defendant complied with
18 all applicable laws, statutes, and regulations at all pertinent times.

19 21. Plaintiff's claims, and those of some or all of the other persons Plaintiff
20 purports to represent, are barred, in whole or in part, because Defendant acted
21 reasonably, appropriately, and in good faith at all pertinent times.

22 22. Plaintiff's claims, and those of some or all of the other persons Plaintiff
23 purports to represent, are barred, in whole or in part, because Defendant did not engage
24

1 in any unfair, unlawful, fraudulent, or wrongful conduct.

2 23. Plaintiff's claims, and those of some or all of the other persons Plaintiff
3 purports to represent, are barred, in whole or in part, because Defendant did not willfully
4 or intentionally engage in any unfair, unlawful, fraudulent, or wrongful conduct.

5 24. Plaintiff's claims, and those of some or all of the other persons Plaintiff
6 purports to represent, are barred, in whole or in part, by the "genuine dispute" doctrine.

7 25. The acts and omissions of Defendant, if any, were excused or justified by
8 the information and facts available to Defendant at the time such acts and omissions, if
9 any, occurred.

10 26. Plaintiff, and some or all of the other persons Plaintiff purports to represent,
11 have sustained no injury in fact or damages caused by Defendant or the conduct alleged
12 in the FAC.

13 27. Plaintiff, and some or all of the other persons Plaintiff purports to represent,
14 have failed and neglected to use reasonable care to protect themselves and minimize the
15 alleged loss and damage complained of, if there was any.

16 28. If Plaintiff, and all or some of those Plaintiff purports to represent, have
17 suffered any injury or harm—which Defendant expressly denies—recovery is barred by
18 the failure of Plaintiff, and some or all of those Plaintiff purports to represent, to mitigate,
19 reduce, or otherwise avoid damages or injuries.

20 29. Plaintiff's claims, and those of some or all of the other persons Plaintiff
21 purports to represent, are barred, in whole or in part, because policyholders voluntarily,
22 intentionally, and/or advertently allowed their policies to lapse and/or terminate.

23 30. Plaintiff's claims, and those of some or all of the other persons Plaintiff
24

1 purports to represent, are barred, in whole or in part, because no act or omission by
2 Defendant, or by any person or entity for which Defendant was responsible, was the
3 proximate cause of any injury or harm alleged.

4 31. Plaintiff's claims, and those of some or all of the other persons Plaintiff
5 purports to represent, are barred, in whole or in part, because any damages—the fact and
6 extent of which Defendant expressly denies—were proximately caused by one or more
7 intervening, superseding, and/or supervening acts or omissions for which Defendant has
8 no liability.

9 32. Plaintiff's claims, and those of some or all of the other persons Plaintiff
10 purports to represent, are barred, in whole or in part, because any damages—the fact and
11 extent of which Defendant expressly denies—were proximately caused by one or more
12 acts or omissions of Plaintiff, policyholders of policies at issue, insureds of policies at
13 issue, and/or members of the proposed class.

14 33. Plaintiff's claims, and those of some or all of the other persons Plaintiff
15 purports to represent, are barred due to the acts and/or omissions of third parties who are
16 unrelated to Defendant.

17 34. To the extent that the Statutes apply with respect to the policies at issue in
18 this action, and benefits are to be paid thereunder even though the policies had lapsed,
19 Defendant is entitled to an offset for any premiums that would have been due and owing
20 between the date of the last paid premium and the death of the insured(s).

21 35. To the extent that the Statutes apply with respect to the policies at issue in
22 this action, and coverage is reinstated under a policy where the insured is still alive,
23 Defendant is entitled to receive the payment (or an offset of any monies payable to the
24

1 insured or policy owner) for any premiums or other sums that would have been due and
2 owing between the date of the last paid premium and the date that coverage is reinstated.

3 36. Any claim for injunctive relief, and any claim for injunctive relief by some
4 or all of the other persons Plaintiff purports to represent, is barred because there is not
5 an ongoing wrong to be addressed by the Court.

6 37. Any claim for injunctive relief, and any claim for injunctive relief by some
7 or all of the other persons Plaintiff purports to represent, is barred because legal remedies
8 are not inadequate.

9 38. Plaintiff, and some or all of the other persons Plaintiff purports to represent,
10 fail to state a claim for punitive and/or exemplary damages against Defendant.

11 39. Any demand for punitive or exemplary damages in the FAC is barred by
12 the Due Process Clauses of the United States Constitution and/or the California
13 Constitution. U.S. Const., amend. XIV; Cal. Const. Art. I, § 7.

14 40. Any demand for punitive or exemplary damages in the FAC is barred by
15 the Equal Protection Clauses of the United States Constitution and/or the California
16 Constitution. U.S. Const., amend. XIV; Cal. Const. Art. I, § 7.

17 41. Any demand for punitive or exemplary damages in the FAC is barred by
18 the Contracts Clauses of the United States Constitution and/or the California
19 Constitution. U.S. Const., Art. I, § 10, cl. 1; Cal. Const. Art. I, § 9.

20 42. Any demand for punitive or exemplary damages in the FAC is barred by
21 the Excessive Fines provisions of the United States Constitution and/or the California
22 Constitution. U.S. Const., amend. XIII; Cal. Const. Art. I, § 17.

23 43. Any demand for punitive or exemplary damages in the FAC does not meet
24

1 the tests for set forth by the United States Supreme Court in *BMW of North America, Inc.*
2 *v. Gore*, 517 U.S. 559 (1996), *State Farm Mutual Automobile Insurance Co. v.*
3 *Campbell*, 538 U.S. 408 (2003), *Philip Morris USA v. Williams*, 549 U.S. 346 (2007),
4 and other cases, and therefore fails to state a cause of action supporting any punitive or
5 exemplary damages claimed.

6 44. Plaintiff, and some or all of the other persons Plaintiff purports to represent,
7 have expressly and/or by conduct waived the right to complain of the conduct alleged in
8 the FAC.

9 45. Plaintiff, and some or all of the other persons Plaintiff purports to represent,
10 are estopped from pursuing the claims in the FAC.

11 46. Plaintiff's claims, and those of some or all of the other persons Plaintiff
12 purports to represent, are otherwise barred by the doctrine of waiver.

13 47. Plaintiff's claims, and those of some or all of the other persons Plaintiff
14 purports to represent, are otherwise barred by the doctrine of forfeiture.

15 48. Plaintiff's claims, and those of some or all of the other persons Plaintiff
16 purports to represent, are barred by the doctrine of unjust enrichment.

17 49. Plaintiff's claims, and those of some or all of the other persons Plaintiff
18 purports to represent, are barred by the doctrine of unclean hands.

19 50. The claims for relief asserted in the FAC are barred, in whole or in part, by
20 the applicable statutes of limitations. *See, e.g.*, Cal. Civ. Proc. Code §§ 312, 335.1, 337,
21 338, 339, 340.

22 51. The claims for relief asserted in the FAC are barred, in whole or in part, by
23 the doctrine of laches.

52. The claims for relief asserted in the FAC are otherwise untimely, in whole or in part.

53. Defendant asserts that Plaintiff failed to join necessary and indispensable parties to this suit.

54. This action is not proper for class certification under Federal Rule of Civil Procedure 23 because Plaintiff cannot satisfy the requirements set forth in Federal Rule of Civil Procedure 23.

55. The FAC fails to adequately define any class of persons who could properly maintain this action as a class action.

56. This action is not proper for class certification under Federal Rule of Civil Procedure 23 because Plaintiff's purported claims are not typical of the claims of the putative class.

57. This action is not proper for class certification under Federal Rule of Civil Procedure 23 because the putative class defined is not ascertainable.

58. This action is not proper for class certification under Federal Rule of Civil Procedure 23 because the putative class defined is not manageable.

59. This action is not proper for class certification under Federal Rule of Civil Procedure 23 because there is a lack of commonality of questions of law.

60. This action is not proper for class certification under Federal Rule of Civil Procedure 23 because there is a lack of commonality of questions of fact.

61. This action is not proper for class certification under Federal Rule of Civil Procedure 23 because questions of law and fact common to the purported class do not predominate over the questions affecting the individual members of the purported class.

1 62. This action is not proper for class certification under Federal Rule of Civil
2 Procedure 23 because individual questions of fact and law predominate over common
3 questions.

4 63. This action is not proper for class certification under Federal Rule of Civil
5 Procedure 23 because Plaintiff and/or Plaintiff's counsel are inadequate representatives
6 of the putative class.

7 64. This action is not proper for class certification under Federal Rule of Civil
8 Procedure 23 because there are likely to be difficulties in the management of the
9 proposed class action.

10 65. This action is not proper for class certification under Federal Rule of Civil
11 Procedure 23 because class-action treatment is inferior to individual resolution of claims.

12 66. This action is not proper for class certification under Federal Rule of Civil
13 Procedure 23 because of conflicts of interest between Plaintiff and the members of the
14 putative class and/or between and among members of the putative class.

15 67. Plaintiff's claims, and those of some or all of the other persons Plaintiff
16 purports to represent, are barred, in whole or in part, by prior bankruptcy proceedings
17 based on the doctrines of res judicata, judicial estoppel, 11 U.S.C. § 1327(a), waiver,
18 equitable estoppel, and release. As a result of those prior proceedings, Plaintiff and all
19 putative class members who went through those bankruptcy proceedings are not the real
20 party in interest and lack standing to pursue the causes of action.

21 68. Plaintiff's claims, and those of some or all of the other persons Plaintiff
22 purports to represent, are barred, in whole or in part, by the following doctrines: res
23 judicata, collateral estoppel, assumption of risk, contributory negligence, duress, failure
24

1 of consideration, contribution, set-off, fraud, illegality, injury by fellow servant, license,
2 joint and several liability, payment, release, standing, real party in interest, accord and
3 satisfaction, good faith, failure to cooperate, failure to read, and/or release.

4 69. Defendant reserves the right to amend its Answer to plead any additional
5 affirmative defenses that become available or known as this action proceeds, including,
6 but not limited to, those defenses that become known to Defendant through discovery.
7 Defendant also reserves the right to delete affirmative defenses. Defendant also reserves
8 the right to add counterclaims and third-party claims, based on information that become
9 available or known as this action proceeds.

10 WHEREFORE, Defendant New York Life Insurance and Annuity Corporation
11 prays for relief as follows:

12 1. That the Court deny Plaintiff's request for certification of any class action
13 pursuant to Rule 23 of the Federal Rules of Civil Procedure or any other applicable Rules
14 of Procedure;

15 2. That the Court deny any relief requested by Plaintiff;

16 3. That Plaintiff take nothing by reason of the First Amended Class Action
17 Complaint;

18 4. That the Court enter judgment in favor of Defendant and against Plaintiff;

19 5. For costs of suit incurred herein, including attorneys' fees; and

20 6. For such other and further relief as the Court may deem just and proper.

1 DATED: January 10, 2022

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14 *Corporation*

PROOF OF SERVICE

COUNTY OF SAN FRANCISCO)
STATE OF CALIFORNIA)

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is Two Embarcadero Center, Suite 1450, San Francisco, California 94111. On the date indicated below, I served the foregoing document described as:

DEFENDANT NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION'S
ANSWER TO FIRST AMENDED CLASS ACTION COMPLAINT

[X] BY CM/ECF ELECTRONIC SERVICE: The interested party(ies) set forth below are registered CM/ECF users with the Court, and have consented to service through the Court's automatic transmission of a notice of filing.

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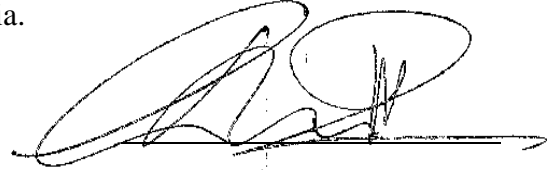
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on behalf of herself and all others similarly situated

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1 I declare that I am employed in the office of a member who has been admitted to the
2 bar of this Court at whose direction the service was made. I declare under penalty of
perjury under the laws of the United States that the foregoing is true and correct.

3 Executed January 10, 2022, in San Francisco, California.

A handwritten signature in black ink, appearing to read 'Sam Roberson', is written over a horizontal line.

Sam Roberson