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8 Defendant John Hancock Life Insurance Company (U.S.A.),
successor in interest to John Hancock Life Insurance Company

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 SILVINA KROETZ, on behalf of herself
and all others similarly situated,

13 Plaintiff,

14 vs.

15 JOHN HANCOCK LIFE INSURANCE
16 COMPANY and DOES 1 to 50, inclusive,

17 Defendants.

Case No. 2:20-cv-02117-AB-RAOx
(Honorable Andre Birotte Jr.)

**DEFENDANT JOHN HANCOCK
LIFE INSURANCE
COMPANY'S ANSWER TO
PLAINTIFF'S COMPLAINT**

Complaint Filed: March 4, 2020

1 Defendant John Hancock Life Insurance Company (U.S.A.), successor in
2 interest to John Hancock Life Insurance Company (“Defendant” or “John Hancock”),
3 for itself and no others, in response to the allegations of Plaintiff Silvina Kroetz’s
4 (“Plaintiff”) Complaint on file herein, admits, denies, and alleges as follows:

5 **I. NATURE OF THE CASE**

6 1. Referring to the allegations of paragraph 1, Defendant denies the
7 allegations of this paragraph.

8 2. Referring to the allegations of paragraph 2, Defendant admits that there
9 are obligations imposed on life insurance companies as more fully set forth in
10 California Insurance Code Sections 10113.71 and 10113.72, but such obligations only
11 apply with respect to life insurance policies issued or delivered in California on and
12 after January 1, 2013, the effective date of the statutes. Except as so specifically
13 admitted, Defendant denies the allegations of this paragraph.

14 3. Referring to the allegations of paragraph 3, Defendant admits that the
15 public policy underlying California Insurance Code Sections 10113.71 and 10113.72
16 is as set forth in the legislative history of such statutes. Except as so specifically
17 admitted, Defendant denies the allegations of this paragraph.

18 4. Referring to the allegations of paragraph 4, Defendant admits that the
19 public policy underlying California Insurance Code Sections 10113.71 and 10113.72
20 is as set forth in the legislative history of such statutes. Except as so specifically
21 admitted, Defendant denies the allegations of this paragraph.

22 5. Referring to the allegations of paragraph 5, Defendant is without
23 sufficient information or belief to respond to this allegation and therefore denies the
24 allegations of this paragraph.

25 6. Referring to the allegations of paragraph 6, Defendant denies the
26 allegations of this paragraph.

27 7. Referring to the allegations of paragraph 7, Defendant denies the
28 allegations of this paragraph.

1 8. Referring to the allegations of paragraph 8, Defendant denies the
2 allegations of this paragraph.

3 9. Referring to the allegations of paragraph 9, Defendant denies the
4 allegations of this paragraph.

5 10. Referring to the allegations of paragraph 10, Defendant denies the
6 allegations of this paragraph.

7 11. Referring to the allegations of paragraph 11, Defendant admits the
8 allegations of this paragraph.

9 12. Referring to the allegations of paragraph 12, Defendant admits the
10 allegations of this paragraph on information and belief.

11 13. Referring to the allegations of paragraph 13, Defendant admits that John
12 Hancock Life Insurance Company (U.S.A.), successor in interest to John Hancock
13 Life Insurance Company, is incorporated in Michigan and otherwise admits the
14 remaining allegations of this paragraph.

15 14. Referring to the allegations of paragraph 14, Defendant admits the
16 allegations of this paragraph.

17 15. Referring to the allegations of paragraph 15, Defendant denies the
18 allegations in subparagraph (d). Except as so specifically denied, Defendant admits
19 the allegations of this paragraph.

20 16. Referring to the allegations of paragraph 16, Defendant denies that it
21 improperly terminated the insurance policy (the "Policy") issued to Sean Kroetz (the
22 "Insured"), or that the Policy was even terminated; it lapsed by the terms of the Policy.
23 Defendant is without sufficient information or belief to respond as to the present
24 residence of the Plaintiff and therefore denies such allegation. Except as so
25 specifically denied, Defendant admits the allegations of this paragraph.

26 17. Referring to the allegations of paragraph 17, Defendant alleges that John
27 Hancock Life Insurance Company (U.S.A.), successor in interest to John Hancock
28 Life Insurance Company, is incorporated in Michigan, is an insurance company

1 licensed to conduct the business of insurance in California, and is an indirectly wholly
2 owned subsidiary of Manulife Financial Corporation. Defendant further alleges that
3 Manulife Financial Corporation is a Canada-based financial services company and
4 has operations in Asia, Canada and the United States. Defendant denies that John
5 Hancock Life Insurance Company (U.S.A.) is a Massachusetts corporation.

6 18. Referring to the allegations of paragraph 18, Defendant admits the
7 allegations of this paragraph.

8 19. Referring to the allegations of paragraph 19, Defendant admits that
9 California Insurance Code Sections 10113.71 and 10113.72 (the “Statutes”) went into
10 effect on January 1, 2013 (the “Effective Date”), but alleges that they only apply to
11 life insurance policies issued or delivered in California after the Effective Date.
12 Except as so specifically admitted, Defendant denies the allegations of this paragraph.

13 20. Referring to the allegations of paragraph 20, Defendant admits that there
14 are obligations under the Statutes, as more specifically set forth therein, and not as
15 Plaintiff has sought to portray them. Except as so specifically admitted, Defendant
16 denies the allegations of this paragraph.

17 21. Referring to the allegations of paragraph 21, Defendant admits that
18 portions of Sections 10113.71 (b)(1) is accurately quoted in this paragraph, but that
19 the obligations under the Statutes are set forth therein, and not as Plaintiff has sought
20 to portray them. Except as so specifically admitted, Defendant denies the allegations
21 of this paragraph.

22 22. Referring to the allegations of paragraph 22, Defendant admits that
23 portions of Sections 10113.72 (b) is accurately quoted in this paragraph, but that the
24 obligations under the Statutes are set forth therein, and not as Plaintiff has sought to
25 portray them. Except as so specifically admitted, Defendant denies the allegations of
26 this paragraph.

27 23. Referring to the allegations of paragraph 23, Defendant denies the
28 allegations of this paragraph.

1 24. Referring to the allegations of paragraph 24, Defendant denies the
2 allegations of this paragraph.

3 25. Referring to the allegations of paragraph 25, Defendant denies the
4 allegations of this paragraph.

5 26. Referring to the allegations of paragraph 26, Defendant denies the
6 allegations of this paragraph.

7 27. Referring to the allegations of paragraph 27, Defendant admits that the
8 type of the Policy issued to the Insured was "Individual Term Life Insurance," with a
9 Date of Issue of June 1, 2002, and identified as Policy No. 75 146 326. Defendant
10 admits that a difficult to read series of photographs of most of the Policy is attached
11 as Exhibit A to the Complaint. Defendant further alleges that the Policy was initially
12 issued by John Hancock Variable Life Insurance Company, which then merged into
13 John Hancock Life Insurance Company (U.S.A.) at the end of the day on December
14 31, 2009. Except as so specifically admitted, Defendant denies the allegations of this
15 paragraph.

16 28. Referring to the allegations of paragraph 28, Defendant admits that the
17 Policy Anniversary is defined as "the same day and month as the Date of Issue for
18 each succeeding year this policy remains in full force," which Policy Anniversary
19 would be June 1. Defendant further admits that the Policy would stay in effect so
20 long as the Insured pays the premium amounts set forth in the schedule in the Policy.
21 Defendant denies that the policy contains any renewal provision. Except as so
22 specifically admitted, Defendant denies the allegations of this paragraph.

23 29. Referring to the allegations of paragraph 29, Defendant admits that the
24 Insured paid premiums to keep the Policy in force from 2002 until he failed to do so
25 with respect to the significantly increased premium payment that came due on June
26 1, 2017. Defendant denies that the annual premiums were \$544.00, but they were
27 actually \$640 for the first 15 years, but the insured was provided a \$96 discount for
28 the initial premium payment if paid in one payment. Except as so specifically

1 admitted, Defendant denies the allegations of this paragraph.

2 30. Referring to the allegations of paragraph 30, Defendant denies that it
3 terminated the Policy issued to the Insured, but rather the Policy lapsed by its own
4 terms and Defendant notified the Insured of this fact in its letter dated August 10,
5 2017. Except as so specifically admitted, Defendant denies the allegations of this
6 paragraph.

7 31. Referring to the allegations of paragraph 31, Defendant admits.

8 32. Referring to the allegations of paragraph 32, Defendant admits that it did
9 not send the Insured a notice inviting him to designate a third person to receive notice
10 of pending lapse or termination. Except as so specifically admitted, Defendant denies
11 the allegations of this paragraph.

12 33. Referring to the allegations of paragraph 33, Defendant denies the
13 allegations of this paragraph.

14 34. Referring to the allegations of paragraph 34, Defendant admits that
15 Plaintiff contacted John Hancock and submitted a claim for benefits. Defendant
16 further admits that counsel for plaintiff, long thereafter, sent letters to defendant
17 referencing rulings issued by trial courts in the *Bentley* and *Thomas* cases. Except as
18 so specifically admitted, Defendant denies the allegations of this paragraph.

19 35. Referring to the allegations of paragraph 35, Defendant admits that no
20 benefits were payable under the Policy because it was not in force at the time of the
21 Insured's death. Except as so specifically admitted, Defendant denies the allegations
22 of this paragraph.

23 36. Referring to the allegations of paragraph 36, Defendant denies the
24 allegations of this paragraph.

25 37. Referring to the allegations of paragraph 37, Defendant admits that
26 Plaintiff seeks to represent the putative class described therein. Defendant further
27 admits that the notice obligations are as set forth in the Statutes, and not as Plaintiff
28 has sought to portray them and that the Statutes do not apply to the putative class set

1 forth in the Complaint. Except as so specifically admitted, Defendant denies the
2 allegations of this paragraph and denies that the putative class as described herein is
3 certifiable, including specifically that this putative class cannot be certified with
4 respect to policies issued or delivered outside of California.

5 38. Referring to the allegations of paragraph 38, Defendant admits the
6 allegations of this paragraph.

7 39. Referring to the allegations of paragraph 39, Defendant denies the
8 allegations of this paragraph.

9 40. Referring to the allegations of paragraph 40, Defendant denies the
10 allegations of this paragraph.

11 41. Referring to the allegations of paragraph 41, Defendant denies the
12 allegations of this paragraph.

13 42. Referring to the allegations of paragraph 42, Defendant admits the
14 allegations of this paragraph.

15 43. Referring to the allegations of paragraph 43, Defendant denies the
16 allegations of this paragraph.

17 44. Referring to the allegations of paragraph 44, Defendant denies the
18 allegations of this paragraph.

19 45. Referring to the allegations of paragraph 45, Defendant denies the
20 allegations of this paragraph.

21 46. Referring to the allegations of paragraph 46, Defendant denies the
22 allegations of this paragraph.

23 47. Referring to the allegations of paragraph 47, Defendant incorporates by
24 reference paragraphs 1 through 46, above, as though fully set forth herein.

25 48. Referring to the allegations of paragraph 48, Defendant admits that it
26 issued life insurance policies to policyholders, but denies that any policyholders were
27 identified in the class alleged in the Complaint. Except as so specifically admitted,
28 Defendant denies the allegations of this paragraph.

1 49. Referring to the allegations of paragraph 49, Defendant denies the
2 allegations of this paragraph, including subparagraphs (a) through (c).

3 50. Referring to the allegations of paragraph 50, Defendant denies the
4 allegations of this paragraph.

5 51. Referring to the allegations of paragraph 51, Defendant incorporates by
6 reference paragraphs 1 through 50, above, as though fully set forth herein.

7 52. Referring to the allegations of paragraph 52, Defendant alleges that this
8 paragraph sets forth solely a legal conclusion, not facts, as to which no response is
9 required. Except as so specifically alleged, Defendant denies the allegations of this
10 paragraph.

11 53. Referring to the allegations of paragraph 53, Defendant denies the
12 allegations of this paragraph.

13 54. Referring to the allegations of paragraph 54, Defendant denies the
14 allegations of this paragraph, including subparagraphs (a) through (e). Defendant
15 further notes that the references to 30 Day Notice and Third-Party Notice are errors
16 in the allegations and do not apply in this action.

17 55. Referring to the allegations of paragraph 55, Defendant denies the
18 allegations of this paragraph.

19 56. Referring to the allegations of paragraph 56, Defendant denies the
20 allegations of this paragraph.

21 57. Referring to the allegations of paragraph 57, Defendant denies the
22 allegations of this paragraph.

23 58. Referring to the allegations of paragraph 58, Defendant denies the
24 allegations of this paragraph.

25 59. Referring to the allegations of paragraph 59, Defendant denies the
26 allegations of this paragraph.

27

28

1 **PRAYER FOR RELIEF**

2 Defendant denies that Plaintiff and the putative Class are entitled to any of the
3 relief sought in the Complaint and/or in the Prayer for Relief.

4
5 **DENIAL OF ALLEGATIONS NOT EXPRESSLY ADMITTED ABOVE**

6 Defendant denies all allegations of the Complaint not expressly and specifically
7 admitted above.

8
9 **AFFIRMATIVE DEFENSES**

10 **FIRST AFFIRMATIVE DEFENSE**

11 **(Failure to State a Claim for Relief)**

12 1. The Complaint, and each cause of action therein, fails to state a claim
13 upon which relief may be granted against Defendant.

14 **SECOND AFFIRMATIVE DEFENSE**

15 **(Failure to Mitigate)**

16 2. Plaintiff, putative class members, policyholders and/or insureds have
17 failed, refused, and/or neglected to take reasonable and/or necessary steps to mitigate
18 any damages allegedly incurred as a result of Defendant's alleged conduct, thus
19 barring, or at least reducing, any recovery in this action.

20 **THIRD AFFIRMATIVE DEFENSE**

21 **(Waiver)**

22 3. Plaintiff, putative class members, policyholders and/or insureds have
23 waived their right, if any, to seek the relief requested in the Complaint.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 **(Estoppel)**

26 4. Plaintiff, putative class members, policyholders and/or insureds by their
27 acts and conduct, are estopped from alleging any and all claims asserted in the
28 Complaint.

FIFTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

5. All claims for relief alleged in the Complaint, and any or all potential recovery sought are barred by the applicable statutes of limitations, including but not limited to California Code of Civil Procedure sections 312, 335.1, 337(a), 338 (including but not limited to subdivisions (a) and (d)), 339(1), 340(a), 343, and any applicable contractual limitations period or applicable common and statutory law.

SIXTH AFFIRMATIVE DEFENSE

(Reasonableness and Good Faith)

6. At all relevant times herein, Defendant acted honestly, in good faith and reasonably under the facts and circumstances known to it. Therefore, Plaintiff, putative class members, policyholders and/or insureds are not entitled to any damages for breach of the implied covenant of good faith and fair dealing.

SEVENTH AFFIRMATIVE DEFENSE

(Genuine Dispute)

7. Defendant had and continues to have a good faith belief that California Insurance Code Sections 10113.71 and 10113.72 did not apply to life insurance policies issued or delivered prior to the Statutes' January 1, 2013 Effective Date, including but not limited to the policies at issue herein. Because there exists a genuine dispute over whether the Statutes apply to the policies issued or delivered in California or in other states prior to the Statutes' Effective Date, the second claim for "breach of the implied covenant of good faith and fair dealing in insurance policy" fails as a matter of law. Additionally, to the extent that there are other reasons for the termination or lapsing of any policies at issue in this action, the genuine dispute doctrine applies to any and all such termination or lapsing of such policies.

EIGHTH AFFIRMATIVE DEFENSE

(Unconstitutional Impairment of Contract)

8. To the extent that California Insurance Code sections 10113.71 and

1 10113.72 are interpreted to apply to life insurance policies issued or delivered prior
 2 to the Statutes' January 1, 2013 Effective Date, including but not limited to the
 3 policies at issue herein, such an interpretation is unconstitutional insofar as the United
 4 States and California Constitutions both prohibit the passage of any law impairing the
 5 obligation of Contracts. *See* U.S. Const. Art. I, § 10, Cl. 1 ("No State shall...pass
 6 any...ex post facto Law...or Law impairing the Obligation of Contracts."); *see also*
 7 Cal. Const., Art. I, § 9 ("A bill of attainder, ex post facto law, or law impairing the
 8 obligation of contracts may not be passed.").

9 **NINTH AFFIRMATIVE DEFENSE**

10 **(Lack of Standing)**

11 9. As policy beneficiaries, rather than policy holders, Plaintiff and putative
 12 class members lack standing to assert some or all of the claims for relief asserted in
 13 the Complaint. Plaintiff and putative class members lack standing for additional
 14 reasons, including but not limited to their lack of damages or injury in fact resulting
 15 from the alleged violation of the Statutes.

16 **TENTH AFFIRMATIVE DEFENSE**

17 **(Superseding/Intervening Cause)**

18 10. The actions of the policyholders and/or the insureds of the policy that are
 19 the subject of this action were the proximate cause of those policies lapsing,
 20 constituting an intervening or superseding cause, and precluding liability of
 21 Defendant.

22 **ELEVENTH AFFIRMATIVE DEFENSE**

23 **(Inadequate Class Allegations)**

24 11. Plaintiff's class action allegations should be dismissed since Plaintiff is
 25 unable to demonstrate the requisite class interest to maintain a class action, or
 26 otherwise satisfy the prerequisites for class certification pursuant to Federal Rule of
 27 Civil Procedure 23 and the case law construing that statute.

28

TWELFTH AFFIRMATIVE DEFENSE

(Class Unmanageable)

12. Plaintiff's class action allegations should be dismissed since Plaintiff is unable to demonstrate a manageable class to maintain a class action.

THIRTEENTH AFFIRMATIVE DEFENSE

(Class Representatives Not Typical)

13. Plaintiff's class action allegations should be dismissed since Plaintiff lacks standing to represent the unnamed class members, or the claims of Plaintiff are not typical of the unnamed class members.

FOURTEENTH AFFIRMATIVE DEFENSE

(Class Action Not Superior Vehicle)

14. Plaintiff's class action allegations should be dismissed since a class action is not a superior vehicle to other methods of fairly and efficiently resolving the claims alleged herein.

FIFTEENTH AFFIRMATIVE DEFENSE

(No Private Right of Action)

15. California Insurance Code Sections 10113.71 and 10113.72 do not create a private right of action for recovery against an insurer like Defendant.

SIXTEENTH AFFIRMATIVE DEFENSE

(Statutes Are Not to Be Applied Retroactively)

16. California Insurance Code sections 10113.71 and 10113.72 do not apply to life insurance policies issued or delivered prior to the Statutes' January 1, 2013 Effective Date, and accordingly neither Plaintiff nor the class she seeks to represent can establish any claim for breach of contract or breach of the implied covenant of good faith and fair dealing.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Offset as to Any Unpaid Premiums from Death Benefits)

17. To the extent that California Insurance Code Sections 10113.71 and

1 10113.72 apply with respect to any of the life insurance policies at issue in this action,
 2 and benefits are to be paid thereunder to any beneficiary(ies) even though the
 3 policy(ies) had lapsed, then Defendant is entitled to an offset for any premiums that
 4 would have been due and owing between the date of the last paid premium and the
 5 death of the insured.

6 **EIGHTEENTH AFFIRMATIVE DEFENSE**

7 **(Offset as to Any Unpaid Premiums if Policy Reinstated)**

8 18. To the extent that California Insurance Code Sections 10113.71 and
 9 10113.72 apply with respect to any of the life insurance policies at issue in this action,
 10 and coverage is reinstated under a policy where the insured is still alive, then
 11 Defendant is entitled to receive the payment (or an offset of any monies payable to
 12 the insured or policy owner) for any premiums that would have been due and owing
 13 between the date of the last paid premium and the date that coverage is reinstated.

14 **NINETEENTH-FIRST AFFIRMATIVE DEFENSE**

15 **(Failure to Perform)**

16 19. Plaintiff and the class of persons Plaintiff seeks to represent failed to
 17 meet or perform all necessary covenants, conditions, and promises required to be
 18 performed in accordance with the terms and conditions of the subject insurance
 19 policies.

20 **TWENTIETH AFFIRMATIVE DEFENSE**

21 **(Claims Barred by Policy)**

22 20. Plaintiff's claims under the Policy, including the class claims, which
 23 arise out of the allegations set forth in the Complaint, are barred and precluded by the
 24 provisions, terms, conditions, exclusions, endorsements, and limitations under the
 25 subject policies.

26 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

27 **(Reservation of Rights)**

28 21. The Complaint does not describe the claims made against Defendant

1 with sufficient particularity to enable Defendant to determine if additional defenses
2 exist in response to Plaintiff's claims. Defendant therefore reserves its right to raise
3 additional affirmative defenses and to supplement those asserted herein upon
4 discovery of further information regarding the claims and upon further investigation.

5
6 WHEREFORE, Defendant prays for judgment as follows:

- 7 1. That Plaintiff be granted no relief in this action;
8 2. That judgment be entered against Plaintiff and in favor of Defendant;
9 3. For costs of suit incurred herein, including such reasonable attorneys'
10 fees as may be allowed by case or statutory authorities and/or
11 agreement of the parties; and
12 4. For such other and further relief as this Court may deem just and
13 proper.

14
15
16 DATED: April 17, 2020

HINSHAW & CULBERTSON LLP

17 By: /s/ Larry M. Golub

18 Larry M. Golub
19 Vivian I. Orlando
20 Zina Yu
21 Attorneys for Defendant
22 Defendant John Hancock Life
23 Insurance Company (U.S.A.), successor
24 in interest to John Hancock Life
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