

COPY

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF SUFFOLK  
SUPERIOR COURT, DEPARTMENT OF THE TRIAL COURT

NEUGEN, LLC, )  
Plaintiff, )  
v. )  
MASSACHUSETTS MUTUAL LIFE )  
INSURANCE COMPANY, )  
Defendant. )

Civil Action No. 2484CV0811A

**COMPLAINT AND  
JURY DEMAND**

**COMPLAINT**

Plaintiff NeuGen, LLC, for its Complaint against Defendant Massachusetts Mutual Life Insurance Company, alleges:

**INTRODUCTION**

1. NeuGen, LLC (“NeuGen” or “Plaintiff”) brings the instant claims against Massachusetts Mutual Life Insurance Company (“MassMutual” or “Defendant”) due to MassMutual’s actions in connection with the partial termination of a retirement plan sponsored by NeuGen containing retirement benefits for NeuGen employees.

2. NeuGen sponsors a 401(k) plan for its employees (the “Plan”) and contracted with MassMutual for MassMutual to manage and invest some of the 401(k) Plan assets in its stable value fund, to provide a stable investment vehicle for the benefit of Plan participants, who relied on this stability to protect their retirement funds.

3. The stable value fund was designed to be the most conservative investment option for Plan participants, to protect their retirement investments against market fluctuations by providing participants a stable and predictable book value at which they can withdraw their funds

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for retirement.

4. Prior to August 2022, approximately 111 NeuGen employees and 126 NeuGen retirees participated in the MassMutual Stable Value Core investment option. In total, NeuGen Plan participants held approximately \$21.5 million in the MassMutual Stable Value Core. The MassMutual Stable Value Core was the single biggest asset in the Plan with the most participants of any other investment option participating.

5. Individual active participants had a range of investments as high as \$850,000. On average, active employee participants held a balance of \$57,000 in the option while retirees held an average of \$117,000. Several participants held MassMutual Stable Value Core as their exclusive 401(k) investment option.

6. When NeuGen terminated certain employees in August 2022 due to financial conditions, MassMutual decided to terminate the parties' agreement entirely and force a liquidation of the Plan's assets at a depressed Market Value – causing Plan participants to lose the benefit of the Book Value, which caused Plan participants to incur unnecessary losses to their retirement funds.

7. In the aggregate, NeuGen participants saw their retirement balances drop by nearly \$3 million as a result of MassMutual's actions to terminate its Agreement with NeuGen and force employees and retirees to accept a Market Value alternative to the Book Value they had been long told was in their account.

8. At the same time, MassMutual benefitted from its bad faith actions due to the unique circumstances of the market and the poor performance of the fund, which it allowed to get these below-water funds off of its books.

9. For the reasons explained more fully below, NeuGen has suffered damages due to

MassMutual's bad faith breach of its contractual obligations and is entitled to relief.

### **PARTIES**

10. NeuGen is a Wisconsin corporation with its principal place of business at 33 Nob Hill Road, Madison, Wisconsin 53713.

11. MassMutual is a Massachusetts corporation with its principal place of business at 1295 State Street, Springfield, Massachusetts 01111 and a headquarters at 10 Fan Pier Boulevard, Boston, Massachusetts 02210.

### **JURISDICTION AND VENUE**

12. This Court has jurisdiction over the Defendant pursuant to Mass. G.L. ch. 223A, §§ 2, 3 because Defendant is organized under the laws of the Commonwealth, maintains a principal place of business in the Commonwealth, and regularly does business or is engaged in a persistent course of conduct in the Commonwealth.

13. Venue is proper in Suffolk County pursuant to Mass. G.L. ch. 223, § 8 because Defendant transacts business in Suffolk County and has a usual place of business there.

### **FACTS**

#### **I. Background**

14. The Wisconsin Education Association Council founded WEA Insurance Corporation ("WEA") in 1970 to serve public employers, their staff and families throughout the state of Wisconsin. WEA provided group health and life insurance to public employers throughout Wisconsin. WEA's members include public school teachers and other state employees.

15. Among other things, WEA established a 401(k) plan, to provide retirement benefits for teachers and other state employees who were WEA members.

16. WEA entered into an agreement with MassMutual, dated December 13, 2013,

whereby MassMutual agreed to manage and invest funds on behalf of the WEA Trust Employees 401(k) Plan in MassMutual's stable market fund (the "Agreement"). The Agreement was amended and restated, effective as of May 24, 2014. A true and accurate copy of the Agreement, as restated, along with amendments, is attached hereto as Exhibit 1.

17. After 2013, WEA created a separate service organization called NeuGen LLC ("NeuGen"). WEA transferred all of WEA's employees to NeuGen, such that NeuGen was the employer of the individuals following the transfer. In addition, WEA transferred all of its benefit plans to NeuGen. Consequently, NeuGen became the plan sponsor and plan administrator for the NeuGen LLC Employees' 401(k) Plan ("Plan"). Further, all agreements related to the Plan were transferred to NeuGen, and thus NeuGen was the successor to WEA with respect to the Agreement.

18. NeuGen invested Plan funds in MassMutual's SAGIC Investment Option (the "SAGIC 21030 Fund" or "Fund") for the benefit of the Plan and its participants. (Agreement, § 1.02).

19. The SAGIC Investment Option is a stable value fund which is designed and intended to be the most conservative investment option for Plan participants to protect their retirement investments.

20. The MassMutual Stable Value Core fact sheet provided to NeuGen by MassMutual states that the "Stable Value Structure Benefits" include a "guarantee of principal," and it lists the "Expected Benefits of Stable Value Product" to include:

- Principal Preservation
- Seeks steady, positive returns in excess of money market rates
- Insulation of participant account values from market fluctuation

21. In August of 2022, NeuGen announced plans to lay off at least 110 of its employees, due to a change in its business model and product offerings.

22. Upon NeuGen’s employee layoff, MassMutual declared a total termination of the Agreement, and distributed the Fund to the Plan and participants at the Market Value.

23. At the time of the termination, the Market Value of the Fund had decreased by a significant amount and was well below its Book Value. MassMutual nevertheless proceeded to distribute the Fund at the depressed Market Value, causing damage to the Plan and its participants.

24. Individual participant losses – the amount that their balance decreased from what they had been told was in their account prior to termination and what was eventually transferred – exceeded \$150,000 in some cases. Dozens of participants saw tens of thousands of their retirement savings evaporate overnight – many of whom were also losing their long-held positions at NeuGen.

25. The Plan and participants further incurred losses based upon the manner in which MassMutual calculated the Market Value upon termination and, specifically, in how MassMutual counted withdrawals against the Plan and other Plan participants rather than spread losses amongst the entire Separate Investment Account, as detailed more fully below.

## **II. Relevant Provisions of the Agreement**

### **A. The SAGIC Investment Option**

26. Under the Agreement, the NeuGen Plan’s funds were invested in the SAGIC Investment Option. (Agreement, § 1.02).

27. The Agreement defines the “SAGIC Investment Option” as the “guaranteed separate investment account investment option, which invests in Separate Investment Account

[BE6]<sup>1</sup> and that is made available under this SAGIC Schedule.” (Agreement, SAGIC Schedule<sup>2</sup> § F1.01(K)).

28. In turn, the “Separate Investment Account [BE6]” is an investment account “established and maintained by MassMutual under the laws of the Commonwealth of Massachusetts.” (Agreement, § F1.01(L)).

29. The Agreement defines two types of account balances: the Book Value Account Balance and the Market Value Account Balance (Agreement, § F1.01(B), (G)).

30. The Book Value Account is defined as “an account, measured in units, maintained to determine the amount of the Investor’s interest in the SAGIC Investment Option[.]” (Agreement, SAGIC Schedule § F1.01(A)).<sup>3</sup>

31. The Market Value Account is defined as “an account, measured in units, maintained to determine the amount of the Investor’s interest in Separate Investment Account [BE6].” (Agreement, SAGIC Schedule § F1.01(F)).

## **B. Termination Provisions**

32. Section 4 of the Agreement governs how the Agreement may be terminated. (Agreement, § 4).

33. Specifically, the Agreement, at § 4.01A, provides that MassMutual “will fully or partially terminate this Agreement under the following circumstances”:

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<sup>1</sup> The Agreement and SAGIC Schedule refer to “Separate Investment Account E5.” However, Amendment No. SV1, executed November 9, 2020, provides: “effective as of December 18, 2020, said Group Annuity Investment Agreement is hereby amended by striking all references to Separate Investment Account E5 and substituting therefor Separate Investment Account BE6. *See* Agreement, at Amendment SV1.

<sup>2</sup> The SAGIC Schedule was revised and replaced by Amendment No. 4, executed effective March 1, 2019. *See* Agreement, at Amendment 4.

<sup>3</sup> Under the Agreement, the “Investor” is listed as “WEA,” such that NeuGen is the “Investor” under the Agreement as WEA’s successor.

- (1) The Investor provides Effective Communication to MassMutual that the Agreement will be fully or partially terminated as of a date selected by the Investor, which will be no earlier than thirty (30) days after the Investor provides Effective Communication to MassMutual.
- (2) The Internal Revenue Service determines that the Plan no longer meets the requirements of Code section 401(a), 403(a), 414(d), 414(e) or any other applicable Code provision.
- (3) There is a termination or partial termination of the Plan.
- (4) The Investor breaches a provision of the Agreement.
- (5) MassMutual provides Effective Communication to the Investor that the Agreement will be terminated as of a date at least ninety (90) days after MassMutual provides Effective Communication to the Investor.

34. The Agreement provides that after the Termination Date, “except with the mutual agreement of MassMutual and the Investor, MassMutual shall not accept Deposits, permit Transfers or make Distributions.” (Agreement, § 4.02).

35. Upon termination of the Agreement, Section 5 of the Agreement provides for termination payment using a payment option set forth in the Agreement or “such other payment option as is mutually agreed upon by MassMutual and Investor.” (Agreement, § 5.01). The Agreement provides that “In the event no option is elected within seven (7) days of the Termination Date, the applicable Lump-sum Payment Option will be deemed to have been elected by the Investor.” *Id.*

36. The Termination Payment Options specifically set forth in the Agreement are an Annuity Purchase Payment Option (§ 5.02), a Lump-Sum Payment Option (§ 5.03), and a Guaranteed Interest Contract Payment Option (§ 5.04).

37. Section 5.05 of the Agreement states that in the event of a lump-sum payment, the Investor will provide to MassMutual in the Effective Communication a designation of the trustee that is to receive the payment and certify that the benefits will be used to pay benefits to Plan participants.

38. The SAGIC Schedule, at section F1.04, provides additional termination events of

the SAGIC Investment Option. Under such termination provisions, the Agreement provides that MassMutual will transfer the Market Value Account Balance to another investment option under the Agreement.

39. The Agreement is subject to the laws of the State of Wisconsin. (Agreement, p. 1).

### **III. MassMutual's Termination of the Agreement and Liquidation of the Fund**

40. On or about August 18, 2022, NeuGen notified MassMutual that NeuGen had laid off 110 of its employees, which may have constituted a partial plan termination. NeuGen stated that the company would remain active and requested that MassMutual work with it to ensure a smooth process for this change in status.

41. In response to NeuGen's notice of the partial plan termination, MassMutual responded to NeuGen that they would review the contractual provisions and would get back to NeuGen regarding the effective communication requirement.

42. On or about August 29, 2022, MassMutual verbally informed NeuGen that it would fully terminate the Agreement and provide a lump sum distribution to NeuGen on September 6, 2022, which was a mere five business days after MassMutual's verbal communication to NeuGen and right after the Labor Day holiday weekend.

43. On August 29, 2022, NeuGen requested that MassMutual reconsider its decision to liquidate the assets of the Fund and delay the distribution, so that NeuGen could determine the best path forward with respect to a successor investment fund for the assets, such that NeuGen could fulfill its fiduciary obligations in the face of a forced liquidation of the Fund.

44. Immediately in response, on August 29, 2022, MassMutual provided an "Effective Communication" (a term defined in the Agreement, at § 8.08). The Effective Communication informed NeuGen that MassMutual was "invoking its right to terminate SAGIC 21030 in its

entirety.” The Effective Communication stated that the Termination Date was August 18, 2022, which was 11 days prior to the date of the Effective Communication.

45. Even though the layoff of 110 employees could have resulted in a partial termination of the Plan, MassMutual elected to fully terminate the Agreement and make a lump-sum payment. MassMutual did not provide any other distribution options or alternatives with respect to the assets in the Fund other than a forced lump-sum distribution to NeuGen, even after NeuGen objected to the lump sum payment that MassMutual was forcing upon NeuGen and requested time to consider other options.

46. In this same Effective Communication, MassMutual informed NeuGen that it would agree to delay the liquidation of the Fund until September 30, 2022 and would pay the Market Value Account Balance in a lump sum payment on October 3, 2022.

47. The Effective Communication also stated: “Please note that any Plan fiduciary instruction or other action that delays MassMutual’s payment of the Market Value Account Balance may cause a further decrease to the market value of the account which would result in a lower payment by MassMutual to the Contractholder in connection with the contract termination.”

48. Due to the market conditions at the time and the performance of MassMutual’s investment fund, including the rising interest rate environment, the Market Value of the Fund was well below the Book Value at the time MassMutual decided to effectuate a full termination and liquidate the Plan funds.

49. MassMutual initially waived the provision of the Agreement that no distributions were to be made after Termination and agreed to allow Plan participants to take distributions at Book Value through September 30, 2022, so that participants could avoid losses associated with MassMutual’s lump sum distribution at the depressed Market Value upon the termination.

50. NeuGen notified all Plan participants of the impending treatment of the Plan's assets and the lump sum distribution that was to be forced by MassMutual at Market Value, with a liquidation date of September 30, 2022. NeuGen relied on MassMutual's agreement that it would delay the forced lump sum distribution until September 30, 2022, and indicated such timing to Plan participants.

51. Upon receipt of notice that the Fund was to be liquidated at Market Value on September 30, many Plan participants chose to withdraw their retirement savings at Book Value, to avoid the market losses.

52. As Plan participants took distributions prior to the forced liquidation, the assets in the Fund decreased, and the Fund experienced a significant reduction in the Market Value / Book Value ("MV/BV") ratio. As of September 30, 2022, MassMutual reported a MV/BV ratio of 85.50% specific to the NeuGen Fund.

53. On or about September 23, 2022, MassMutual unilaterally decided to restrict all withdrawals from the Fund and prohibited additional Plan participants from withdrawing their savings from the Fund. This action by MassMutual precluded additional participants from withdrawing their retirement savings at Book Value as previously represented, and left them with the lower Market Value distribution.

54. MassMutual proceeded to liquidate the Plan's SAGIC Investment Option on September 30, 2022, and paid the Market Value Account Balance in a lump sum payment to NeuGen on October 3, 2022.

#### **IV. MassMutual's Termination of the Agreement and Distribution was Wrongful**

55. Upon receiving notification of NeuGen's layoffs, MassMutual forced a full termination of the Agreement and effected a lump sum distribution of Plan assets based upon the

Market Value of the Fund, causing the Plan and its participants to incur significant losses.

56. MassMutual should not have fully terminated the Agreement and forced a distribution, at a time when the Market Value of MassMutuals' funds was far below their Book Value, due to market conditions and the poor performance of MassMutuals' investments.

57. MassMutual failed to consider other options that could have avoided or diminished the losses to Plan participants, even after NeuGen objected to the lump sum and wanted to discuss other approaches, including: opting not to terminate the Agreement; effecting only a partial termination of the Agreement under Section 4.01; providing an option for a different distribution method as specifically set forth in Section 5.01 of the Agreement, including Section 5.04 which would have preserved the Book Value; providing a different investment option under the Agreement as set forth in Section F1.04 of the SAGIC Schedule; or delaying distribution further until the market rebounded or so that Plan participants could continue to withdraw funds at Book Value and NeuGen could find a replacement fund.

58. The Agreement required that, in the event of any change in Plan operations or other change or amendment to the Plan, MassMutual was required to "determine whether it can continue to operate the Agreement under its current terms," and, if MassMutual determines that there is an "adverse effect," to "propose an amendment." (Agreement, § 6.02).

59. MassMutual did not take any steps to determine whether it could "continue to operate the Agreement under its current terms." Nor did MassMutual propose any amendment to the Agreement as required pursuant to the Agreement. (Agreement, § 6.02).

60. MassMutual did not provide any election for NeuGen to make, as required under Section 5.01 of the Agreement. Rather, it provided an Effective Communication with a retroactive Termination Date of 11 days prior, thus not providing at least seven days for NeuGen to confer

and make a distribution election as was provided under Section 5.01 of the Agreement.

61. Because of the unique factors in the market at the time, including rising interest rates, MassMutual knew that the Market Value of the Fund was lower than the Book Value. MassMutual dumped its market losses onto Plan participants, thus benefitting from this distribution at Market Value at the expense of the Plan participants.

62. MassMutual acted in its own interest and quickly distributed the funds to benefit itself and failed to consider any other options that would have mitigated the losses to the Plan and its participants.

63. MassMutual did not request a certification as required by Section 5.05 of the Agreement for a Lump Sum Payment.

64. Given that MassMutual had already agreed to extend the date for distribution to September 30, 2022, MassMutual could have further postponed distribution in the interests of Plan participants, either until the market adjusted itself, other options were explored, or participants could withdraw their money at Book Value should they so choose, but MassMutual failed to do so. Instead, MassMutual unilaterally ceased allowing participants to withdraw their money at Book Value prior to September 30, 2022.

65. MassMutual's actions breached the terms of the Agreement and further contradicted the intent of the Agreement that distribution at Market Value upon termination would inure to the benefit of Plan participants, who it was assumed would benefit from the growth of their investments over time.

66. MassMutual took advantage of the circumstance of the NeuGen layoffs to impose a complete termination of the Agreement which enabled MassMutual to get off its books the liability for the investments which were below Market Value and Book Value, while the Plan and

its participants absorbed the losses.

67. The Plan and its participants incurred significant losses due to MassMutual's termination of the Agreement and the timing and manner in which MassMutual terminated the Agreement and paid the Market Value Account Balance.

#### **V. MassMutual Improperly Calculated the Market Value**

68. MassMutual also breached its contractual obligations in its calculation of the Market Value of the Fund, as MassMutual failed to calculate the Market Value across the entire Separate Investment Account BE6, as required by the Agreement.

69. Section 5.03 of the Agreement provides that the lump-sum payment will be the "Market Value Account Balance of the SAGIC Investment Option." (Agreement, § 5.03).

70. The Agreement clearly required that the Market Value Account Balance of the Plan participants be determined based upon the amount in Separate Investment Account BE6 – in other words, based upon *all* investments in that Fund, and not reduced by the Plan's individual experience and withdrawals. (Agreement, SAGIC Schedule § F1.01(G)).

71. This is confirmed by Section F1.02(A) of the SAGIC Schedule, which provides that the value of Investor's Market Value Account (e.g., the dollar amount of the Investor's interest in Separate Investment Account BE6), is determined based upon the "Unit Value for Separate Investment Account [BE6]." (Agreement, SAGIC Schedule § F1.02A). In turn, "Unit Value" is defined as "the Separate Investment Account Balance . . . divided by the total number of units outstanding in the Market Value Account and in all other Market Value Accounts maintained with respect to Separate Investment Account [BE6] . . ." (Agreement, SAGIC Schedule § F1.01(N)).

72. The "Market Value Account" is defined as "an account, measured in units, maintained to determine the amount of the Investor's interest in Separate Investment Account

[BE6],” e.g., the entire account maintained by MassMutual. (Agreement, SAGIC Schedule § F1.01(F), (L)).

73. In contrast, the “Book Value Account” is defined as “an account, measured in units, maintained to determine the amount of the Investor’s interest in the SAGIC Investment Option,” e.g., the “separate investment account investment option” for the Plan. (Agreement, SAGIC Schedule § F1.01(A), (K)).

74. Each of these provisions make clear that the valuation of Market Value is based upon all units in the Separate Investment Account BE6, not just NeuGen’s interest in the Separate Investment Account BE6. In other words, the Market Value is based on the Unit Value, and the Unit Value is the total account balance of the Fund divided by the total number of units in the Fund (i.e., “total number of units outstanding in the Market Value Account and in all other Market Value Accounts maintained with respect to the Separate Investment Account [BE6]...””) (Agreement, SAGIC Schedule § F1.01(N)). (Emphasis added).

75. However, when MassMutual made the final distribution, it purported to calculate the Market Value based solely upon the Market Value of the account that it attributed to NeuGen Plan participants, rather than the entire Separate Investment Account BE6.

76. This problem was compounded because each time a Plan participant withdrew money at Book Value, MassMutual used that withdrawal to decrease the value for remaining Plan participants, which reduced the MV/BV ratio for NeuGen’s investment in the Fund. MassMutual allowed some Plan participants to take withdrawals from the Fund at Book Value, but then shut down that opportunity earlier than it agreed to, which compounded the issue for other Plan participants.

77. Because MassMutual calculated the Lump Sum payment to be tied to the MV/BV

ratio of NeuGen's interest in the Fund, and each withdrawal by a Plan participant decreased the MV/BV ratio for the assets remaining in the Plan, the result was that the final distribution of remaining assets was significantly decreased.

78. MassMutual's distribution method contradicts the plain terms of the Agreement, which requires that distribution be made based upon the Market Value Account as defined in the Agreement, and there is nothing in Agreement that references Book Value, or a Market Value / Book Value ratio, with respect to termination payments, or that states that the Market Value is determined only with respect to the Plan and not the whole investment Fund.

79. Further, the Effective Communication provided that any further *delay* in payments could result in a lower Market Value, presumably based on the underlying investments. The Effective Communication did not indicate that any distribution of payments would also decrease the Market Value that resulted in a lower payment to NeuGen.

80. By not properly aggregating losses across the larger pool of MassMutual's investors, MassMutual counted each withdrawal by a Plan member against every remaining Plan member, which caused a significantly lower payment upon the final lump sum distribution.

81. MassMutual's actions caused the Plan and its remaining participants to incur significant losses to their retirement savings.

**COUNT I**  
**Breach of Contract**

82. Plaintiff repeats and realleges the allegations in paragraphs 1 - 81 above, as if fully set forth herein.

83. The Agreement was a valid and enforceable contract between NeuGen and MassMutual.

84. NeuGen entered the Agreement for the benefit of itself and the Plan and its

participants.

85. NeuGen has complied with all of its obligations under the Agreement and all conditions precedent.

86. MassMutual breached the Agreement in at least the following ways, as detailed above:

a. Fully terminating the Agreement and making a lump sum distribution of the Fund based on the depressed Market Value as of September 30, 2022, rather than effectuating a partial termination or considering other options mutually agreeable to NeuGen, without providing NeuGen with at least seven days to make an election for a different payment option, by providing the Effective Communication and unilaterally selecting the lump sum payment option eleven days after MassMutual determined the Termination Date, in breach of Sections 4.01, 5.01 and 6.02 of the Agreement;

b. Incorrectly calculating the Market Value based only upon NeuGen's participants' accounts and not across the entire Separate Investment Account BE6, and counting the withdrawals of Plan participants and reduced MV/BV ratio against the Fund assets in making this calculation, in breach of Section 5.03 and F1.02 of the Agreement.

87. MassMutual's breaches have caused damage to NeuGen and to the Plan and its participants.

88. As a result of MassMutual's breaches, Plaintiff has been damaged in an amount to be proven at trial.

**COUNT II**  
**Breach of the Duty of Good Faith and Fair Dealing**

89. Plaintiff repeats and realleges the allegations in paragraphs 1 - 88 above, as if fully set forth herein.

90. The Agreement was a valid and enforceable contract between NeuGen and MassMutual.

91. The Agreement contained an implied covenant of good faith and fair dealing and duty of cooperation that is implied in every contract.

92. MassMutual breached the implied covenant of good faith and fair dealing and duty of cooperation in its performance of its obligations under the Agreement, in at least the following ways, as detailed above:

a. MassMutual took advantage of the circumstance of the NeuGen layoffs to impose a complete termination of the Agreement at Market Value, at a time when the Market Value was significantly depressed, without considering any other options that would have mitigated losses to the Plan and its participants;

b. MassMutual distributed the funds at Market Value as of September 30, 2022, in order to get the liability for these underwater funds off its books while the Plan and its participants absorbed the losses, thus shifting losses onto the Plan and its participants;

c. MassMutual effectuated a full termination of the Agreement, rather than effectuating a partial termination or considering other options, alternative methods or timing of distribution, or proposing amendments that would have mitigated losses to the Plan and its participants, or requesting or allowing NeuGen to make an election with respect to another distribution or investment option;

d. MassMutual took these actions despite the fact that the intent and purpose of the Agreement was to provide Plan participants with a stable, reliable retirement investment with a “guarantee” of principal that would “insulat[e] participant account values from market fluctuations,” as advertised and represented by MassMutual, and in contradiction of the intent of the Agreement that distribution at Market Value upon termination of the Agreement would inure to the benefit of Plan participants, who it was assumed would benefit from the growth of their investments over time;

e. MassMutual initially agreed to allow Plan participants to withdraw money after the Termination Event and before distribution, but then abruptly ceased allowing withdrawals before the distribution date; this action further harmed the remaining Plan participants, in that (a) they were not allowed to make withdrawals at Book Value, and (b) MassMutual used the withdrawals by certain Plan participants after the Termination Event to decrease the MV/BV ratio, thus penalizing the remaining participants with an even lower payment upon final distribution.

f. MassMutual incorrectly calculated the Market Value based only upon NeuGen’s participants’ accounts and not across the entire Separate Investment Account BE6 and counted the withdrawals of Plan participants and reduced MV/BV ratio against the Fund assets in making this calculation.

93. MassMutual’s actions were not in compliance with the substance, intent or spirit of the Agreement, and prevented NeuGen and the Plan and participants from receiving the intended benefits of the bargain.

94. MassMutual benefitted as a result of these actions, at the expense of Plan participants.

95. As a result of MassMutual's actions, Plaintiff has been damaged in an amount to be proven at trial.

### **COUNT III**

#### **Violation of Massachusetts Consumer Protection Act (G.L. c. 93A)**

96. Plaintiff repeats and realleges the allegations in paragraphs 1 - 95 above, as if fully set forth herein.

97. MassMutual engaged in trade or business in the Commonwealth within the meaning of Mass. G.L. c. 93A, § 11.

98. MassMutual's conduct as alleged herein constitutes knowing unfair and deceptive acts and practices in violation of Mass. G.L. c. 93A.

99. Specifically, MassMutual knowingly disregarded its contractual arrangements with the intent to secure benefits for itself, at the expense of the Plan and Plan participants.

100. MassMutual engaged in unfair and deceptive practices in at least the following ways, as detailed above:

a. MassMutual took advantage of the circumstance of the NeuGen layoffs to impose a complete termination of the Agreement at Market Value, at a time when the Market Value was significantly depressed, without considering any other options that would have mitigated losses to the Plan and its participants;

b. MassMutual distributed the funds at Market Value as of September 30, 2022, in order to get the liability for these underwater funds off its books while the Plan and its participants absorbed the losses, thus shifting losses onto the Plan

and its participants;

c. MassMutual effectuated a full termination of the Agreement, rather than effectuating a partial termination or considering other options, alternative methods or timing of distribution, or proposing amendments that would have mitigated losses to the Plan and its participants, or requesting or allowing NeuGen to make an election with respect to another distribution or investment option;

d. MassMutual took these actions despite the fact that the intent and purpose of the Agreement was to provide Plan participants with a stable, reliable retirement investment with a “guarantee” of principal that would “insulat[e] participant account values from market fluctuations,” as advertised and represented by MassMutual, and in contradiction of the intent of the Agreement that distribution at Market Value upon termination of the Agreement would inure to the benefit of Plan participants, who understood that they would benefit from the growth of their retirement investments over time;

e. MassMutual initially agreed to allow Plan participants to withdraw money after the Termination Event and before distribution, but then abruptly ceased allowing withdrawals before the distribution date; this action further harmed the remaining Plan participants, in that (a) they were not allowed to make withdrawals at Book Value, and (b) MassMutual used the withdrawals by certain Plan participants after the Termination Event to decrease the MV/BV ratio, thus penalizing the remaining participants with an even lower payment upon final distribution.

f. MassMutual incorrectly calculated the Market Value based only

upon NeuGen's participants' accounts and not across the entire Separate Investment Account BE6 and counted the withdrawals of Plan participants and reduced MV/BV ratio against the Fund assets in making this calculation.

101. MassMutual's conduct was immoral, unethical, oppressive, extortionate and egregious, as MassMutual took advantage of the market circumstances to transfer its losses to the Plan and its participants, who had relied upon MassMutual to secure their retirement funds, at precisely the time that such participants were facing loss of employment and financial insecurity.

102. MassMutual's actions caused damage to the Plan and its participants who relied upon MassMutual to secure their retirement funds with a guarantee of principal. The loss to Plan participants was foreseeable as a result of MassMutual's conduct.

103. MassMutual benefitted as a result of its actions, at the expense of Plan participants.

104. The violation of chapter 93A by MassMutual was willful and knowing, such that NeuGen is entitled to double or treble damages under c. 93A § 11.

105. On August 3, Plaintiff sent to MassMutual a written demand for relief pursuant to Mass. G.L. c. 93A.

106. MassMutual is located in this Commonwealth and its conduct took place primarily and substantially in the Commonwealth.

107. As a result of MassMutual's actions, Plaintiff has been damaged in an amount to be proven at trial.

108. NeuGen is entitled to attorney's fees and costs, pursuant to c. 93A § 11.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that the Court grant it the following relief:

- a. Damages in an amount to be determined at trial for all losses resulting from Defendant's breaches;

- b. Double or treble damages under Mass. G.L. c. 93A § 11.
- c. Pre-judgment and post-judgment interest;
- d. Attorney's fees and costs;
- e. Such other and further relief as the Court may deem just and proper.

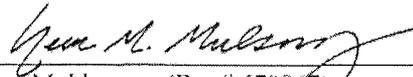
**JURY DEMAND**

Plaintiff demands a jury on all claims so triable.

Respectfully submitted,

For the Plaintiff NeuGen LLC,

By its attorneys,



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Sean Muldowney (Bar # 670967)  
Mallarie Simonds (Bar # 705207)  
HUSCH BLACKWELL, LLP  
One Beacon Street, Suite 1320  
Boston, MA 02108  
P: (617)598-6740  
F: (617)720-5092  
Sean.Muldowney@huschblackwell.com  
Mallarie.Simonds@huschblackwell.com

Melissa Z. Baris (pro hac vice forthcoming)  
HUSCH BLACKWELL, LLP  
8001 Forsyth Boulevard, Suite 1500  
St. Louis, MO 63105  
P: (314) 480-1500  
F: (314) 480-1505  
Melissa.Baris@huschblackwell.com

Counsel for NeuGen, LLC

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