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11 Attorneys for Plaintiff Cheri Poe, on behalf
12 of herself and all others similarly situated

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 CHERI POE, on behalf of herself and) CASE NO.: 8:21-cv-2065
16 all others similarly situated,)
17 Plaintiffs,) **FIRST AMENDED CLASS ACTION**
18 v.) **COMPLAINT FOR BREACH OF**
19) **CONTRACT**
20) **DEMAND FOR JURY TRIAL**
21 NORTHWESTERN MUTUAL LIFE)
22 INSURANCE COMPANY,)
23 Defendants.)

1 Plaintiff Cheri Poe, on behalf of herself and all others similarly situated,
2 brings this action against Defendant Northwestern Mutual Life Insurance Company
3 (“Northwestern Mutual”) as follows:

4 INTRODUCTION

5 1. Insurance Code sections 10113.71 and 10113.72 (“the Statutes”) require
6 insurers to: (1) provide a grace period of at least 60 days for nonpayment of premium;
7 (2) mail a notice of termination for any nonpayment of premium to the policy owner
8 and any other person designated to receive notice of the termination within 30 days of
9 the premium due date and at least 30 days prior to the termination date; and (3)
10 annually notify the policy owner of the right to change or make a designee for
11 receiving the notice. The Statutes became effective January 1, 2013 and their
12 requirements apply regardless of whether a policy was originally issued prior to that
13 date. *McHugh v. Protective Life Insurance Company* (2021) 12 Cal.5th 213.

14 2. Plaintiff became a beneficiary under two life insurance policies issued
15 to her husband in 2001 and 2002. Her husband dutifully paid premiums under the
16 policies for years but, due to an apparent mistake by his bank, missed his December
17 2017 payment. Despite the Statutes’ clear mandate, Northwestern Mutual failed to
18 observe a 60-day grace period, failed to provide the requisite notices, and terminated
19 the policies before Plaintiff’s husband unexpectedly died in late April of 2018. When
20 Northwestern Mutual was later advised of the death and queried regarding the status
21 of the policies, it stated that no coverage was in effect on the date of the insured’s
22 death and refused to allow a claim for the policies’ benefits. Plaintiff brings this class
23 action to remedy Northwestern Mutual’s violations of the Statutes and its wrongful
24 denial of life insurance claims for nonpayment of premium under policies issued in
25 California prior to January 1, 2013.

26 JURISDICTION AND VENUE

27 3. This Court has original jurisdiction of this case based on diversity of
28 citizenship. Plaintiff is a citizen of the State of California, Northwestern Mutual is

1 incorporated in and has its principal place of business in the State of Wisconsin, and
2 the amount in controversy between Plaintiff and Northwestern Mutual is in excess of
3 \$75,000.00. 28 U.S.C. § 1332.

4 4. The Court has personal jurisdiction over the Northwestern Mutual
5 because it has conducted business in California by insuring various persons in
6 California and administering claims for life insurance benefits due beneficiaries in
7 California, as alleged herein.

8 5. Plaintiff's claims arise out of a life insurance benefit denied in Orange
9 County, California by Northwestern Mutual. Thus, venue is proper in this judicial
10 district pursuant to 28 U.S.C. § 1391(b)(2).

11 **THE PARTIES**

12 6. Plaintiff Cheri Poe is an individual who, at relevant times, has resided
13 in Orange County, California.

14 7. Northwestern Mutual is an insurance company licensed to do business
15 in California and, at all relevant times, has been domiciled in Wisconsin.

16 **SUBSTANTIVE ALLEGATIONS**

17 8. In 2012, Assembly Bill 1747 was enacted and created the Statutes.
18 They became effective January 1, 2013.

19 9. Insurance Code section 10113.71 provides in pertinent part:

20 (a) Each life insurance policy issued or delivered in this state shall
21 contain a provision for a grace period of not less than 60 days from the
22 premium due date. The 60-day grace period shall not run concurrently
23 with the period of paid coverage. The provision shall provide that the
policy shall remain in force during the grace period.

24 (b)(1) A notice of pending lapse and termination of a life insurance
25 policy shall not be effective unless mailed by the insurer to the named
26 policy owner, a designee named pursuant to Section 10113.72 for an
27 individual life insurance policy, and a known assignee or other person
28 having an interest in the individual life insurance policy, at least 30
days prior to the effective date of termination if termination is for
nonpayment of premium.

1 10. Insurance Code section 10113.72 provides:

2 (a) An individual life insurance policy shall not be issued or delivered
3 in this state until the applicant has been given the right to designate at
4 least one person, in addition to the applicant, to receive notice of lapse
5 or termination of a policy for nonpayment of premium. The insurer
6 shall provide each applicant with a form to make the designation. That
7 form shall provide the opportunity for the applicant to submit the name,
8 address, and telephone number of at least one person, in addition to the
9 applicant, who is to receive notice of lapse or termination of the policy
10 for nonpayment of premium.

11 (b) The insurer shall notify the policy owner annually of the right to
12 change the written designation or designate one or more persons. The
13 policy owner may change the designation more often if he or she
14 chooses to do so.

15 (c) No individual life insurance policy shall lapse or be terminated for
16 nonpayment of premium unless the insurer, at least 30 days prior to the
17 effective date of the lapse or termination, gives notice to the policy
18 owner and to the person or persons designated pursuant to subdivision
19 (a), at the address provided by the policy owner for purposes of
20 receiving notice of lapse or termination. Notice shall be given by first-
21 class United States mail within 30 days after a premium is due and
22 unpaid.

23 11. In enacting the Statutes, the Legislature intended to address the problem
24 of long time policy owners—often seniors and/or those with health conditions—losing
25 life insurance policies “they had spent years paying for.”

26 Moreover, the legislative history provides several indications that the
27 Legislature enacted the grace period and notice protections in part to
28 protect *existing* policy owners from losing the important life insurance
 coverage they had spent years paying for. The Assembly
 and Senate materials on Assembly Bill No. 1747 (2011–2012 Reg.
 Sess.) include purpose and supporting argument statements like the
 following: “According to the author, the bill provides consumer
 safeguards from which *people who have purchased life insurance*
 coverage, especially seniors, would benefit. Under existing law,
 individuals can easily lose the critical protection of life insurance if a
 single premium is accidentally missed (even if they have been paying
 premiums on time for many years).

1 *McHugh v. Protective Life Insurance Company, supra*, 12 Cal.5th at 240-241.

2 12. Consistent with this purpose, the Statutes “appear to create a single,
3 unified pretermination notice scheme. This scheme appears to include three
4 components: (1) New and existing policy owners must have the opportunity to
5 designate additional people to receive a notice of termination (§ 10113.72, subds. (a),
6 (b)); (2) policy owners and any designees must receive notice within 30 days of a
7 missed premium payment, and any termination for nonpayment will not be effective
8 unless insurers send notice to these parties at least 30 days prior (§§ 10113.71, subd.
9 (b)(1), (3), 10113.72, subd. (c)); and (3) each policy has a 60-day grace period, which
10 lines up with the two 30-day notice windows (§ 10113.71, subd. (a)).” *McHugh v.*
11 *Protective Life Insurance Company, supra*, 12 Cal.5th at 240.

12 13. The Statutes’ requirements apply to policies issued in California prior to
13 the Statutes’ January 1, 2013 effective date.

14 We conclude that sections 10113.71 and 10113.72 apply to all
15 life insurance policies in force when these two sections went into
16 effect, regardless of when the policies were originally issued. This
17 interpretation fits the provisions’ language, legislative history, and
18 uniform notice scheme, and it protects policy owners — including
19 elderly, hospitalized, or incapacitated ones who may be particularly
vulnerable to missing a premium payment — from losing coverage,
consistent with the provisions’ purpose.

20 *McHugh v. Protective Life Insurance Company, supra*, 12 Cal.5th at 220.

21 14. Additionally, “[a]n insurer’s failure to comply with these statutory
22 requirements means that the policy cannot lapse.” *Thomas v. State Farm Life*
23 *Insurance Company* (9th Cir., Oct. 6, 2021, No. 20-55231) 2021 WL 4596286, at *1,
24 citing *McHugh v. Protective Life Insurance Company, supra*.

25 15. Northwestern Mutual has failed to comply with the Statutes for policies
26 issued in California before 2013. When premiums have become due on or after
27 January 1, 2013 under these policies, Northwestern Mutual has not provided a
28 prospective 60-day grace period and has not mailed a notice of termination within 30

1 days of the premium due date and at least 30 days before the termination date.

2 Additionally, Northwestern Mutual has not provided an annual notice of the right to
3 change or make a designee for receiving the notice of termination.

4 16. In connection with its disregard of the requirements of the Statutes for
5 policies issued before 2013, Northwestern Mutual has improperly denied claims for
6 deaths under those policies, refused to allow claims to be made, or just ignored its
7 responsibility to pay benefits for the deaths, on the basis the policies were terminated
8 for nonpayment of premium.

9 17. Northwestern Mutual issued two term life insurance policies on the life
10 of Scott Poe: Policy No. 15874906 in the amount of \$700,000 effective September 21,
11 2001 and Policy No. 16288790 in the amount of \$400,000 effective November 3,
12 2002. Northwestern agreed to pay the amounts of these policies in the event of Scott
13 Poe's death subject to the payment of premiums on their due dates.

14 18. Effective October 21, 2016, and after she was married to Scott Poe,
15 Plaintiff was designated as a beneficiary under the policies along with Scott Poe's
16 sons from a prior marriage, Zachary Poe and Jacob Poe.

17 19. Each policy has a "Grace Period" provision that states "[a] grace period
18 of 31 days will be allowed to pay a premium that is not paid on its due date." The
19 provision further states that "[i]f the premium is not paid within the grace period, the
20 policy will terminate as of the due date."

21 20. Northwestern Mutual set up a Northwestern Mutual Insurance Service
22 Account ("ISA") to process Scott Poe's monthly premiums that were to be deducted
23 from his checking account with Citibank. Northwestern Mutual took the monthly
24 premiums for the two policies from the ISA account on or about the 21st of each
25 month.

26 21. Scott Poe paid the monthly premiums on both policies until the
27 premiums due for December 21, 2017. Shortly before that date, and unbeknownst to
28 Scott Poe, Citibank froze his checking account.

1 22. On December 27, 2017, Northwestern Mutual sent Scott Poe a
2 “Returned Payment Notice” for both policies advising that “[c]overage remains in
3 force until the end of the grace period.” For Policy No. 15874906, the notice stated a
4 “Policy Paid to” date of December 21, 2017 and an “End of Grace Period” date of
5 January 21, 2018. For Policy No. 16288790, the notice stated a “Policy Paid to” date
6 of January 3, 2018 and an “End of Grace Period” date of February 3, 2018.

7 23. On January 24, 2018, Northwestern Mutual sent a notice to Scott Poe
8 advising that his ISA account had been closed and that if payment was not received by
9 the end of the grace period, the “non-payment provision becomes effective.” This
10 notice stated the same “Policy Paid to” and “End of Grace Period” dates as the
11 December 27, 2017 notice.

12 24. On January 24, 2018, Northwestern Mutual also sent a notice to Scott
13 Poe advising that the grace period for Policy No. 15874906 “expires on January 21,
14 2018 and the full protection under this policy terminates.” It further advised that he
15 could submit a payment without evidence of insurability if received by February 19,
16 2018.

17 25. On February 25, 2018, Northwestern Mutual sent Scott Poe two more
18 notices on Policy No. 15874906 stating that the policy had lapsed and additional
19 premium was due by March 21, 2018 to keep the policy in force.

20 26. On March 11, 2018, Northwestern Mutual sent Scott Poe two more
21 notices on Policy No. 16288790 stating that the policy had lapsed and additional
22 premium was due by April 3, 2018 to keep the policy in force.

23 27. These actions by Northwestern Mutal violated the Statutes.
24 Northwestern Mutual did not provide a prospective 60-day grace period from the
25 premium due date, did not mail notices of termination within 30 days of the premium
26 due dates and/or at least 30 days before the termination dates, and it did not provide an
27 annual notice of the right to change or make a designee for receiving the notice of
28 termination.

1 28. Scott Poe died on April 29, 2018.

2 29. Plaintiff and her co-beneficiaries, Zachary Poe and Jacob Poe,
3 consulted with an attorney who notified Northwestern Mutual of Scott Poe's death and
4 inquired about its position that the policies had terminated prior to the date of Scott
5 Poe's death.

6 30. After reviewing its records, Northwestern Mutual wrote a letter to the
7 attorney confirming its position that the policies terminated before Scott Poe's death
8 and advised that "no death claim is payable, and a claim package will not be provided
9 at this time."

10 31. Given Northwestern Mutual's refusal to entertain a formal claim,
11 Plaintiff took no further action.

12 32. Northwestern Mutual's failure to comply with Statutes means that the
13 policies issued to Scott Poe remained in force through the date of his death and
14 Northwestern Mutual's refusal to entertain any claim for death benefits under the
15 policies breached the terms of the policies and the obligations superimposed on those
16 terms by California law.

17 33. As a result of Northwestern Mutual's actions, Plaintiff has not received
18 the benefits due her under the policies.

19 34. Zachary Poe and Jacob Poe filed an action against Northwestern Mutual
20 and another defendant based on Northwestern Mutual's refusal to pay benefits to them
21 under the two policies. *Zachary Poe, et al. v. Northwestern Mutal Life Insurance*
22 *Company, et al.*, Orange County Superior Court Case No. 30-2019-011117036-CU-
23 BC-CJC. In that case, Northwestern Mutual took the position that it was not required
24 to comply with the Statutes because the policies were issued prior to 2013. In
25 September of 2021, Zachary Poe and Jacob Poe filed a request for dismissal with
26 prejudice and their case was subsequently dismissed. Plaintiff was not a party to that
27 litigation.

CLASS ACTION ALLEGATIONS

35. Plaintiff brings this action on behalf of herself and all others similarly situated as a class action pursuant to Federal Rules of Civil Procedure Rule 23. Pursuant to Rule 23(b)(3) and 23(b)(2), Plaintiff seeks certification of the following class:

All persons designated as beneficiaries under individual life insurance policies issued in California prior to January 1, 2013 by Northwestern Mutual Life Insurance Company that were terminated for nonpayment of a premium due on or after January 1, 2013 and where the deaths of the insureds occurred within four years of the filing of this action while the policies were in a terminated status.

36. Plaintiff and the class members reserve the right under Federal Rule of Civil Procedure Rule 23(c)(1)(C) to amend or modify the class to include greater specificity, by further division into subclasses, or by limitation to particular issues.

37. This action has been brought and may be properly maintained as a class action under the provisions of Federal Rules of Civil Procedure Rule 23 because it meets the requirements of Rule 23(a), Rule 23(b)(3), and Rule 23(b)(2).

A. Numerosity.

38. The potential members of the proposed class as defined are so numerous that joinder of all the members of the proposed class is impracticable. While the precise number of proposed class members has not been determined at this time, Plaintiff is informed and believes that there are a substantial number of individuals who were beneficiaries under Northwestern Mutual policies issued before 2013 who have been similarly affected.

B. Commonality.

39. Common questions of law and fact exist as to all members of the proposed class because the claims at issue arise out of Northwestern Mutual's uniform and systemic violation of the Statutes, as alleged herein

C. Predominant questions of law or fact.

40. Questions of law or fact common to class members predominate over any questions affecting only individual members because Northwestern Mutual's liability for violating the Statutes is based upon its admitted non-compliance, as alleged herein.

D. Typicality.

41. The claims of the named Plaintiff are typical of the claims of the proposed class. Plaintiff and all members of the class are similarly affected by Northwestern Mutual's wrongful conduct as described herein.

E. Adequacy of representation.

42. Plaintiff will fairly and adequately represent and protect the interests of the members of the proposed class. Counsel who represents Plaintiff is competent and experienced in litigating large and complex class actions, including insurance class actions.

F. Superiority of class action.

43. A class action is superior to all other available means for the fair and efficient adjudication of this controversy. Individual joinder of all members of the proposed class is not practicable, and common questions of law and fact exist as to all class members.

44. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

45. Northwestern Mutual has also acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

**FIRST CLAIM FOR RELIEF
BREACH OF CONTRACT**

46. Plaintiff and the class members repeat and re-allege each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.¹

47. As alleged herein, Northwestern Mutual issued two term life policies on the life of Scott Poe, Policy No. 15874906 in the amount of \$700,000 effective September 21, 2001 and Policy No. 16288790 in the amount of \$400,000 effective November 3, 2002. Northwestern agreed to pay the amounts of these policies in the event of Scott Poe's death subject to the payment of premiums on their due dates.

48. By operation of the Statutes, these life insurance policies and all the individual life insurance policies issued by Northwestern Mutual in California prior to 2013 provided a 60-day grace period and required Northwestern Mutual to give notice of any termination for nonpayment of premium within 30 days of the premium due date and at least 30 days before the termination date, and to provide an annual notice of the right to change or make a designee for receiving any notice of termination.

49. Scott Poe paid the monthly premiums on both policies until the premiums due for December 21, 2017. Shortly before that date, and unbeknownst to Scott Poe, Citibank froze his checking account.

50. As alleged herein, when Scott Poe and all other insureds covered under individual life insurance policies issued by Northwestern Mutual in California prior to 2013 missed a premium payment due on or after January 1, 2013, Northwestern Mutual failed to comply with the Statutes. Northwestern Mutual did not provide a prospective 60-day grace period from the premium due date, did not mail notices of

¹ On April 20, 2022, the Court granted Defendant's partial motion to dismiss as to the claims for Declaratory Relief and Violation of California's Unfair Competition Law. (Dkt. 34.) The Court cautioned that the failure to file an amended complaint could result in the dismissal of this action without prejudice. (Dkt. 34 at 8.) Plaintiff has no additional allegations to add and is hereby complying with the Court's April 20, 2022 Order by filing a First Amended Complaint that omits the dismissed claims.

1 termination within 30 days of the premium due dates and/or at least 30 days before the
2 termination dates, and it did not provide an annual notice of the right to change or
3 make a designee for receiving the notice of termination.

4 51. Despite its non-compliance with the Statutes, Northwestern Mutual
5 terminated the policies issued Scott Poe and other insureds covered under life
6 insurance policies issued by Northwestern Mutual in California prior to 2013 for
7 nonpayment of premium.

8 52. When presented with death claims or inquiries regarding the status of
9 such policies, Northwestern Mutual has affirmed its position that the policies
10 terminated for nonpayment of premium as it did with respect to its position on Scott
11 Poe's policies. Northwestern Mutual has also advised beneficiaries that it will not
12 entertain claims under the policies given its position regarding the policies' terminated
13 status.

14 53. Northwestern Mutual's failure to comply with the Statutes means that
15 the policies could not be terminated for nonpayment of premium and its refusal to
16 allow a claim to be made for the policies' benefits, and its attendant refusal to pay
17 those benefits, breached the terms of the policies and the obligations superimposed on
18 the policies' terms by California law.

19 54. As a proximate result of the systemic breach of the contracts issued to
20 insureds such as Scott Poe, Plaintiff and beneficiaries like her have been deprived of
21 policy benefits, and interest thereon, all to their damage in a sum to be proven at the
22 time of trial.

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1 55. Plaintiff requests attorneys' fees under Code of Civil Procedure section
2 1021.5, the substantial benefit doctrine and/or a common fund theory.

3 **Wherefore, Plaintiff prays for judgment against Northwestern Mutual as**
4 **follows:**

- 5 1. Policy benefits and interest as described herein;
- 6 2. Attorneys' fees as described herein;
- 7 3. Costs of suit incurred herein; and
- 8 4. For such other and further relief as the Court deems just and proper.

9
10 DATED: May 18, 2022

GIANELLI & MORRIS

11 By: /s/ Adrian J. Barrio
12 ROBERT S. GIANELLI
13 JOSHUA S. DAVIS
14 ADRIAN J. BARRIO
Attorneys for Plaintiff

15
16 **DEMAND FOR JURY TRIAL**

17 On behalf of herself and all class members, Plaintiff hereby demands a trial by
18 jury on all issues triable to a jury.

19
20 DATED: May 18, 2022

GIANELLI & MORRIS

21
22 By: /s/ Adrian J. Barrio
23 ROBERT S. GIANELLI
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25 ADRIAN J. BARRIO
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