

1 Zoë K. Wilhelm (SBN 305932)  
2 *zoe.wilhelm@faegredrinker.com*  
3 **FAEGRE DRINKER BIDDLE & REATH LLP**  
4 1800 Century Park East, Suite 1500  
5 Los Angeles, California 90067  
6 Tel: (310) 203-4000  
7 Fax: (310) 229-1285

8 Timothy J. O'Driscoll (*admitted pro hac vice*)  
9 *timothy.odriscoll@faegredrinker.com*  
10 **FAEGRE DRINKER BIDDLE & REATH LLP**  
11 One Logan Square, Suite 2000  
12 Philadelphia, PA 19103  
13 Tel: 215-988-2700  
14 Fax: 215-988-2757

15 Attorneys for Defendant  
16 THE NORTHWESTERN MUTUAL LIFE  
17 INSURANCE COMPANY

18 UNITED STATES DISTRICT COURT  
19 CENTRAL DISTRICT OF CALIFORNIA

20 CHERI POE, on behalf of herself and all  
21 others similarly situated,

22 Plaintiff,

23 v.

24 NORTHWESTERN MUTUAL LIFE  
25 INSURANCE COMPANY,

26 Defendant.

Case No. 8:21-cv-2065-PA-E

Hon. Percy Anderson

**DEFENDANT THE  
NORTHWESTERN MUTUAL LIFE  
INSURANCE COMPANY'S  
ANSWER AND AFFIRMATIVE  
DEFENSES TO FIRST AMENDED  
COMPLAINT**

FAC Filed: May 18, 2022  
Complaint Filed: December 16, 2021

1 Defendant The Northwestern Mutual Life Insurance Company  
 2 (“Northwestern Mutual”) submits this Answer and Affirmative Defenses to the  
 3 First Amended Complaint (“FAC”) filed by Plaintiff Cheri Poe, on behalf of herself  
 4 and all others similarly situated (“Plaintiff”). Northwestern Mutual reserves the  
 5 right to amend or supplement the following as information is gathered through  
 6 discovery or otherwise, and in the event that any class is certified in any part and  
 7 further information regarding putative class members is obtained through discovery  
 8 or otherwise. Any allegations that are not specifically admitted herein are denied.  
 9 To the extent that any heading in the FAC is included herein, Northwestern Mutual  
 10 does not admit the substance of the heading and expressly denies same.

## 11 **ANSWER**

### 12 **INTRODUCTION**

13 1. Insurance Code sections 10113.71 and 10113.72 (“the Statutes”)  
 14 require insurers to: (1) provide a grace period of at least 60 days for nonpayment of  
 15 premium; (2) mail a notice of termination for any nonpayment of premium to the  
 16 policy owner and any other person designated to receive notice of the termination  
 17 within 30 days of the premium due date and at least 30 days prior to the termination  
 18 date; and (3) annually notify the policy owner of the right to change or make a  
 19 designee for receiving the notice. The Statutes became effective January 1, 2013  
 20 and their requirements apply regardless of whether a policy was originally issued  
 21 prior to that date. *McHugh v. Protective Life Insurance Company* (2021) 12 Cal. 5th  
 22 213.

23 **ANSWER:** The allegations of paragraph 1 are legal conclusions to which no  
 24 response is required. To the extent a response is required, the Statutes speak for  
 25 themselves, and Northwestern Mutual denies the allegations of paragraph 1 to the  
 26 extent that they are inconsistent with the Statutes.

27 2. Plaintiff became a beneficiary under two life insurance policies issued  
 28 to her husband in 2001 and 2002. Her husband dutifully paid premiums under the

1 policies for years but, due to an apparent mistake by his bank, missed his December  
 2 2017 payment. Despite the Statutes' clear mandate, Northwestern Mutual failed to  
 3 observe a 60-day grace period, failed to provide the requisite notices, and  
 4 terminated the policies before Plaintiff's husband unexpectedly died in late April of  
 5 2018. When Northwestern Mutual was later advised of the death and queried  
 6 regarding the status of the policies, it stated that no coverage was in effect on the  
 7 date of the insured's death and refused to allow a claim for the policies' benefits.  
 8 Plaintiff brings this class action to remedy Northwestern Mutual's violations of the  
 9 Statutes and its wrongful denial of life insurance claims for nonpayment of  
 10 premium under policies issued in California prior to January 1, 2013.

11 **ANSWER:** Northwestern Mutual admits that, in 2016, Plaintiff became a  
 12 beneficiary under two life insurance policies issued to Scott Poe in 2001 and 2002  
 13 (the "Policies"). Northwestern Mutual admits that it stated that the Policies were  
 14 terminated for nonpayment of premium prior to Scott Poe's death and that no death  
 15 benefit was payable and a claim package would not be provided at that time.  
 16 Northwestern Mutual denies the remaining allegations of paragraph 2.  
 17 Northwestern Mutual further states that the Policies terminated due to Scott Poe's  
 18 failure to make any premium payments after November 2017. This occurred after  
 19 Scott Poe's bank put his checking account, which was being used to fund his  
 20 premium payments, in "post-no-debit" status, following several overdrafts and the  
 21 exhaustion of a line of credit. As a result, Northwestern Mutual's attempt to  
 22 electronically debit Scott Poe's checking account on December 20, 2017 failed.  
 23 Northwestern Mutual then sent eight notices to Scott Poe about the impending  
 24 termination of the Policies and opportunities to reinstate the Policies. Scott Poe  
 25 never responded to any of those notices. At the time of Scott Poe's death in late  
 26 April 2018, premium payments on the Policies had remained due and unpaid for  
 27 approximately four months.  
 28

## JURISDICTION AND VENUE

3. This Court has original jurisdiction of this case based on diversity of citizenship. Plaintiff is a citizen of the State of California, Northwestern Mutual is incorporated in and has its principal place of business in the State of Wisconsin, and the amount in controversy between Plaintiff and Northwestern Mutual is in excess of \$75,000.00. 28 U.S.C. § 1332.

**ANSWER:** Northwestern Mutual admits that that it is incorporated and has its principal place of business in the State of Wisconsin and that the amount in controversy is in excess of \$75,000. Northwestern Mutual lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 3, and therefore denies them.

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

**ANSWER:** Northwestern Mutual admits that it has conducted business in California, and has issued life insurance on the lives of persons living in California and administered claims for life insurance benefits due to beneficiaries residing in California. The remaining allegations of paragraph 4 are legal conclusions to which no response is required. To the extent a response is required, Northwestern Mutual denies the remaining allegations of paragraph 4.

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

**ANSWER:** The allegations of paragraph 5 are legal conclusions to which no response is required. To the extent a response is required, Northwestern Mutual denies the allegations of paragraph 5.

## THE PARTIES

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

**ANSWER:** Northwestern Mutual lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6, and therefore denies them.

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

**ANSWER:** Northwestern Mutual admits that it is a corporation organized and existing under the laws of Wisconsin, with its principal place of business in Milwaukee, Wisconsin, and that it is licensed to do business in California. The remaining allegations of paragraph 7 are legal conclusions to which no response is required.

## SUBSTANTIVE ALLEGATIONS

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

**ANSWER:** Admitted.

9. Insurance Code section 10113.71 provides in pertinent part:

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

(b)(1) A notice of pending lapse and termination of a life insurance policy shall not be effective unless mailed by the insurer to the named policy owner, a designee named pursuant to Section 10113.72 for an individual life insurance policy, and a known assignee or other person 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       **ANSWER:** Northwestern Mutual states that the Statutes speak for  
 2 themselves, and to the extent the allegations of paragraph 9 differ from the content  
 3 as reflected in them, said allegations are denied.

4       10. Insurance Code section 10113.72 provides:

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

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

19       **ANSWER:** Northwestern Mutual states that the Statutes speak for  
 20 themselves, and to the extent the allegations of paragraph 10 differ from the content  
 21 as reflected in them, said allegations are denied.

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

25       Moreover, the legislative history provides several indications that the  
 26 Legislature enacted the grace period and notice protections in part to protect  
 27 *existing* policy owners from losing the important life insurance coverage they  
 28 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).

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

**ANSWER:** The allegations of paragraph 11 are legal conclusions to which no response is required. To the extent a response is required, Northwestern Mutual states that the Statutes speak for themselves, and to the extent the allegations of paragraph 11 differ from the content as reflected in them, said allegations are denied.

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

**ANSWER:** The allegations of paragraph 12 are legal conclusions to which no response is required. To the extent a response is required, Northwestern Mutual states that the Statutes speak for themselves, and to the extent the allegations of paragraph 12 differ from the content as reflected in them, said allegations are denied.



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

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

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

11           **ANSWER:** The allegations of paragraph 13 are legal conclusions to which  
12 no response is required. To the extent a response is required, Northwestern Mutual  
13 states that the Statutes speak for themselves, and to the extent the allegations of  
14 paragraph 13 differ from the content as reflected in them, said allegations are  
15 denied.

16           14. Additionally, “[a]n insurer's failure to comply with these statutory  
17 requirements means that the policy cannot lapse.” *Thomas v. State Farm Life*  
18 *Insurance Company* (9th Cir., Oct. 6, 2021, No. 20-55231) 2021 WL 4596286, at  
19 \*1, citing *McHugh v. Protective Life Insurance Company, supra*.

20           **ANSWER:** The allegations of paragraph 14 are legal conclusions to which  
21 no response is required. To the extent a response is required, Northwestern Mutual  
22 denies the allegations of paragraph 14. Northwestern Mutual further states that the  
23 California Supreme Court's decision in *McHugh v. Protective Life Insurance*  
24 *Company*, 12 Cal. 5th 213 (2021) speaks for itself.

25           15. Northwestern Mutual has failed to comply with the Statutes for  
26 policies issued in California before 2013. When premiums have become due on or  
27 after 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 days of the premium due date and at least 30 days before the termination date.



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

3 **ANSWER:** The allegations of paragraph 15 are legal conclusions to which  
4 no response is required. To the extent a response is required, Northwestern Mutual  
5 denies the allegations of paragraph 15.

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

11 **ANSWER:** Denied.

12 17. Northwestern Mutual issued two term life insurance policies on the life  
13 of Scott Poe: Policy No. 15874906 in the amount of \$700,000 effective September  
14 21, 2001 and Policy No. 16288790 in the amount of \$400,000 effective November  
15 3, 2002. Northwestern agreed to pay the amounts of these policies in the event of  
16 Scott Poe's death subject to the payment of premiums on their due dates.

17 **ANSWER:** Northwestern Mutual admits that it issued the Policies  
18 referenced in paragraph 17. The Policies speak for themselves, and to the extent the  
19 allegations of paragraph 17 differ from the content as reflected in them, said  
20 allegations are denied.

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

24 **ANSWER:** Northwestern Mutual admits that effective October 21, 2016, the  
25 direct beneficiaries of the Policies were changed to Cheri Curry-Poe, Zachary Poe,  
26 and Jacob Poe. Northwestern Mutual lacks knowledge or information sufficient to  
27 form a belief as to the remaining allegations of paragraph 18, and therefore denies  
28 them.

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

5           **ANSWER:** Northwestern Mutual states that the Policies speak for  
6 themselves, and to the extent the allegations of paragraph 19 differ from the content  
7 as reflected in them, said allegations are denied.

8           20. Northwestern Mutual set up a Northwestern Mutual Insurance Service  
9 Account (“ISA”) to process Scott Poe’s monthly premiums that were to be  
10 deducted from his checking account with Citibank. Northwestern Mutual took the  
11 monthly premiums for the two policies from the ISA account on or about the 21st  
12 of each month.

13           **ANSWER:** Admitted. Northwestern Mutual further states that an ISA  
14 account is a courtesy provided to policy owners to pay premiums on a monthly  
15 basis using smaller EFT transfers rather than a large annual or quarterly payment.

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

19           **ANSWER:** Northwestern Mutual admits that Scott Poe paid monthly  
20 premiums on both policies prior to December, 2017. Northwestern Mutual admits  
21 that Scott Poe did not pay the premiums due for December 21, 2017, and that  
22 Citibank froze Scott Poe’s checking account prior thereto. Northwestern Mutual  
23 lacks sufficient information to admit or deny the allegations of paragraph 21  
24 regarding Scott Poe’s knowledge, and on that basis denies them. Northwestern  
25 Mutual denies the remaining allegations of paragraph 21. Northwestern Mutual  
26 further states that Citibank put Scott Poe’s checking account in “post-no-debit”  
27 status, following several overdrafts and the exhaustion of a line of credit.  
28

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  
 4 a “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”  
 6 date of January 3, 2018 and an “End of Grace Period” date of February 3, 2018.

7           **ANSWER:** Northwestern Mutual admits that it sent Scott Poe a Returned  
 8 Payment Notice on December 27, 2017. Northwestern Mutual further states that the  
 9 Returned Payment Notice speaks for itself, and to the extent the allegations of  
 10 paragraph 22 differ from the content as reflected in it, said allegations are denied.

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

16           **ANSWER:** Northwestern Mutual admits that it sent Scott Poe a notice on  
 17 January 24, 2018. Northwestern Mutual further states that the January 24, 2018  
 18 notice speaks for itself, and to the extent the allegations of paragraph 23 differ from  
 19 the content as reflected in it, said allegations are denied.

20           24. On January 24, 2018, Northwestern Mutual also sent a notice to Scott  
 21 Poe advising that the grace period for Policy No. 15874906 “expires on January 21,  
 22 2018 and the full protection under this policy terminates.” It further advised that he  
 23 could submit a payment without evidence of insurability if received by February 19,  
 24 2018.

25           **ANSWER:** Northwestern Mutual admits that it sent Scott Poe another notice  
 26 on January 24, 2018. Northwestern Mutual further states that the January 24, 2018  
 27 notice speaks for itself, and to the extent the allegations of paragraph 24 differ from  
 28 the content as reflected in it, said allegations are denied. Northwestern Mutual

1 further states that it also sent Scott Poe a separate “Premium Payment Due” notice  
2 in connection with Policy No. 15874906 on January 24, 2018.

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

6 **ANSWER:** Northwestern Mutual admits that it sent Scott Poe two more  
7 notices on February 25, 2018. Northwestern Mutual further states that the February  
8 25, 2018 notices speak for themselves, and to the extent the allegations of  
9 paragraph 25 differ from the content as reflected in them, said allegations are  
10 denied.

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

14 **ANSWER:** Northwestern Mutual admits that it sent Scott Poe two more  
15 notices on March 11, 2018. Northwestern Mutual further states that the March 11,  
16 2018 notices speak for themselves, and to the extent the allegations of paragraph 26  
17 differ from the content as reflected in them, said allegations are denied.

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

24 **ANSWER:** The allegations of paragraph 27 are legal conclusions to which  
25 no response is required. To the extent a response is required, Northwestern Mutual  
26 denies the allegations of paragraph 27.

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

1           **ANSWER:** On information and belief, Northwestern Mutual admits the  
2 allegation of paragraph 28.

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

7           **ANSWER:** Northwestern Mutual admits that it received communication  
8 from an attorney, representing Zachary Poe, inquiring about the termination of the  
9 Policies prior to Scott Poe's death. Northwestern Mutual lacks information  
10 sufficient to admit or deny the remaining allegations of paragraph 29, and on that  
11 basis denies them.

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

16           **ANSWER:** Northwestern Mutual states that the referenced letter speaks for  
17 itself, and to the extent the allegations of paragraph 30 differ from the content as  
18 reflected in it, said allegations are denied.

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

21           **ANSWER:** Denied.

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

**ANSWER:** The allegations of paragraph 32 are legal conclusions to which no response is required. To the extent a response is required, Northwestern Mutual denies the allegations of paragraph 32.

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

**ANSWER:** Northwestern Mutual admits that Plaintiff has not received benefits under the Policies. Northwestern Mutual denies the remaining allegations of paragraph 33.

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

**ANSWER:** Admitted.

## 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

1 within four years of the filing of this action while the policies were in a  
 2 terminated status.

3 **ANSWER:** Northwestern Mutual admits that Plaintiff purports to bring this  
 4 action against it on behalf of the described putative class, but denies that  
 5 certification of any class is appropriate under applicable law and denies the  
 6 remaining allegations of paragraph 35.

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

10 **ANSWER:** The allegations of paragraph 36 are legal conclusions to which  
 11 no response is required. To the extent a response is required, Northwestern Mutual  
 12 denies that certification of any class is appropriate under applicable law and denies  
 13 the remaining allegations of paragraph 36.

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

17 **ANSWER:** Denied. Northwestern Mutual specifically denies that  
 18 certification of any class is appropriate under applicable law and denies the  
 19 remaining allegations of paragraph 37.

20 **A. Numerosity.**

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

27 **ANSWER:** The allegations of paragraph 38 are legal conclusions to which  
 28 no response is required. To the extent a response is required, Northwestern Mutual



1 denies the allegations of paragraph 38. Northwestern Mutual further specifically  
2 denies that certification of any class is appropriate under applicable law.

3 **B. Commonality.**

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

7 **ANSWER:** The allegations of paragraph 39 are legal conclusions to which  
8 no response is required. To the extent a response is required, Northwestern Mutual  
9 denies the allegations of paragraph 39. Northwestern Mutual further specifically  
10 denies that certification of any class is appropriate under applicable law.

11 **C. Predominant question of law or fact.**

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

16 **ANSWER:** The allegations of paragraph 40 are legal conclusions to which  
17 no response is required. To the extent a response is required, Northwestern Mutual  
18 denies the allegations of paragraph 40. Northwestern Mutual further specifically  
19 denies that certification of any class is appropriate under applicable law.

20 **D. Typicality.**

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

24 **ANSWER:** The allegations of paragraph 41 are legal conclusions to which  
25 no response is required. To the extent a response is required, Northwestern Mutual  
26 denies the allegations of paragraph 41. Northwestern Mutual further specifically  
27 denies that certification of any class is appropriate under applicable law.

1           **E.     Adequacy of representation.**

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

6           **ANSWER:** The allegations of paragraph 42 are legal conclusions to which  
7 no response is required. To the extent a response is required, Northwestern Mutual  
8 denies the allegations of paragraph 42. Northwestern Mutual further specifically  
9 denies that certification of any class is appropriate under applicable law.

10          **F.     Superiority of class action.**

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

15          **ANSWER:** The allegations of paragraph 43 are legal conclusions to which  
16 no response is required. To the extent a response is required, Northwestern Mutual  
17 denies the allegations of paragraph 43. Northwestern Mutual further specifically  
18 denies that certification of any class is appropriate under applicable law.

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

24          **ANSWER:** The allegations of paragraph 44 are legal conclusions to which  
25 no response is required. To the extent a response is required, Northwestern Mutual  
26 denies the allegations of paragraph 44. Northwestern Mutual further specifically  
27 denies that certification of any class is appropriate under applicable law.

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.

**ANSWER:** The allegations of paragraph 45 are legal conclusions to which no response is required. To the extent a response is required, Northwestern Mutual denies the allegations of paragraph 45. Northwestern Mutual further specifically denies that certification of any class is appropriate under applicable law.

## 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.

**ANSWER:** Northwestern Mutual incorporates by reference its responses to the foregoing paragraphs as if set forth in full herein.

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.

**ANSWER:** Northwestern Mutual admits that it issued the Policies.

Northwestern Mutual states that the Policies speak for themselves, and to the extent the allegations of paragraph 47 differ from the content as reflected in them, said allegations are denied.

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

1 an annual notice of the right to change or make a designee for receiving any notice  
2 of termination.

3 **ANSWER:** The allegations of paragraph 48 are legal conclusions to which  
4 no response is required. To the extent a response is required, Northwestern Mutual  
5 states that the Statutes speak for themselves, and to the extent the allegations of  
6 paragraph 48 differ from the content as reflected in them, said allegations are  
7 denied.

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

11 **ANSWER:** Northwestern Mutual admits that Scott Poe paid monthly  
12 premiums on both policies prior to December 21, 2017. Northwestern Mutual  
13 admits that Scott Poe did not pay the premiums due for December 21, 2017, and  
14 that Citibank froze Scott Poe's checking account prior thereto. Northwestern  
15 Mutual lacks sufficient information to admit or deny the allegations of paragraph 49  
16 regarding Scott Poe's knowledge, and on that basis denies them. Northwestern  
17 Mutual denies the remaining allegations of paragraph 49. Northwestern Mutual  
18 further states that Citibank put Scott Poe's checking account in "post-no-debit"  
19 status, following several overdrafts and the exhaustion of a line of credit.

20 50. As alleged herein, when Scott Poe and all other insureds covered under  
21 individual life insurance policies issued by Northwestern Mutual in California prior  
22 to 2013 missed a premium payment due on or after January 1, 2013, Northwestern  
23 Mutual failed to comply with the Statutes. Northwestern Mutual did not provide a  
24 prospective 60-day grace period from the premium due date, did not mail notices of  
25 termination within 30 days of the premium due dates and/or at least 30 days before  
26 the termination dates, and it did not provide an annual notice of the right to change  
27 or make a designee for receiving the notice of termination.

1           **ANSWER:** The allegations of paragraph 50 are legal conclusions to which  
 2 no response is required. To the extent a response is required, Northwestern Mutual  
 3 denies the allegations of paragraph 50.

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           **ANSWER:** The allegations of paragraph 51 are legal conclusions to which  
 9 no response is required. To the extent a response is deemed necessary,  
 10 Northwestern Mutual denies the allegations of paragraph 51.

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

17           **ANSWER:** Northwestern Mutual admits that it advised the attorney for  
 18 beneficiaries that no claim was payable under the Policies because the Policies had  
 19 terminated due to nonpayment of premium prior to the death of the insured, and that  
 20 a claim package would not be provided at that time. Northwestern Mutual denies  
 21 the remaining allegations of paragraph 52.

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

1        **ANSWER:** The allegations of paragraph 53 are legal conclusions to which  
 2 no response is required. To the extent a response is required, Northwestern Mutual  
 3 denies the allegations of paragraph 53.

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

8        **ANSWER:** The allegations of paragraph 54 are legal conclusions to which  
 9 no response is required. To the extent a response is required, Northwestern Mutual  
 10 denies the allegations of paragraph 54.

11        55. Plaintiff requests attorneys' fees under Code of Civil Procedure section  
 12 1021.5, the substantial benefit doctrine and/or a common fund theory.

13        **ANSWER:** The allegations of paragraph 55 are legal conclusions to which  
 14 no response is required. To the extent a response is required, Northwestern Mutual  
 15 admits that Plaintiff purports to seek attorneys' fees, but denies that Plaintiff is  
 16 entitled to such fees under any theory, and denies any remaining allegations of  
 17 paragraph 55.

## 18        **PRAYER FOR RELIEF**

19        Wherefore, Plaintiff prays for judgment against Northwestern Mutual as  
 20 follows:

- 21        1. Policy benefits and interest as described herein;
- 22        2. Attorneys' fees as described herein;
- 23        3. Costs of suit incurred herein; and
- 24        4. For such other and further relief as the Court deems just and proper.

25        **ANSWER:** Northwestern Mutual denies that Plaintiff, and those other  
 26 persons whom Plaintiff purports to represent are entitled to any of the relief sought  
 27 in the FAC, or any relief whatsoever. Northwestern Mutual further specifically  
 28 denies that certification of any class is appropriate under applicable law. Subject to

1 this denial, Northwestern Mutual responds to the individually numbered paragraphs  
2 of the Prayer for Relief section of the FAC as follows:

3 1. Northwestern Mutual denies that Plaintiff, and those other persons  
4 whom Plaintiff purports to represent, are entitled to the relief sought in paragraph 1  
5 of the Prayer for Relief section of the FAC.

6 2. Northwestern Mutual denies that Plaintiff, and those other persons  
7 whom Plaintiff purports to represent, are entitled to the relief sought in paragraph 2  
8 of the Prayer for Relief section of the FAC.

9 3. Northwestern Mutual denies that Plaintiff, and those other persons  
10 whom Plaintiff purports to represent, are entitled to the relief sought in paragraph 3  
11 of the Prayer for Relief section of the FAC.

12 4. Northwestern Mutual denies that Plaintiff, and those other persons  
13 whom Plaintiff purports to represent, are entitled to the relief sought in paragraph 4  
14 of the Prayer for Relief section of the FAC.

### 15 **DEMAND FOR JURY TRIAL**

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

### 17 **AFFIRMATIVE DEFENSES**

18 Pursuant to Federal Rule of Civil Procedure 8(c), and without assuming any  
19 burden of proof or persuasion that would otherwise rest on Plaintiff, Northwestern  
20 Mutual asserts the following affirmative defenses to the claims of Plaintiff and  
21 putative class members. Nothing stated herein is intended or shall be construed as  
22 an admission that any particular issue or subject matter is relevant to Plaintiff's  
23 allegations. Northwestern Mutual reserves the right to amend or to supplement the  
24 following affirmative defenses, including without limitation, the right to amend as  
25 information is gathered through discovery regarding Plaintiff and putative class  
26 members.



**First Affirmative Defense**

1           The FAC, and each of the purported claims therein, fail to state a claim  
2  
3 against Northwestern Mutual on which relief can be granted.

**Second Affirmative Defense**

4           Plaintiff's interpretation of the Statutes is unconstitutional insofar as  
5  
6 the United States and California Constitutions both prohibit the passage of any law  
7 impairing the obligation of contracts. U.S. Const. art. I, § 10, cl. 1 ("No State shall .  
8 . . pass any . . . ex post fact Law, or Law impairing the Obligation of Contracts.");  
9 Cal. Const. art. I, § 9 ("A bill of attainder, ex post facto law, or law impairing the  
10 obligation of contracts may not be passed").

**Third Affirmative Defense**

11           Plaintiff's interpretation of the Statutes is unconstitutional insofar as  
12  
13 the United States and California Constitutions both prohibit the passage of any law  
14 depriving any person of property without due process of law, or denying to any  
15 person the equal protection of the laws, or taking private property without just  
16 compensation. U.S. Const. amend. V ("No person shall be . . . deprived of life,  
17 liberty, or property, without due process of law; nor shall private property be taken  
18 for public use, without just compensation."); U.S. Const. amend XIV § 1 ("No State  
19 shall . . . deprive any person of life, liberty, or property, without due process of law;  
20 nor deny to any person within its jurisdiction the equal protection of the laws.");  
21 Cal. Const. art. I, § 7(a) ("A person may not be deprived of life, liberty, or property  
22 without due process of law or denied equal protection of the laws . . ."); Cal.  
23 Const. art. I, § 19(a) ("Private property may be taken or damaged for a public use  
24 and only when just compensation, ascertained by a jury unless waived, has first  
25 been paid to, or into court for, the owner.").

**Fourth Affirmative Defense**

26           The Statutes do not create a private right of action for recovery against  
27  
28 Northwestern Mutual.

**Fifth Affirmative Defense**

5. Plaintiff, and the other persons Plaintiff purports to represent, do not have standing or right, in whole or in part, to assert a claim for violation of the Statutes.

**Sixth Affirmative Defense**

6. Plaintiff's claims, and those of the other persons Plaintiff purports to represent, are barred in whole or in part by the real party in interest doctrine.

**Seventh Affirmative Defense**

7. Plaintiff's claims, and those of some or all of the other persons Plaintiff purports to represent, are barred by the provisions, terms, exclusions, definitions, limitations, and conditions of the Policies and any other insurance policies at issue.

**Eighth Affirmative Defense**

8. Plaintiff's claims, and those of some or all of the other persons Plaintiff purports to represent, are barred because Northwestern Mutual has fully and/or substantially performed all contractual, statutory, regulatory and other duties that may have been owed to Plaintiff and persons Plaintiff purports to represent.

**Ninth Affirmative Defense**

9. Plaintiff's claims, and those of some or all of the other persons Plaintiff purports to represent, are barred by the failure to satisfy necessary conditions precedent.

**Tenth Affirmative Defense**

10. Plaintiff's claims, and those of some or all of the other persons Plaintiff purports to represent, are barred by failure of consideration and/or otherwise failure to perform under the Policies and any other insurance policies at issue.

**Eleventh Affirmative Defense**

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

**Twelfth Affirmative Defense**

12. Plaintiff's claims, and those of some or all of the other persons Plaintiff purports to represent, are barred or limited because Northwestern Mutual acted reasonably, appropriately, and in good faith at all pertinent times.

**Thirteenth Affirmative Defense**

13. The acts and omissions of Northwestern Mutual, if any, were excused or justified by the information and facts available to Northwestern Mutual at the time such acts and omissions, if any, occurred.

**Fourteenth Affirmative Defense**

14. The Court lacks jurisdiction over the claims of Plaintiff, and those of some or all of the other persons Plaintiff purports to represent, under Article III of the United States Constitution to the extent that they have experienced no injury in fact due to Northwestern Mutual's conduct as alleged in the FAC. *See e.g., TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 (2021).

**Fifteenth Affirmative Defense**

15. Plaintiff's claims, and those of some or all of the other persons Plaintiff purports to represent, are barred, in whole or in part, because no act or omission by Northwestern Mutual, or by any person or entity for which Northwestern Mutual was responsible, was the proximate cause of any injury or harm alleged.

**Sixteenth Affirmative Defense**

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

**Seventeenth Affirmative Defense**

17. If Plaintiff, and some or all of the other persons Plaintiff purports to represent, have sustained any damages – which Northwestern Mutual expressly denies – recovery is barred by the failure of Plaintiff, and some or all of the persons Plaintiff purports to represent, to mitigate, reduce, or otherwise avoid damages.

**Eighteenth Affirmative Defense**

18. Plaintiff's claims, and those of some or all of the other persons Plaintiff purports to represent, are barred due to the acts or omissions of third parties who are unrelated to Northwestern Mutual.

**Nineteenth Affirmative Defense**

19. Plaintiff's claims, and those of some or all of the other persons Plaintiff purports to represent, are barred, in whole or in part, because Plaintiff has failed to join necessary and indispensable parties to the suit.

**Twentieth Affirmative Defense**

20. Plaintiff's claims, and/or those of some or all of the other persons Plaintiff purports to represent, are barred by Cal. Civ. Code § 1559 ("A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.").

**Twenty-first Affirmative Defense**

21. To the extent the Statutes are deemed to require benefits to be paid even though the Policies and any other insurance policies at issue had lapsed, Northwestern Mutual is entitled to an offset for any premiums that would have been due and owing between the date of the last paid premium and the death of the insured(s).

**Twenty-second Affirmative Defense**

22. Plaintiff, and some or all of the other persons Plaintiff purports to represent, have expressly and/or by conduct waived the right to complain of the conduct alleged in the FAC and are estopped from pursuing these claims.

**Twenty-third Affirmative Defense**

23. Plaintiff, and some or all of the other persons Plaintiff purports to represent, have expressly and/or by conduct ratified the conduct alleged in the FAC and are estopped from pursuing these claims.

**Twenty-fourth Affirmative Defense**

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

**Twenty-fifth Affirmative Defense**

25. Plaintiff's claims, and those of some or all of the other persons Plaintiff purports to represent, are barred by the doctrine of unclean hands in that the actions of Plaintiff, and some or all of the other persons Plaintiff purports to represent, have caused some or all of the alleged harm incurred, if any.

**Twenty-sixth Affirmative Defense**

26. The claims for relief asserted in the FAC are barred, in whole or in part, by the applicable statutes of limitations, laches, and/or other time bars.

**Twenty-seventh Affirmative Defense**

27. Plaintiff's claims, and/or those of some or all of the other persons Plaintiff purports to represent, are barred, in whole or in part, by the doctrines of res judicata and/or collateral estoppel.

**Twenty-eighth Affirmative Defense**

28. Plaintiff's claims, and/or those of some or all of the other persons Plaintiff purports to represent, are barred, in whole or in part, by the doctrines of accord and satisfaction and/or release.

**Twenty-ninth Affirmative Defense**

29. With respect to putative absent class members, Northwestern Mutual reserves all defenses and rights, including the defense of lack of personal jurisdiction.

**Thirtieth Affirmative Defense**

30. Northwestern Mutual reserves the right to plead any additional affirmative defenses that become available or known as this action proceeds, including, but not limited to, those defenses that become known to Northwestern Mutual through discovery. Northwestern Mutual reserves the right to amend its Answer to add such additional defenses or to delete any affirmative defenses that it determines are not applicable, as well as any counterclaims and third-party claims, based on information revealed during the discovery process.

WHEREFORE, Defendant Northwestern Mutual prays for relief as follows:

1. That the Court deny Plaintiff's request for certification of any class action pursuant to Rule 23 of the Federal Rules of Civil Procedure or any other applicable Rules of Procedure;
2. That the Court deny any and all relief requested by Plaintiff;
3. That Plaintiff takes nothing by reason of the FAC;
4. That the Court enter judgment in favor of Northwestern Mutual and against Plaintiff;
5. That the Court dismiss the FAC in its entirety with prejudice;
6. For costs of suit incurred herein, including attorney's fees; and
7. For such other and further relief as the Court may deem just and proper.

Dated: June 1, 2022

FAEGRE DRINKER BIDDLE & REATH LLP

By: *s/ Zoë K. Wilhelm*  
Zoë K. Wilhelm

Attorneys for Defendant THE NORTHWESTERN  
MUTUAL LIFE INSURANCE COMPANY