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PROTECTIVE LIFE INSURANCE COMPANY

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JANICE SCHMIDT, and JUDY A. VANN-)
EUBANKS on behalf of herself and all others)
similarly situated,)

Plaintiff,)

vs.)

STANDARD INSURANCE COMPANY,)
erroneously named as STANDARD LIFE)
INSURANCE COMPANY, PROTECTIVE)
LIFE INSURANCE COMPANY, and DOES)
1 TO 50, inclusive,)

Defendants.

CASE NO. 1:21-cv-01784-JLT-SAB

**DEFENDANT PROTECTIVE LIFE
INSURANCE COMPANY'S ANSWER TO
AMENDED CLASS ACTION
COMPLAINT AND DEMAND FOR JURY
TRIAL**

1
2
3 Defendant Protective Life Insurance Company (“Protective”), through undersigned counsel,
4 respectfully submits this Answer to the Amended Class Action Complaint and Demand for Jury Trial,
5 Doc. 39-1 (the “Amended Complaint”) filed by Plaintiffs Janice Schmidt (“Plaintiff Schmidt”) and Judy
6 A. Vann-Eubanks (“Plaintiff Vann-Eubanks”) individually and on behalf of the proposed class
7 (“Plaintiffs”). Unless expressly admitted in this Answer, Protective denies the material allegations of the
8 Amended Complaint and demands strict proof thereof. Subject to these denials and the affirmative
9 defenses set forth herein, Protective responds to the individually numbered allegations of the Amended
10 Complaint as follows:

11 **I. NATURE OF THE CASE**

12 1. Denied. Protective specifically denies all allegations that it has violated any statute,
13 regulation, law, or insurance policy provision in any way.

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

20 3. The allegations of paragraph 3 include legal conclusions to which no response is required;
21 to the extent a response is deemed necessary, Protective denies the allegations in paragraph 3. The
22 Statutes speak for themselves. Protective specifically denies any implied allegation that it has violated
23 any statute, regulation, law, or insurance policy provision in any way. Protective denies any other
24 allegations in paragraph 3.

25 4. The allegations of paragraph 4 include legal conclusions to which no response is required;
26 to the extent a response is deemed necessary, Protective lacks knowledge or information sufficient to
27 form a belief about whether the “author” of the Statutes actually made the statement listed in paragraph
28 4, and therefore denies it. The Statutes speak for themselves. Protective denies each and any

1 characterization of the Statutes that is inconsistent with the Statutes themselves. Protective specifically
2 denies all allegations that it has violated any statute, regulation, law, or insurance policy provision in any
3 way. Protective denies any other allegations in paragraph 4.

4 5. The allegations of paragraph 5 include legal conclusions to which no response is required;
5 to the extent a response is deemed necessary, Protective denies the allegations in paragraph 5.

6 6. Denied. Protective specifically denies that it has violated any statute, regulation, law, or
7 insurance policy provision in any way.

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

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

20 9. The allegations of paragraph 9 include legal conclusions to which no response is required;
21 to the extent a response is deemed necessary, Protective denies that the Ninth Circuit’s unpublished, non-
22 precedential memorandum in *Thomas v. State Farm Life Insurance Co.*, 20-55231, 2021 WL 4596286
23 (9th Cir. Oct. 6, 2021), “followed” (except temporally) or “expanded” the California Supreme Court’s
24 decision in *McHugh v. Protective Life Insurance Company*, 12 Cal. 5th 213 (2021). The Ninth Circuit’s
25 unpublished, non-precedential memorandum in *Thomas* speaks for itself. Protective denies any other
26 allegations in paragraph 9.

27 10. Denied. Protective specifically denies that it has violated any statute, regulation, law, or
28 insurance policy provision in any way.

1 11. Denied. Protective specifically denies that it has violated any statute, regulation, law, or
2 insurance policy provision in any way. Protective further denies that Plaintiffs, and the other persons that
3 Plaintiffs purport to represent, have suffered any damage whatsoever.

4 12. Protective lacks knowledge or information sufficient to form a belief about the truth of the
5 allegations in paragraph 12 relating to Arthur James Schmidt's ("Mr. Schmidt") death or Robert L.
6 Eubanks' ("Mr. Eubanks") death, and therefore denies them. Protective further specifically denies that
7 Plaintiff Schmidt and Mr. Schmidt were married on January 30, 2018. Protective specifically denies all
8 allegations that it has violated any statute, regulation, law, or insurance policy provision in any way. The
9 remaining allegations of this paragraph are not directed to Protective. To the extent that they are,
10 Protective denies them.

11 13. Denied. Protective specifically denies all allegations that it has violated any statute,
12 regulation, law, or insurance policy provision in any way. Protective further denies that Plaintiffs, and
13 the other persons that Plaintiffs purport to represent, have suffered any harm whatsoever.

14 **II. JURISDICTION AND VENUE**

15 14. Protective does not contest that this Court has subject-matter jurisdiction under 28 U.S.C.
16 § 1332 to hear Plaintiffs' claims against Protective. Protective denies all other allegations in paragraph
17 14.

18 15. Protective admits that, upon information and belief, Plaintiff Schmidt and Plaintiff Vann-
19 Eubanks were citizens and domiciliaries of the State of California at the time this civil action was filed.
20 Protective lacks knowledge or information sufficient to form a belief about the truth of the remaining
21 allegations in paragraph 15, and therefore denies them.

22 16. Protective admits that it is incorporated under the laws of Tennessee with its principal
23 place of business in Birmingham, Alabama. Protective lacks knowledge or information sufficient to form
24 a belief about the truth of the remaining allegations in paragraph 16 relating to "Standard Life Insurance
25 Company", and therefore denies them.

26 17. Denied.

27 18. Protective does not contest that the amount in controversy exceeds \$75,000.00, exclusive
28 of interest and costs.

1 required. The Statutes speak for themselves. Protective denies each and any characterization of the
2 Statutes that is inconsistent with the Statutes themselves.

3 26. The allegations of paragraph 26 include legal conclusions to which no response is
4 required; to the extent a response is deemed necessary, Protective denies the allegations in paragraph 26.
5 The Statutes speak for themselves. Protective denies each and any characterization of the Statutes that is
6 inconsistent with the Statutes themselves. Protective specifically denies all allegations that it has violated
7 any statute, regulation, law, or insurance policy provision in any way, and Protective further specifically
8 denies the allegation that only the quoted portions of the Statutes are “pertinent.” Protective denies any
9 other allegations in paragraph 26.

10 27. Denied. Protective specifically denies all allegations that it has violated any statute,
11 regulation, law, or insurance policy provision in any way. Protective denies any other allegations in
12 paragraph 27.

13 28. Denied. Protective specifically denies all allegations that it has violated any statute,
14 regulation, law, or insurance policy provision in any way. Protective denies any other allegations in
15 paragraph 28.

16 29. Denied. Protective specifically denies all allegations that it has violated any statute,
17 regulation, law, or insurance policy provision in any way. Protective denies any other allegations in
18 paragraph 29.

19 30. Denied. Protective specifically denies all allegations that it has violated any statute,
20 regulation, law, or insurance policy provision in any way. Protective denies any other allegations in
21 paragraph 30.

22 31. Protective admits that the Schmidt Policy insured Mr. Schmidt and Plaintiff Schmidt was
23 named a beneficiary of the Schmidt Policy prior to its termination. “Standard Life Insurance Company”
24 did not issue the Schmidt Policy. Protective further admits that the Eubanks Policy insured Mr. Eubanks
25 and designated Violet Eubanks, Mr. Eubank’s wife, as primary beneficiary, and Plaintiff Vann-Eubanks
26 as 50% contingent beneficiary prior to its termination. Protective specifically denies all allegations that
27 it has violated any statute, regulation, law, or insurance policy provision in any way. In further response,
28 Protective specifically denies that the Policies were in force and effect on the date of the insureds’ deaths.

Protective further specifically denies that the Schmidt Policy or Eubanks Policy were in force and effect on the date of Mr. Schmidt's and Mr. Eubanks' purported death respectively. The remaining allegations of this paragraph are not directed to Protective. Protective denies any remaining allegations in paragraph 31.

32. Protective admits that it issued a policy of life insurance insuring the life of Mr. Eubanks— Policy no. PL0647591— on May 25, 1999. The remaining allegations of this paragraph are denied as written. "Standard Life Insurance Company" did not issue the Schmidt Policy, and Protective did not assume the servicing of policies from "Standard Life Insurance Company." Protective specifically denies that the Policies were in force and effect on the date of the insureds' deaths. Protective further specifically denies that the Schmidt Policy or Eubanks Policy were in force and effect on the date of Mr. Schmidt's and Mr. Eubanks' purported death respectively.

33. Denied. The Policies speak for themselves. Protective denies each and any characterization of the Policies that are inconsistent with the Policies themselves. Protective specifically denies all allegations that it has violated any statute, regulation, law, or insurance policy provision in any way, and Protective further specifically denies that the Policies could "renew" by payment of premiums. In further response, Protective specifically denies that the Policies were in force and effect on the date of the insureds' deaths. Protective further specifically denies that the Schmidt Policy or Eubanks Policy were in force and effect on the date of Mr. Schmidt's and Mr. Eubanks' purported death respectively. The remaining allegations of this paragraph are not directed to Protective. Protective denies any remaining allegations in paragraph 33.

34. Denied as written.

35. Protective lacks information sufficient to form a belief about the truth of the allegations in paragraph 35, and therefore denies them.

36. Denied. Protective specifically denies all allegations that it has violated any statute, regulation, law, or insurance policy provision in any way. Protective denies any other allegations in paragraph 36.

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

paragraph 37.

38. Protective admits that Plaintiff Schmidt's counsel contacted Protective at some point after January 30, 2018. Protective denies that Plaintiff Schmidt (or her counsel) fully completed the claims process required by the Schmidt Policy and Protective. Protective further denies that Plaintiff Schmidt and Mr. Schmidt were married at the purported time of Mr. Schmidt's death. Protective denies that Plaintiff Vann-Eubanks (or her counsel) fully completed the claims process required by the Eubanks Policy and Protective. Protective denies any remaining allegations in paragraph 38.

39. The allegations of paragraph 39 include legal conclusions to which no response is required; to the extent that a response is deemed necessary, Protective admits that no death benefit is payable under the Policies. Protective specifically denies all allegations that it has violated any statute, regulation, law, or insurance policy provision in any way. Protective denies any other allegations in paragraph 39.

40. Protective admits that the court decisions in *McHugh*, *Bentley*, and *Thomas* are matters of public record. Protective specifically denies any implied allegation that it has violated any statute, regulation, law, or insurance policy provision in any way. Protective denies any other allegations in paragraph 40.

41. Protective admits Protective Life Insurance Company is the defendant in the *McHugh* matter, and Protective further admits the *Thomas* decision is a matter of public record. Protective specifically denies all allegations that it has violated any statute, regulation, law, or insurance policy provision in any way. Protective denies any other allegations in paragraph 41.

42. Protective admits only that Plaintiffs have not been paid the death benefit under the terminated Policies; no such benefits are payable. Protective specifically denies all allegations that it has violated any statute, regulation, law, or insurance policy provision in any way. Protective further denies that Plaintiffs, and the other persons that Plaintiffs purport to represent, have suffered any harm or damage whatsoever. Protective denies any other allegations in paragraph 42.

V. CLASS ACTION ALLEGATIONS

43. The description of the proposed class speaks for itself. The definitions of the proposed class speak for themselves. Protective specifically denies that certification of any class is appropriate

under applicable law. Protective specifically denies all allegations that it has violated any statute, regulation, law, or insurance policy provision in any way. Protective denies all other allegations in paragraph 43.

44. The allegations of paragraph 44 do not require a response. Protective specifically denies that certification of any class is appropriate under applicable law. Protective denies all other allegations in paragraph 44.

45. Denied. Protective specifically denies that certification of any class is appropriate under applicable law. Protective denies all other allegations in paragraph 45.

46. Denied. Protective specifically denies that certification of any class is appropriate under applicable law. Protective denies all other allegations in paragraph 46.

47. Denied. Protective specifically denies that certification of any class is appropriate under applicable law. Protective denies all other allegations in paragraph 47.

48. Denied. Protective specifically denies that certification of any class is appropriate under applicable law. Protective denies all other allegations in paragraph 48.

49. Denied. Protective specifically denies that certification of any class is appropriate under applicable law. Protective denies all other allegations in paragraph 49.

50. Denied. Protective specifically denies that certification of any class is appropriate under applicable law. Protective denies all other allegations in paragraph 50.

51. Denied. Protective specifically denies that certification of any class is appropriate under applicable law. Protective denies all other allegations in paragraph 51.

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

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VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

BREACH OF CONTRACTUAL DUTY TO PAY A COVERED CLAIM¹

¹ The First Cause of Action of the Complaint includes a heading (summarizing Plaintiffs' legal argument) to which no response is required. To the extent a response is required, Protective denies the

1 (ON BEHALF OF THE CLASS)

2 53. Protective incorporates its responses to the foregoing paragraphs as if set forth fully in this
3 cause of action.

4 54. Denied. Protective specifically denies all allegations that it has violated any statute,
5 regulation, law, or insurance policy provision in any way. Protective denies any other allegations in
6 paragraph 54.

7 55. Denied. Protective specifically denies all allegations that it has violated any statute,
8 regulation, law, or insurance policy provision in any way. Protective denies any other allegations in
9 paragraph 55.

10 56. Denied. Protective specifically denies all allegations that it has violated any statute,
11 regulation, law, or insurance policy provision in any way. Protective denies any other allegations in
12 paragraph 56.

13 57. Protective specifically denies all allegations that it has violated any statute, regulation,
14 law, or insurance policy provision in any way. Protective further denies that Plaintiffs, and the other
15 persons that Plaintiffs purport to represent, have suffered any harm or damage whatsoever. Protective
16 denies any other allegations in paragraph 57.

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18 ////

19 SECOND CAUSE OF ACTION

20 BAD FAITH BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR

21 DEALING IN INSURANCE POLICY²

22 (ON BEHALF OF THE CLASS)

23 58. Protective incorporates its responses to the foregoing paragraphs as if set forth fully in this
24 cause of action.

25 _____
26 allegations in the heading and denies that Plaintiffs, and those other persons that Plaintiffs purport to
represent, are entitled to any relief whatsoever.

27 ² The Second Cause of Action of the Complaint includes a heading (summarizing Plaintiffs' legal
28 argument) to which no response is required. To the extent a response is required, Protective denies the
allegations in the heading and denies that Plaintiffs, and those other persons that Plaintiffs purport to
represent, are entitled to any relief whatsoever.

1 59. The allegations of paragraph 59 include legal conclusions to which no response is
2 required. Protective specifically denies any implied allegation that it has violated any implied duty of
3 good faith and fair dealing to Plaintiffs and those other persons that Plaintiffs purport to represent.

4 60. Denied. Protective specifically denies all allegations that it has violated any statute,
5 regulation, law, or insurance policy provision in any way. Protective denies any other allegations in
6 paragraph 60.

7 61. Denied. Protective specifically denies all allegations that it has violated any statute,
8 regulation, law, or insurance policy provision in any way. Protective denies any other allegations in
9 paragraph 61.

10 a. Denied. Protective specifically denies all allegations that it has violated any statute,
11 regulation, law, or insurance policy provision in any way. Protective denies any other
12 allegations in paragraph 61(a).

13 b. Denied. Protective specifically denies all allegations that it has violated any statute,
14 regulation, law, or insurance policy provision in any way. Protective denies any other
15 allegations in paragraph 61(b).

16 c. Denied. Protective specifically denies all allegations that it has violated any statute,
17 regulation, law, or insurance policy provision in any way. Protective denies any other
18 allegations in paragraph 61(c).

19 d. Denied. Protective specifically denies all allegations that it has violated any statute,
20 regulation, law, or insurance policy provision in any way. Protective denies any other
21 allegations in paragraph 61(d).

22 e. Denied. Protective specifically denies all allegations that it has violated any statute,
23 regulation, law, or insurance policy provision in any way. Protective denies any other
24 allegations in paragraph 61(e).

25 62. Denied. Protective specifically denies all allegations that it has violated any statute,
26 regulation, law, or insurance policy provision in any way. Protective further denies that Plaintiffs, and
27 the other persons that Plaintiffs purport to represent, are entitled to any relief whatsoever. Protective
28 denies any other allegations in paragraph 62.

63. Denied. Protective specifically denies all allegations that it has violated any statute, regulation, law, or insurance policy provision in any way. Protective further denies that Plaintiffs, and the other persons that Plaintiffs purport to represent, are entitled to any relief whatsoever. Protective denies any other allegations in paragraph 63.

64. Denied. Protective specifically denies all allegations that it has violated any statute, regulation, law, or insurance policy provision in any way. Protective further denies that Plaintiffs, and the other persons that Plaintiffs purport to represent, are entitled to any relief whatsoever. Protective denies any other allegations in paragraph 64.

65. Denied. Protective specifically denies all allegations that it has violated any statute, regulation, law, or insurance policy provision in any way. Protective further denies that Plaintiffs, and the other persons that Plaintiffs purport to represent, are entitled to any relief whatsoever. Protective denies any other allegations in paragraph 65.

66. Denied. Protective specifically denies all allegations that it has violated any statute, regulation, law, or insurance policy provision in any way. Protective further denies that Plaintiffs, and the other persons that Plaintiffs purport to represent, are entitled to any relief whatsoever. Protective denies any other allegations in paragraph 66.

67. The allegations in paragraph 67 include legal conclusions to which no response is required. Protective lacks knowledge or information sufficient to form a belief about the truth of the statement quoted in paragraph 67, and therefore denies it. Protective denies any implied allegation that it has violated any statute, regulation, law, or insurance policy provision in any way. Protective denies any other allegations in paragraph 67.

PRAYER FOR RELIEF

Protective denies that Plaintiffs, and those other persons that Plaintiffs purport to represent, are entitled to any of the relief sought in Paragraphs (A) through (F) of the Prayer for Relief section of the Amended Complaint. Protective further denies that Plaintiffs, and those other persons that Plaintiffs purport to represent, are entitled to any relief whatsoever from Protective.

JURY DEMAND

Plaintiffs' demand for a jury trial does not require a response.

1 **AFFIRMATIVE AND OTHER DEFENSES**

2 Having answered the individually numbered paragraphs of Plaintiffs' Amended Complaint,
3 Protective asserts the following defenses. By setting forth these defenses, Protective does not assume the
4 burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to
5 Plaintiffs and those persons Plaintiffs purport to represent. Moreover, nothing stated herein is intended
6 or shall be construed as an admission that any particular issue or subject matter is relevant to Plaintiffs'
7 allegations.

8 1. The Amended Complaint, and each purported claim therein, fails to state a claim against
9 Protective on which relief can be granted.

10 2. Protective asserts that Plaintiffs have failed to join necessary and indispensable parties to
11 this suit.

12 3. Protective denies the material allegations of the Amended Complaint and demands strict
13 proof thereof.

14 4. The so-called "renewal principle" discussed in *Thomas v. State Farm Insurance Co.*, 424
15 F. Supp. 3d 1018 (S.D. Cal. 2019) (Bashant, J.), and *Bentley v. United of Omaha Life Insurance Co.*, 371
16 F. Supp. 3d 723 (C.D. Cal. 2019) (Gee, J.), does not apply to the policies at issue here.

17 5. Plaintiffs' interpretation of the Statutes is unconstitutional insofar as the United States and
18 California Constitutions both prohibit the passage of any law impairing the obligation of contracts. U.S.
19 Const., Art. I, § 10, cl. 1 ("No State shall . . . pass any . . . ex post facto law, or law impairing the
20 obligation of contracts."); Cal. Const., Art. I, § 9 ("A bill of attainder, ex post facto law, or law impairing
21 the obligation of contracts may not be passed.").

22 6. California Insurance Code §§ 10113.71 and 10113.72 do not create a private right of
23 action for recovery against insurers like Protective.

24 7. Plaintiffs' claims, and those of some or all of the other persons Plaintiffs purport to
25 represent, are barred by the provisions, terms, exclusions, definitions, limitations, and conditions of the
26 insurance policies at issue.

27 8. Plaintiffs' claims, and those of some or all of the other persons Plaintiffs purport to
28 represent, are barred because Protective has fully and/or substantially performed all contractual, statutory,

1 and other duties that may have been owed to Plaintiffs and the members of the putative class.

2 9. Plaintiffs' claims, and those of some or all of the other persons Plaintiffs purport to
3 represent, are barred by the failure to satisfy necessary conditions precedent.

4 10. Plaintiffs' claims, and those of some or all of the other persons Plaintiffs purport to
5 represent, are barred because they are based on alleged breach of obligations not found in the insurance
6 policies at issue, which are fully integrated agreements.

7 11. Plaintiffs' claims, and those of some or all of the other persons Plaintiffs purport to
8 represent, are barred or limited because Protective complied with all applicable laws, statutes, and
9 regulations at all pertinent times.

10 12. Plaintiffs' claims, and those of some or all of the other persons Plaintiffs purport to
11 represent, are barred or limited because Protective acted reasonably, appropriately, and in good faith at
12 all pertinent times.

13 13. Plaintiffs' claims, and those of some or all of the other persons Plaintiffs purport to
14 represent, are barred because Protective did not engage in any unfair, unlawful, fraudulent, or wrongful
15 conduct.

16 14. Plaintiffs' claims, and those of some or all of the other persons Plaintiffs purport to
17 represent, are barred because Protective did not willfully or intentionally engage in any unfair, unlawful,
18 fraudulent, or wrongful conduct.

19 15. The claims for relief asserted in the Amended Complaint are barred, in whole or in part,
20 by the applicable statutes of limitations, laches, and/or other time bars.

21 16. The acts and omissions of Protective, if any, were excused or justified by the information
22 and facts available to Protective at the time such acts and omissions, if any, occurred.

23 17. Plaintiff, and some or all of the other persons Plaintiffs purport to represent, have sustained
24 no injury in fact or damages caused by Protective or the conduct alleged in the Amended Complaint.

25 18. Plaintiffs, and some or all of the other persons Plaintiffs purport to represent, have failed
26 and neglected to use reasonable care to protect themselves and minimize the alleged loss and damage
27 complained of, if there was any.

28 19. If Plaintiffs, and all or some of those Plaintiffs purport to represent, have suffered any

1 injury or harm—which Protective expressly denies—recovery is barred by the failure of Plaintiffs, and
2 some or all of those Plaintiffs purport to represent, to mitigate, reduce, or otherwise avoid damages or
3 injuries.

4 20. Plaintiffs' claims, and those of some or all of the other persons Plaintiffs purport to
5 represent, are barred, in whole or in part, because no act or omission by Protective, or by any person or
6 entity for which Protective was responsible, was the proximate cause of any injury or harm alleged.

7 21. Plaintiffs' claims, and those of some or all of the other persons Plaintiffs purport to
8 represent, are barred due to the acts or omissions of third parties who are unrelated to Protective.

9 22. To the extent California Insurance Code §§ 10113.71 and 10113.72 require benefits to be
10 paid even though any policies had lapsed, Protective is entitled to an offset for any premiums that would
11 have been due and owing between the date of the last paid premium and the death of the insured(s).

12 23. To the extent California Insurance Code §§ 10113.71 and 10113.72 require reinstatement
13 even though any policies had lapsed, Protective is entitled to receive any past premiums that would be
14 due and owing since the date of the last paid premium.

15 24. Plaintiffs, and some or all of the other persons Plaintiffs purport to represent, fail to state
16 a claim for punitive, exemplary, and/or treble damages against Protective.

17 25. Any demand for punitive or exemplary damages in the Amended Complaint is barred by
18 the Due Process Clauses of the United States Constitution and/or the California Constitution. U.S. Const.,
19 amend. XIV; Cal. Const. Art. I, § 7.

20 26. Any demand for punitive or exemplary damages in the Amended Complaint is barred by
21 the Equal Protection Clauses of the United States Constitution and/or the California Constitution. U.S.
22 Const., amend. XIV; Cal. Const. Art. I, § 7.

23 27. Any demand for punitive or exemplary damages in the Amended Complaint is barred by
24 the Contracts Clauses of the United States Constitution and/or the California Constitution. U.S. Const.,
25 Art. I, § 10, cl. 1; Cal. Const. Art. I, § 9.

26 28. Any demand for punitive or exemplary damages in the Amended Complaint is barred by
27 the Excessive Fines provisions of the United States Constitution and/or the California Constitution. U.S.
28 Const., amend. VIII; Cal. Const. Art. I, § 17.

1 29. Any demand for punitive or exemplary damages in the Amended Complaint does not meet
2 the tests for set forth by the United States Supreme Court in *BMW of North America, Inc. v. Gore*, 517
3 U.S. 559 (1996), *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), *Philip*
4 *Morris USA v. Williams*, 549 U.S. 346 (2007), and other cases, and therefore fails to state a cause of
5 action supporting any punitive or exemplary damages claimed.

6 30. Plaintiffs, and some or all of the other persons Plaintiffs purport to represent, have
7 expressly and/or by conduct waived the right to complain of the conduct alleged in the Amended
8 Complaint and are estopped from pursuing these claims.

9 31. Plaintiffs' claims, and those of some or all of the other persons Plaintiffs purport to
10 represent, are barred by the doctrine of unjust enrichment.

11 32. Plaintiffs' claims, and those of some or all of the other persons Plaintiffs purport to
12 represent, are barred by the doctrine of unclean hands in that the actions of Plaintiff, and some or all of
13 the other persons Plaintiffs purport to represent, have caused some or all of the alleged harm incurred, if
14 any.

15 33. The second cause of action in the Amended Complaint for breach of the implied covenant
16 of good faith and fair dealing is barred by the genuine dispute doctrine.

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

19 35. The Amended Class Action Complaint fails to adequately define any class of persons who
20 could properly maintain this action as a class action.

21 36. This action is not proper for class certification under Federal Rule of Civil Procedure 23
22 because Plaintiffs' purported claims are not typical of the claims of the putative class or sub-class.

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

25 38. This action is not proper for class certification under Federal Rule of Civil Procedure 23
26 because the putative sub-class defined is not ascertainable.

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

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

3 41. This action is not proper for class certification under Federal Rule of Civil Procedure 23
4 because questions of law and fact common to the purported class (and/or sub-class) do not predominate
5 over the questions affecting the individual members of the purported class (and/or sub-class).

6 42. This action is not proper for class certification under Federal Rule of Civil Procedure 23
7 because individual questions of fact and law predominate over common questions.

8 43. This action is not proper for class certification under Federal Rule of Civil Procedure 23
9 because Plaintiffs and/or Plaintiffs' counsel are inadequate representatives of the putative class.

10 44. This action is not proper for class certification under Federal Rule of Civil Procedure 23
11 because there are likely to be difficulties in the management of the proposed class action.

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

14 46. This action is not proper for class certification under Federal Rule of Civil Procedure 23
15 because of conflicts of interest between Plaintiffs and the members of the putative class and/or between
16 and among members of the putative class.

17 47. Plaintiffs' claims are barred, in whole or in part, because the Policy terminated as a result
18 of Plaintiffs' admitted failure and inability to repay the required portion(s) of certain loans taken against
19 the Policy.

20 48. Plaintiffs' claims, and those of some or all of the other persons Plaintiffs purport to
21 represent, are barred, in whole or in part, by the following doctrines: res judicata, collateral estoppel,
22 laches, assumption of risk, contributory negligence, duress, failure of consideration, contribution, set-
23 off, fraud, illegality, injury by fellow servant, license, joint and several liability, payment, release,
24 standing, real party in interest, accord and satisfaction, good faith, failure to cooperate, failure to read,
25 and/or release.

26 49. Protective reserves the right to plead any additional affirmative defenses that become
27 available or known as this action proceeds, including, but not limited to, those defenses that become
28 known to Protective through discovery. Protective reserves the right to amend its Answer to add such

1 additional defenses or to delete any affirmative defenses that it determines are not applicable, as well as
2 any counterclaims and third-party claims, based on information revealed during the discovery process.

3 WHEREFORE, Defendant Protective Life Insurance Company prays for relief as follows:

- 4 1. That the Court deny Plaintiffs' request for certification of any class action pursuant to
5 Rule 23 of the Federal Rules of Civil Procedure or any other applicable Rules of Procedure;
- 6 2. That the Court deny any and all relief requested by Plaintiff;
- 7 3. That Plaintiffs takes nothing by reason of the Amended Class Action Complaint;
- 8 4. That the Court enter judgment in favor of Defendant Protective Life Insurance Company
9 and against Plaintiffs;
- 10 5. That the Court dismiss the Amended Class Action Complaint in its entirety with prejudice;
- 11 6. For costs of suit incurred herein, including attorneys' fees; and
- 12 7. For such other and further relief as the Court may deem just and proper.

13
14 DATED: October 20, 2022

MAYNARD, COOPER & GALE, LLP,

15
16 By: /s/ Cindy M. Rucker

CINDY M. RUCKER

17 Attorneys for Defendant PROTECTIVE LIFE
18 INSURANCE COMPANY
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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO)

I am employed in the County of San Francisco, State of California. I am over the age of 21 and am not a party to the within action. My business address is Maynard, Cooper & Gale, LLP, Two Embarcadero Center, Suite 1450, San Francisco, California 94111. On the date indicated below, I served the foregoing document described as:

DEFENDANT PROTECTIVE LIFE INSURANCE COMPANY'S ANSWER TO AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

on the interested parties in this action by placing: [] the original document - OR- [X] a true and correct copy thereof enclosed in sealed envelopes addressed as follows:


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[x] BY CM/ECF ELECTRONIC SERVICE: The following are registered CM/ECF users with the Court and have consented to service through the Court's automatic transmission of a notice of electronic filing.

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

Executed on October 20, 2022, in San Francisco, California.


Sam Roberson III