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8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 ROBERT R. FINE, Individually and On
Behalf of All Others Similarly Situated,
13
14 Plaintiff,
15
v.
16 KANSAS CITY LIFE INSURANCE
COMPANY,
17
18 Defendant.

Case No. 2:22-cv-2071-SSS

**KANSAS CITY LIFE
INSURANCE COMPANY'S
ANSWER TO SECOND
AMENDED CLASS ACTION
COMPLAINT**

Judge: Sunshine Suzanne Sykes

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1 Defendant Kansas City Life Insurance Company (“KCL”) hereby answers the
2 Second Amended Class Action Complaint filed by Robert R. Fine (“Plaintiff”) as
3 follows:

4 **NATURE OF ACTION¹**

5 1. KCL admits that Plaintiff filed a Second Amended Complaint (the
6 “SAC”) purporting to represent a class and alleging claims for breach of contract and
7 conversion but denies that such claims are sufficiently alleged or supported by
8 provisions of the life insurance policies of the Plaintiff and the unidentified putative
9 class members he purports to represent. KCL further denies breaching any promises
10 or committing any wrongdoing, and denies that Plaintiff has satisfied the
11 requirements to certify a class. Except to the extent expressly admitted, KCL denies
12 the remaining allegations in Paragraph 1 of the SAC.

13 2. KCL admits that the terms of Policy No. 2442027, issued by KCL to
14 Plaintiff, provide for an “accumulated value” as defined and set forth in that policy.
15 Except as expressly admitted, KCL denies the remaining allegations in Paragraph 2
16 of the SAC, which purport to summarize and restate the referenced terms.

17 3. KCL denies each and every allegation of Paragraph 3 of the SAC.

18 4. KCL denies each and every allegation of Paragraph 4 of the SAC.

19 5. KCL admits that the SAC alleges claims on behalf of Plaintiff and that
20 Plaintiff purportedly represents a class of similarly situated persons as described in
21 Paragraph 5 but denies the propriety of certifying the described class for, among other
22 reasons, material differences between universal and variable universal life insurance
23 policies and products that bar a conclusion that such policyholders are similarly
24 situated, and further denies that Plaintiff or the putative class is entitled to any relief.
25 Except as expressly admitted, KCL denies the remaining allegations in Paragraph 5
26 of the SAC.

27 ¹ KCL’s Answer includes the Second Amended Complaint’s subject headings solely
28 for ease of reference by the Court and the parties. KCL denies any legal conclusions
or characterizations of facts made or implied by the headings.

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1 6. KCL admits that a Missouri federal court certified a class of Kansas
2 owners of universal life insurance policies in *Meek v. Kansas City Life Ins. Co.*, 19-
3 00462-CV-W-BP (W.D. Mo.), that a Missouri state court certified a class of Missouri
4 owners of universal life insurance policies in *Karr v. Kansas City Life Ins. Co.*, 1916-
5 CV-26645 (Circuit Court of Jackson County, Mo.), and that another Missouri state
6 court certified a class of Missouri owners of variable universal life insurance policies
7 in *Sheldon v. Kansas City Life Ins. Co.*, 1916-CV26689 (Circuit Court of Jackson
8 County, Mo.). KCL denies that each of these certified classes satisfied the applicable
9 class certification requirements or that the law applied to this other actions—whether
10 correctly or not—in any way governs or binds this Court. Except as expressly
11 admitted, KCL denies the remaining allegations in Paragraph 6 of the SAC.

12 7. KCL admits that Plaintiff purports to seek the remedies set forth in
13 Paragraph 7 of the SAC on behalf of himself and a class of similarly situated persons,
14 and expresses skepticism that Plaintiff actually intends to seek all the remedies
15 arising from the asserted claims, particularly as his counsel is the same counsel as in
16 the *Karr* case referenced in Paragraph 6 of the SAC, and voluntarily abandoned the
17 conversion claim and associated punitive damages during trial. Regardless, KCL
18 denies that either Plaintiff or the putative class is entitled to any relief whatsoever.
19 KCL further denies that the requirements of Federal Rule of Civil Procedure 23 for
20 certification of a class are satisfied. Except to the extent expressly admitted, KCL
21 denies the remaining allegations in Paragraph 7 of the SAC.

22 **PARTIES**

23 8. KCL lacks knowledge or information sufficient to form a belief about
24 the truth of the allegations in Paragraph 8 of the SAC, and on that basis, denies them.

25 9. KCL admits the allegations in Paragraph 9 of the FAC.

26 **JURISDICTION AND VENUE**

27 10. Paragraph 10 of the SAC does not aver factual allegations to which any
28 response by KCL is required. To the extent that one is required, KCL admits that the

1 SAC invokes the Court’s jurisdiction as described in that paragraph, but denies that
2 the requirements of Federal Rule of Civil Procedure 23 for certification of a class are
3 satisfied, and also denies that the matter in controversy exceeds \$5,000,000. KCL
4 admits that it conducts business in California. As to the remaining allegations, KCL
5 lacks information or knowledge sufficient to form a belief about the truth of the
6 allegations in Paragraph 10 of the SAC, and on that basis denies them. Except to the
7 extent expressly admitted, KCL denies the remaining allegations in Paragraph 10 of
8 the SAC.

9 11. Plaintiff’s allegations about the propriety of venue in this Court pursuant
10 to a Section of the United States Code is not a factual allegation to which any
11 response is required. KCL nevertheless admits that, to the extent this Court has
12 jurisdiction over the case, venue in the Central District of California is proper. Except
13 to the extent expressly admitted, KCL denies the remaining allegations in Paragraph
14 11 of the SAC.

15 **FACTUAL BACKGROUND**

16 12. KCL admits that it issued a “Flexible Premium Adjustable Death
17 Benefit Life Policy” bearing policy number 2442027 and an initial specified amount
18 of \$73,500 (“Policy No. 2442027”). KCL denies that Policy No. 2442027 was issued
19 on June 3, 1989, and further denies that Exhibit A to the SAC is a true and correct
20 copy of Policy No. 2442027 due to lack of completeness. Except to the extent
21 expressly admitted, KCL denies the remaining allegations in Paragraph 12 of the
22 SAC.

23 13. KCL admits that it issued Policy No. 2442027 to Plaintiff. KCL denies
24 the remaining allegations in Paragraph 13 of the SAC.

25 14. KCL admits that it is the insurer of Policy No. 2442027. KCL denies the
26 remaining allegations in Paragraph 14 of the SAC.

27 15. KCL admits that the contract between it and Plaintiff is comprised of
28 Policy No. 2442027 (which includes riders, amendments, and endorsements to such

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1 policy), the application, and any supplemental applications. KCL denies the
2 remaining allegations in Paragraph 15 of the SAC.

3 16. KCL denies the allegations in Paragraph 16 of the SAC.

4 17. KCL admits that Section 10.4 of Policy No. 2442027 contains the
5 quoted phrase, but denies the remaining allegations to the extent they purport to
6 characterize or summarize the policy rather than accurately stating its actual terms.
7 KCL further denies the remaining allegations in Paragraph 17 of the SAC.

8 18. KCL admits that Section 10.4 of Policy No. 2442027 contains the
9 quoted phrase, but denies the remaining allegations to the extent they purport to
10 characterize or summarize the policy rather than accurately stating its actual terms.
11 KCL also denies that a sixth page exists to Plaintiff’s application. Except to the extent
12 expressly admitted, KCL further denies the remaining allegations in Paragraph 18 of
13 the SAC.

14 19. KCL admits that it issued and administered Policy No. 2442027. KCL
15 denies the remaining allegations in Paragraph 19 of the SAC.

16 20. KCL admits that Policy No. 2442027 is a universal life insurance policy.
17 KCL denies the remaining allegations in Paragraph 20 of the SAC.

18 21. KCL admits that Policy No. 2442027 provides for the computation of
19 an “accumulated value” as defined in the policy. KCL denies the remaining
20 allegations in Paragraph 21 of the SAC.

21 22. KCL admits that as a general matter certain premiums, deductions and
22 charges are made pursuant to the terms of various different policies and deposited
23 elsewhere. KCL denies the remaining allegations in Paragraph 22 of the SAC.

24 23. Paragraph 23 of the SAC does not aver factual allegations to which any
25 response by KCL is required. To the extent that a response is required, KCL denies
26 the allegations in Paragraph 23 of the SAC.

27 24. KCL admits that Section 11.2 of Policy No. 2442027 contains the
28 quoted language, but denies the remaining allegations to the extent they purport to

1 characterize or summarize the policy rather than accurately stating its actual terms.
2 KCL denies the remaining allegations in Paragraph 24 of the SAC.

3 25. KCL admits that Policy No. 2442027 identifies and defines various
4 deductions, charges, and other terms, as one can see upon review of the referenced
5 policy. Other statements in Paragraph 23 of the SAC are not factual allegations to
6 which any response by KCL is required. To the extent a response is required, KCL
7 denies the remaining allegations in Paragraph 25 of the SAC.

8 26. KCL admits that page 5 of Policy No. 2442027 identifies a “Premium
9 Expense Charge” as “5.0% deducted from each premium payment,” but denies the
10 remaining allegations to the extent they purport to characterize or summarize the
11 policy rather than accurately stating its actual terms. KCL denies the remaining
12 allegations in Paragraph 26 of the SAC.

13 27. KCL admits that Section 11.4 of Policy No. 2442027 defines the term
14 “Monthly Deduction” with language Plaintiff has excerpted, but denies the remaining
15 allegations to the extent they purport to characterize or summarize the policy rather
16 than accurately stating its actual terms. KCL denies the remaining allegations in
17 Paragraph 27 of the SAC.

18 28. KCL admits that page 5 of Policy No. 2442027 identifies a “Monthly
19 Expense Charge – Current” and “Monthly Expense Charge – Guaranteed,” but denies
20 the remaining allegations to the extent they purport to characterize or summarize the
21 policy rather than accurately stating its actual terms. KCL denies the remaining
22 allegations in Paragraph 28 of the SAC.

23 29. KCL admits that Section 5.11 of Policy No. 2442027 defines the term
24 “Expense Charges” with language similar to that which Plaintiff has altered in
25 purporting to excerpt the language, but denies the remaining allegations to the extent
26 they purport to characterize or summarize the policy rather than accurately stating its
27 actual terms. KCL denies the remaining allegations in Paragraph 29 of the SAC.
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1 30. KCL admits that Policy No. 2442027 identifies expense charges, but
2 denies the remaining allegations to the extent they purport to characterize or
3 summarize the policy rather than accurately stating its actual terms. KCL denies the
4 remaining allegations in Paragraph 30 of the SAC.

5 31. KCL admits that Policy No. 2442027 authorizes KCL to do many things
6 and in Section 11.5 defines “Cost of Insurance,” but denies the remaining allegations
7 to the extent they purport to characterize or summarize the policy rather than
8 accurately stating its actual terms. KCL denies the remaining allegations in Paragraph
9 31 of the SAC.

10 32. KCL admits that Section 11.5 of Policy No. 2442027 defines “Cost of
11 Insurance” with language similar to that which Plaintiff has altered in purporting to
12 excerpt the language. KCL denies the remaining allegations in Paragraph 32 of the
13 SAC.

14 33. KCL admits that Section 11.5 in Policy No. 2242027 contains the
15 quoted language. KCL denies the remaining allegations in Paragraph 33 of the SAC.

16 34. KCL admits that Section 4 of Policy No. 2442027 contains language
17 similar to that which Plaintiff has altered in purporting to excerpt the language, but
18 denies the remaining allegations to the extent they purport to characterize or
19 summarize the policy rather than accurately stating its actual terms. KCL denies the
20 remaining allegations in Paragraph 34 of the SAC.

21 35. KCL denies each and every allegation of Paragraph 35 of the SAC.

22 36. KCL denies each and every allegation of Paragraph 36 of the SAC.

23 37. KCL denies each and every allegation of Paragraph 37 of the SAC.

24 38. KCL denies each and every allegation of Paragraph 38 of the SAC.

25 39. KCL denies each and every allegation of Paragraph 39 of the SAC.

26 40. KCL denies each and every allegation of Paragraph 40 of the SAC.

27 41. KCL denies each and every allegation of Paragraph 41 of the SAC.

28 42. KCL denies each and every allegation of Paragraph 42 of the SAC.

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- 1 43. KCL denies each and every allegation of Paragraph 43 of the SAC.
- 2 44. KCL denies each and every allegation of Paragraph 44 of the SAC.
- 3 45. KCL denies each and every allegation of Paragraph 45 of the SAC.
- 4 46. KCL denies each and every allegation of Paragraph 46 of the SAC.
- 5 47. KCL denies each and every allegation of Paragraph 47 of the SAC.
- 6 48. KCL denies Plaintiff’s allegations that *Karr v. Kansas City Life*
- 7 *Insurance Co.*, 1916-CV26645 (Circuit Court of Jackson County, Mo.), which
- 8 involved a different Plaintiff purporting to represent a different class regarding
- 9 different policies and that asserted claims under Missouri law in a Missouri state
- 10 court, in which Plaintiff voluntarily abandoned a conversion claim and associated
- 11 punitive damages during trial is remotely “identical.” KCL admits that the *Karr* court
- 12 granted partial summary judgment in favor of the plaintiff on the contract claims
- 13 asserted by that plaintiff regarding policy forms that are not identical to those Plaintiff
- 14 in this case has placed at issue. KCL denies the remaining allegations in Paragraph
- 15 48 of the SAC.
- 16 49. Paragraph 49 of the SAC does not aver factual allegations to which any
- 17 response by KCL is required. To the extent that a response is required, KCL denies
- 18 each and every allegation of Paragraph 49 of the SAC.
- 19 50. The first and last sentences of Paragraph 50 of the SAC do not aver
- 20 factual allegations to which any response by KCL is required, and merely speculate
- 21 about what “would be” the case, rather than what is or what is not, and thus expressly
- 22 hedges using “even if” language. To the extent that a response is required to
- 23 Plaintiff’s speculations, KCL denies them. Regarding other aspects of Paragraph 50
- 24 of the SAC, KCL admits it possesses actuarial information considered in determining
- 25 various rates to be applied pursuant to Policy No. 2442027. Except to the extent
- 26 expressly admitted, KCL denies the remaining allegations in Paragraph 50 of the
- 27 SAC.
- 28 51. KCL denies each and every allegation of Paragraph 51 of the SAC.

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CLASS ACTION ALLEGATIONS

52. Paragraph 52 of the SAC does not aver factual allegations to which any response by KCL is required. To the extent that one is required, KCL admits that Plaintiff purports to bring this case as a class action pursuant to Federal Rule of Civil Procedure 23. KCL denies that the requirements of Federal Rule of Civil Procedure 23 for certification of a class are satisfied. KCL denies the remaining allegations in Paragraph 52 of the SAC.

53. Paragraph 53 of the SAC does not aver factual allegations to which any response by KCL is required. To the extent that one is required, KCL admits that Plaintiff alleges that certain putative members are excluded from the class. KCL denies the remaining allegations in Paragraph 53 of the SAC.

54. KCL denies each and every allegation of Paragraph 54 of the SAC.

55. KCL denies each and every allegation of Paragraph 55 of the SAC.

56. KCL denies each and every allegation of Paragraph 56 of the SAC.

57. KCL denies each and every allegation of Paragraph 57 of the SAC.

58. KCL denies each and every allegation of Paragraph 58 of the SAC.

59. KCL denies each and every allegation of Paragraph 59 of the SAC.

60. KCL denies each and every allegation of Paragraph 60 of the SAC.

61. KCL denies each and every allegation of Paragraph 61 of the SAC.

COUNT I: BREACH OF CONTRACT

(Cost of Insurance Charge)

62. Paragraph 62 of the SAC does not aver factual allegations to which any response by KCL is required. To the extent that one is required, KCL denies the allegations.

63. KCL admits that it issued Policy No. 2442027 to Plaintiff, but cannot identify the putative class members or so-called “Class Policies” with any certainty. Except to the extent expressly admitted, KCL denies the remaining allegations in Paragraph 63 of the SAC.

1 64. KCL admits that, as of the date of the filing of this Answer, Policy No.
2 2442027 is a valid and enforceable contract between Plaintiff and KCL. KCL lacks
3 knowledge or information sufficient to form a belief about the truth of the remaining
4 allegations of Paragraph 64 and on that basis denies them.

5 65. KCL denies each and every allegation of Paragraph 65 of the SAC.

6 66. KCL denies each and every allegation of Paragraph 66 of the SAC.

7 67. KCL denies each and every allegation of Paragraph 67 of the SAC.

8 68. KCL denies each and every allegation of Paragraph 68 of the SAC.

9 69. KCL denies each and every allegation of Paragraph 69 of the SAC.

10 70. KCL denies each and every allegation of Paragraph 70 of the SAC.

11 71. KCL denies each and every allegation of Paragraph 71 of the SAC and
12 specifically denies that Plaintiff or the putative class has suffered any damages at all.

13 **COUNT II: BREACH OF CONTRACT**

14 **(Expense Charges)**

15 72. Paragraph 72 of the SAC does not aver factual allegations to which any
16 response by KCL is required. To the extent that one is required, KCL denies the
17 allegations.

18 73. KCL denies each and every allegation of Paragraph 73 of the SAC.

19 74. KCL denies each and every allegation of Paragraph 74 of the SAC.

20 75. KCL denies each and every allegation of Paragraph 75 of the SAC and
21 specifically denies that Plaintiff or the putative class has suffered any damages at all.

22 **COUNT III: BREACH OF CONTRACT**

23 **(Improving Expectations as to Future Mortality Experience)**

24 76. Paragraph 76 of the SAC does not aver factual allegations to which
25 any response by KCL is required. To the extent that one is required, KCL denies the
26 allegations.

27 77. KCL denies each and every allegation of Paragraph 77 of the SAC.

28 78. KCL denies each and every allegation of Paragraph 78 of the SAC.

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1 79. KCL denies each and every allegation of Paragraph 79 of the SAC.

2 80. KCL denies each and every allegation of Paragraph 80 of the SAC and
3 specifically denies that Plaintiff or the putative class has suffered any damages at all.

4 **COUNT IV: CONVERSION**

5 81. Paragraph 81 of the SAC does not aver factual allegations to which any
6 response by KCL is required. To the extent that one is required, KCL denies the
7 allegations.

8 82. KCL denies each and every allegation of Paragraph 82 of the SAC.

9 83. KCL denies each and every allegation of Paragraph 83 of the SAC.

10 84. KCL denies each and every allegation of Paragraph 84 of the SAC.

11 85. KCL admits that Section 11.7 of Policy No. 2442027 contains the
12 quoted phrase, although it has been altered by Plaintiff. KCL denies the remaining
13 allegations to the extent they purport to characterize or summarize the policy rather
14 than accurately stating its actual terms. KCL denies the remaining allegations in
15 Paragraph 85 of the SAC.

16 86. KCL denies each and every allegation of Paragraph 86 of the SAC.

17 87. KCL denies each and every allegation of Paragraph 87 of the SAC and
18 specifically denies that Plaintiff or the putative class has suffered any damages at all.

19 88. KCL denies each and every allegation of Paragraph 88 of the SAC.

20 89. KCL denies each and every allegation of Paragraph 89 of the SAC and
21 specifically denies that Plaintiff or the putative class has suffered any damages at all.

22 90. KCL admits it drafted Policy No. 2442027 and the policy speaks for
23 itself. Except to the extent expressly admitted, KCL denies the remaining allegations
24 in Paragraph 90 of the SAC.

25 91. KCL lacks knowledge or information sufficient to form a belief about
26 the truth of the allegations regarding correspondence and on that basis denies them.
27 KCL further denies the remaining allegations in Paragraph 91 of the SAC.

28 92. KCL denies each and every allegation in Paragraph 92 of the SAC.

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1 93. KCL lacks knowledge or information sufficient to form a belief about
2 the truth of the allegations regarding the vaguely referenced “marketing materials
3 and illustrations” and on that basis denies them. KCL further denies the remaining
4 allegations in Paragraph 93 of the SAC.

5 94. KCL lacks knowledge or information sufficient to form a belief about
6 the truth of the allegations regarding the insufficiently identified marketing statement
7 and correspondence to unidentified “regulator” and on that basis denies them. KCL
8 further denies the remaining allegations in Paragraph 94 of the SAC.

9 95. KCL lacks knowledge or information sufficient to form a belief about
10 the truth of the allegations regarding an unidentified “state regulator” and on that
11 basis denies them. KCL further denies the remaining allegations in Paragraph 95 of
12 the SAC.

13 96. KCL admits that some later-issued products contain different language
14 than the terminology used in Policy No. 2442027. Except to the extent expressly
15 admitted, KCL denies the remaining allegations in Paragraph 96 of the SAC.

16 97. KCL denies each and every allegation of Paragraph 97 of the SAC.

17 98. KCL admits that certain employees attended the 2017 ReFocus
18 Conference. Except to the extent expressly admitted, KCL denies the remaining
19 allegations in Paragraph 98 of the SAC.

20 99. KCL lacks knowledge or information sufficient to form a belief about
21 the truth of the allegations regarding the vaguely referenced, unidentified
22 correspondence and on that basis denies them. KCL further denies the remaining
23 allegations in Paragraph 99 of the SAC.

24 100. Paragraph 100 of the SAC does not aver factual allegations to which any
25 response by KCL is required. To the extent that one is required, KCL admits that in
26 June 2018, in *Vogt v. State Farm Life Insurance Company*, in the United States
27 District Court for the Western District of Missouri, Case No. 2:16-cv-04170-NKL, a
28 jury returned a verdict in favor of a plaintiff class against State Farm Life Insurance

1 Company, a third party to the present controversy, and that in June 2020, the United
2 States Court of Appeals, Eighth Circuit affirmed the jury’s verdict against that third
3 party based on the record in that case and the court’s assessment of the issues,
4 arguments and authorities presented in that appeal. Except to the extent expressly
5 admitted, KCL denies the remaining allegations in Paragraph 100 of the SAC.

6 101. KCL denies each and every allegation of Paragraph 101 of the SAC and
7 specifically denies that Plaintiff or the putative class has suffered any damages at all.

8 **PRAYER FOR RELIEF**

9 KCL denies that Plaintiff is entitled to any of the relief sought in the Wherefore
10 clause of the SAC.

11 **DEFENSES**

12 KCL hereby asserts the following affirmative defenses to the SAC, without
13 undertaking or otherwise shifting the applicable burden of proof in any respect. KCL
14 specifically reserves the right to assert additional affirmative defenses as warranted
15 in light of any clarification or modification of the allegations in the SAC or in light
16 of facts learned during the course of investigation, discovery, or trial.

17 **FIRST DEFENSE**

18 **(Failure to State a Claim)**

- 19 1. The SAC fails to state a claim upon which any relief can be granted.

20 **SECOND DEFENSE**

21 **(No Standing/No Injury in Fact)**

- 22 2. Plaintiff and some or all members of the putative class lack standing to
23 bring some or all of the claims set forth in the SAC because they have not suffered
24 any injury in fact.

25 **THIRD DEFENSE**

26 **(Source of Duty Rule and Economic Loss Doctrine)**

- 27 3. Plaintiff has failed to state a claim for relief for conversion, because
28 among other things, the only source of duty alleged arises from Policy No. 2442027

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1 and the economic loss doctrine bars recovery of the purely economic damages
2 alleged. Plaintiff does not have a property interest or other interest in the accumulated
3 value, from which he alleges deductions in excess of those contractually permitted
4 were made, that is legally sufficient to support a claim for conversion.

5 **FOURTH DEFENSE**

6 **(Statute of Limitations)**

7 4. Plaintiff’s claims, and those of some or all of the other persons he
8 purports to represent, are barred by the applicable statutes of limitations for each
9 cause of action alleged. For instance, Policy No. 2442027 was issued in June 1989,
10 more than 33 years before Plaintiff filed his Complaint, and he cannot adequately
11 demonstrate any fraudulent concealment by KCL or any other facts that would toll
12 the running of the applicable statutes of limitations. To the extent the discovery rule
13 applies to any of Plaintiff’s or the putative class’s causes of action, they had adequate
14 actual or constructive knowledge (from the terms of their contracts, illustrations,
15 annual statements, correspondence, and other written and oral communications with
16 KCL or third parties) to trigger the running of the limitations period so that the
17 applicable statutes of limitation have now expired.

18 **FIFTH DEFENSE**

19 **(No Fraudulent Concealment—No Duty to Disclose)**

20 5. Plaintiff cannot assert his untimely claims based on fraudulent
21 concealment as KCL had no duty to disclose the conduct of which Plaintiff
22 complains.

23 **SIXTH DEFENSE**

24 **(No Fraudulent Concealment—No Intent to Deceive)**

25 6. Plaintiff cannot assert his untimely claims based on fraudulent
26 concealment as KCL had no intent to deceive any policyholder.

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SEVENTH DEFENSE

(No Fraudulent Concealment—Failure to Plead Fraud with Particularity)

7. Plaintiff cannot assert his untimely claims based on fraudulent concealment as Plaintiff has not alleged fraud with the particularity required by Rule 9(b) of the Federal Rules of Civil Procedure.

EIGHTH DEFENSE

(Laches)

8. Plaintiff’s claims, and those of some or all of the other persons he purports to represent, are barred by the equitable doctrine of laches because they waited many years, and in some cases decades, to bring their claims in this action. For instance, Plaintiff waited more than 33 years after Policy No. 2442027 was issued, and after receiving numerous documents and communications that should have alerted him to his claims in this action, before filing this lawsuit. Consequently, KCL has been prejudiced and disadvantaged by this undue delay in seeking a remedy.

NINTH DEFENSE

(Voluntary Payment Doctrine)

9. Plaintiff’s claims, and those of some of the persons he purports to represent are barred by the voluntary payment doctrine as they continued to pay premiums after knowing the pertinent facts.

TENTH DEFENSE

(Ratification)

10. Plaintiff and some or all of the persons he purports to represent have ratified KCL’s actions under their contracts by continuing to pay premiums.

ELEVENTH DEFENSE

(Waiver)

11. Plaintiff and some or all of the persons he purports to represent have waived the claims set forth in the SAC.

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TWELFTH DEFENSE

(Release)

12. Some of the persons Plaintiff purports to represent have released the claims set forth in the SAC.

THIRTEENTH DEFENSE

(Accord and Satisfaction)

13. Some or all of the causes of action by some of the persons Plaintiff purports to represent are barred by accord and satisfaction.

FOURTEENTH DEFENSE

(Contract Obligations Fully Performed)

14. Each count of the SAC is barred because KCL has fully performed all of its contractual obligations to Plaintiff and other persons he purports to represent.

FIFTEENTH DEFENSE

(Claims Barred by Contract Provisions)

15. Some or all of Plaintiff’s claims and the persons he purports to represent are barred by the express provisions of those persons’ respective insurance contracts, which authorize each of the deductions about which Plaintiff complains.

SIXTEENTH DEFENSE

(Election of Remedies)

16. As Plaintiff’s and the putative class members’ claims for conversion are based on the same alleged conduct as Plaintiff’s and the putative class members’ breach of contract claims, Plaintiff and the putative class members cannot recover under both theories.

SEVENTEETH DEFENSE

(Failure to Mitigate Damages)

17. Plaintiff and some or all of the persons he purports to represent are barred from relief because they have failed to mitigate their alleged damages.

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EIGHTEENTH DEFENSE

(No Damages)

18. Plaintiff, and some or all of the persons he purports to represent, suffered no damages by reason of any act or omission of KCL.

NINETEENTH DEFENSE

(No Basis for Attorneys’ Fees)

19. None of the causes of action alleged in the SAC entitle Plaintiff or any person he purports to represent to recover attorneys’ fees from KCL as a matter of contract, statute or otherwise.

TWENTIETH DEFENSE

(No Basis for Punitive or Exemplary Damages)

20. Plaintiff has not alleged any facts sufficient to support a finding that KCL has acted with malice or is guilty of oppression or any other facts sufficient to recover punitive or exemplary damages. Further, punitive damages may not be recovered to the extent they are excessive under the Constitution of the United States or any state law applicable to claims brought by residents of the respective states in which each member of the putative class purchased his or her policy. Further, KCL at all times has acted in good faith and therefore is not liable for any punitive or exemplary damages.

TWENTY-FIRST DEFENSE

(No Equitable or Injunctive Relief Available)

21. Plaintiff and those persons he purports to represent are not entitled to any injunctive or declaratory relief to the extent that (1) their policies have lapsed or terminated or (2) they have an adequate remedy at law for money damages.

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TWENTY-SECOND DEFENSE

(Filed Rate Doctrine)

22. Plaintiff’s claims and those of the persons he purports to represent are barred by the filed rate doctrine. The policy forms at issue were filed with and/or approved by state regulatory authorities.

TWENTY-THIRD DEFENSE

(Primary Jurisdiction)

23. The claims of Plaintiff and the members of the putative class are barred, in whole or in part, by the doctrine of primary jurisdiction in that the claims and conduct alleged in the SAC require the resolution of issues that the state legislatures have placed within the special competence of the states’ insurance regulators. Those regulators have at their disposal a pervasive and self-contained system of administrative procedures to address issues of the type raised by the SAC and the SAC demonstrates a paramount need for the specialized fact-finding expertise of the state insurance regulators. Without prior action by the insurance regulator in any state, there exists a substantial danger that application of the insurance statutes and regulations of that state will not be uniformly applied.

TWENTY-FOURTH DEFENSE

(Approval of Policies and Compliance with Insurance Regulations)

24. The insurance contract forms at issue in this litigation were approved by and/or filed with the states’ insurance regulatory authorities if such approval or filing was required and KCL has complied with all relevant insurance regulations with regard to the approval and maintenance of those contracts.

TWENTY-FIFTH DEFENSE

(Class Action Improper)

25. Plaintiff’s claim on behalf of others is not proper for class certification because Plaintiff cannot satisfy the requirements set forth in Federal Rule of Civil Procedure 23. A class action is also improper as a result of a conflict caused by the

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1 proposed class counsel’s simultaneous representation of four other competing
2 putative and certified classes in cost of insurance allegations against KCL, thereby
3 jeopardizing the classes’ right to a duty of loyalty, adequate counsel, and zealous
4 representation.

5 **TWENTY-SIXTH DEFENSE**

6 **(Counsel Conflict)**

7 26. Plaintiff’s counsel’s simultaneous representation of competing putative
8 and certified classes in allegations against KCL creates irreconcilable, non-waivable
9 conflicts of interest in violation of the applicable rules of professional conduct and
10 governing law.

11 **TWENTY-SEVENTH DEFENSE**

12 **(Failure to Name Required Parties)**

13 27. The SAC fails to name one or more required parties.

14 **TWENTY-EIGHTH DEFENSE**

15 **(Offset)**

16 28. Each purported claim in the SAC is barred, in whole or in part, by the
17 right of KCL to a set-off against any damages by virtue of Plaintiff’s breach or
18 wrongful conduct under the terms of the policy, or as a result of Plaintiff’s lack of
19 damage under the policy.

20 **TWENTY-NINTH DEFENSE**

21 **(Reservation of Rights)**

22 29. KCL reserves the right to amend its answer and assert further
23 affirmative defenses that are not presently known to it but may become known and
24 available through further investigation and discovery.

25 **PRAYER**

26 WHEREFORE, KCL prays for judgment as follows:

- 27 1. That Plaintiff takes nothing by way of his SAC;
28 2. For dismissal of the SAC against KCL with prejudice;

1 3. That the Court deny Plaintiff’s request for certification of any class
2 action pursuant to Rule 23 of the Federal Rules of Civil Procedure or any other
3 applicable Rules of Procedure;

4 4. That judgment be entered in favor of KCL and against Plaintiff;

5 5. That KCL be awarded its costs of this suit, including attorneys’ fees,
6 and;

7 6. For such other and further relief in favor of KCL as the Court may deem
8 just and proper.

9 Dated: March 3, 2023

Squire Patton Boggs (US) LLP

11 By: /s/Adam R. Fox

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