

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

LORIN NIEWINSKI, JOHN BAKER  
MCCLANAHAN, as personal representative  
of THE ESTATE OF MELISSA  
BUCHANAN, ROBERT A. BOZAICH,  
RONNIE JACKSON, and SHERIF B.  
BOTROS, individually and on Behalf of All  
Others Similarly Situated,

Plaintiffs,

vs.

STATE FARM LIFE INSURANCE  
COMPANY and STATE FARM LIFE AND  
ACCIDENT ASSURANCE COMPANY,

Defendants

Case No. 2:23-cv-4159

**DEFENDANTS' ANSWER TO PLAINTIFFS' CLASS ACTION COMPLAINT**

Defendants State Farm Life Insurance Company and State Farm Life and Accident Assurance Company (collectively, "State Farm") hereby respond to and answer the allegations of Plaintiffs' putative Class Action Complaint. Except as expressly admitted in this Answer below, State Farm denies all of Plaintiffs' allegations.

**I. INTRODUCTION**

1. This is a class action to recover amounts that Defendants charged and collected from Plaintiffs and other similarly situated owners of life insurance policies issued by Defendants on Forms 86040 and 86075 (the "Policies") in excess of amounts authorized by the express terms of those Policies. Plaintiffs' claims and those of the proposed nationwide class (the "Class") are

exclusively supported by the explicit provisions of their Policies and are not derived from any alleged conversations had, or documents reviewed, at the time of sale.

**ANSWER: State Farm admits that Plaintiffs seek to bring a class action against State Farm on behalf of a class of owners of Forms 86040 and 86075 issued and administered by State Farm but deny that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

2. Plaintiffs, individually and on behalf of members of the Class, seek to recover amounts they allege Defendants have wrongfully taken from them and other owners of the Policies across the United States.

**ANSWER: State Farm admits that Plaintiffs purport to bring this case as a class action under Rule 23 of the Federal Rules of Civil Procedure but denies that this case meets the requirements for certification of a litigation class and otherwise denies these allegations. Except as expressly admitted, State Farm denies all remaining allegations in this paragraph.**

3. The Policies at issue are “universal life” insurance policies, the terms of which provide for a “Cash Value” consisting of monies held in trust by Defendants for Plaintiffs and members of the Class. Plaintiffs allege Defendants are contractually bound to deduct from the Cash Value only those charges that are explicitly identified and authorized by the terms of the Policies, which are fully integrated agreements.

**ANSWER: State Farm admits that it is authorized to make deductions and apply charges as permitted by Plaintiffs’ Policies but otherwise denies the allegations in this paragraph and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

4. Defendants' conduct in this case concerns the determination of the "Monthly Cost of Insurance Rates," or "COI Rates" applied to the Policies. Defendants use these COI Rates to calculate a monthly "Cost of Insurance Charge," or "COI Charge," which is taken from each Plaintiffs' and Class members' Cash Value. By calculating the COI Rates in a manner that violates the express terms of the Policies, Defendants cause Plaintiffs' and the Class members' Cash Values to be lower than they otherwise would have been had Defendants properly determined the COI Rates.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

5. Defendants breach the Policies express terms in at least five ways: (a) by using unauthorized and undisclosed factors to compute the COI Rates under the Policies; (b) by using expenses to compute the COI Rates that are in excess of the Expense Charge permitted by the Policies; (c) by failing to reduce COI Rates when Defendants' expectations as to future mortality experience improved; (d) by failing to consider and use *only* their expectations of future mortality when Defendants adjusted their COI Rates; and (e) by failing to reduce COI Rates to the full extent of mortality improvements experienced by Defendants when Defendants adjusted their COI Rates.

**ANSWER: State Farm denies these allegations.**

6. Defendants' conduct has persisted for decades, unbeknownst to Plaintiffs and members of the Class. As set forth herein, Defendants conduct was, by its nature, inherently undiscoverable. In addition, Defendants fraudulently concealed their conduct. Finally, Defendants had an affirmative duty to truthfully disclose how they were determining the COI Rates to Plaintiffs and the Class but failed to do so.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

7. Defendants' conduct has caused, and continues to cause, material harm to Plaintiffs and the Class by wrongfully draining monies they have accumulated in the Cash Values of their Policies. Every unauthorized dollar taken from the Plaintiffs' and Class members' Cash Values is one less dollar that accumulates with interest and that can be used to: pay future premiums; increase the death benefit; use as collateral for policy loans; or withdraw as cash.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

8. And because the Policies stay in-force only so long as the Cash Value is sufficient to cover future COI Charges, Defendants' conduct causes the premature lapse of Policies or forces owners to make substantial additional payments to retain their Policies.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

## **II. PARTIES**

9. Plaintiff Niewinski is an individual and resident of the State of Missouri whose policy was issued by Defendant State Farm Life Insurance Company in Maryland.

**ANSWER: State Farm admits these allegations.**

10. Plaintiff Buchanan was an individual and resident of the State of Tennessee whose policy was issued by Defendant State Farm Life Insurance Company in Tennessee.

**ANSWER: State Farm admits these allegations.**

11. Plaintiff Bozaich is an individual and resident of the State of Minnesota whose policy was issued by Defendant State Farm Life Insurance Company in Illinois.

**ANSWER: State Farm states that it lacks knowledge or information sufficient to form a belief about the truth of these allegations, and thus denies these allegations.**

12. Plaintiff Jackson is an individual and resident of the State of Arkansas whose policy was issued by Defendant State Farm Life Insurance Company in California.

**ANSWER: State Farm states that it lacks knowledge or information sufficient to form a belief about the truth of these allegations, and thus denies these allegations.**

13. Plaintiff Botros is an individual and resident of the State of North Carolina whose policy was issued by Defendant State Farm Life Insurance Company in North Carolina.

**ANSWER: State Farm states that it lacks knowledge or information sufficient to form a belief about the truth of these allegations, and thus denies these allegations.**

14. Defendant State Farm Life and Accident Assurance Company is a life insurance company organized and existing under the laws of the State of Illinois, with its principal place of business in Bloomington, Illinois, and is registered to do business in the State of New York and the State of Wisconsin.

**ANSWER: State Farm admits these allegations.**

15. Defendant State Farm Life Insurance Company is a life insurance company organized and existing under the laws of the State of Illinois, with its principal place of business in Bloomington, Illinois, and is registered to do business in the State of Missouri and has a registered office located at 221 Bolivar Street, Jefferson City, MO 65101.

**ANSWER: State Farm admits these allegations.**

16. Over the years Defendants issued hundreds of thousands of Policies nationwide.

**ANSWER: State Farm admits these allegations.**

17. Class Representatives bring this case as a class action under Federal Rule of Civil Procedure 23, on behalf of themselves and as representatives of a nationwide Class of similarly situated persons who own or owned the Policies, as more fully defined below.

**ANSWER: State Farm admits that Plaintiffs purport to bring this case as a putative class action under Rule 23 of the Federal Rules of Civil Procedure but denies that this case meets the requirements for certification of a litigation class, and otherwise denies these allegations.**

### **III. JURISDICTION AND VENUE**

18. This Court has jurisdiction over all causes of action asserted herein pursuant to 28 U.S.C. § 1332(d) because this is a class action with diversity of citizenship between parties and the matter in controversy exceeds \$5,000,000, exclusive of interest and costs, and the proposed Class contains more than 100 members.

**ANSWER: State Farm admits that there is diversity of citizenship between the present parties and that the proposed Class contains more than 100 members but denies all other allegations and specifically denies that certification of a litigation class is proper.**

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial portion of the events giving rise to Plaintiffs' causes of action occurred in this District. Likewise, venue is proper in this Division pursuant to Local Rule 3.2(b)(2) because Defendant State Farm Life Insurance Co. has a registered office located at 221 Bolivar Street, Jefferson City, MO 65101.

**ANSWER: State Farm does not contest venue in this Court for the claims currently asserted by the named Plaintiffs who reside in Missouri, but denies that venue is proper in this Court for any claims between State Farm and residents of states other than Missouri.**

**IV. ALLEGATIONS**

**A. Plaintiffs' Policies**

20. Plaintiff Niewinski purchased from Defendant State Farm Life Insurance Company a flexible premium adjustable whole life insurance Form 86040 policy bearing the policy number LF-0954-3201, and a policy date of June 2, 1988, with a basic amount of \$75,000. Plaintiff Niewinski has always been the owner of this policy.

**ANSWER: State Farm admits these allegations.**

21. Melissa Buchanan purchased from Defendant State Farm Life Insurance Company a flexible premium adjustable whole life insurance Form 86040 policy bearing the policy number LF-1206-8657, and a policy date of March 1, 1992, with a basic amount of \$75,000 (the "Buchanan Estate Policy"). Ms. Buchanan passed away on December 3, 2016, and State Farm paid \$70,276.09, which was the amount payable at the time of Ms. Buchanan's death with interest; this payment did not release State Farm from liability for the claims alleged herein. Melissa Buchanan was both the "owner" and the "insured" under the Buchanan Estate Policy, and State Farm was the effective and liable insurer of the Buchanan Estate Policy.

**ANSWER: State Farm admits that Melissa Buchanan purchased the flexible premium adjustable whole life insurance policy bearing the policy number LF-1206-8657, with a policy date of March 1, 1992, and with a basic amount of \$75,000. State Farm also admits that State Farm Life Insurance Company issued Melissa**

**Buchanan's Policy. Except as expressly admitted, State Farm denies these allegations.**

22. Plaintiff Bozaich purchased from Defendant State Farm Life Insurance Company a flexible premium adjustable whole life insurance Form 86040 policy bearing the policy number LF-1256-7421, and a policy date of December 12, 1992, with a basic amount of \$50,000. Plaintiff Bozaich has always been the owner of this policy.

**ANSWER: State Farm states that it lacks knowledge or information sufficient to form a belief about the truth of these allegations, and thus denies these allegations.**

23. Plaintiff Jackson purchased from Defendant State Farm Life Insurance Company a flexible premium adjustable whole life insurance Form 86040 policy bearing the policy number LF-1016-0814, and a policy date of April 24, 1989, with a basic amount of \$50,000. Plaintiff Jackson has always been the owner of this policy.

**ANSWER: State Farm states that it lacks knowledge or information sufficient to form a belief about the truth of these allegations, and thus denies these allegations.**

24. Plaintiff Botros purchased from Defendant State Farm Life Insurance Company a flexible premium adjustable whole life insurance Form 86040 policy bearing the policy number LF-1184-7414, and a policy date of November 21, 1991, with a basic amount of \$250,000. Plaintiff Botros has always been the owner of this policy.

**ANSWER: State Farm states that it lacks knowledge or information sufficient to form a belief about the truth of these allegations, and thus denies these allegations.**

**B. The Language of the Policies**

25. An exemplar copy of the form of the Policies is attached hereto as **Exhibit A**.



**ANSWER: State Farm admits that a copy of Plaintiff Lorin Niewinski's Policy is attached to the Complaint as Exhibit A, but otherwise denies these allegations.**

26. Defendants have administered and currently administer all aspects of Plaintiffs' Policies, as well as the Policies of members of the nationwide Class, including by collecting premiums, and determining, assessing, and deducting COI Rates and COI Charges for the Policies.

**ANSWER: State Farm admits that it has collected premiums and set, assessed, and deducted Policy charges according to the terms of the Policies and that the premiums and charges are shown to Plaintiffs on their annual notices. State Farm denies any allegation inconsistent with the terms of the Policy. Except as expressly admitted, State Farm denies the allegations contained in this paragraph and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

27. Defendants are the effective and liable insurers of the respective Policies they each issued.

**ANSWER: State Farm admits that State Farm Life Insurance Company issued Plaintiffs' Policies. Except as expressly admitted, State Farm denies all remaining allegations contained in this paragraph and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

28. The Policies are valid and enforceable contracts between Plaintiffs and members of the Class, on the one hand, and Defendants, on the other.

**ANSWER: State Farm admits it is the insurer of the Policies issued to Plaintiffs but lacks knowledge or information sufficient to form a belief as to whether those Policies**

**are currently valid and enforceable contracts between the proposed class members and State Farm and therefore denies the remaining allegations in this paragraph. Except as expressly admitted, State Farm denies the allegations contained in this paragraph and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

29. Each of the Policies provides: “The [P]olicy is the entire contract,” and it consists of “the Basic Plan, any amendments, endorsements, and riders, and a copy of the application.”<sup>1</sup>

**ANSWER: State Farm admits that Plaintiffs have partially quoted from the Policies. The Policies are the best evidence of their contents. State Farm denies any allegation inconsistent with the terms of the Policies. Except as expressly admitted, State Farm denies the allegations contained in this paragraph.**

30. The terms of the Policies are not subject to individual negotiation and are materially the same for all policy owners. They cannot be altered by an agent’s representations at the time of sale.

**ANSWER: State Farm denies the allegations contained in this paragraph and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

31. “Only an officer has the right to change this policy. No agent has the authority to change the policy or to waive any of its terms. All endorsements, amendments, and riders must be signed by an officer to be valid.”<sup>2</sup>

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<sup>1</sup> Ex. A at p. 11.

<sup>2</sup> Ex. A at p. 11.

**ANSWER: State Farm admits that Plaintiffs have partially quoted from the Policies. The Policies are the best evidence of their contents. State Farm denies any allegation inconsistent with the terms of the Policies. Except as expressly admitted, State Farm denies the allegations contained in this paragraph.**

32. In addition to a death benefit, the Policies provide owners a savings or interest-bearing component that is identified in the Policies as the “Cash Value.”

**ANSWER: State Farm admits that the Policy establishes the definition of “Cash Value” and the authorized deductions in the Policy. State Farm further admits that the Cash Value can earn interest as authorized by the Policy. State Farm denies any allegation inconsistent with the Policy terms. Except as expressly admitted, State Farm denies the allegations contained in this paragraph and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

33. Generally speaking, premium dollars are deposited into the Cash Value, from which Defendants deduct those monthly charges authorized by the terms of the Policies. The Cash Value earns interest as provided by the Policies.

**ANSWER: State Farm admits that the Policy establishes the definition of “Cash Value” and the authorized deductions in the Policy. State Farm further admits that the Cash Value can earn interest as authorized by the Policy. The Policy defines how flexible premium contributions will be handled by State Farm, and State Farm denies any allegation inconsistent with the Policy terms. The Policy also authorizes State Farm to make monthly deductions, and State Farm denies any allegation inconsistent with the Policy terms. Except as expressly admitted, State Farm denies**

**the allegations contained in this paragraph and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

34. The money that makes up the Cash Value is the property of the policy owner and is held in trust by Defendants.

**ANSWER: State Farm admits that the Cash Value of Plaintiffs' Policies were administered according to the terms of the Policies. State Farm denies any allegation inconsistent with the Policy terms and specifically denies that the Cash Value is the property of the policy owner and held in trust by State Farm. Except as expressly admitted, State Farm denies the allegations contained in this paragraph.**

35. Defendants may access and withdraw funds from the Cash Value only as expressly authorized by the Policies.

**ANSWER: State Farm admits that the Policy defines how charges may be assessed and deducted from the Cash Value. State Farm denies any allegation inconsistent with the Policy terms and specifically denies that the Cash Value is owned by anyone other than State Farm. Except as expressly admitted, State Farm denies the allegations contained in this paragraph and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

36. The Policies expressly define the specific charges that Defendants may assess and deduct from a given policy owner's premium payments and the accumulated Cash Value. Defendants may deduct only those charges allowed by the Policies.

**ANSWER: State Farm admits that Plaintiffs' Policies define how charges may be assessed and deducted from the Cash Value and premium payments and that all charges and deductions State Farm makes are shown to Plaintiffs on their annual notices. State Farm denies any allegation inconsistent with the Policy terms. Except as expressly admitted, State Farm denies the allegations contained in this paragraph and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

37. Under the express terms of the Policies, an expense charge of 7.5% is deducted from each premium paid.<sup>3</sup>

**ANSWER: State Farm admits that the Policy authorizes an expense charge and refers to the Policy for the terms thereof. State Farm denies any allegation inconsistent with the Policy terms and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

38. The Cash Value is equal to 92.5% of the initial premium less the monthly deduction for the first policy month:

The cash value on any deduction date after the policy date is the cash value on the prior deduction date:

- (1) plus 92½% of any premiums received since the prior deduction date,
- (2) less the deduction for the cost of insurance for any increase in Basic Amount and the monthly charges for any riders that became effective since the prior deduction date,
- (3) less any withdrawals since the prior deduction date,
- (4) less the current monthly deduction,

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<sup>3</sup> Ex. A at p. 3.

- (5) plus any dividend paid and added to the cash value on the current deduction date, and
- (6) plus any interest accrued since the prior deduction date.

The cash value on any other date is the cash value on the prior deduction date:

- (1) plus 92½% of any premiums received since the prior deduction date,
- (2) less the deduction for the cost of insurance for any increase in Basic Amount and the monthly charges for any riders that became effective since the prior deduction date,
- (3) less any withdrawals since the prior deduction date, and
- (4) plus any interest accrued since the prior deduction date.<sup>4</sup>

**ANSWER: State Farm admits that the cited language is found in the Policy. State Farm denies any allegation inconsistent with the Policy terms. Except as expressly admitted, State Farm denies the allegations contained in this paragraph.**

39. The “Policy Date” is “[t]he effective date of this Policy,” and the “Deduction Date” is “[t]he policy date and each monthly anniversary of the policy date.”<sup>5</sup>

**ANSWER: State Farm admits that the Policy defines “Policy Date” as “[t]he effective date of this Policy” and defines “Deduction Date” as “[t]he policy date and each monthly anniversary of the policy date.” State Farm denies any allegation inconsistent with the Policy terms. Except as expressly admitted, State Farm denies the allegations contained in this paragraph.**

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<sup>4</sup> Ex. A at p. 9.

<sup>5</sup> Ex. A at p. 5.

40. The Policies authorize Defendants to take a “Monthly Deduction” from each policy owner’s Cash Value each month.<sup>6</sup>

**ANSWER: State Farm admits that Plaintiffs’ Policies authorize State Farm to make a “Monthly Deduction” from Plaintiffs’ Cash Value each month and that the deductions are shown to Plaintiffs on their annual notice. State Farm denies any allegation inconsistent with the Policy terms. State Farm denies the remaining allegations in this paragraph and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

41. The Policies expressly define the Monthly Deduction as follows:

**Monthly Deduction.** This deduction is made each month, whether or not premiums are paid, as long as the cash surrender value is enough to cover that monthly deduction. Each deduction includes:

- (1) the cost of insurance,
- (2) the monthly charges for any riders, and
- (3) the monthly expense charge.<sup>7</sup>

**ANSWER: State Farm admits that the cited language is found in the Policy. State Farm denies any allegation inconsistent with the Policy terms. Except as expressly admitted, State Farm denies the allegations contained in this paragraph.**

42. The Policies state that the monthly expense charge (“Expense Charge”) is \$4.00.<sup>8</sup>

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<sup>6</sup> Ex. A at p. 9.

<sup>7</sup> Ex. A at p. 9.

<sup>8</sup> Ex. A at p. 3.

**ANSWER: State Farm admits that Plaintiffs' Policies have a monthly expense charge of \$4.00. State Farm denies the remaining allegations in this paragraph. State Farm specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

43. The Policies also expressly define how the COI Charge is calculated:

**Cost of Insurance.** This cost is calculated each month. The cost is determined separately for the Initial Basic Amount and each increase in Basic Amount. The cost of insurance is the monthly cost of insurance rate times the difference between (1) and (2), where:

- (1) is the amount of insurance on the deduction date at the start of the month divided by 1.0032737, and
- (2) is the cash value on the deduction date at the start of the month before the cost of insurance and the monthly charge for any waiver of monthly deduction benefit rider are deducted.

Until the cash value exceeds the Initial Basic Amount, the cash value is part of the Initial Basic Amount. Once the cash value exceeds that amount, if there have been any increases in Basic Amount, the excess will be part of the increases in order in which the increases occurred.<sup>9</sup>

**ANSWER: State Farm admits that the Policy contains the quoted terms. State Farm denies any allegation inconsistent with the Policy terms. Except as expressly admitted, State Farm denies the allegations contained in this paragraph. State Farm specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

44. The Policies specify the factors Defendants may use to determine the COI Rates, which are used to calculate the COI Charges that are deducted from the Cash Value each month:

**Monthly Cost of Insurance Rates.** These rates for each policy year are based on the Insured's age on the policy anniversary, sex, and applicable rate class. A rate class will be determined for the Initial Basic Amount and for each increase.

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<sup>9</sup> Ex. A at p. 10.



The rates shown on page 4 are the maximum monthly cost of insurance rates for the Initial Basic Amount. Maximum monthly cost of insurance rates will be provided for each increase in the Basic Amount. We can charge rates lower than those shown. Such rates can be adjusted for projected changes in mortality but cannot exceed the maximum monthly cost of insurance rates. Such adjustments cannot be made more than once a calendar year.<sup>10</sup>

**ANSWER: State Farm admits that the Policy contains the quoted terms. State Farm denies any allegation inconsistent with the Policy terms. Except as expressly admitted, State Farm denies the allegations contained in this paragraph and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

45. Policies issued on Form 86075 have an identical provision for COI Rates except that it omits the reference to “sex.”

**ANSWER: State Farm responds that this paragraph characterizes language in the Policy. The Policies are the best evidence of their contents. State Farm denies any allegations inconsistent with the terms of the Policies. State Farm specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

46. Defendants admit that a rate “based on” factors explicitly identified in the Policies must be determined using only those identified factors.<sup>11</sup>

**ANSWER: This paragraph contains legal conclusions to which no response is required. To the extent a response is required, State Farm denies the allegations in**

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<sup>10</sup> Ex. A at p. 10.

<sup>11</sup> See *Alleman v. State Farm Life Ins. Co.*, 334 Fed. Appx. 470, 472 (3rd Cir. 2009) (affirming summary judgment in State Farm’s favor, and rejecting plaintiff insured’s argument that provision in life insurance policy stating charge would be “based on the Insured’s age last birthday and sex” should be read to include other undisclosed factors, because “[b]y the plain language of these policies, it is clear that the insureds’ age and sex are the only mortality factors relevant to the rate ....” (emphasis added)).

**this paragraph. State Farm specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

47. Thus, under the explicit terms of the Policies, Defendants are authorized to determine COI Rates for each policy year using only the specified factors and projected changes in mortality.<sup>12</sup>

**ANSWER: State Farm admits that Plaintiffs’ Policies contain a paragraph titled “Monthly Cost of Insurance Rates” and refers to the Policy for the terms thereof. State Farm denies any allegation inconsistent with the Policy terms. Except as expressly admitted, State Farm denies the allegations contained in this paragraph and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

48. Policy year, age, sex, and rate class are factors commonly understood as mortality factors used to determine the mortality expectations of an insured or group or class of insureds.<sup>13</sup>

**ANSWER: State Farm admits that age and sex are terms that can, but do not always, relate to mortality expectations. State Farm denies the remaining allegations. State Farm specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

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<sup>12</sup> Ex. A at p. 10.

<sup>13</sup> See *Vogt v. State Farm Life Ins. Co.*, 963 F.3d 753, 760 (8th Cir. 2020), *cert. denied*, 209 L. Ed. 2d 577 (Apr. 19, 2021) (“These enumerated factors are so-called ‘mortality factors’ because they relate to a policyholder’s mortality risk, which allows the insurer to determine the projected mortality estimate of a policyholder based on his specific circumstances.”).

49. By specifically identifying COI Rates for each policy year as based on mortality factors, Defendants agree that mortality expectations determine the COI Rates under the Policies, as confirmed by the additional provision that “[s]uch rates can be adjusted for projected changes in mortality.”<sup>14</sup>

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

50. Given the language of the COI Rates provision in the Policies, and its context in the Policies as a whole, no reasonable layperson would expect that the Policies permitted Defendants to use any factor they wanted to determine COI Rates for the Policies. A reasonable layperson would instead read the specified mortality factors, in combination with the contractual limitation that rates can only be adjusted for “projected changes in mortality,” to mean that only mortality expectations are used to determine COI Rates for the Policies.<sup>15</sup>

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

51. Thus, the Policies authorize Defendants to make periodic deductions from policy owners’ Cash Values including, specifically, COI Charges that are calculated using COI Rates that

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<sup>14</sup> Ex. A at p. 10.

<sup>15</sup> See *Vogt*, No. 2:16-cv-04170-NKL, 2018 WL 1747336, at \*4 (“Given the COI language in the Vogt policy and its context in the policy as a whole, the Court believes no reasonable lay person would expect that State Farm was permitted to use any factor it wanted to calculate the cost of insurance.”), *aff’d*, 963 F.3d at 763-64 (concluding “a person of ordinary intelligence purchasing an insurance policy would not read the provision and understand that where the policy states that the COI fees will be calculated ‘based on’ listed mortality factors that the insurer would also be free to incorporate other, unlisted factors into this calculation.”).

Defendants must determine based on specified factors, and that can be adjusted for projected changes in mortality.

**ANSWER: State Farm admits that Plaintiffs' Policies authorize State Farm to make periodic deductions, which are shown to Plaintiffs on their annual notices. State Farm denies any allegation inconsistent with the Policy terms. State Farm denies the remaining allegations in this paragraph and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

52. The Policies also disclose an expense charge set at a fixed percentage of seven and a half percent of each premium payment made. The Policies further disclose a separate, monthly Expense Charge within the Monthly Deduction that Defendants set at a fixed amount of \$4.00 per month.

**ANSWER: State Farm responds that this Paragraph characterizes language in the Policy. The Policy is the best evidence of its contents, and State Farm denies any allegation inconstant with the terms of the Policy. State Farm denies all remaining allegations in this Paragraph and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

**C. Defendants' Loading of COI Rates**

53. Although the Policies authorize Defendants to use only certain, specified factors in determining the COI Rates, Defendants use other factors, not authorized by the Policies, when determining those rates, including, without limitation, profit and expenses.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

54. By loading these factors into the COI Rates, Defendants knowingly cause those rates to be higher than what is explicitly authorized by the Policies and, as a result, withdraw COI Charges from policy owner Cash Values in amounts greater than what is permitted by the Policies.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

55. By loading unauthorized factors in the COI Rates, Defendants repeatedly breached and continue to breach the Policies and impermissibly inflate the COI Rates.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

56. As a direct and proximate result of Defendants' breaches, Plaintiffs and the Class have been damaged, and those damages are continuing in nature in that Defendants deducted and will continue to deduct unauthorized COI Charges from policy owners' Cash Values.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

57. Defendants' conduct is intentional and willful. Defendants have not taken any steps to remove non-mortality loads from COI Rates and COI Charges for the Policies. Plaintiffs and

the Class are therefore forced to continue suffering the unlawful deductions or lose their life insurance. Defendants' intentional and willful breaches justify punitive damages.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

**D. Defendants Include Excess Expenses in COI Rates**

58. By including expenses in the COI Rates, Defendants repeatedly and continuously breach the Policies by impermissibly deducting from the Cash Values of Plaintiffs and the Class amounts in excess of the fixed Expense Charges expressly authorized by the Policies.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

59. As a direct and proximate result of Defendants' breaches, Plaintiffs and the Class have been damaged and those damages are continuing in nature in that Defendants have deducted and will continue to deduct expenses, including without limitation, maintenance, administrative, and other expenses, from the Cash Values of Plaintiffs and the Class in amounts not authorized by the Policies.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

60. By including expenses in the COI Rates in excess of the monthly Expense Charge expressly authorized by the Policies, Defendants are causing monthly Expense Charges for the Policies to be greater than the Policies explicitly authorize. As a result, Defendants continue to

withdraw charges from policy owner Cash Values in amounts greater than what is permitted by the Policies.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

61. As a direct and proximate result of Defendants' conduct, Plaintiffs and the Class have been damaged, and those damages are continuing in nature in that Defendants deducted and will continue to deduct unauthorized charges from policy owners' Cash Values.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

62. Defendants' conduct is intentional and willful. Defendants have not taken any steps to remove expenses from the COI Rates and COI Charges in excess of the expenses permitted to be deducted by the Expense Charge provision of the Policies. Plaintiffs and the Class are therefore forced to continue suffering the unlawful deductions or lose the life insurance. Defendants' intentional and willful breaches justify punitive damages.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

**E. Defendants Have Failed to Reduce COI Rates**

63. The COI Rates provision requires Defendants to reduce the COI Rates when Defendants' expectations as to future mortality experience improve. Defendants did not do so.

**ANSWER: State Farm denies these allegations.**

64. That COI Rates are based on mortality factors means that Defendants were required to determine the COI Rates by reference to mortality tables. Mortality tables are charts showing the rate of death (either as a percentage or as the number of deaths per thousand individuals) at a given age. Actuaries and insurers use mortality tables to determine insurance rates that are intended to reflect expectations of future mortality.

**ANSWER: The allegations of the first sentence of Paragraph 64 set forth a legal conclusion to which no responsive pleading is required. To the extent a responsive pleading is required, State Farm denies the allegations of the first sentence of Paragraph 64 to the extent they suggest that State Farm was prohibited from considering information other than “mortality tables” in developing COI rates for use with Plaintiffs’ Policies. State Farm lacks sufficient information to form a belief as to the truth of the remaining allegations because there are many types of “mortality tables” that may contain historical or expected future mortality rates for various groups defined in various ways and used by various insurers in differing ways for various purposes.**

65. Beginning at least as early as 1941, the National Association of Insurance Commissioners (“NAIC”) has periodically issued a series of Commissioners Standard Ordinary (“CSO”) mortality tables. These are industry standard mortality tables that are commonly used by insurers to calculate reserves and to set maximum permitted cost of insurance rates in universal life insurance policies.

**ANSWER: State Farm admits that the National Association of Insurance Commissioners (“NAIC”) has published various tables at various times that are referred to as Commissioners’ Standard Ordinary mortality tables and that some**



**such tables have been commonly used by insurers to calculate reserves for the purpose of statutory accounting statements. State Farm admits that it has used certain of such tables in developing maximum cost of insurance rates for various universal life insurance policies. State Farm lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph, and thus denies all remaining allegations in this paragraph.**

66. The 1980 table issued by the NAIC was called the 1980 Commissioners Standard Ordinary Smoker or Nonsmoker Mortality Table (“1980 CSO Mortality Table”). That table was the industry-standard table until 2001.

**ANSWER: State Farm admits that the NAIC published various tables in 1980 referred to as Commissioners’ Standard Ordinary mortality tables and that these tables included a 1980 Commissioners Standard Ordinary Smoker or Nonsmoker Mortality Table. State Farm also admits that the 1980 Commissioners Standard Ordinary Smoker or Nonsmoker Mortality Table was an industry-standard table until 2001. Except as expressly admitted, State Farm denies all remaining allegations in this paragraph.**

67. At the request of the NAIC, the Society of Actuaries (“SOA”) and the American Academy of Actuaries (the “Academy”) produced a proposal for a new CSO Mortality Table in 2001. The accompanying report from June 2001 explained that (a) the 1980 CSO Mortality Table was still the industry-standard table and (b) expected mortality rates had improved significantly each year since the 1980 table was issued. The report stated: “The current valuation standard, the 1980 CSO Table, is almost 20 years old and mortality improvements have been evident each year

since it was adopted. . . . [C]urrent mortality levels . . . are considerably lower than the mortality levels underlying the 1980 CSO Table.<sup>16</sup>

**ANSWER: State Farm admits that the statements contained in Paragraph 67 appear to cite or characterize a June 2001 report from the American Academy of Actuaries' CSO Task Force to the NAIC Life and Health Actuarial Task Force and that the report contains the language quoted in Paragraph 67. The report is the best evidence of its contents, and, except as expressly admitted, State Farm does not admit the truth of the contents of the report. State Farm lacks knowledge and information sufficient to form a belief about the truth of the remaining allegations of Paragraph 67, and, except as expressly admitted, State Farm denies the remaining allegations of this paragraph.**

68. The report further explained that “[f]or most of the commonly insured ages (from about age 25 to age 75), the proposed 2001 CSO Table mortality rates are in the range of 50% to 80% of the 1980 CSO Table.”

**ANSWER: State Farm admits that the statements contained in paragraph 68 appear to cite or characterize a June 2001 report from the American Academy of Actuaries' CSO Task Force to the NAIC Life and Health Actuarial Task Force and that the report contains the language quoted in Paragraph 68. The report is the best evidence of its contents, and, except as expressly admitted, State Farm does not admit the truth of the contents of the report. State Farm lacks knowledge and information sufficient to form a belief about the truth of the remaining allegations of Paragraph 68, and,**

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<sup>16</sup> *Report of the American Academy of Actuaries' Commissioner's Standard Ordinary (CSO) Task Force*, Presented to the National Association of Insurance Commissioners' Life and Health Actuarial Task Force (LHATF), June 2001, available at [http://www.actuary.org/pdf/life/cso2\\_june01.pdf](http://www.actuary.org/pdf/life/cso2_june01.pdf).

**except as expressly admitted, State Farm denies the remaining allegations this paragraph.**

69. The final proposed tables were adopted as the 2001 Commissioners Standard Ordinary Mortality Table (“2001 CSO Mortality Table”) which, as the report indicated, reflected vastly improved mortality experience as compared to the 1980 CSO Mortality Table. These mortality improvements represent a substantial benefit that Defendants should have passed on to Plaintiffs and the Class.

**ANSWER: State Farm admits that the NAIC adopted the 2001 Commissioners Standard Ordinary Mortality Table and that it is sometimes referred to as the 2001 CSO Mortality Table. The report, including tables therein, is the best evidence of its contents, and, except as expressly admitted, State Farm does not admit the truth of the contents of the report. State Farm denies the remaining allegations in this paragraph.**

70. Since the 2001 CSO Mortality Tables were published, the SOA and the Academy have periodically published, from surveys of life insurers, new tables showing continued consistent and significant mortality improvement. For example, the Academy’s 2015 report observed: “The current CSO table was created in 2001 based on experience from 1990-1995 and thus, is at least 20 years old. *Since that time, industry experience studies performed by the Society of Actuaries Individual Life Experience Committee (ILEC) have shown significant improvement in the mortality rates experienced by the industry from that underlying the 2001 CSO table development.*”<sup>17</sup>

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<sup>17</sup> Am. Academy of Actuaries, *Report on the 2017 CSO and 23017 CSO Preferred Structure Table Development* (Oct. 2018), <https://www.soa.org/Files/Research/Exp-Study/research-2017-cso-report.pdf> (emphasis added).

**ANSWER: State Farm admits the above quote accurately sets forth language contained in the Academy’s 2015 Report but denies the remaining allegations of this paragraph.**

71. Other surveys of insurers conducted by the SOA between 2002 and 2009 also show that mortality has steadily decreased since the issuance of the 2001 CSO Mortality Table. For instance, the SOA published Individual Life Experience Reports for the periods 2002-2004,<sup>18</sup> 2005-2007,<sup>19</sup> 2008-2009,<sup>20</sup> and 2009-2013,<sup>21</sup> each of which showed significant improvement in mortality. Defendants were two of the surveyed companies included in each of these studies.

**ANSWER: State Farm admits that the Society of Actuaries (“SOA”) has conducted several surveys of life insurance companies with respect to mortality experience, including the following: 2002-04 Individual Life Experience Report, 2005-07 Individual Life Experience Report, 2008-09 Individual Life Experience Report, and 2009-2013 Individual Life Insurance Mortality Experience Report. The reports are the best evidence of their contents, and, except as expressly admitted, State Farm does not admit the truth of the contents of the reports. State Farm admits that there are surveys that have noted mortality improvements for some groups over some periods. State Farm admits that it is listed as one of the companies surveyed in the 2002-04**

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<sup>18</sup> Society of Actuaries, *Report of the Individual Life Insurance Experience Committee Mortality under Standard Individually Underwritten Life Insurance Between 2002 and 2004 Policy Initiatives* (Dec. 2004), <https://www.soa.org/resources/experience-studies/2005-2009/02-04-iindividual-life-exp-rpt/>.

<sup>19</sup> Society of Actuaries, *Report of the Individual Life Insurance Experience Committee Mortality for Standard Individually Underwritten Life Insurance Between 2005 and 2007 Policy Anniversaries* (Feb. 2010), <https://www.soa.org/resources/experience-studies/2010/2005-2007-ind-life-report/>.

<sup>20</sup> Society of Actuaries, *2008-09 Report of the Individual Life Insurance Experience Committee* (April 2013), <https://www.soa.org/experience-studies/2017/2009-13-indiv-life-ins-mort-exp/>.

<sup>21</sup> Society of Actuaries, *2009-2013 Individual Life Insurance Mortality Experience Report* (Oct. 2017), <https://www.soa.org/experience-studies/2013/research-2008-2009-ind-life-exp/>.

**Individual Life Experience Report, the 2005-07 Individual Life Experience Report, and the 2008-09 Individual Life Experience Report. Except to the extent expressly admitted, State Farm denies the remaining allegations in this paragraph.**

72. The SOA also periodically publishes updated mortality tables that reflect insurers' changing experience, including (a) 1990-95 Basic Select and Ultimate Mortality Tables;<sup>22</sup> (b) 2001 Valuation Basic Mortality Table;<sup>23</sup> (c) 2008 Valuation Basic Table;<sup>24</sup> and (d) 2015 Valuation Basic Table.<sup>25</sup> Consistent with the foregoing, these tables confirm that mortality continued to improve substantially since issuance of the Policies.

**ANSWER: State Farm admits that the SOA has published a variety of mortality tables over the past several decades. Such tables are the best evidence of their contents, and, except as expressly admitted, State Farm does not admit the truth of the contents of the tables. State Farm admits that there are some tables that show mortality improvements for some groups over some periods. State Farm admits that, in investigating Plaintiffs' allegations, it identified what appear to be multiple documents to which Plaintiffs may be referring in Paragraph 72, but State Farm lacks knowledge to identify which document or documents Plaintiffs reference in this paragraph and therefore lacks knowledge or information sufficient to form a belief**

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<sup>22</sup> Society of Actuaries, *1990-95 Basic Select and Ultimate Mortality Tables for Individual Life Insurance*, <https://www.soa.org/experience-studies/2000-2004/90-95-basic-select/>.

<sup>23</sup> Society of Actuaries, *Final Report of the Individual Life Insurance Valuation Mortality Task Force 2001 – Valuation Basic Mortality Table [2001 VBT]* (April 2005), <https://www.soa.org/experiencestudies/2005-2009/final-report-life-insurance-valuation/>.

<sup>24</sup> Society of Actuaries, *2008 Valuation Basic Tables [VBT] Report* (June 16, 2009), <https://www.soa.org/experience-studies/2005-2009/2008-vbt-report-tables/>.

<sup>25</sup> Society of Actuaries, *2015 Valuation Basic Report and Tables* (Sept. 13, 2018), <https://www.soa.org/experience-studies/2015/2015-valuation-basic-tables/>.

**about the remaining allegations contained in Paragraph 72. Except as expressly admitted, State Farm denies the remaining allegations in this paragraph.**

73. Other surveys have also noted significant improvements in mortality expectations. In May of 2013, for instance, the reinsurance company RGA published a report sponsored by the SOA enumerating mortality rates and mortality improvements at older ages.<sup>26</sup>

**ANSWER: State Farm admits that RGA published a report named “Report on the Survey of Older Age Mortality and Other Assumptions,” and that “May 2013” appears on the title page of the report. The report is the best evidence of its contents and, except as expressly admitted, State Farm does not admit the truth of the contents of the report. Except as expressly admitted, State Farm denies the remaining allegations in this paragraph.**

74. This study, which was based on a survey of insurance companies—including Defendants—showed material rates of mortality improvement. As another example, in March 2014 the actuarial firm Milliman published a report sponsored by the SOA—also based on a survey of insurance companies that included Defendants—called the “Select Period Mortality Survey,” which confirmed that select rates of mortality improved significantly since 2001.<sup>27</sup>

**ANSWER: State Farm admits that RGA published a report named “Report on the Survey of Older Age Mortality and Other Assumptions” with “May 2013” appearing on the title page of the report, and that State Farm Life Insurance Company is listed as a participant in the survey. The report is the best evidence of its contents and,**

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<sup>26</sup> Tim Rozar, Catie Muccigrosso, Susan Willeat, RGA, *Report on the Survey of Older Age Mortality and Other Assumptions* (May 2013), [https://www.rgare.com/docs/default-source/default-document-library/older-age-mortality.pdf?sfvrsn=dc9ad888\\_0](https://www.rgare.com/docs/default-source/default-document-library/older-age-mortality.pdf?sfvrsn=dc9ad888_0).

<sup>27</sup> Allen M. Klein, Michelle L. Krysiak, Milliman, *Select Period Mortality Survey* (March 2014), available at <https://www.soa.org/research-reports/2014/research-2014-select-period/>.

**except as expressly admitted, State Farm does not admit the truth of the contents of the report. State Farm also admits that Milliman published a report named “Select Period Mortality Survey” and that “March 2014” appears on its title page. The report is the best evidence of its contents and, except as expressly admitted, State Farm does not admit the truth of the contents of the report. Except as expressly admitted, State Farm denies the remaining allegations in this paragraph.**

75. These well documented mortality improvements that have appeared since the Policies were issued represent a substantial financial benefit to Defendants in the form of decreased costs of providing insurance.

**ANSWER: State Farm denies these allegations.**

76. Defendants were contractually required to pass this financial benefit to the holders of the Policies through decreased COI Charges but failed to do so. Defendants’ conduct is intentional and willful. Defendants made an affirmative decision to not fully pass-on the improvements in mortality, in the form of calculating lower COI Rates each time Defendants experience better-than-anticipated mortality expectations, to Plaintiffs and the Class. Plaintiffs and the Class are therefore forced to continue suffering the unlawful deductions or lose the life insurance. Defendants’ breaches justify punitive damages.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

77. At a minimum, Defendants abused their contractual discretion by failing to reduce COI Charges. Defendants are vested with contractual discretion to adjust COI Rates based on

“projected changes in mortality.” They abused their contractual discretion by failing to adjust their COI Rates in a manner favorable to Plaintiffs and the Class in response to mortality improvements.

**ANSWER: State Farm admits that Plaintiffs’ Policies provide: “[The COI] can be adjusted for projected changes in mortality but cannot exceed the maximum monthly cost of insurance rates, but denies the remaining allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

**F. Defendants Have Failed to Base COI Rate Changes On Projected Mortality**

78. The Policies require Defendants, when they make the decision to adjust their COI Rates, to base those COI Rates on their expectations of future mortality.

**ANSWER: State Farm denies these allegations.**

79. Defendants, in breach of the express language of the Policies, considered and used factors other than their mortality experience when they adjusted the COI Rates on the Policies in 1990, 2002, and 2008.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

80. State Farm does not dispute that it considered and used non-mortality factors when it adjusted its COI Rates in 1990, 2002, and 2008.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**



81. Defendants' conduct is intentional and willful. Defendants made an affirmative decision to not fully pass-on the improvements in mortality, in the form of determining lower COI Rates when Defendants did set new COI Rates, to Plaintiffs and the Class. Plaintiffs and the Class are therefore forced to continue suffering the unlawful deductions or lose the life insurance. Defendants' breaches justify punitive damages.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

**G. Any Statute of Limitations has Been Tolled.**

82. Any applicable statute of limitations has been tolled for at least five reasons: (a) Defendants' conduct was inherently undiscoverable; (b) Defendants fraudulently concealed their conduct; (c) operation of the doctrine of equitable tolling; (d) Defendants' had an affirmative duty to disclose the factors they were considering and using in determining the COI Rates to Plaintiffs and members of the Class but did not do so; and (e) Defendants' breaches are continuing in nature. Each basis is set forth in greater detail below, but regardless of which applies, the result is the same: any applicable statute of limitations has been tolled, in whole or in part, and Plaintiffs and the Class's claims are therefore timely.<sup>28</sup>

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<sup>28</sup> See *Vogt v. State Farm Life Ins. Co.*, No. 2:16-CV-04170-NKL, 2018 WL 1747336, at \*6-\*8 (W.D. Mo. Apr. 10, 2018) (rejecting State Farm's statute of limitations arguments regarding its '94 policy); *Jaunich v. State Farm Life Ins. Co.*, 569 F. Supp. 3d 912, 918 (D. Minn. 2021) (same); *Page v. State Farm Life Ins. Co.*, No. SA-20-CV-00617-FB, 2022 WL 718789, at \*16-17 (W.D. Tex. Mar. 10, 2022) (same); *Bally v. State Farm Life Ins. Co.*, 536 F. Supp. 3d 495, 516 (N.D. Cal. 2021) (granting plaintiff's motion for summary judgment as to the statute of limitations issue, concluding that "class members failed to discover any breach of contract, not because of a lack of diligence, but because the Policy was at best ambiguously drafted and because the nature of the harm was such that it was not obvious to policyholders. State Farm's extrinsic evidence does not show that State Farm ever put policyholders on notice.").

**ANSWER: Paragraph 82 contains legal conclusions to which no response is required. To the extent a response is required, State Farm denies the allegations of this paragraph and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

*i. Defendants' conduct was inherently undiscoverable.*

83. The nature of Defendants' conduct is such that Plaintiffs and each member of the Class would be unaware that Defendants were engaging in wrongdoing by taking inflated charges and improper amounts from their Cash Values.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

84. Defendants possess the actuarial information and equations underlying the computation of rates and charges for the Policies. The COI Rates used to calculate the COI Charges are not disclosed to policy owners, nor are the components or factors that comprise those rates. Even if they were, Plaintiffs and the Class would lack the knowledge, experience, and training to reasonably ascertain how Defendants calculated the rates and charges.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

85. Nor could Plaintiffs and members of the Class have learned of how Defendants determined COI Rates, even if they had asked Defendants. Defendants guard their determination of COI Rates in a manner akin to a "state secret," with only a small, select group of employees

having access to this information. Just as KFC and Coca-Cola do not disclose their recipes to consumers, neither does State Farm disclose its COI Rate “recipe.”

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

86. State Farm also does not provide its agents with its COI Rate “recipe.” These agents serve as Plaintiffs and Class members’ primary point of contact with Defendants for matters related to the Policies. Consequently, because these agents do not know how State Farm determines its COI Rates, they necessarily could not have provided that information to Plaintiffs and the Class, had they asked.

**ANSWER: State Farm states that it lacks knowledge or information sufficient to form a belief about the truth of the first sentence of Paragraph 86, and thus denies these allegations. State Farm denies the remaining allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

87. Defendants were aware that Plaintiffs and each member of the Class did not know about the improper COI Rates because of Defendants’ superior knowledge of the aforementioned determinations.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

88. Despite reasonable diligence on their part, Plaintiffs were kept ignorant by Defendants of the factual bases for these claims for relief.

**ANSWER: State Farm denies these allegations.**

89. Based on the foregoing, Defendants' conduct was inherently undiscoverable, and any statute of limitations has been tolled as a result. Plaintiffs' and the Class's claims are therefore timely.

**ANSWER: Paragraph 89 contains legal conclusions to which no response is required.**

**To the extent a response is required, State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

*ii. Defendants fraudulently concealed their conduct.*

90. Defendants also took affirmative steps to fraudulently conceal the impropriety of their COI Rate determinations.

**ANSWER: State Farm denies these allegations.**

91. First, Defendants sent Plaintiffs and each member of the Class annual statements that identified each month's COI Charge while affirmatively concealing the factors Defendants used to determine the COI Rates.

**ANSWER: State Farm admits that Plaintiffs were sent annual statements that show all charges and deductions State Farm makes on their Policies. Except as expressly admitted, State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

92. Second, Defendants sent notices to Plaintiffs and members of the Class in 2002 and 2008 that affirmatively concealed the fact that it was improperly determining the COI Rates. In particular, those notices make no mention of the fact that State Farm had considered and used non-

mortality factors in determining its COI Rates, and instead suggest that the COI Rate changes were based wholly on changes to Defendants' projected changes in mortality. Put differently, by telling Plaintiffs and members of the Class that they were doing what the Policies required them to do (when in fact, they had not), Defendants' statements in 2002 and 2008 fraudulently concealed Defendants' breaches.

**ANSWER: State Farm admits that it sent notices to Plaintiffs in 2002 and 2008, but denies the remaining allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

93. Plaintiffs and members of the Class reasonably relied to their detriment on Defendants' fraudulent concealment of their misconduct and material omission of the factors actually used to determine and calculate the deductions from policy owners' Cash Values. As a result of such concealment, Plaintiffs and members of the Class did not believe they had suffered any injury or that it was necessary to file a lawsuit. Plaintiffs did not discover and, exercising reasonable diligence, could not have discovered the facts establishing Defendants' repeated breaches or the harm caused thereby. Plaintiffs did not learn of Defendants' repeated breaches supporting their claims until after they engaged counsel.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

94. Based on the foregoing, Defendants fraudulently concealed their conduct, and any statute of limitations has been tolled as a result. Plaintiffs' and the Class's claims are therefore timely.

**ANSWER: Paragraph 94 contains legal conclusions to which no response is required.**

**To the extent a response is required, State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

*iii. The doctrine of equitable tolling applies.*

95. Defendants are estopped from asserting a statute of limitations defense. Defendants' conduct in failing to disclose the true factors they used—and continue to use—to determine the COI Rates misled Plaintiffs and prevented them from learning the factual bases for these claims for relief.

**ANSWER: Paragraph 95 contains legal conclusions to which no response is required.**

**To the extent a response is required, State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

96. Plaintiffs proceeded diligently to file suit once they discovered the need to proceed.

**ANSWER: State Farm denies these allegations.**

97. Based on the foregoing, Defendants should be estopped from asserting a statute of limitations defense. Plaintiffs' and the Class's claims are therefore timely.

**ANSWER: Paragraph 97 contains legal conclusions to which no response is required.**

**To the extent a response is required, State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

*iv. Defendants' duty to disclose.*

98. Insurance companies owe a duty to disclose material facts to their insureds. Defendants are insurance companies, and Plaintiffs and members of the Class are their insureds.

Defendants thus owe Plaintiffs and members of the Class a heightened duty. Where there is a duty to disclose arising from the relationship between the parties, a party's failure to disclose material facts, without more, constitutes fraudulent concealment and tolls the applicable statute of limitations.

**ANSWER: Paragraph 98 contains legal conclusions to which no response is required.**

**To the extent a response is required, State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

99. Plaintiffs and members of the Class have been in a contractual relationship with Defendants since no later than 1993 and trusted Defendants to act in good-faith and safeguard their property – the Cash Value of their universal life insurance policies. In addition, and unlike most insurance policies (e.g., auto, home, health, term life, etc.), the insurer of a universal life insurance policy possesses and controls the insured's Cash Value, which is property belonging to the insured.

**ANSWER: Paragraph 99 contains legal conclusions to which no response is required.**

**To the extent a response is required, State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

100. From the insured's Cash Value, Defendants deduct each month the Expense Charge and the COI Charge. The insured is completely reliant upon Defendants to do what they say they are going to do in withdrawing the charges from the policy's Cash Value, because Defendants do not reveal how it makes its calculations.

**ANSWER: State Farm admits that Plaintiffs' Policies define how charges may be assessed and deducted from the Cash Value and premium payments and that all**

**charges and deductions State Farm makes are shown to Plaintiffs on their annual notices. Except as expressly admitted, State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

101. At a minimum, this relationship qualifies as “special” or “quasi-fiduciary.”

**ANSWER: Paragraph 101 contains legal conclusions to which no response is required. To the extent a response is required, State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

102. Defendants’ methodology for determining COI Rates was material information, and Defendants therefore had a duty to disclose the factors it was considering and using when determining its COI Rates.

**ANSWER: Paragraph 102 contains legal conclusions to which no response is required. To the extent a response is required, State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

103. Contrary to that duty, Defendants did not disclose its determination of COI Rates. Because Defendants owed a heightened duty to Plaintiff and members of the Class, its failure to disclose its consideration and use of non-mortality factors in determining its COI Rates reinforces Plaintiff’s argument that the statute of limitations was tolled.

**ANSWER: Paragraph 103 contains legal conclusions to which no response is required. To the extent a response is required, State Farm denies these allegations**



**and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

104. Based on the foregoing, Defendants breached their duty of disclosure to Plaintiffs and members of the Class, thereby tolling any applicable statute of limitations. Plaintiffs and the Class's claims are therefore timely.

**ANSWER: Paragraph 104 contains legal conclusions to which no response is required. To the extent a response is required, State Farm denies these allegations and specifically denies that this case meets the requirements for class certification under Rule 23 of the Federal Rules of Civil Procedure.**

*v. Defendants' breaches are ongoing, occurring each month.*

105. Defendants' breaches are ongoing and continuing in nature.

**ANSWER: State Farm denies these allegations.**

106. Each month, Defendants take from the Plaintiffs' and the Class's Cash Values COI Charges that are calculated using improperly determined and unauthorized COI Rates.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

107. Based on the foregoing, Plaintiffs and Class's claims are timely in full—because Defendants' conduct continues to this day—or in part—because each breach represents a new actionable cause of action.

**ANSWER: Paragraph 107 contains legal conclusions to which no response is required. To the extent a response is required, State Farm denies these allegations**

**and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

**V. CLASS ALLEGATIONS**

108. Class Representatives bring this case as a class action under Federal Rule of Civil Procedure 23, on behalf of themselves and as representatives of the following Class:

All persons or entities who own or owned one of approximately 450,000 Form 86040/A86040 universal life insurance policies or Form 86075/A86075 universal life insurance policies in the United States that were issued and administered by one or more Defendant or their predecessors in interest, including all applications, schedules, riders, and other forms specifically made a part of the policies at the time of their issue, plus all riders and amendments issued later, or otherwise part of “The Contract,” as defined in the Policy or Policies.

Excluded from the Class are the Defendants; any entity in which the Defendants has a controlling interest; any of the officers, or members of the board of directors of Defendants; the legal representatives, heirs, successors, and assigns of the Defendants; anyone employed with Plaintiffs’ counsel’s law firms; and any Judge to whom this action or a Related Action<sup>29</sup> is assigned, and his or her immediate family.

**ANSWER: State Farm admits that Plaintiffs purport to bring this case as a putative class action under Rule 23 of the Federal Rules of Civil Procedure but denies that this case meets the requirements for certification of a litigation class. Except as expressly admitted, State Farm denies these allegations.**

109. The Class satisfies the numerosity, commonality, typicality, adequacy, and superiority requirements of a class action under Rule 23, as set forth more fully herein.

**ANSWER: Paragraph 109 contains legal conclusions to which no response is required. To the extent a response is required, State Farm denies these allegations**

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<sup>29</sup> “Related Action(s)” means *Millwood v. State Farm Life Insurance Company*, Case No. 7:19-cv-01445-DCC, currently pending in the United States District Court for the District of South Carolina, and *McClanahan v. State Farm Life Ins. Co.*, Case No. 1:22-cv-01031-STA-JAY originally filed in the Western District of Tennessee, and now on appeal in the U.S. Sixth Circuit Court of Appeals, Case No. 23-5578, *Gettys Millwood, et al v. State Farm Life Insurance Company*.

**and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

110. *Numerosity.* The persons who fall within the Class number in the hundreds of thousands, and thus the numerosity standard is satisfied. Because Class members are geographically dispersed across the United States, joinder of all Class members in a single action is impracticable. Class members may be informed of the pendency of this class action through direct mail.

**ANSWER: The first and second sentences of Paragraph 110 contain legal conclusions to which no response is required. To the extent a response is required, State Farm denies these allegations. State Farm admits the third sentence of Paragraph 110. Except as expressly admitted, State Farm denies the remaining allegations of this paragraph and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

111. *Commonality.* There are questions of fact and law common to the Class that predominate over any questions affecting only individual members. The questions of law and fact common to the Class arising from Defendants' actions include the following, without limitation:

- a. Whether Defendants are permitted by the Policies to determine the COI Rates using factors other than those specified in the Policies;
- b. Whether Defendants added, included, used, or relied on factors not specified in the Policies when determining the COI Rates used to calculate the COI Charges for the Policies;
- c. Whether Defendants added, included, used, or relied on factors unrelated to their expectations of future mortality experience in determining the COI Rates that the Policies provide are determined using specified mortality factors and no other specified factors;

- d. Whether Defendants are permitted by the Policies to deduct expense amounts from policy owners' Cash Values in excess of the amounts disclosed in the Policies;
- e. Whether Defendants are required by the Policies to reduce COI Rates when their expectations as to future mortality experience improve;
- f. Whether Defendants are required by the Policies to reduce COI Rates to the full extent of mortality improvements experienced by Defendants;
- g. Whether Defendants abused their discretion under the Policies;
- h. Whether Defendants' expectations as to future mortality experience improved such that Defendants were required by the Policies to reduce COI Rates;
- i. Whether Defendants charged amounts in excess of those specifically authorized by the Policies;
- j. Whether Defendants breached the terms of the Policies;
- k. Whether Defendants converted Class members' property;
- l. Whether the Class was injured and sustained damages as a result of Defendants' wrongful conduct;
- m. Whether the Class is entitled to damages, restitution, and/or other relief as a remedy for Defendants' conduct; and
- n. Whether the Class is entitled to declaratory relief stating the proper construction and/or interpretation of the Policies.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

112. *Predominance.* The questions set forth above predominate over any questions affecting only individual persons. Defendants have acted or refused to act on grounds generally applicable to the Class. The presentation of separate actions by individual Class members would create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct

for Defendants, and/or substantially impair or impede the ability of Class members to protect their interests.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

113. *Typicality.* Class Representatives' claims are typical of those of the Class in that Class members purchased Policies containing the same limitations on the amounts that Defendants could charge under the express terms of the Policies.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

114. *Adequacy.* Class Representatives are adequate representatives of the Class because they are members of the Class and their interests do not conflict with the interests of those they seek to represent. The interests of the Class members will be fairly and adequately protected by Class Representatives and their counsel, who have extensive experience prosecuting complex class litigation.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

115. *Superiority.* A class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the claims asserted herein. Maintenance of this action as a class action is a fair and efficient method for adjudicating this controversy. It would be impracticable and undesirable for

each member of the Class who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Class members.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

116. For the foregoing reasons, the Court should certify this action as a Class pursuant to Federal Rule of Civil Procedure 23(b)(3).

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

## **VI. CLAIMS**

### **COUNT I: BREACH OF CONTRACT**

117. Plaintiffs reallege and incorporate herein the allegations of the paragraphs above of this Complaint as if fully set forth herein.

**ANSWER: State Farm incorporates and restates by reference its responses to the allegations contained in paragraphs 1 through 116.**

118. This claim is brought on behalf of Plaintiffs and the Class.

**ANSWER: State Farm admits that Plaintiffs purport to bring this case as a class action under Rule 23 of the Federal Rules of Civil Procedure, but denies that this case meets the requirements for certification of a litigation class and otherwise denies**

**these allegations. Except as expressly admitted, State Farm denies all remaining allegations in this paragraph.**

119. Plaintiffs and the Class purchased life insurance policies—the Policies—from Defendants.

**ANSWER: State Farm admits that Plaintiffs purchased the Policies from State Farm. Except as expressly admitted, State Farm denies the allegations contained in this paragraph and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

120. The Policies are valid and enforceable contracts between Plaintiffs and the Class, and Defendants.

**ANSWER: State Farm states it lacks knowledge or information sufficient to form a belief as to whether the Policies are valid and enforceable contracts between Plaintiffs and State Farm or the putative Class and State Farm and therefore denies these allegations. State Farm specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

121. Plaintiffs and the Class substantially performed their obligations under the terms of the Policies.

**ANSWER: State Farm denies the allegations contained in this paragraph and specifically denies that all putative class members substantially performed their obligations. State Farm also specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

122. Defendants breached the Policies in five ways, as set forth herein: (a) by using unauthorized and undisclosed factors to compute the COI Rates under the Policies; (b) by using expenses to compute the COI Rates that are in excess of the Expense Charge permitted by the Policies; (c) by failing to reduce COI Rates when Defendants' expectations as to future mortality experience improved; (d) by failing to consider and use *only* their expectations of future mortality when Defendants adjusted their COI Rates; and (e) by failing to reduce COI Rates to the full extent of mortality improvements experienced by Defendants when Defendants adjusted their COI Rates. Defendants' actions resulted in Defendants using higher COI Rates than what was explicitly authorized by the Policies.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

123. Defendants knowingly caused their COI Rates to be higher than what is explicitly authorized by the Policies.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

124. Because Defendants calculate COI Charges using inflated COI Rates, Defendants have deducted, and continue to deduct, COI Charges from the Cash Values of Plaintiffs and the Class in amounts greater than those authorized by their Policies.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**



125. Defendants' practice of deducting charges in amounts not authorized by the Policies constitutes repeated breaches of the Policies.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

126. As a direct and proximate result of Defendants' breaches, Plaintiffs and the Class have been damaged.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

## **COUNT II: BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

127. Plaintiffs reallege and incorporate herein the allegations of the paragraphs above of this Complaint as if fully set forth herein.

**ANSWER: State Farm incorporates and restates by reference its responses to the allegations contained in paragraphs 1 through 126.**

128. This claim is brought on behalf of Plaintiffs and the Class.

**ANSWER: State Farm admits that Plaintiffs purport to bring this case as a class action under Rule 23 of the Federal Rules of Civil Procedure, but denies that this case meets the requirements for certification of a litigation class and otherwise denies these allegations. Except as expressly admitted, State Farm denies all remaining allegations in Paragraph 128.**

129. The Policies include an implied covenant that Defendants will act in good faith and deal fairly with Plaintiffs and the Class, and that neither party shall do anything that will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.

**ANSWER: Paragraph 129 contains legal conclusions to which no response is required. To the extent a response is required, State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

130. Defendants breached the implied covenant of good faith and fair dealing with Plaintiffs and the Class by (a) failing to reduce COI Rates when Defendants' expectations as to future mortality experience improved; (b) by failing to consider and use only their expectations of future mortality when Defendants adjusted their COI Rates; and (c) failing to reduce COI Rates to the full extent of mortality improvements experienced by Defendants when Defendants adjusted their COI Rates. As a consequence thereof, Plaintiffs and the Class suffered financial losses and were, therefore, injured.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

131. Defendants' decision to (a) not reduce COI Rates when Defendants' expectations as to future mortality experience improved, (b) not consider and use only their expectations of future mortality when Defendants adjusted their COI Rates and (c) not reduce COI Rates to the full extent of mortality improvements experienced by Defendants when Defendants adjusted their COI Rates also frustrated the purposes of the Policies, which was to reimburse State Farm for its actual mortality risk.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

132. As a direct and proximate cause of these breaches of the implied covenant of good faith and fair dealing and of Defendants' frustration of the purpose of the Policies, Plaintiffs and the Class have been damaged as alleged herein in an amount to be proven at trial.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

### **COUNT III: CONVERSION**

133. Plaintiffs reallege and incorporate herein the allegations of the paragraphs above of this Complaint as if fully set forth herein.

**ANSWER: State Farm incorporates and restates by reference its responses to the allegations contained in paragraphs 1 through 132.**

134. This claim is brought on behalf of Plaintiffs and the Class.

**ANSWER: State Farm admits that Plaintiffs purport to bring this case as a class action under Rule 23 of the Federal Rules of Civil Procedure, but denies that this case meets the requirements for certification of a litigation class and otherwise denies these allegations. Except as expressly admitted, State Farm denies all remaining allegations in Paragraph 134.**

135. Plaintiffs and the Class have a property interest in the funds in their Cash Values.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

136. By deducting charges in unauthorized amounts from the Cash Values of Plaintiffs and the Class, Defendants misappropriate or misapply specific funds placed in the custody of

Defendants for the benefit of Plaintiffs and the Class for use consistent with the terms of the Policies, without authorization or consent, and divert those funds for their own use.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

137. As a direct and proximate result of Defendants' conduct, Plaintiffs and the Class have been damaged and continue to be damaged.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

138. Although requiring expert testimony, the amounts of unauthorized charges Defendants take from Plaintiffs and the Class are capable of determination, to an identified sum, by comparing Plaintiffs' actual COI Charge each month to a COI Charge computed using a COI Rate determined using the mortality factors disclosed in the Policies.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

139. On behalf of themselves and the Class, Plaintiffs seek all damages and consequential damages proximately caused by Defendants' conduct.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

140. Defendants intended to cause damage to the Plaintiffs and the Class by deducting more than they were authorized to deduct from their Cash Values. Their conduct is, therefore, malicious and Defendants are also guilty of oppression in that their systematic acts of conversion subject Plaintiffs and the Class to cruel and unjust hardship in conscious disregard of their rights. Plaintiffs and the Class are therefore entitled to punitive or exemplary damages.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

**COUNT IV: DECLARATORY AND INJUNCTIVE RELIEF**

141. Plaintiffs reallege and incorporate herein the allegations of the paragraphs above of this Complaint as if fully set forth herein.

**ANSWER: State Farm incorporates and restates by reference its responses to the allegations contained in paragraphs 1 through 140.**

142. This claim is brought on behalf of Plaintiffs and the Class.

**ANSWER: State Farm admits that Plaintiffs purport to bring this case as a class action under Rule 23 of the Federal Rules of Civil Procedure, but denies that this case meets the requirements for certification of a litigation class and otherwise denies these allegations. Except as expressly admitted, State Farm denies all remaining allegations in Paragraph 142.**

143. An actual controversy has arisen and now exists between Plaintiffs and the Class, on the one hand, and Defendants, on the other, concerning the respective rights and duties of the parties under the Policies.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

144. Plaintiffs contend that Defendants breached and continue to breach the Policies in the following respects, each of which resulted in Defendants impermissibly increasing COI Rates for the Policies and withdrawing COI Charges from the Cash Values of Plaintiff and the Class in amounts greater than those authorized by the Policies:

- a. By using unauthorized and undisclosed factors to compute the COI Rates under the Policies;
- b. By using expenses to compute the COI Rates that are in excess of the Expense Charge permitted by the Policies;
- c. By failing to reduce COI Rates when Defendants' expectations as to future mortality experience improved;
- d. By failing to consider and use only their expectations of future mortality when Defendants adjusted their COI Rates; and
- e. By failing to reduce COI rates to the full extent of mortality improvements experienced by Defendants when Defendants adjusted their COI Rates.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

145. Plaintiffs therefore seek a declaration of the parties' respective rights and duties under the Policies and request the Court to declare the aforementioned conduct of Defendants as unlawful and in material breach of the Policies so that future controversies may be avoided.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

146. Pursuant to a declaration of the parties' respective rights and duties under the Policies, Plaintiffs further seek an injunction permanently enjoining Defendants from continuing to collect unlawfully inflated charges in violation of the Policies.

**ANSWER: State Farm denies these allegations and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

**VII. [PLAINTIFFS'] PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, request relief as follows:

- a. That the Court enter an order certifying the class, appointing Plaintiffs as representatives of the Class, appointing Plaintiffs' counsel as Class counsel; and directing that reasonable notice of this action, as provided by Federal Rule of Civil Procedure 23(c)(2), be given to the Class;
- b. For a judgment against Defendants for the causes of action alleged against them;
- c. For compensatory damages;
- d. For punitive and exemplary damages;
- e. For a declaration that Defendants' conduct as alleged herein is unlawful and in material breach of the Policies;
- f. For appropriate injunctive relief, enjoining Defendants from continuing to collect unlawfully inflated charges in violation of the Policies;
- g. For pre-judgment and post-judgment interest at the maximum rate permitted by law;
- h. For Plaintiffs' attorneys' fees;

- i. For Plaintiffs' costs and litigation expenses incurred; and
- j. For such other relief in law or equity as the Court deems just and proper.

**ANSWER: State Farm denies that Plaintiffs are entitled to any of the relief sought by way of this lawsuit, including in the Complaint's Prayer for Relief, and specifically denies that this case meets the requirements for certification of a litigation class under Rule 23 of the Federal Rules of Civil Procedure.**

### **ADDITIONAL DEFENSES**

Nothing herein may be construed to suggest that State Farm bears the burden of proof on any of the issues set forth below. State Farm reserves the right to assert other defenses to the extent the factual bases for other such defenses are discovered during the course of this litigation.

### **FIRST DEFENSE**

Plaintiffs' and the putative class's claims are barred, in whole or in part, by the applicable statutes of limitations. Plaintiffs cannot adequately demonstrate any fraudulent concealment by State Farm or any other facts that would toll the running of the applicable statutes of limitation. To the extent the discovery rule applies to any of Plaintiffs' or the putative class's causes of action, they had adequate actual or constructive knowledge (from the terms of their contracts, illustrations, annual statements, correspondence, and other written and oral communications with State Farm or third parties or other available information) to trigger the running of the limitations period so that the applicable statutes of limitation have now expired.

### **SECOND DEFENSE**

Plaintiffs' and the putative class's claims are barred, in whole or in part, by the doctrine of unclean hands and/or estoppel. Plaintiffs and the putative class received the entire benefit of the bargain and cannot now mount a claim for breach.



### **THIRD DEFENSE**

Neither Plaintiffs nor the putative class can assert their untimely claims based on fraudulent concealment because: (1) State Farm had no duty to disclose the conduct of which Plaintiffs complain; (2) State Farm had no intent to deceive any policyholder; and (3) Plaintiffs have not alleged fraud with the particularity required by Rule 9(b) of the Rules of Civil Procedure.

### **FOURTH DEFENSE**

Plaintiffs' and the putative class's claims are barred, in whole or in part, due to Plaintiffs' and the putative class's own actions, negligence or legal fault.

### **FIFTH DEFENSE**

Plaintiffs' and the putative class's claims are barred, in whole or in part, by the doctrine of waiver.

### **SIXTH DEFENSE**

Plaintiffs' and the putative class's claims are barred, in whole or in part, by their failure to mitigate damages, if any.

### **SEVENTH DEFENSE**

Plaintiffs' and the putative class's claims are barred, in whole or in part, by payment or the voluntary payment doctrine.

### **EIGHTH DEFENSE**

Plaintiffs' and the putative class's claims are barred by the filed rate doctrine. The policy forms at issue were filed with and/or approved by state regulatory authorities.

### **NINTH DEFENSE**

Plaintiffs' and the putative class's claims are barred, in whole or in part, by the doctrine of laches.

**TENTH DEFENSE**

Claims of some members of the putative classes are barred by or otherwise did not survive the surrender or termination of the policy.

**ELEVENTH DEFENSE**

Claims of the Plaintiffs and some members of the putative classes are barred by or otherwise did not survive either the death of the owner of the Policy or the death of the insured.

**TWELFTH DEFENSE**

Claims of the Plaintiffs and the putative class are preempted by the insurance regulations and statutes of states where the Policies were issued.

**THIRTEENTH DEFENSE**

Claims of the Plaintiffs and some members of the putative classes are barred in whole or in part by the doctrines of payment, accord and satisfaction, recoupment, set-off, and/or election of remedies.

**FOURTEENTH DEFENSE**

The breach of contract claims of any member of the putative classes who did not pay a premium for the alleged coverage for which they seek to recover payment fail for lack of consideration and/or a failure to perform.

**FIFTEENTH DEFENSE**

The Complaint, and each purported cause of action alleged therein, is barred by the conduct, actions and inactions of Plaintiffs and/or and the putative class under the doctrine of ratification.

**SIXTEENTH DEFENSE**

Plaintiffs and/or and the putative class have already received the benefit of their bargain.

### **SEVENTEENTH DEFENSE**

With respect to the claims of Plaintiffs and/or the putative class, the terms and conditions imposed with respect to the insurance that is the subject of the Complaint complied with all applicable statutes, regulations, and/or filed rates and policy forms. To the extent that the causes of action advanced in the Complaint challenge the terms contained in policy forms accepted for those terms and conditions, such claims are barred as a matter of law, since among other things, all such claims seek to alter or amend the terms of the filed and accepted forms.

### **EIGHTEENTH DEFENSE**

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 State Farm has complied with all relevant insurance regulations with regard to the approval and maintenance of those contracts.

### **NINETEENTH DEFENSE**

The claims advanced in the Complaint by Plaintiffs and/or and the putative class, insofar as they relate to alleged conduct that is subject to the regulatory jurisdiction of one or more regulatory or administrative agencies or bodies, are subject to the exclusive jurisdiction of those regulatory or administrative agencies under the doctrines of primary and/or exclusive jurisdiction. Alternatively, such claims are barred by the absence of any private right of action with regard to conduct submitted to the discretion of a regulatory or administrative agency or body.

### **TWENTIETH DEFENSE**

State Farm denies that it or any of its agents, principals or representatives breached any duty or obligations allegedly owed to Plaintiffs or the putative class.

**TWENTY-FIRST DEFENSE**

The claims of Plaintiffs and some members of the putative class are barred by the doctrines of res judicata, collateral estoppel, waiver or settlement.

**TWENTY-SECOND DEFENSE**

The Complaint fails to state a claim upon which any relief can be granted and should be dismissed.

**TWENTY-THIRD DEFENSE**

Plaintiffs and some or all members of the putative class lack standing to bring some or all of the claims set forth in the Complaint because they have not suffered any injury in fact.

**TWENTY-FOURTH DEFENSE**

Plaintiffs' Complaint is barred, in whole or in part, because Plaintiffs and the putative class have released the claims set forth in the Complaint.

**TWENTY-FIFTH DEFENSE**

Some or all of Plaintiffs' and the putative class's claims are barred by the express provisions of those persons' respective insurance contracts, which authorize each of the deductions about which Plaintiffs complain.

**TWENTY-SIXTH DEFENSE**

Plaintiffs and the putative class suffered no damages by reason of any act or omission of State Farm.

**TWENTY-SEVENTH DEFENSE**

None of the causes of action alleged in the Complaint entitle Plaintiffs or any member of the putative class to recover attorney's fees from State Farm as a matter of contract, statute or otherwise.

### **TWENTY-EIGHTH DEFENSE**

Plaintiffs' and the putative class's claims are barred, in whole or in part, because the Plaintiffs understood the terms of their contract and appreciated the benefits of the contract from the time it was issued to the present. Plaintiffs and members of the putative class have taken actions consistent with the policies and in reliance on the policies, including receipt of interest, modification of rate class in the event of a change in smoker status, receipt of loans, waivers of monthly deductions, receipt of cash surrender value, and receipt of death benefits.

### **TWENTY-NINTH DEFENSE**

This Court lacks personal jurisdiction over some putative class members.

### **THIRTIETH DEFENSE**

The Complaint and each and every claim for relief are barred by the Parole Evidence Rule, which precludes the claimants from varying the written terms of the policies.

### **THIRTY-FIRST DEFENSE**

The claims and/or damages of Plaintiffs and the alleged putative class are barred, in whole or in part, by the terms, conditions, limitations, and exclusions contained within their respective policies and/or by public policy or express provision of law.

### **THIRTY-SECOND DEFENSE**

The adjudication of the claims of the putative class through purported class-wide proof would violate State Farm's right to due process of law and right to trial by jury guaranteed by the United States and Missouri Constitutions.

### **THIRTY-THIRD DEFENSE**

The claims and/or damages of Plaintiffs and the alleged putative class are barred, in whole or in part, by the terms, conditions, limitations, and exclusions contained within their respective policies and/or by public policy or express provision of law.

### **THIRTY-FOURTH DEFENSE**

Plaintiffs' Policies and those owned by members of the putative class inform the policyholder that State Farm will determine the cost of insurance rate to be applied to the policy Insured by reference to that Insured's "age on the policy anniversary, sex, and applicable rate class." Because that is exactly what State Farm did for each Insured for a policy on Forms 86040 and 86075, there is no breach of the policy. Plaintiffs' Complaint, therefore, fails to state a claim upon which any relief can be granted.

### **THIRTY-FIFTH DEFENSE**

State Farm advised each policyholder, including Plaintiffs, how the cost of insurance rate for that policy Insured would be determined, and State Farm determined each Insured's rate as it had so advised that policyholder. Accordingly, there is no basis for any claim of fraud and deception.

### **THIRTY-SIXTH DEFENSE**

Plaintiffs cannot assert untimely claims based on fraudulent concealment as alleged in the Complaint as State Farm fully disclosed all material information to Plaintiffs and its other policyholders and had no duty to disclose the additional information that is identified in the complaints, nor did State Farm have any intent to deceive Plaintiffs or any other policyholder.

### **THIRTY-SEVENTH DEFENSE**

Certain putative class member claims for conversion are barred by the economic loss doctrine.

**THIRTY-EIGHTH DEFENSE**

Plaintiffs' claims on behalf of the putative class members residing in states other than those in which Plaintiffs reside fail for lack of standing.

**THIRTY-NINTH DEFENSE**

The Court lacks personal jurisdiction over State Farm as it pertains to the claims on behalf of non-Missouri putative class members.

**FORTIETH DEFENSE**

The Court lacks subject matter jurisdiction over the claims of non-Missouri putative class members.

**FORTY-FIRST DEFENSE**

Plaintiffs' and the putative class's claims for conversion are barred because the funds are not sufficiently "identifiable" under the laws of the governing states.

**DEFENSES RESERVED**

State Farm hereby gives notice that it may rely upon other defenses that become available or apparent during the discovery proceedings in this matter, and hereby reserves its right to amend its Answer and to assert any such defenses.

**REQUEST FOR RELIEF**

Wherefore, State Farm denies that Plaintiffs are entitled to any of the relief they seek, whether on behalf of themselves or a putative class, and prays for judgment as follows.

- a. That Plaintiffs take nothing by their Complaint;

- b. That the Court dismiss, with prejudice, Plaintiffs' Complaint, and award State Farm its recoverable costs; and
- c. That the Court award State Farm such other and further relief as it may deem just and proper.

**DEMAND FOR JURY TRIAL**

State Farm hereby demands a trial by jury of all issues so triable.



September 12, 2023

Respectfully submitted,

s/ *Jeremy A. Root*

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