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17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**
19 **EASTERN DIVISION**

20 Barbara Linhart, on behalf of herself and
21 all others similarly situated.

22 Plaintiff,

23 v.

24 New York Life Insurance Company,
25 New York Life Insurance and Annuity
26 Corporation, Life Insurance Company of
27 North America and NYLife Insurance
28 Company of Arizona and DOES 1 TO
50, inclusive,

Defendants.

No. 5:21-cv-1640

**CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

1. **BREACH OF CONTRACTUAL
DUTY TO PAY A COVERED
CLAIM**
2. **BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING**

1 BARBARA LINHART (“Mrs. Linhart” or “Plaintiff”), brings this action
2 on behalf of herself and all others similarly situated, against Defendants New
3 York Life Insurance Company (incorporated in New York), New York Life
4 Insurance and Annuity Corporation (incorporated in Delaware), Life Insurance
5 Company of North America (incorporated in Pennsylvania), and NYLife
6 Insurance Company of Arizona (incorporated in Arizona) all of which are part
7 of the NAIC #0826 NEW YORK LIFE GROUP companies which issue and
8 administer life insurance policies in the state of California (jointly, “New York
9 Life”). Plaintiff, by and through her attorneys, based on her individual
10 experiences, the investigation of counsel, and information and belief, alleges as
11 follows in support of the claims herein.

12 I. NATURE OF THE CASE

13 1. Plaintiff has filed this class action lawsuit because Defendant New
14 York Life knowingly and repeatedly violated California law by failing to
15 provide statutorily mandated forms and annual notices to policyholders as
16 required by California law, and therefore, improperly lapsed and refused to pay
17 the benefits of its life insurance policies.

18 2. Under Section 10113.72 of the California Insurance Code
19 (“Statutes”), which became effective January 1, 2013, life insurance companies
20 such as New York Life are required to, among other requirements:

21 a) give their policyholders an opportunity to designate a third party to
22 receive notice of a potential termination of benefits for non-payment of
23 a premium by providing a form to the policyholder which form “shall
24 provide the opportunity for the applicant to submit the name, address,
25 and telephone number of at least one person, in addition to the applicant,
26 who is to receive notice of lapse or termination of the policy for
27 nonpayment of premium.” (“Designation Notice Requirement”); and
28

1 b) shall notify the policy owner annually of the right to change the written
2 designation or designate one or more persons. (“Annual Notice
3 Requirement”)

4 3. For policies issued before January 1, 2013, New York Life failed
5 to comply with the Statutes in two distinct ways, each of which independently
6 warrant the relief sought in this case. Specifically: a) New York Life did not
7 provide its policy owners with the requisite form to make the designation as
8 required by the Designation Notice Requirement; and b) New York Life did not
9 advise its policy owners of their right to change their designation as required by
10 the Annual Notice Requirement.

11 4. Rather than simply comply with the spirit and letter of the Statutes,
12 New York Life included a plainly deficient and ambiguous “notice” within
13 other lengthy and unrelated policy materials that did not conspicuously and
14 unambiguously advise policyholders of their rights. This purported notice made
15 it nearly impossible for policyholders to exercise their important statutory rights
16 that the Statutes were enacted to protect. The public policy undergirding the
17 Statutes’ requirements—which were publicly supported by California’s
18 Governor, Insurance Commissioner and Department of Insurance—is to
19 provide consumer safeguards from which people who have purchased life
20 insurance coverage, especially seniors, would benefit, specifically, to protect
21 consumers from losing insurance coverage due to a premium payment that is
22 accidentally missed.

23 3. According to the author of the legislation: “Individuals can easily
24 lose the critical protection of life insurance if a single premium is accidentally
25 missed. If an insured individual loses coverage and wants it reinstated, he or
26 she may have to undergo a new physical exam and be underwritten again,
27 risking a significantly more expensive, possibly unaffordable premium if his or
28

1 her health has changed in the years since purchasing the policy. Therefore, the
2 protections provided by [the Requirements] are intended to make sure that
3 policyholders have sufficient warning that their premium may lapse due to
4 nonpayment.”

5 4. This is not a mere hypothetical concern. When one is ill, or in the
6 final stages of life, it is not uncommon for a life insurance holder to miss a
7 premium payment as a result of their poor health.

8 5. The Statutes were also designed specifically to deal with the
9 unique nature of life insurance. When a potential claim for benefits arises, the
10 policy owner and party responsible for payment of premiums is often the
11 insured, and due to their death, is no longer available to explain the
12 circumstances related to any potential lapse or termination of coverage. The
13 beneficiary is often unaware of the circumstances related to any lapse of
14 coverage. Rather, the insurer is fully in control of the documentation and
15 requirements for termination of coverage. As such, California requires strict
16 compliance with all statutory and contractual provisions governing termination
17 of an otherwise in-force policy regardless of the nonpayment of premium and
18 no lapse or termination for failure to pay a premium is effective, and the policy
19 remains in force even if premiums are unpaid, unless and until all statutory and
20 contractual provisions are satisfied.

21 6. New York Life has repeatedly and intentionally failed to adhere to
22 the Designation Notice Requirements and Annual Notice Requirements, and
23 then failed to honor those life insurance policies by refusing to pay beneficiaries
24 the proceeds. New York Life’s conduct has been particularly egregious and
25 unreasonable as it has had notice that numerous district courts in the Ninth
26 Circuit have enforced the Statutes against life insurance companies in nearly
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1 identical circumstances, and more recently the California Supreme Court
2 agreed.

3 7. The California Supreme Court has unequivocally held—in
4 *McHugh v. Protective Life Ins. Co.*, Cal. Supreme Court Case Number S259215
5 (Aug. 30, 2021)—that the Statutes apply to all policies that were in force as of
6 January 1, 2013:

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

15 8. The *McHugh* decision followed multiple rulings from other courts,
16 one dating as far back as 2016, which have likewise applied the Statutes to
17 policies in force as of the Statutes’ effective date. *See Bentley v. United of*
18 *Omaha Life Insurance Co.*, 2:15-CV-07870 (C.D. Cal. Feb. 21, 2019), Dkt. No.
19 174 at 24-25 (“Jennifer Bentley, as the class representative, has successfully
20 demonstrated that United breached its contractual duty to pay life insurance
21 benefits because: (1) United issued the life insurance policy to Eric Bentley,
22 and Jennifer Bentley is that policy’s beneficiary, Jt. Stip. ¶ 15; (2) the Bentley
23 policy was issued, delivered, or renewed in California by United, *id.* ¶¶ 16–17;
24 (3) the Bentley policy renewed after the Effective Date, *id.* ¶¶ 17, 20; (4) United
25 did not provide Eric Bentley with the Offer to Designate or provide Jennifer
26 Bentley with the Designee/30-Day Notice required by the Statutes, *id.* ¶¶ 22–
27 24; (5) the Bentley policy lapsed for non-payment of premium after the
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1 Effective Date, *id.* ¶¶ 4–5, 35–36; and (6) to date, United has not paid death
2 benefits on the Bentley policy. *Id.* ¶ 32. Thus, there is no dispute of material
3 fact that United breached its contractual duty to pay Jennifer Bentley’s life
4 insurance claim.”). *Accord Moriarty v. American General Life Ins. Co.*, 3:17-
5 cv-1709 (S. D. Cal. Oct. 1, 2020); *Siino v. Foresters Life Ins. & Annuity Co.*,
6 2020 U.S. Dist. Lexis 178709, *14–19 (N.D. Cal. Sep. 1, 2020); *Thomas v.*
7 *State Farm Insurance Company*, Case No 18-cv-00728 (S.D. Cal. Dec. 10,
8 2019); *Bentley v. United of Omaha Life Insurance Co* 2016 U.S. Dist. LEXIS
9 195183 (C.D. Cal. June 22, 2016).

10 9. In addition to these judicial interpretations, New York Life is one
11 of the members of the Association of California Life & Health Insurance
12 Companies (“ACLHIC”), and on October 25, 2012, ACLHIC advised, among
13 others, New York Life employees Michael Tobin and Jill Diaz that the Statutes
14 and the “alternative designee provisions will be applied prospectively, and will
15 only impact those policies issued, delivered or renewed on or after January 1,
16 2013.” Thus, nearly nine years before denying Plaintiff’s claim, New York
17 Life’s own trade association advised that the Statutes would cover policies
18 renewed after the Effective Date.

19 10. Despite this longstanding, clear and overwhelming authority, for
20 life insurance policies originally issued prior to January 1, 2013, New York Life
21 has terminated and refused to pay benefits due to the non-payment of premiums
22 despite failing to adhere to the Designation Notice and Annual Notice
23 Requirements mandated by law with respect to such policies.

24 11. Plaintiff is one of many beneficiaries that have been damaged by
25 New York Life’s unlawful conduct.

1 paid his premiums for the policy at issue for nearly thirteen years while residing
2 in Mission Viejo, California. New York Life has transacted business throughout
3 this district including the issuance of life insurance policies and was found or
4 had agents in this district.

5 20. This Court has personal jurisdiction over New York Life because,
6 among other facts, New York Life: a) transacted business in this district; b)
7 issued insurance policies in this district; c) had substantial contacts with this
8 district; and/or d) was engaged in the illegal conduct alleged herein which was
9 directed at and had the intended effect of causing injury to persons residing or
10 located in this district.

11 **III. THE PARTIES**

12 21. Mrs. Linhart is the sole beneficiary of the insurance policy issued
13 by New York Life to her late-husband James Linhart that was entered into in
14 Mission Viejo, California. At the time the policy was issued, Mr. and Mrs.
15 Linhart were residents of Mission Viejo, California.

16 22. New York Life is an insurance company licensed to conduct the
17 business of insurance in California. New York Life Insurance and Annuity
18 Corporation is a Delaware corporation and is a unit of New York Life Group, a
19 New York based financial services company that issues and administers life
20 insurance policies in the state of California under the names including but not
21 limited to: New York Life Insurance Company (incorporated in New York),
22 Life Insurance Company of North America (incorporated in Pennsylvania), and
23 NYLife Insurance Company of Arizona (incorporated in Arizona).

24 **IV. FACTUAL ALLEGATIONS**

25 23. In 2012, Assembly Bill 1747 was enacted and created Sections
26 10113.71 and 10113.72 of the California Insurance Code (the “Statutes”).
27
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1 **Section 10113.72:**

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

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

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

26
27 Cal. Ins. Code § 10113.71-72. (emphasis added)

28

1
2 27. New York Life has chosen to disregard the Statutes with respect
3 to life insurance policies it issued or delivered or renewed in California prior to
4 January 1, 2013.

5 28. In particular, New York Life has disregarded the Designation
6 Notice and Annual Notice Requirements for insurance policies it issued or
7 delivered in California prior to the Effective Date of the Statutes—January 1,
8 2013—even if the policies were renewed after the Effective Date.

9 29. As a result of New York Life’s disregard of the Designation
10 Requirements and Annual Notice Requirements of the Statutes, New York Life
11 has improperly terminated policies and refused to pay out proceeds that are due
12 and owing to the beneficiaries of such improperly terminated policies.

13 30. The policy issued by New York Life to Mr. Linhart—for which
14 Plaintiff is the sole beneficiary—is one example.

15 31. On August 1, 2007, New York Life issued a \$350,000 “Individual
16 Term Life Insurance” policy to Mr. Linhart (Policy No. 62970515) (the
17 “Policy”).

18 32. Upon information and belief, pursuant to the Policy, Mr. Linhart
19 was able to and had the option to renew the Policy by paying the monthly
20 renewal premium identified in the Policy. The Policy Anniversary was each
21 August 1st of the year.

22 33. Mr. Linhart made his premium payments for over 13 years, some
23 after the Effective Date, and, as a result, the Policy renewed each year and
24 coverage remained in force without interruption during that time. On August
25 3, 2021, New York Life purportedly sent Mr. Linhart a letter that advised that
26 coverage under the Policy was no longer being provided for the alleged non-
27 payment of the premiums.
28

1 34. Mr. Linhart died on August 7, 2021.

2 35. At no time prior to the termination did New York Life provide Mr.
3 Linhart with the form to designate a third party to receive notification of a
4 pending termination as mandated by the Designation Notice Requirements of
5 the Statutes. At no time prior to the termination did New York Life provide
6 Mr. Linhart with notice of his annual of the right to change the written
7 designation of the third party to receive notifications as mandated by the Annual
8 Notice Requirement.

9 36. Instead of providing plain, clear, unambiguous and conspicuous
10 notice of these important statutory and consumer rights, New York Life did
11 exactly the opposite.

12 37. New York Life buried a confusing reference to a right to designate
13 a third party in California within a lengthy, single-spaced “Annual Policy
14 Summary” in the definitions section on page two of the five-page summary
15 lumped together with references to New Jersey, Florida, Vermont and Maine
16 residents—attached as **Exhibit 1**—which read as follows:

This Annual Policy Summary is not a contract. Please refer to your policy contract or contact your agent/representative for more complete explanations of your coverage. We reserve the right to correct errors.

DEFINITIONS OF TERMS FOR THE NYLIAC ANNUAL POLICY SUMMARY - Not all terms will appear nor will all be applicable on all Annual Policy Summaries.

Account Value - The value of the policy on the specified "as of" date. This value is based on the account value as of the beginning of the reporting period less cost of insurance charges, administrative fees, any partial cash surrender value benefits paid, and any service or other charges debited during the reporting period. The account value is increased by premiums received (less premium expense charges) and interest credited during the reporting period.

Additional Benefits - The listing of benefits included in the policy.

Alternative Cash Surrender Value (ACSV) - For a period of 10 years from the policy date of this policy, while the insured is living, this policy will have an ACSV. The ACSV is equal to the Cash Surrender Value of the policy plus the amortized value of the Alternative Cash Surrender Value Benefit.

Alternative Cash Surrender Value Benefit (ACSVB) - The ACSVB is equal to (a) x (b), where (a) is equal to the current month's un-amortized ACSVB value which consists of the prior month's un-amortized ACSVB value; 60% of the Sales Expense Charges deducted from all premiums paid since the last Monthly Deduction Day and 60% of the monthly deduction for both the Monthly Per Thousand of Base Policy Face Amount Charges and the Monthly Per Thousand of any riders attached to this policy and (b) is the current month's amortization factor. This factor is 1 each month during the first policy year and then decreases linearly beginning with the 13th policy month and continuing through the end of the 10th policy year. On the 10th Policy Anniversary and any date thereafter, the ACSVB will be zero.

Base Plan Face Amount - The Initial Death Benefit under the policy. The amount does not include any other policy or rider benefits. It also does not reflect a reduction for a policy loan.

Cash Surrender Value - The net amount payable to the policyowner if the policy is surrendered to the Company on the specified "as of" date. The amount is based on the account value, less any applicable Surrender charges, less any unpaid loan and accrued loan interest. A surrender may result in a taxable gain that may be subject to federal and state withholding.

Cash Value Accumulation Test (CVAT) - The IRS Life Insurance Qualification Test that states that the account value cannot exceed the single premium required to fund future contract benefits, under the guaranteed assumptions. If the account value exceeds the net single premium, the death benefit will be increased to an amount that will meet the test.

Corridor Death Benefit - The increase in death benefit necessary to maintain the relationship between a policy's death benefit and account value prescribed by the Internal Revenue Code.

Cost of Insurance Charges - The amount deducted to pay the insurance cost of the base policy and any riders.

Current Loan Interest Rate - The rate of interest currently charged on a policy loan.

Fees and Other Charges - The fees and other charges include a monthly contract charge, a monthly per thousand face amount charge, premium expense charges and any additional first year premium expense charges, if applicable.

Guideline Annual Premium - The annual premium needed to endow a policy at age 100 at 4% interest and guaranteed charges.

Guideline Premium Test - The IRS Life Insurance Qualification Test that requires that cumulative premiums paid do not exceed the greater of the Guideline Single Premium or the sum of the Guideline Annual Premiums.

Guideline Single Premium - The single premium needed to endow a policy at age 100 under the guaranteed assumptions.

Interest Earned - The amount of interest earned on the policy's account value during the prior policy year, ending on the anniversary date.

Policy Loans and Partial Surrenders - The amount(s) of money the Company paid out of the policy as loans and/or partial surrenders during the reporting period.

Loan Interest Paid - The policy loan interest paid in cash during this statement period.

Loan Repayment(s) - The amount(s) paid to us to reduce the outstanding policy loan principal during this period. This includes receipt of both internal and external funds.

Outstanding Loan Balance - The policy loan amount and any unpaid interest due on a specified "as of" date.

Policy Date - The date when the insurance coverage began.

Policyowner - The person or organization who has the rights of ownership in the policy during the lifetime of the primary insured.

Planned (Pay Mode) Premium - The frequency of premium payments and the amount of the current planned premium selected by the policyowner.

Summary of Payments - The various payments made to the Company for the policy during the reporting period.

Target Premium - The Target Premium is an amount used to determine the amount of premium expense charge deducted from your policy premium payments during each policy year. The Target Premium will change if the initial base policy face amount is increased or decreased.

Taxes Withheld - The amount withheld to pay federal or state taxes on money paid from the policy.

Total Death Benefit - A summary of the Death Benefit provided by the policy that would be payable if the insured had died on the "as of" date. This amount includes the total face amount of the base policy, any term insurance rider on the Primary Insured, and, depending upon the Life Insurance Option elected, the account value amount or the adjusted total premium amount. The benefit has been reduced by any outstanding policy loan and unpaid loan interest.

Total Loan Interest Charged - The sum of the policy loan interest charged during the period, including loan interest charged on the anniversary.

New Jersey, Vermont, Florida, Maine & California Residents - If the insured covered by this policy and/or policyowner is age 62 or older (NJ), age 64 or older (VT) or any age (FL, ME and CA), you can designate a third party to whom we will mail copies of premium, cancellation and lapse notices. Please call a Customer Service Representative at the toll-free number on page one for more information regarding this procedure.

1 38. This buried “notice”—enlarged and isolated below for reference—
2 located in the lower right hand corner not only failed to comply with the
3 mandate of the Statutes—by not providing the requisite form or notification of
4 a policyholder’s important statutory right to change a designation—it also
5 plainly failed to satisfy the spirit of the Statutes by depriving policyholders,
6 particularly the vulnerable population the Statutes were designed to protect, of
7 any meaningful opportunity to designate a third-party to receive notices of a
8 potential lapse as the Legislature intended.

9
10
11 **New Jersey, Vermont, Florida, Maine &**
12 **California Residents - If the insured covered by**
13 **this policy and/or policyowner is age 62 or older**
14 **(NJ), age 64 or older (VT) or any age (FL, ME**
15 **and CA), you can designate a third party to**
16 **whom we will mail copies of premium,**
17 **cancellation and lapse notices. Please call a**
18 **Customer Service Representative at the toll-free**
19 **number on page one for more information**
20 **regarding this procedure.**

21
22 39. New York Life’s conduct is egregious because it shows that it
23 knew it had obligations to Mr. Linhart and others like him under the Statutes
24 yet chose to ignore some of the obligations entirely and make hollow efforts to
25 satisfy others in a way that made it highly unlikely policyholders would ever be
26 aware of, much less exercise, their statutory rights.

1 40. All life insurance companies already have on file beneficiary
2 designation forms. Other major insurance companies, including but not limited
3 to Fidelity, United of Omaha, Blue Cross Blue Shield, and Primerica had no
4 trouble drafting simple forms for their policyholders to complete. See **Exhibit**
5 **2**.

6 41. Having failed to satisfy the Designation Notice Requirement and
7 Annual Notice Requirement, New York Life, by extension, also failed to notify
8 a third-party designee of Mr. Linhart's of the pending termination in violation
9 of the Third-Party Notice Requirement of the Statutes.

10 42. After Mr. Linhart's death, Mrs. Barbara Linhart (the named
11 beneficiary under the Policy and Mr. Linhart's widow) contacted New York
12 Life and submitted a claim for benefits.

13 43. New York Life is aware of the California Supreme Court's ruling
14 in *McHugh*, as well as, on information and belief, the rulings in *Bentley* and
15 *Thomas*.

16 44. New York Life denied the claim, stating that no benefits were
17 payable on the Policy.

18 45. As a result of the denial, Mrs. Linhart has not received the proceeds
19 from the Policy, which has caused Mrs. Linhart to suffer considerable harm in
20 an amount to be proven at the time of trial.

21 **V. CLASS ACTION ALLEGATIONS**

22 46. Plaintiff brings this class action on behalf of herself, and all
23 persons and entities similarly situated pursuant to Rule 23 of the Federal Rules
24 of Civil Procedure. Specifically, Plaintiff brings this action on behalf of the
25 following class, which is subject to refinement based on information learned
26 during discovery:

1 All beneficiaries who made a claim, or would have been eligible
2 to make a claim, for the payment of benefits on life insurance
3 policies issued or delivered in the State of California, that were in
4 force on or after January 1, 2013 or renewed after January 1, 2013,
5 and were lapsed or were terminated by New York Life for the non-
6 payment of premium after January 1, 2013, and as to which
7 policies the notice form as described by Sections 10113.72(a) of
8 the California Insurance Code (the “Designation Notice
9 Requirement”) or notice to change a designation as described in
10 Section 10113.72(b) of the California Insurance Code (the
11 “Annual Notice Requirement”), were not sent by New York Life
12 prior to lapse or termination (hereinafter referred to as “Class”).

13 As used in the Class definition, the “notice to change a designation as
14 described in Section 10113.72(b)” refers to the notice to the policy owner
15 annually of the opportunity to change the written designation of a third-party
16 designee.

17 As used in the Class definition, the “form” described by Section
18 10113.72(a) of the California Insurance Code refers to the form the insurer shall
19 provide that affords the opportunity for the policy owner to submit the name,
20 address, and telephone number of at least one person who is to receive notice
21 of lapse or termination of the policy for nonpayment of premium.

22 47. Excluded from the Class are: a) New York Life; b) any entity in
23 which New York Life has a controlling interest; c) New York Life’s officers,
24 directors, and employees; d) New York Life’s legal representatives, successors,
25 and assigns; e) governmental entities; and f) the Court to which this case is
26 assigned.

27 48. Members of the Class are so numerous and geographically
28 dispersed, throughout California and likely the United States, that joinder of all
members is impracticable. On information and belief, the Class is readily
identifiable from information and records in New York Life’s possession.

1 49. Plaintiff's claims are typical of the claims of the members of the
2 Class. The Plaintiff and all members of the Class were damaged by the same
3 wrongful conduct of New York Life, that is, *inter alia*, its failure to satisfy the
4 Designation Notice Requirement and Annual Notice Requirement and its
5 breach of its insurance policies through its wrongful termination and non-
6 payment of proceeds.

7 50. The Plaintiff will fairly and adequately protect and represent the
8 interests of the Class. Having suffered the same injury from the same conduct
9 of New York Life, Plaintiff's interests are coincident with, and not antagonistic
10 to, those of the other members of the Class.

11 51. Plaintiff's counsel in this matter are experienced in the prosecution
12 of complex commercial class actions such as this one.

13 52. Questions of law and fact common to members of the Class
14 predominate over questions that may affect only individual class members
15 because, among other things, New York Life has acted on grounds generally
16 applicable to the entire Class, thereby making damages with respect to the Class
17 as a whole appropriate. Such generally applicable conduct is inherent in New
18 York Life's wrongful conduct.

19 53. Questions of law and fact common to the Class include, but are not
20 limited to:

- 21 • Whether the Designation Notice and Annual Notice Requirement
22 applied to New York Life policies issued before the Effective Date
23 but in force after the Effective Date;
- 24 • Whether the Designation Notice Requirement applied to New
25 York Life policies issued before the Effective Date but renewed
26 after the Effective Date;

- 1 • Whether New York Life has failed to satisfy the Designation
- 2 Notice and Annual Notice Requirements;
- 3 • Whether New York Life violated the Statutes by not satisfying the
- 4 Designation Notice and Annual Notice Requirements;
- 5 • Whether New York Life breached its life insurance policies by not
- 6 satisfying the Designation Notice and Annual Notice
- 7 Requirements;
- 8 • Whether New York Life breached its life insurance policies by
- 9 terminating policies and not paying claims despite not satisfying
- 10 the Designation Notice and Annual Notice Requirements; and
- 11 • The quantum of damages sustained by the Class in the aggregate.

12 54. Treatment of this dispute as a class action is a superior method for
13 the fair and efficient adjudication of this matter over individual actions. Class
14 treatment will permit a large number of similarly situated persons to prosecute
15 their common claims in a single forum simultaneously, efficiently, and without
16 the unnecessary duplication of evidence, effort, or expense that numerous
17 individual actions would require. In addition, class treatment will avoid the risk
18 of inconsistency and varying adjudications.

19 55. The many benefits of proceeding through the class mechanism,
20 including providing injured persons or entities a method for obtaining redress
21 on claims that could not practicably or cost effectively be pursued individually,
22 substantially outweighs potential difficulties—which Plaintiff does not
23 anticipate—in management of this case as a class action.

24
25 **VI. CAUSES OF ACTION**
26 **FIRST CAUSE OF ACTION**
27 **BREACH OF CONTRACTUAL DUTY TO PAY A COVERED CLAIM**
28 **(ON BEHALF OF PLAINTIFF AND THE CLASS)**

1 56. Plaintiff refers to all preceding paragraphs and incorporates them
2 as though set forth in full in this cause of action.

3 57. New York Life issued and delivered life insurance policies, which
4 were binding contracts, to the policyholders identified in the Class.

5 58. New York Life breached the terms of such life insurance
6 policies—including its policy with Mr. Linhart, which Plaintiff, as the
7 beneficiary, has the right to enforce—by, *inter alia*, the following acts and/or
8 omissions:

- 9 a. Failing to timely and meaningfully invite the policyholders
10 identified in the Class—including Mr. Linhart—to
11 designate a third party to receive termination notices for
12 non-payment of a premium as required by the Designation
13 Notice Requirement of the Statutes by not providing
14 policyholders with a copy of a designation form that
15 provides the opportunity for the policy owner to submit the
16 name, address, and telephone number of at least one person
17 who is to receive notice of lapse or termination of the policy
18 for nonpayment of premium, drafting the notices in way that
19 was difficult to comprehend and act on and burying the
20 notices within other materials;
- 21 b. Failing to timely invite the policyholders identified in the
22 Class— including Mr. Linhart—of their annual right to
23 change their third-party designation as required by the
24 Annual Notice Requirement of the Statutes;
- 25 c. Improperly terminating and refusing to pay benefits to the
26 Class members—including Plaintiff—despite not satisfying
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1 the Designation Notice and Annual Notice Requirements of
2 the Statutes; and

3 c. Failing to abide by the Statutes at all times after the
4 Effective Date.

5 59. The Statutes mandate that no lapse or termination is effective
6 unless the statutory provisions are complied with, which New York Life has
7 failed to do, and thus breached Mr. Linhart’s policy and the other policies for
8 which the Class members are beneficiaries.

9 60. As a result of New York Life’s breaches of its life insurance
10 policies, the Class—including Plaintiff—has sustained direct damages, as well
11 as other foreseeable and incidental damages, in an amount to be determined
12 according to proof at the time of trial, plus interest. In California, the measure
13 of damage for breach of a life insurance policy is set as the “sum or sums
14 payable in the manner and at the times as provided in the policy to person
15 entitled thereto.” Cal. Ins. Code § 10111.

16
17 **SECOND CAUSE OF ACTION**
18 **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND**
19 **FAIR DEALING OF AN INSURANCE POLICY**
20 **(ON BEHALF OF PLAINTIFF AND THE CLASS)**

21 63. Plaintiff refers to all preceding paragraphs and incorporates them
22 as if set forth in full in this cause of action.

23 64. In every insurance policy there exists an implied duty of good faith
24 and fair dealing that the insurance company will not do anything to injure the
25 right of the insured to receive the full benefit of the policy.

26 65. New York Life breached the duty of good faith and fair dealing it
27 owed to the policy holders identified in the Class, including its policy with Mr.
28 Linhart, which Plaintiff has the right to enforce.

1 66. New York Life breached its duty of good faith and fair dealing and
2 engaged in bad faith by, inter alia, the following unreasonable acts and/or
3 omissions:

- 4 a. Failing to timely and meaningfully invite the policyholders
5 identified in the Class—including Mr. Linhart—to
6 designate a third party to receive termination notices for
7 non-payment of a premium as required by the Designation
8 Notice Requirement of the Statutes by not providing
9 policyholders with a copy of a designation form that
10 provides the opportunity for the policy owner to submit the
11 name, address, and telephone number of at least one person
12 who is to receive notice of lapse or termination of the policy
13 for nonpayment of premium, drafting the notices in way that
14 was difficult to comprehend and act on and burying the
15 notices within other materials;
- 16 b. Failing to timely invite the policyholders identified in the
17 Class— including Mr. Linhart—of their annual right to
18 change their third party designation as required by the
19 Annual Notice Requirement of the Statutes;
- 20 c. Failing to abide by the Statutes at all times after the
21 Effective Date;
- 22 d. Failing to abide by the Statutes and resolve life insurance
23 claims after becoming aware of the precedential rulings in
24 California state and federal courts; and
- 25 e. Improperly terminating or lapsing the respective policies
26 and unreasonably refusing, without proper cause, to pay
27 benefits to the Class members—including Plaintiff—
28

1 despite, on information and belief, having knowledge that
2 California courts had interpreted the Statutes as covering
3 policies like those within the Class.

4 67. As a direct and proximate result of New York Life’s breaches of
5 its duty of good faith and fair dealing, Plaintiff and the Class have sustained
6 direct damages, as well as other foreseeable and incidental damages, in an
7 amount to be determined according to proof at the time of trial, plus interest.

8 68. As a further direct and proximate result of the claim denial and
9 unreasonable and bad faith conduct of New York Life, Plaintiff was compelled
10 to retain legal counsel on behalf of herself and the Class to institute litigation to
11 obtain the full and fair benefit of the insurance of which they are beneficiaries,
12 making New York Life liable for those attorney fees and litigation costs
13 reasonably incurred in order to obtain the full benefit.

14 69. In addition, New York Life’s conduct described herein was
15 intended to cause injury and/or was despicable conduct carried out with a
16 willful and conscious disregard of the rights of the Class, including Plaintiff to
17 delay and deny benefits.

18 70. New York Life’s conduct constitutes malice, oppression or fraud
19 and was unreasonable under California Civil Code section 3294 and California
20 Insurance Code Unfair Practices Act section 790.03 because New York Life’s
21 continued unwillingness to fully satisfy its contractual and statutory obligations
22 was done and is being done with full knowledge that the courts, including the
23 California Supreme court, based on, *inter alia*, the language and purpose of the
24 Statutes, the legislative history and/or long-standing Renewal Principle, have
25 ruled that the Statutes cover all policies in force as of the Effective Date.

26 71. As *McHugh* specifically held: “...the Legislature enacted the [the
27 Statutes] not only to provide protections to people in the future, but also to
28

1 ensure that existing policy owners don't lose the life insurance coverage that
2 they may have spent years paying for and on which their loved ones depend".
3

4 **PRAYER FOR RELIEF**

5 Plaintiff, on behalf of herself and each Class member, prays for relief and
6 judgment as follows:

- 7 A. For certification of this matter as a Class Action pursuant to
8 Federal Rule of Civil Procedure 23, and appointment of Plaintiff
9 as a Class Representative and her counsel of record as Class
10 Counsel;
- 11 B. For economic and foreseeable consequential damages, attorneys'
12 fees and costs against Defendant New York Life for its breach of
13 contract and bad-faith;
- 14 C. For punitive damages against Defendant New York Life due to its
15 ongoing bad-faith;
- 16 D. For an award of attorneys' fees and costs of suit pursuant to, *inter*
17 *alia*, the Public Benefit Doctrine, California Code of Civil
18 Procedure Section 1021.5 on the basis that private enforcement of
19 these rights is necessary, and the interests Plaintiff seeks to protect
20 significantly benefit the general public;
- 21 D. Prejudgment pursuant to §3289(b) of the California Insurance
22 Code at a rate of 10% as well as applicable post judgment interest;
23 and
- 24 E. All other and further relief, including punitive damages, as this
25 Honorable court deems just and proper.
26
27
28

JURY DEMAND

Plaintiff, on behalf of the Class, hereby demands a jury trial on all causes of action that can be heard by a jury

Respectfully submitted,

September 28, 2021 HAGENS BERMAN SOBOL SHAPIRO LLP

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behalf of herself and all others similarly
situated*

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims New York Life Failed to Send Mandatory Forms and Notices, Caused Policies to Lapse](#)
