

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

CHRISTOPHER Y. MEEK, individually     )  
and on behalf of others similarly situated,     )

Plaintiff,     )

vs.     )

KANSAS CITY LIFE INSURANCE     )  
COMPANY,     )

Case No. 4:19-cv-00472

**DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES  
TO PLAINTIFF’S FIRST AMENDED COMPLAINT**

Defendant Kansas City Life Insurance Company (“KCL”) answers the First Amended Complaint of Christopher Y. Meek (“Plaintiff”) in numbered paragraphs corresponding to the paragraphs of such First Amended Complaint (“FAC”), as follows:

**NATURE OF THE ACTION**

1. KCL admits that Plaintiff filed a First Amended Complaint purporting to allege a class action for breach of contract and conversion (the “FAC”) but denies that any claims are sufficiently alleged. KCL denies that it breached any promises or committed any wrongdoing and denies that the requirements of Federal Rule of Civil Procedure 23 for certification of a class are satisfied. Except to the extent expressly admitted, KCL denies each and every allegation of Paragraph 1 of the FAC.

2. KCL admits that the terms of Policy No. 2282560, issued by KCL to Christopher Y. Meek, as owner and insured, provides for a “cash value” as determined in the manner provided for in that policy. Except as expressly admitted, KCL denies each and every allegation of Paragraph 2 of the FAC.

3. KCL denies each and every allegation of Paragraph 3 of the FAC.

4. KCL denies each and every allegation of Paragraph 4 of the FAC.

5. KCL admits that Plaintiff seeks the remedies set forth in Paragraph 5 of the FAC on behalf of himself and a class of similarly situated persons, but denies that Plaintiff is entitled to such relief, or any relief whatsoever. KCL further denies that the requirements of Federal Rule of Civil Procedure 23 for certification of a class are satisfied and denies that Plaintiff's allegations are adequate to inform KCL of who qualifies as "similarly situated persons."

### **PARTIES**

6. KCL lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 6 of the FAC, and on that basis, denies them.

7. KCL admits the allegations in Paragraph 7 of the FAC.

### **JURISDICTION AND VENUE**

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

9. KCL admits that, to the extent this Court has jurisdiction over this case, venue in the Western District of Missouri is proper. KCL resides in the Western District of Missouri. Except as expressly admitted, KCL denies each and every allegation of Paragraph 9 of the FAC.

### **FACTUAL BACKGROUND**

10. KCL admits that it issued a "Flexible Premium Adjustable Life Insurance Policy" bearing Policy Number 2282560, an Issue Date of October 9, 1984, and a Policy Date of October 18, 1984, with an initial specified amount of \$60,000 ("Policy No. 2282560"), and states that, pursuant to an Option to Increase Specified Amount Rider, the specified amount was increased to \$95,000 in 1986, to \$130,000 in 1989, and \$165,000 in 1992; that Policy No.

2282560 had a Disability Continuance of Insurance Rider in effect until 2012; and that \$10,000 of term coverage has been in effect for each of two other insureds under an Other Insured Term Life Insurance Rider to Policy No. 2282560 that became effective in 1986. KCL denies that Exhibit A to the FAC is a true and correct copy of Policy No. 2282560 due to lack of completeness. Except as expressly admitted, KCL denies each and every allegation of Paragraph 10 of the FAC.

11. KCL admits that it issued Policy No. 2282560 to Christopher Y. Meek and that its records reflect that Mr. Meek has always been the owner and insured under Policy No. 2282560, and that Policy No. 2282560 remained in force as of the date that Mr. Meek filed the FAC. Except as expressly admitted, KCL denies each and every allegation of Paragraph 11 of the FAC.

12. KCL admits that it is the insurer under Policy No. 2282560. Except as expressly admitted, KCL denies each and every allegation of Paragraph 12 of the FAC.

13. KCL admits that the contract between Mr. Meek and KCL is comprised of the Policy No. 2282560 (which includes riders, amendments, and endorsements to such policy), the application, and any supplemental applications. Except as expressly admitted, KCL denies each and every allegation of Paragraph 13 of the FAC.

14. KCL admits that the terms of Policy No. 2282560 were not negotiated with Plaintiff and that Policy No. 2282560 contains the terms of a base policy form and certain riders that were filed with the Kansas Department of Insurance pursuant to the laws and regulations of Kansas, together with individualized information for that specific policy, such as information about the insured, which is used in selecting certain rates applied under the terms of the policy,

and the specified amount selected by the owner and modified thereafter by the owner. Except as expressly admitted, KCL denies each and every allegation of Paragraph 14 of the FAC.

15. KCL admits that Policy No. 2282560 contains the following provision within section 9.4 on page 10<sup>1</sup>:

*Any change to your policy that is not provided for in this Section must be approved by us and signed by our President, Vice President, Secretary or Assistant Secretary.*

*An approved change must be endorsed on or attached to your policy.*

Except as expressly admitted, KCL denies each and every allegation of Paragraph 15 of the FAC.

16. KCL admits that Policy No. 2282560 contains the following provision within section 9.4 on page 10:

*No agent has the authority to make any changes or waive any of the terms of your policy.*

KCL admits that the application for Policy No. 2282560 contains the language contained in parentheses in Paragraph 16 of the FAC. Except as expressly admitted, KCL denies and each and every allegation of Paragraph 16 of the FAC.

17. KCL admits that, with respect to flexible premium adjustable life insurance policies that were issued by KCL using policy form 101190-82, KCL has administered such policies by adding the net premiums to the policies' cash values; adding interest to the policies' cash values and subtracting monthly deductions from the cash values; processing loans, loan payments, and withdrawals; and engaging in other transactions contemplated by such policies

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<sup>1</sup> Italicized text in this Answer indicates terms that are quoted directly from Exhibit A to the FAC.

pursuant to their terms. Except as expressly admitted, KCL denies and each and every allegation of Paragraph 17 of the FAC.

18. KCL admits that the owner under Policy No. 2282560 and owners of other policies issued on policy form 101190-82 either have or, as to policies no longer in force, had, the option of paying premiums sufficient to keep their policies and the death benefits provided by those policies in force until the death of the insured. Except as expressly admitted, KCL denies each and every allegation of Paragraph 18 of the FAC.

19. KCL admits that some sources have provided a simplified description of universal life insurance policies as involving death benefits and an investment, savings, or interest-bearing component, but KCL denies that any of the contractual terms or features of universal life insurance policies it has issued operate in isolation or have economic significance except in conjunction with all of the contractual terms and features of the policy considered as a whole. KCL admits that Policy No. 2282560 provides for the computation of a “cash value” as defined in the policy, which is used in determining whether the policy remains in force (*see* Policy No. 2282560 Section 6.5 and 7.5) and in determining the amount of certain benefits available under the policy (*see, e.g.*, 5.1, 5.2 (coverage option A), 10.8, and 11.2). Except as expressly admitted, KCL denies each and every allegation of Paragraph 19 of the FAC.

20. KCL lacks knowledge or information sufficient to form a belief as to the assertions made with respect to universal life policies “like those owned by Plaintiff and class members” and on that basis denies the allegations in Paragraph 20 of the FAC. KCL admits that under Policy No. 2282560 and other policies issued on Form 101190-82, “net premiums” are added to the “cash value” and the “monthly deduction” is subtracted from the “cash value”

pursuant to the terms of those policies. Except as expressly admitted, KCL denies each and every allegation of Paragraph 20 of the FAC.

21. KCL denies each and every allegation in Paragraph 21 of the FAC.

22. KCL admits that Policy No. 2282560 contains the following language:

*On each monthly anniversary day the cash value will be equal to:*

$$A + B + C - D$$

*On any day other than a monthly anniversary day, the cash value will be equal to:*

$$A + B + C$$

*“A” is the cash value on the preceding monthly anniversary day.*

*“B” is the net premiums received since the preceding monthly anniversary day.*

*“C” is interest on “A” from the preceding monthly anniversary day plus interest on each net premium in “B” from the date of receipt of each premium at our Home Office.*

*“D” is the monthly deduction (as described in Section 10.4) for the month beginning on that monthly anniversary day.*

KCL denies any inference that any provision of the policy can be fairly read in isolation.

Except as expressly admitted, KCL denies each and every allegation of Paragraph 22 of the FAC.

23. KCL admits that, with respect to Policy No. 2282560, the “premium expense charge” is deducted from premiums received and the “monthly deductions” are subtracted from the “cash value” (as defined in the policy) and determined in accordance with the terms of the policy. KCL denies any inference that any provision of the policy can be fairly read in isolation. Except as expressly admitted, KCL denies each and every allegation of Paragraph 23 of the FAC.

24. KCL admits that Policy No. 2282560 identifies a “Premium Expense Charge” that is presently specified to be 7.5% of each premium payment for the first 10 years the policy is in force and 3% of each premium payment thereafter. KCL denies any inference that any provision of the policy can be fairly read in isolation. Except as expressly admitted, KCL denies each and every allegation of Paragraph 24 of the FAC.

25. KCL admits that Policy No. 2282560 provides for a “Monthly Deduction,” which the policy defines as:

*The amount we deduct on the monthly anniversary day from the cash value to pay the cost of insurance, expenses and the cost of any additional benefits provided by riders for the month beginning on that monthly anniversary day.*

KCL denies any inference that any provision of the policy can be fairly read in isolation. Except as expressly admitted, KCL denies each and every allegation of Paragraph 25 of the FAC.

26. KCL admits that Policy No. 2282560 provides for “monthly deductions” that, pursuant to Section 10.4 of the policy, are the sum of X, Y, and Z, where “Y” is the “current monthly expense charge” for the appropriate policy year, and that, on page 4 of the policy, the “current monthly expense charge” was specified to be \$19.70 per month for the first policy year and \$2.50 per month after the first policy year. KCL denies any inference that any provision of the policy can be fairly read in isolation. Except as expressly admitted, KCL denies each and every allegation of Paragraph 26 of the FAC.

27. KCL admits the allegations in Paragraph 27 of the FAC. KCL denies any inference that any provision of the policy can be fairly read in isolation.

28. KCL admits that Policy No. 2282560 contains the following language on page 6 of the policy, under the heading “Expense Charges”:

*The amount we deduct to cover our expenses. The premium expense charge is the amount we deduct from each premium payment. The monthly expenses charge is included in the monthly deduction. These charges are shown on page 4.*

KCL denies any inference that any provision of the policy can be fairly read in isolation. Except as expressly admitted, KCL denies each and every allegation of Paragraph 28 of the FAC.

29. KCL admits that Section 10.5 of Policy No. 2282560 contains the following language under the heading “Expense Charges”:

*The current monthly expenses charge and the current increase expense charge are shown on page 4. These expense charges will be determined by us based on our expectations as to future expenses. However, any percentage increase in these current expense charges over that shown on page 4 will not be greater than the percentage increase over the same period in the Consumer Price Index for Urban Wage Earners and Clerical Workers-All Items. If the Consumer Price Index is no longer available, we will substitute an index which in our opinion is a comparable index.*

KCL denies any inference that any provision of the policy can be fairly read in isolation. Except as expressly admitted, KCL denies each and every allegation of Paragraph 29 of the FAC.

30. KCL admits that the “premium expense charge,” “monthly expense charge,” and “increase expense charge” are the only amounts that are identified as “expense charges” to be subtracted from the cash value of Policy No. 2282560. KCL denies any inference that any provision of the policy can be fairly read in isolation. Except as expressly admitted, KCL denies each and every allegation of Paragraph 30 of the FAC.

31. KCL admits that Section 10.5 of Policy No. 2282560 provides for a limit to an increase in the “current expense charges.” KCL admits that Sections 10.4 of Policy No. 2282560 provides for a monthly deduction from the cash value of  $X + Y + Z$ , where “X” “is the cost of insurance (as described in Section 10.6) and the cost of any additional benefits provided by riders for the policy month.” Section 10.6 provides additional information about the computation of the cost of insurance. Further, KCL denies any inference that any provision of



the policy can be fairly read in isolation. Except as expressly admitted, KCL denies each and every allegation of Paragraph 31 of the FAC.

32. KCL admits that Section 4.11 of Policy No. 2282560 makes the following statements under the heading “Cost of Insurance”:

*The charge we make for providing pure insurance protection using the current cost of insurance rates for this policy. It does not include the cost of any additional benefits provided by riders.*

Further, KCL denies any inference that any provision of the policy can be fairly read in isolation. Except as expressly admitted, KCL denies each and every allegation of Paragraph 32 of the FAC.

33. KCL admits that Section 10.6 of Policy No. 2282560 contains the following language:

*The cost of insurance on any monthly anniversary day is equal to:*

$$Q \times (R - S)$$

*“Q” is the cost of insurance rate (as described in Section 3).*

*“R” is the Insured’s death benefit on that day divided by no less than 1.0024663.*

*“S” is the cash value (as described in Section 10.2) prior to subtracting the cost of insurance.*

*If the coverage option shown on page 4 is Option A and there have been increases in the specified amount, the cash value of this policy described in “S” above will be allocated between the specified amount provided under the original application and subsequent increases. The cash value will be allocated first to the specified amount provided under the original application with any excess allocated to any increases in the order in which they were made.*

KCL denies any inference that any provision of the policy can be fairly read in isolation. Except as expressly admitted, KCL denies each and every allegation of Paragraph 33 of the FAC.

34. KCL admits that Policy No. 2282560 contains the following language in Section 3 on page 5 of the policy:

*The cost of insurance rate on each monthly anniversary day is based on the Insured's sex, age and risk class. Age means the age on the Insured's last birthday. The guaranteed maximum monthly cost of insurance rates per \$1,000 shown in the table below are based on the Commissioners 1958 Standard Ordinary Mortality Table, age last birthday.*

*Monthly cost of insurance rates actually used will be determined by us based on our expectations as to future mortality experience, but these rates will never be greater than those shown below. However, the guaranteed maximum monthly cost of insurance rates for special risk classes will be adjusted appropriately.*

KCL denies any inference that any provision of the policy can be fairly read in isolation.

Except as expressly admitted, KCL denies each and every allegation of Paragraph 34 of the FAC.

35. KCL denies each and every allegation of Paragraph 35 of the FAC.

36. KCL denies each and every allegation of Paragraph 36 of the FAC.

37. KCL denies each and every allegation of Paragraph 37 of the FAC.

38. KCL denies each and every allegation of Paragraph 38 of the FAC.

39. KCL denies each and every allegation of Paragraph 39 of the FAC.

40. KCL denies each and every allegation of Paragraph 40 of the FAC.

41. KCL denies each and every allegation of Paragraph 41 of the FAC.

42. KCL admits that, according to a recent computation, Plaintiff has paid \$62,425.27

in gross premiums with respect to Policy No. 2282560 and that the cash value on October 18, 2019 was \$501.59. Except as expressly admitted, KCL denies each and every allegation of Paragraph 42 of the FAC.

43. KCL lacks knowledge or information sufficient to form a belief about the allegations that Plaintiff does not have other life insurance coverage, and on that basis, denies them. KCL denies each and every remaining allegation of Paragraph 43 of the FAC.

44. KCL denies each and every allegation of Paragraph 44 of the FAC.

45. KCL denies each and every allegation of Paragraph 45 of the FAC.
46. KCL denies each and every allegation of Paragraph 46 of the FAC.
47. KCL denies each and every allegation of Paragraph 47 of the FAC.
48. KCL admits the allegations contained in the first five sentences of Paragraph 48 of the FAC, except that it denies that there are two authorized “Expense Charges” under Policy 2282560 because there is a third authorized “Expense Charge” referred to as an “Increase Expense Charge,” which has not been applied pursuant to Policy 2282560 to date. Except as expressly admitted, KCL denies each and every allegation of Paragraph 48 of the FAC.
49. KCL denies each and every allegation of Paragraph 49 of the FAC.
50. KCL denies each and every allegation of Paragraph 50 of the FAC.
51. KCL admits that it possesses some actuarial information that has been considered in determining various rates to be applied pursuant to Policy No. 2282560 and other life insurance policies it has issued. Except as expressly admitted, KCL denies each and every allegation of Paragraph 51 of the FAC.
52. KCL denies each and every allegation of Paragraph 52 of the FAC.
53. KCL denies each and every allegation of Paragraph 53 of the FAC.

#### **CLASS ACTION ALLEGATIONS**

54. KCL admits that Plaintiff purports to bring this case as a class action pursuant to Federal Rule of Civil Procedure 23. Except as expressly admitted, KCL denies each and every allegation of Paragraph 54 of the FAC.

55. KCL admits that Plaintiff alleges that certain putative members and certain variable life insurance policies are excluded from the class.<sup>2</sup> Except as expressly admitted, KCL denies each and every allegation of Paragraph 55 of the FAC.

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

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

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

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

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

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

62. KCL denies each and every allegation of Paragraph 62 of the FAC.

63. KCL denies each and every allegation of Paragraph 63 of the FAC.

**COUNT I: BREACH OF CONTRACT**  
**(Cost of Insurance Charge)**

64. KCL incorporates by reference its responses to Paragraphs 1-63 of the FAC as if fully set forth herein.

65. KCL admits that it issued Policy No. 2282560 to Plaintiff. Except as expressly admitted, KCL denies each and every allegation of Paragraph 65 of the FAC.

66. KCL admits that, as of the date of the filing of this Answer, Policy No. 2282560 is a valid and enforceable contract between Plaintiff and KCL. KCL lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 66, and on that basis, denies them.

67. KCL denies each and every allegation of Paragraph 67 of the FAC.

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<sup>2</sup> To the extent that Plaintiff actually intended to exclude policies rather than their owners, KCL denies the allegations of Paragraph 55 because the policies themselves cannot be class members.

68. KCL denies each and every allegation of Paragraph 68 of the FAC.

69. KCL denies each and every allegation of Paragraph 69 of the FAC because KCL determined the scales of cost of insurance rates to use with respect to policies issued on Form 101190-82 for various groups of insureds based on its expectations as to future mortality experience, pursuant to the terms of Form 101190-82.

70. KCL denies each and every allegation of Paragraph 70 of the FAC.

71. KCL denies each and every allegation of Paragraph 71 of the FAC.

72. KCL denies each and every allegation of Paragraph 72 of the FAC.

73. KCL denies each and every allegation of Paragraph 73 of the FAC.

**COUNT II: BREACH OF CONTRACT**  
**(Expense Charges)**

74. KCL incorporates by reference its responses to Paragraphs 1-73 of the FAC as if fully set forth herein.

75. KCL denies each and every allegation of Paragraph 75 of the FAC.

76. KCL denies each and every allegation of Paragraph 76 of the FAC.

77. KCL denies each and every allegation of Paragraph 77 of the FAC.

**COUNT III: BREACH OF CONTRACT**  
**(Improving Expectations as to Future Mortality Experience)**

78. KCL incorporates by reference its responses to Paragraphs 1-77 of the FAC as if fully set forth herein.

79. KCL admits that Policy No. 2282560 and other policies issued on Form 101190-82 state in part that cost of insurance rates actually used will be determined based on expectations as to future mortality experience. KCL denies any inference that any provision of the policy can be fairly read in isolation. Except as expressly admitted, KCL denies each and every allegation of Paragraph 79 of the FAC.

80. KCL denies each and every allegation of Paragraph 80 of the FAC.

81. KCL denies each and every allegation of Paragraph 81 of the FAC.

82. KCL denies each and every allegation of Paragraph 82 of the FAC.

**COUNT IV: CONVERSION**

83. KCL incorporates by reference its responses to Paragraphs 1-82 of the FAC as if fully set forth herein.

84. KCL denies each and every allegation of Paragraph 84 of the FAC.

85. KCL denies each and every allegation of Paragraph 85 of the FAC.

86. KCL denies each and every allegation of Paragraph 86 of the FAC.

87. KCL denies each and every allegation of Paragraph 87 of the FAC.

88. KCL denies each and every allegation of Paragraph 88 of the FAC.

89. KCL denies each and every allegation of Paragraph 89 of the FAC.

90. KCL admits that Plaintiff purports to seek damages, but denies that Plaintiff is entitled to any damages. Except as expressly admitted, KCL denies each and every allegation of Paragraph 90 of the FAC.

91. KCL denies each and every allegation of Paragraph 91 of the FAC.

**COUNT V: DECLARATORY AND INJUNCTIVE RELIEF**

92. KCL incorporates by reference its responses to Paragraphs 1-91 of the FAC as if fully set forth herein.

93. KCL admits that Plaintiff alleges he has claims against KCL arising out of Policy No. 2282560. KCL denies that any such claims have merit. Except as expressly admitted, KCL denies each and every allegation of Paragraph 93 of the FAC.

94. KCL admits that Plaintiff contends KCL has breached Policy No. 2282560 and the other policies purchased by members of an insufficiently defined putative class. KCL denies that any such claims have any merit. Except as expressly admitted, KCL denies each and every allegation of Paragraph 94 of the FAC.

95. KCL admits that Plaintiff seeks and requests declaratory relief as stated in Paragraph 95 of the FAC. KCL denies that Plaintiff is entitled to any such relief. Except as expressly admitted, KCL denies each and every allegation of Paragraph 95 of the FAC.

96. KCL admits that Plaintiff seeks injunctive relief as stated in Paragraph 96 of the FAC. KCL denies that Plaintiff is entitled to any such relief. Except as expressly admitted, KCL denies each and every allegation of Paragraph 96 of the FAC.

### **AFFIRMATIVE DEFENSES**

KCL incorporates by reference its responses to Paragraphs 1 through 96 of the FAC as if fully set forth herein and hereby asserts the following affirmative defenses, without undertaking or otherwise shifting the applicable burden of proof in any respect. KCL specifically reserves the right to assert additional affirmative defenses as warranted in light of any clarification or modification of the allegations or on facts learned during the course of investigation, discovery, or trial.

#### **FIRST AFFIRMATIVE DEFENSE (Failure to State a Claim)**

The FAC fails to state a claim upon which any relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE (No Standing/No Injury in Fact)**

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

**THIRD AFFIRMATIVE DEFENSE**  
**(Source of Duty Rule and Economic Loss Doctrine)**

Plaintiff has failed to state a claim for relief for conversion because, among other things, the only source of duty alleged arises from Policy No. 2282560 and the economic loss doctrine bars recovery of the purely economic damages alleged. Plaintiff does not have a property interest or other interest in the cash value, from which he alleges deductions in excess of those contractually permitted were made, that is legally sufficient to support a claim for conversion.

**FOURTH AFFIRMATIVE DEFENSE**  
**(Statute of Limitations)**

Plaintiff's claims, and those of some or all of the other persons he purports to represent, are barred by the applicable statutes of limitation for each cause of action alleged. For instance, Policy No. 2282560 was issued in October 1984, more than 34 years before Plaintiff filed his Complaint, and he cannot adequately demonstrate any fraudulent concealment by KCL 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 Plaintiff's 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 KCL or third parties) to trigger the running of the limitations period so that the applicable statutes of limitation have now expired.

**FIFTH AFFIRMATIVE DEFENSE**  
**(No Fraudulent Concealment—No Duty to Disclose)**

Plaintiff cannot assert his untimely claims based on fraudulent concealment as alleged in paragraph 52 of the FAC as KCL had no duty to disclose the conduct of which Plaintiff complains.



**SIXTH AFFIRMATIVE DEFENSE**  
**(No Fraudulent Concealment—No Intent to Deceive)**

Plaintiff cannot assert his untimely claims based on fraudulent concealment as alleged in paragraph 52 of the FAC as KCL had no intent to deceive any policy owner.

**SEVENTH AFFIRMATIVE DEFENSE**  
**(No Fraudulent Concealment—Failure to Plead Fraud with Particularity)**

Plaintiff cannot assert his untimely claims based on fraudulent concealment as alleged in paragraph 52 of the FAC as Plaintiff has not alleged fraud with the particularity required by Rule 9(b) of the Rules of Civil Procedure.

**EIGHTH AFFIRMATIVE DEFENSE**  
**(Laches)**

Plaintiff's claims, and those of some or all of the other persons he purports to represent, are barred by the equitable doctrine of laches because they waited many years, and in some cases decades, to bring their claims in this action. For instance, Plaintiff waited more than 34 years after Policy No. 2282560 was issued, and after receiving numerous documents and communications that should have alerted him to his claims in this action, before filing this lawsuit. KCL has been prejudiced and disadvantaged by this undue delay in seeking a remedy.

**NINTH AFFIRMATIVE DEFENSE**  
**(Voluntary Payment Doctrine)**

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

**TENTH AFFIRMATIVE DEFENSE**  
**(Ratification)**

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

**ELEVENTH AFFIRMATIVE DEFENSE  
(Waiver)**

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

**TWELFTH AFFIRMATIVE DEFENSE  
(Release)**

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

**THIRTEENTH AFFIRMATIVE DEFENSE  
(Accord and Satisfaction)**

Some or all of the causes of action by some members of the putative class are barred by an accord and satisfaction.

**FOURTEENTH AFFIRMATIVE DEFENSE  
(Contract Obligations Fully Performed)**

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

**FIFTEENTH AFFIRMATIVE DEFENSE  
(Claims Barred By Contract Provisions)**

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

**SIXTEENTH AFFIRMATIVE DEFENSE  
(Election of Remedies)**

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

**SEVENTEENTH AFFIRMATIVE DEFENSE**  
**(Failure to Mitigate Damages)**

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

**EIGHTEENTH AFFIRMATIVE DEFENSE**  
**(No Damages)**

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

**NINETEENTH AFFIRMATIVE DEFENSE**  
**(No Basis for Attorney's Fees)**

None of the causes of action alleged in the Complaint entitle Plaintiff or any person he purports to represent to recover attorney's fees from KCL as a matter of contract, statute or otherwise.

**TWENTIETH AFFIRMATIVE DEFENSE**  
**(No Basis for Punitive or Exemplary Damages)**

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

**TWENTY-FIRST AFFIRMATIVE DEFENSE**  
**(No Equitable or Injunctive Relief Available)**

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

**TWENTY-SECOND AFFIRMATIVE DEFENSE**  
**(Filed Rate Doctrine)**

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

**TWENTY-THIRD AFFIRMATIVE DEFENSE**  
**(Primary Jurisdiction)**

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

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**  
**(Approval of Policies and Compliance with Insurance Regulations)**

The insurance contract forms at issue in this litigation were approved by and/or filed with the states' insurance regulatory authorities if such approval or filing was required and KCL has

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

**TWENTY-FIFTH AFFIRMATIVE DEFENSE  
(Class Action Improper)**

Plaintiff's claim on behalf of others is not proper for class certification because Plaintiff cannot satisfy the requirements set forth in Federal Rule of Civil Procedure 23.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE  
(Failure to Name Required Parties)**

The FAC fails to name one or more required parties.

WHEREFORE, KCL respectfully requests that the Court deny Plaintiff's request for certification of any class action pursuant to Rule 23 of the Federal Rules of Civil Procedure or any other applicable Rules of Procedure, deny any relief requested by Plaintiff, and otherwise enter judgment in favor of KCL and against Plaintiff, including an award of all appropriate costs to KCL.

October 31, 2019

Respectfully submitted,

**BERKOWITZ OLIVER LLP**

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 31, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

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/s/ John W. Shaw  
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