

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DENNIS E. DAVIS, individually and on behalf of all)
others similarly situated,

Plaintiff,

v.

SYMETRA LIFE INSURANCE COMPANY, an
Iowa corporation,

Defendant.

CASE NO. 2:21-CV-00533 RSL

ANSWER TO CLASS ACTION
COMPLAINT

**DEFENDANT SYMETRA LIFE INSURANCE COMPANY'S
ANSWER AND AFFIRMATIVE DEFENSES TO CLASS ACTION COMPLAINT**

Defendant Symetra Life Insurance Company ("Symetra") hereby responds and answers the allegations of Plaintiff's putative Class Action Complaint. Except as expressly admitted in this Answer below, Symetra denies all of Plaintiff's allegations.

NATURE OF ACTION

1. This is a class action for breach of contract and conversion to recover amounts that Defendant charged Plaintiff and the proposed class in excess of the amounts authorized by the express terms of their life insurance policies. Plaintiff's breach of contract claim is supported exclusively by the written provisions of his policy, which are materially the same as those of other policies held by the members of the proposed class, and not subject to individual negotiation.

1 **ANSWER: Symetra admits that Plaintiff purports to bring claims for breach of**
2 **contract and conversion and seeks to represent a class. Symetra denies Plaintiff is entitled**
3 **to any relief and denies that the case meets the requirements for class certification. Symetra**
4 **denies the remaining allegations of Paragraph 1.**

5 2. The terms of Plaintiff's life insurance policy provide for a "Cash Value" consisting
6 of monies held in trust by Defendant for Plaintiff, and Defendant is contractually bound to deduct
7 from the Cash Value only those charges that are explicitly identified and authorized by the policy's
8 terms.
9

10 **ANSWER: Plaintiff's life insurance policy is a written document which speaks for**
11 **itself and Symetra denies any allegations inconsistent therewith.**

12 3. Despite unambiguous language in the policy, which is a fully integrated insurance
13 agreement, Defendant breaches the policy by deducting charges from Plaintiff's Cash Value in
14 excess of the amounts specifically permitted by the policy, and those breaches are continuous and
15 ongoing.
16

17 **ANSWER: Paragraph 3 contains legal conclusions that do not require a response.**
18 **To the extent a response is required, Symetra denies the allegations of Paragraph 3. Symetra**
19 **specifically denies that it deducts charges in excess of the amounts permitted by the policy.**
20

21 4. Defendant has caused material harm to Plaintiff and the proposed class by
22 improperly draining monies they have accumulated in the Cash Values under their policies. Every
23 unauthorized dollar taken from policy owners is one less dollar that can be used to: invest through
24 the policy; pay future premiums; increase the death benefit; use as collateral for policy loans; or
25 withdraw as cash. Class members face a "lose-lose" decision: continue to pay the overcharges to
26
27

1 maintain their insurance or surrender the policy after having paid significant premiums for
2 decades.

3 **ANSWER: Symetra denies the allegations of Paragraph 4.**

4
5 5. Plaintiff brings this case as a class action under Federal Rule of Civil Procedure 23,
6 individually and on behalf of the following persons (the “class”):

7 All persons who own or owned a life insurance policy issued or administered by
8 Defendant, the terms of which provide or provided for: 1) an insurance or cost of
9 insurance charge or deduction calculated using a rate that is determined based on
10 Defendant’s expectations as to future mortality experience; 2) additional but
separate policy charges, deductions, or expenses; 3) an investment, interest-
bearing, or savings component; and 4) a death benefit.

11 **ANSWER: Symetra admits that Plaintiff purports to bring this case as a class action**
12 **under Fed. R. Civ. P. 23, but denies that the case meets the requirements for class**
13 **certification and otherwise denies the allegations of Paragraph 5.**

14 6. On behalf of himself and the class, Plaintiff seeks to recover compensatory and
15 punitive damages, as well as declaratory and injunctive relief.

16 **ANSWER: Symetra admits that Plaintiff purports to seek the requested relief.**
17 **Symetra denies that Plaintiff is entitled to any relief and otherwise denies the allegations of**
18 **Paragraph 6.**

19
20 **PARTIES**

21 7. Plaintiff Dennis E. Davis resides in Des Moines, Iowa, and is a citizen of the State
22 of Iowa.

23 **ANSWER: Upon information and belief, Symetra admits the allegations of**
24 **Paragraph 7.**

25 8. Defendant is a corporation incorporated under the laws of the State of Iowa, with
26 its principal place of business located in Bellevue, Washington.

27 **ANSWER: Symetra admits the allegations of Paragraph 8.**

JURISDICTION AND VENUE

9. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d)(2), because this is a class action in which at least one member of the class is a citizen of a state different from Defendant, the amount in controversy exceeds \$5 million exclusive of interest and costs, and the proposed class contains more than 100 members.

ANSWER: Symetra admits that jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2). Symetra denies that this action is appropriate for certification as a class action and denies that Plaintiff is entitled to any relief.

10. Venue is proper in this judicial district under 28 U.S.C. § 1391 because Defendant is a resident of this district and a substantial portion of the events giving rise to Plaintiff's causes of action occurred in this district.

ANSWER: Symetra admits that venue is proper in this judicial district.

FACTUAL BACKGROUND

11. Plaintiff purchased from American States Life Insurance Company an "Adjustable Life Policy" bearing policy number 00534812, with an effective date of September 16, 1987, and an initial specified amount of \$100,000 (the "Policy"). A true and accurate copy of the Policy is attached hereto as Exhibit A and incorporated herein by reference.

ANSWER: Symetra admits the allegations of Paragraph 11.

12. American States Life Insurance Company merged into Defendant, effective October 1, 2005, making Defendant the effective and liable insurer of the Policy.

ANSWER: Symetra admits that American States Life Insurance Company merged into Symetra effective October 1, 2005 and that Symetra is the effective insurer of Plaintiff's Policy. Symetra denies the remaining allegations of Paragraph 12.

1 13. Plaintiff has always been both the “owner” and the “insured” under the Policy,
2 which was surrendered on October 9, 2020.

3 **ANSWER: Symetra admits the allegations of Paragraph 13.**

4 14. Defendant was the effective and liable insurer of the Policy and policies meeting the
5 class definition (the “Class Policies”).

6 **ANSWER: Symetra admits that it is the insurer on the life insurance policy issued to**
7 **the named Plaintiff. Symetra denies that the case meets the requirements for class**
8 **certification pursuant to Fed. R. Civ. P. 23 and denies all remaining allegations of Paragraph**
9 **14.**

10 15. The Policy was “a legal contract” between Plaintiff and Defendant. Ex. A at 1.

11 **ANSWER: Paragraph 15 contains legal conclusions that do not require a response.**
12 **To the extent a response is required, Symetra admits the Policy is a contract.**

13 16. The entire contract between Plaintiff and Defendant consists of the Policy, the
14 application, and any supplemental application. Ex. A at 11 & Waiver of Cost of Insurance Rider
15 (General Provisions) (“This rider is made a part of the policy to which it is attached.”).

16 **ANSWER: The Policy is a written document which speaks for itself and Symetra**
17 **denies any allegations inconsistent therewith.**

18 17. The terms of the Policy are not subject to individual negotiation and are materially
19 the same for all policyholders.

20 **ANSWER: Symetra denies the allegations of Paragraph 17.**

21 18. Only the President, a Vice President, or the Secretary of Defendant has authority to
22 change, modify or waive any policy provisions. Ex. A at 11.

1 **ANSWER: The Policy is a written document which speaks for itself and Symetra**
2 **denies any allegations inconsistent therewith.**

3 19. Defendant has issued and administered, and currently administers, all aspects of the
4 Policy and Class Policies, including collecting premiums, and setting, assessing, and deducting
5 policy charges.
6

7 **ANSWER: Symetra admits that it administers Plaintiff's policy. Symetra denies that**
8 **the case meets the requirements for class certification pursuant to Fed. R. Civ. P. 23.**
9 **American States Life Insurance Company issued the named Plaintiff's Policy. American**
10 **States merged into Symetra effective October 1, 2005. Symetra denies any remaining**
11 **allegations of Paragraph 19.**

12 20. In addition to a death benefit, the Policy and Class Policies provide policyholders
13 an investment, savings, or interest-bearing component, that accumulates value over time. Although
14 the savings component in certain of the Class Policies may be identified by a different name, it is
15 identified in the Policy and throughout this Complaint as the "Cash Value."
16

17 **ANSWER: The Policy is a written document which speaks for itself and Symetra**
18 **denies any allegations inconsistent therewith. Symetra denies that the case meets the**
19 **requirements for class certification pursuant to Fed. R. Civ. P. 23 and therefore denies any**
20 **allegations regarding Class Policies. Symetra denies any remaining allegations of Paragraph**
21 **20.**
22

23 21. Generally, like Plaintiff and class members, universal life insurance policyholders
24 contribute premiums, the net amount of which, after a "Percentage of Premium Expense Charge"
25 is deducted, are deposited into the Cash Value of a policy, from which the insurer deducts monthly
26 charges as authorized by the policy.
27

1 **ANSWER: The Policy is a written document which speaks for itself and Symetra**
2 **denies any allegations inconsistent therewith. Symetra denies that the case meets the**
3 **requirements for class certification pursuant to Fed. R. Civ. P. 23 and therefore denies any**
4 **allegations regarding Class Policies. Symetra denies any remaining allegations of Paragraph**
5 **21.**

6
7 22. The Policy and Class Policies expressly define the components of the Cash Value,
8 and how it is calculated:

9 On each Monthly Anniversary Day, the Cash Value is equal to (a), plus (b), minus
10 (c), plus (d), where:

11 (a) is the cash value on the preceding Monthly Anniversary Day.

12 (b) is all net premiums received since the preceding Monthly Anniversary Day.

13 (c) is the cost of insurance for the month preceding the Monthly Anniversary Day.

14 (d) is one month's interest on the result of item (a) less item (c).

15 On any day other than a Monthly Anniversary Day, the cash value shall be
16 calculated as (e), plus (f), minus (g), where:

17 (e) is the cash value as of the preceding Monthly Anniversary Day.

18 (f) is all net premiums received since the preceding Monthly Anniversary Day.

19 (g) is the monthly deduction for the month following the preceding Monthly
20 Anniversary Day.

21 Ex. A at 14.

22 **ANSWER: The Policy is a written document which speaks for itself and Symetra**
23 **denies any allegations inconsistent therewith. Symetra denies that the case meets the**
24 **requirements for class certification pursuant to Fed. R. Civ. P. 23 and therefore denies any**
25 **allegations regarding Class Policies. Symetra denies any remaining allegations of Paragraph**
26 **22.**

23. The Policy expressly defines the specific charges that Defendant may assess and deduct from Plaintiff's premium payments and the Policy's Cash Value. Defendant may assess charges and take deductions only as allowed by the Policy.

ANSWER: The Policy is a written document which speaks for itself and Symetra denies any allegations inconsistent therewith.

24. The Policy authorizes Defendant to deduct the Cost of Insurance from the Cash Value, and expressly defines how the Cost of Insurance is calculated:

The cost of insurance is determined on a monthly basis. It is the cost for this Policy plus the cost for any riders. The cost of insurance for the Insured is calculated as (a) multiplied by the result of (b) minus (c), where:

(a) is the cost of insurance rate as described in the Cost of Insurance rates section;

(b) is the Insured's Death Benefit at the beginning of the policy month divided by 1.0032737;

(c) is the cash value at the beginning of the policy month.

Ex. A at 14-15.

ANSWER: The Policy is a written document which speaks for itself and Symetra denies any allegations inconsistent therewith.

25. Under the explicit terms of the Policy, Defendant is authorized to use only the insured's age, sex, rate class, and the Defendant's expectations as to future mortality experience when determining the Policy's Cost of Insurance Rates:

The monthly cost of insurance rate is based on the sex, attained age, and rating class of the person insured. ... Monthly cost of insurance rates will be determined by us from time to time based on our expectations as to future mortality experience.... [T]he cost of insurance rates will not be greater than those shown in the Table of Guaranteed Maximum Insurance Rates.

Ex. A at 15.

ANSWER: The Policy is a written document which speaks for itself and Symetra denies any allegations inconsistent therewith.

26. Age, sex, and rate class are factors commonly used within the life insurance industry to determine the mortality expectations of an insured or group or class of insureds.

ANSWER: Symetra admits age, sex, and rate class are factors used in setting the monthly cost of insurance rate in its policies, but to the extent the allegation implies these factors are exclusive, Symetra denies this allegation. Symetra denies any remaining allegation of Paragraph 26.

27. Because the Policy specifically identifies age, sex, and rate class as the defining components of the Cost of Insurance Rates, and expressly states that current Cost of Insurance Rates are based on Defendant's expectations as to future mortality experience, the parties agree that mortality expectations are what determine Cost of Insurance Rates under the Policy.

ANSWER: Symetra denies the allegations of Paragraph 27.

28. Like the Policy, the Class Policies disclose similar periodic deductions that Defendant is authorized to take from policyholders' Cash Values, including specifically, the Cost of Insurance that is calculated using Cost of Insurance Rates that Defendant must determine based on its expectations as to future mortality experience, and separate premium expense charges in fixed amounts.

ANSWER: Symetra denies that the case meets the requirements for class certification pursuant to Fed. R. Civ. P. 23 and therefore denies any allegations regarding Class Policies. Symetra denies any remaining allegations of Paragraph 28..

29. Although the Policy and Class Policies authorize Defendant to use only its "expectations as to future mortality experience" when determining Cost of Insurance Rates, Defendant uses other factors, not authorized by the Policy, when determining such rates, including without limitation, expense experience.

1 **ANSWER: Symetra denies the allegations of Paragraph 29. Symetra further denies**
 2 **that the case meets the requirements for class certification pursuant to Fed. R. Civ. P. 23.**

3 30. By including other factors when determining Cost of Insurance Rates, Defendant
 4 knowingly causes those rates to be greater than what is explicitly authorized by the Policy and
 5 Class Policies.
 6

7 **ANSWER: Symetra denies the allegations of Paragraph 30. Symetra further denies**
 8 **that the case meets the requirements for class certification pursuant to Fed. R. Civ. P. 23.**

9 31. By loading Cost of Insurance Rates with unauthorized factors, Defendant repeatedly
 10 and continuously breaches the Policy and Class Policies by impermissibly inflating those rates
 11 such that they substantially exceed Defendant's "expectations as to future mortality experience."
 12

13 **ANSWER: Paragraph 31 contains legal conclusions that do not require a response.**
 14 **To the extent a response is required, Symetra denies the allegations of Paragraph 31.**
 15 **Further answering, Symetra specifically denies that it uses unauthorized factors to calculate**
 16 **the Cost of Insurance Rates and denies that it impermissibly inflates those rates. Symetra**
 17 **further denies that the case meets the requirements for class certification pursuant to Fed.**
 18 **R. Civ. P. 23.**

19 32. The inflated Cost of Insurance Rates used by Defendant cause the monthly Cost of
 20 Insurance to be deducted in amounts greater than those explicitly authorized by the Policy and
 21 Class Policies. Consequently, Defendant deducts from the Cash Value an amount for the Cost of
 22 Insurance that is greater than that authorized under the Policy and Class Policies. On information
 23 and belief, during several years he owned the Policy, Defendant's expectations as to future
 24 mortality experience accounted for less than half of the amounts deducted from Plaintiff's Cash
 25
 26
 27

1 Value for the Cost of Insurance, meaning that more than 50% of the Cost of Insurance deducted
2 consisted of other factors not authorized by the Policy.

3 **ANSWER: Symetra denies the allegations of Paragraph 32. Symetra further denies**
4 **that the case meets the requirements for class certification pursuant to Fed. R. Civ. P. 23.**

5 33. Each of Defendant's past and future Cost of Insurance deductions from the Cash
6 Values of Plaintiff and the class constitutes a separate breach of contract.

7 **ANSWER: Paragraph 33 contains legal conclusions that do not require a response.**
8 **To the extent a response is required, Symetra denies the allegations of Paragraph 33.**
9 **Symetra further denies that the case meets the requirements for class certification pursuant**
10 **to Fed. R. Civ. P. 23.**

11 34. As a direct and proximate result of Defendant's breaches, therefore, Plaintiff and
12 the class have been damaged, and those damages are continuing in nature in that Defendant has
13 taken and will continue to take Cost of Insurance deductions in unauthorized amounts from
14 policyholders' Cash Values.

15 **ANSWER: Paragraph 34 contains legal conclusions that do not require a response.**
16 **To the extent a response is required, Symetra denies the allegations of Paragraph 34.**
17 **Symetra further denies that the case meets the requirements for class certification pursuant**
18 **to Fed. R. Civ. P. 23.**

19 35. The nature of Defendant's conduct is such that Plaintiff and each member of the
20 class would be unaware that Defendant was engaging in wrongdoing by taking Cost of Insurance
21 deductions in inflated charges and improper amounts from Cash Values. Defendant possesses the
22 actuarial information and equations underlying the computation of rates and charges for the Policy.
23 The Cost of Insurance Rates used to calculate Cost of Insurance deductions are not disclosed to
24
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1 policy owners, nor are the components or factors that comprise those rates. And even if they were,
2 members of the class would lack the knowledge, experience, or training to reasonably ascertain
3 how Defendant calculated the rates and deductions included in the Policy.

4 **ANSWER: Symetra denies the allegations of Paragraph 25 and denies that the case**
5 **meets the requirements for class certification pursuant to Fed. R. Civ. P. 23.**
6

7 36. Because of its superior knowledge of the computations, Defendant was aware that
8 Plaintiff and each member of the class did not know about the improper deductions. Defendant
9 sent Plaintiff and the class annual statements each year that identified each month's Cost of
10 Insurance deduction while affirmatively concealing the factors Defendant used to determine the
11 Cost of Insurance Rates. Concealment of its conduct and failure to disclose its conduct to Plaintiff
12 and the class constitutes fraudulent concealment and therefore tolls the statute of limitations for
13 Plaintiff and proposed class members. Plaintiff did not learn of Defendant's breaches until after he
14 had engaged counsel and consulted an actuarial expert in October 2020.
15

16 **ANSWER: Symetra admits the named Plaintiff was sent annual statements each year**
17 **that identified each month's Cost of Insurance deduction. Symetra denies the remaining**
18 **allegations of the Paragraph 36. Symetra further denies that the case meets the requirements**
19 **for class certification pursuant to Fed. R. Civ. P. 23.**
20

21 37. Plaintiff did not discover nor, through reasonable diligence, could he have
22 discovered the facts establishing Defendant's breaches or the harm caused thereby.

23 **ANSWER: Symetra denies the allegations of Paragraph 37.**
24
25
26
27

CLASS ACTION ALLEGATIONS

38. Pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), 23(b)(2), 23(b)(3) and/or 23(c)(4), Plaintiff brings this action on behalf of himself and all others similarly situated, and seeks to represent the following class:

All persons who own or owned a life insurance policy issued or administered by Defendant, the terms of which provide or provided for: 1) an insurance or cost of insurance charge or deduction calculated using a rate that is determined based on Defendant's expectations as to future mortality experience; 2) additional but separate policy charges, deductions, or expenses; 3) an investment, interest-bearing, or savings component; and 4) a death benefit.

ANSWER: Symetra admits that Plaintiff purports to bring this case as a class action under Fed. R. Civ. P. 23, but denies that the case meets the requirements for class certification and otherwise denies the allegations of Paragraph 38.

39. Excluded from the class is Defendant, any entity in which Defendant has a controlling interest, any of the officers, directors, or employees of the Defendant, the legal representatives, heirs, successors, and assigns of the Defendant, anyone employed with Plaintiff's counsels' firms, any Judge to whom this case is assigned, and his or her immediate family. Also excluded from the class is any policy that explicitly discloses all the factors Defendant used to calculate its rates and charges.

ANSWER: Symetra admits that Plaintiff purports to bring this case as a class action under Fed. R. Civ. P. 23, but denies that the case meets the requirements for class certification and otherwise denies the allegations of Paragraph 39.

40. Plaintiff's claims satisfy the numerosity, typicality, adequacy, commonality, and superiority requirements under Federal Rule of Civil Procedure 23, as set forth more fully herein.

ANSWER: Paragraph 40 contains legal conclusions that do not require a response. To the extent a response is required, Symetra denies the allegations of Paragraph 40.

41. The persons who fall within the class number in at least the hundreds and most likely thousands, and thus the numerosity standard is satisfied. Because class members are geographically dispersed across the country, joinder of all class members in a single action is impracticable.

ANSWER: Paragraph 41 contains legal conclusions that do not require a response.

To the extent a response is required, Symetra denies the allegations of Paragraph 41.

42. There are questions of law and fact common to the claims of Plaintiff and the class that predominate over any questions affecting only individual class members. The questions of law and fact arising from Defendant's actions that are common to the class include, without limitation:

a. Whether Defendant is permitted by the Class Policies to use factors other than those disclosed in the Class Policies to determine the monthly Cost of Insurance Rates used to calculate insurance policy deductions;

b. Whether Defendant added, included, or relied on factors not specified in the Class Policies when determining the monthly Cost of Insurance Rates used to calculate Cost of Insurance deductions;

c. Whether Defendant added, included, or relied on factors unrelated to mortality expectations in setting and determining Cost of Insurance Rates, despite the policy provisions providing that Cost of Insurance Rates will be based on expectation as to future mortality experience;

d. Whether Defendant breached the terms of the Class Policies;

e. Whether the class sustained damages as a result of Defendant's breaches of contract;

f. Whether the class is entitled to damages, restitution, and/or other equitable relief requiring Defendant to make deductions from Cash Values in accordance with the terms of the Class Policies in the future; and

g. Whether the class, or a subset of the class, is entitled to declaratory relief stating the proper construction and/or interpretation of the Class Policies.

1 **ANSWER: Paragraph 42 contains legal conclusions that do not require a response.**

2 **To the extent a response is required, Symetra denies the allegations of Paragraph 42.**

3 43. The questions set forth above predominate over any questions affecting only
4 individual persons, and a class action is superior with respect to considerations of consistency,
5 economy, efficiency, fairness, and equity to other available methods for the fair and efficient
6 adjudication of the claims asserted herein.
7

8 **ANSWER: Paragraph 43 contains legal conclusions that do not require a response.**

9 **To the extent a response is required, Symetra denies the allegations of Paragraph 43.**

10 44. Plaintiff's claims are typical of the claims of the class in that Plaintiff and the class
11 members all purchased policies containing the same or similar limitations on the amounts that
12 Defendant could charge its policyholders or deduct from their Cash Values under the express terms
13 of the Policy and Class Policies.
14

15 **ANSWER: Paragraph 44 contains legal conclusions that do not require a response.**

16 **To the extent a response is required, Symetra denies the allegations of Paragraph 44.**

17 45. Plaintiff will fairly and adequately protect and represent the interests of the
18 proposed class, because his interests are aligned with, and not antagonistic to, those of the proposed
19 class, and he is represented by counsel who are experienced and competent in the prosecution of
20 class action litigation and have particular expertise with class action litigation on behalf of owners
21 of universal life insurance policies.
22

23 **ANSWER: Paragraph 45 contains legal conclusions that do not require a response.**

24 **To the extent a response is required, Symetra denies the allegations of Paragraph 45.**

25 46. Maintenance of this action as a class action is a fair and efficient method for
26 adjudicating this controversy. It would be impracticable and undesirable for each member of the
27

1 class to bring a separate action. Because of the relatively small size of individual class member's
 2 claims, absent a class action, most class members would likely find the cost of litigating their
 3 claims prohibitively high and would have no effective remedy. In addition, the maintenance of
 4 separate actions would place a substantial and unnecessary burden on the courts and could result
 5 in inconsistent adjudications, while a single class action can determine, with judicial economy, the
 6 rights of all class members.
 7

8 **ANSWER: Paragraph 46 contains legal conclusions that do not require a response.**

9 **To the extent a response is required, Symetra denies the allegations of Paragraph 46.**

10
 11 **COUNT I: BREACH OF CONTRACT**
 12 **(Cost of Insurance)**

13 47. The preceding paragraphs are incorporated by reference as if fully alleged herein.

14 **ANSWER: Symetra incorporates and restates by reference its responses to all**
 15 **preceding allegations.**

16 48. Plaintiff and the class purchased life insurance policies—the Policy and Class
 17 Policies—from Defendant.

18 **ANSWER: Symetra admits that Plaintiff purchased a life insurance policy from**
 19 **American States Life Insurance Company, which merged into Symetra. Symetra admits**
 20 **that Plaintiff purports to represent a class of policyholders who purchased life insurance**
 21 **policies, but denies that the case meets the requirements for class certification and otherwise**
 22 **denies the allegations of Paragraph 48.**

23 49. The Policy and Class Policies are valid and enforceable contracts between the
 24 Defendant and Plaintiff and class members.
 25

26 **ANSWER: Paragraph 49 contains legal conclusions that do not require a response.**

27 **To the extent a response is required, Symetra admits the named Plaintiff's Policy is a**

1 **contract. Symetra denies that the case meets the requirements for class certification and**
2 **otherwise denies the remaining allegations of Paragraph 49.**

3 50. Plaintiff and the class substantially performed their obligations under the terms of
4 the Policy and Class Policies.

5 **ANSWER: Paragraph 50 contains legal conclusions that do not require a response.**
6 **To the extent a response is required, Symetra denies that the case meets the requirements**
7 **for class certification and otherwise denies the allegations of Paragraph 50.**

8 51. By including unauthorized and undisclosed factors in the monthly Cost of Insurance
9 Rates, Defendant impermissibly causes those rates to be greater than those authorized by the Policy
10 and the Class Policies.

11 **ANSWER: Symetra denies that the case meets the requirements for class**
12 **certification and otherwise denies the allegations of Paragraph 51.**

13 52. Because Defendant calculates the amount to be deducted from the Cash Values of
14 Plaintiff and the class for the Cost of Insurance using monthly Cost of Insurance Rates that are
15 greater than those authorized by the Policy and Class Policies, Defendant has taken and will take
16 Cost of Insurance deductions from the Cash Values of Plaintiff and the class in amounts greater
17 than those authorized by their policies.

18 **ANSWER: Symetra denies that the case meets the requirements for class certification**
19 **and otherwise denies the allegations of Paragraph 52.**

20 53. Defendant's practice of taking Cost of Insurance deductions in amounts not
21 authorized by the Policy and Class Policies constitutes a breach of the policies.

22 **ANSWER: Paragraph 53 contains legal conclusions that do not require a response.**
23 **To the extent a response is required, Symetra denies that the case meets the requirements**
24

1 for class certification and otherwise denies the allegations of Paragraph 53. Symetra
 2 specifically denies that it takes Cost of Insurance deductions in amounts not authorized by
 3 the Policy and putative Class Policies.

4 54. As a direct and proximate result of Defendant's breach, Plaintiff and the class
 5 have sustained damages that are continuing in nature in an amount to be determined at trial.
 6

7 **ANSWER: Paragraph 54 contains legal conclusions that do not require a response.**
 8 **To the extent a response is required, Symetra denies that the case meets the requirements**
 9 **for class certification and otherwise denies the allegations of Paragraph 54.**

10 **COUNT II: BREACH OF CONTRACT**
 11 **(Improving Expectations as to Future Mortality Experience)**

12 55. The preceding paragraphs are incorporated by reference as if fully alleged herein.

13 **ANSWER: Symetra incorporates and restates by reference its responses to all**
 14 **preceding allegations.**

15 56. When setting monthly Cost of Insurance Rates, the Policy and Class Policies
 16 authorize Defendant to consider only its expectations as to future mortality experience.
 17

18 **ANSWER: The Policy is a written document which speaks for itself and Symetra**
 19 **denies any allegations inconsistent therewith. Symetra denies that the case meets the**
 20 **requirements for class certification pursuant to Fed. R. Civ. P. 23 and therefore denies any**
 21 **allegations regarding Class Policies, and otherwise denies the allegations remaining**
 22 **allegations of Paragraph 56.**

23 57. Although mortality expectations have generally improved because people are living
 24 longer today than when the Policy and Class Policies were initially priced, Defendant has, on
 25 information and belief, failed to reduce monthly Cost of Insurance Rates for the Policy and Class
 26 Policies.
 27

ANSWER: Paragraph 58 contains legal conclusions that do not require a response. To the extent a response is required, Symetra denies that the policy has been breached, denies that the case meets the requirements for class certification and otherwise denies the allegations of Paragraph 58.

ANSWER: Paragraph 59 contains legal conclusions that do not require a response. To the extent a response is required, Symetra denies that the case meets the requirements for class certification and otherwise denies the allegations of Paragraph 59.

ANSWER: Symetra incorporates and restates by reference its responses to all preceding allegations.

ANSWER: Paragraph 61 contains legal conclusions that do not require a response. To the extent a response is required, Symetra denies that the case meets the requirements for class certification and otherwise denies the allegations of Paragraph 61.

62. Defendant intentionally and substantially interfered with that property interest. By taking Cost of Insurance deductions in unauthorized amounts from the Cash Values of Plaintiff and the class, Defendant assumed and exercised ownership over, and misappropriated or misapplied, specific funds held in trust for the benefit of Plaintiff and the class, without authorization or consent and in hostility to the rights of Plaintiff and class members.

ANSWER: Paragraph 62 contains legal conclusions that do not require a response. To the extent a response is required, Symetra denies that the case meets the requirements for class certification and otherwise denies the allegations of Paragraph 62.

63. Defendant continues to retain these funds unlawfully. At no time did Plaintiff or any class member consent to such wrongful retention of funds by Defendant.

ANSWER: Paragraph 63 contains legal conclusions that do not require a response. To the extent a response is required, Symetra denies that the case meets the requirements for class certification and otherwise denies the allegations of Paragraph 63.

64. Defendant's wrongful exercise of control over the personal property of Plaintiff and class members constitutes conversion.

ANSWER: Paragraph 64 contains legal conclusions that do not require a response. To the extent a response is required, Symetra denies that the case meets the requirements for class certification and otherwise denies the allegations of Paragraph 64.

65. As a direct and proximate result of Defendant's conduct, Plaintiff and the class have been damaged, and these damages are continuing in nature.

ANSWER: Paragraph 65 contains legal conclusions that do not require a response. To the extent a response is required, Symetra denies that the case meets the requirements for class certification and otherwise denies the allegations of Paragraph 65.

1 66. Although requiring expert testimony, the amounts of unauthorized Cost of
 2 Insurance deductions Defendant took from Plaintiff and the class are capable of determination, to
 3 an identified sum, by comparing Plaintiff's actual Cost of Insurance deduction each month to a
 4 Cost of Insurance deduction calculated using a monthly Cost of Insurance Rate determined using
 5 Defendant's expectations as to future mortality experience.

7 **ANSWER: Symetra denies that the case meets the requirements for class**
 8 **certification and otherwise denies the allegations of Paragraph 66.**

9 67. Defendant intended to cause damage to Plaintiff and the class by deducting more
 10 from their Cash Value than was authorized by the Policy and Class Policies.

11 **ANSWER: Symetra denies that the case meets the requirements for class**
 12 **certification and otherwise denies the allegations of Paragraph 67.**

13 68. By reason of the foregoing, Plaintiff and class members are entitled to recover from
 14 Defendant all damages and costs permitted by law, including all amounts Defendant wrongfully
 15 converted.

16 **ANSWER: Paragraph 68 contains legal conclusions that do not require a response.**
 17 **To the extent a response is required, Symetra denies that the case meets the requirements**
 18 **for class certification and otherwise denies the allegations of Paragraph 68.**

19 **COUNT IV: VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT**

20 69. The preceding paragraphs are incorporated by reference as if fully alleged herein.

21 **ANSWER: Symetra incorporates and restates by reference its responses to all**
 22 **preceding allegations.**

23 70. Defendant engaged in unfair or deceptive acts or practices by materially failing to
 24 disclose and concealing from Plaintiff and class members the factors used to calculate monthly
 25
 26
 27

1 Cost of Insurance Rates and the basis for the amounts deducted from their Cash Values for the
 2 Cost of Insurance. Defendant alone, and not Plaintiff and class members, possesses the actuarial
 3 information and equations underlying the determination and computation of rates and charges for
 4 the Policies, such that Plaintiff and class members were unaware of Defendant's unfair and
 5 deceptive acts and practices.
 6

7 **ANSWER: Symetra denies that the case meets the requirements for class**
 8 **certification and otherwise denies the allegations of Paragraph 70.**

9 71. Defendant provides life insurance in Washington. Defendant's unfair and deceptive
 10 acts or practices therefore occurred in trade or commerce as part of its business operations.
 11

12 **ANSWER: Symetra admits only that it provides life insurance in Washington.**
 13 **Symetra denies that the case meets the requirements for class certification and otherwise**
 14 **denies the remaining allegations of Paragraph 71.**

15 72. Defendant's unfair and deceptive acts and practices impact the public interest.
 16 Washington regulates the insurance industry and deems misconduct by licensed insurers to affect
 17 the public interest. Moreover, Defendant's conduct applies uniformly to individuals obtaining life
 18 insurance policies from Defendant and if action is not taken, Defendant will continue to commit
 19 such wrongful acts against present and future insureds.
 20

21 **ANSWER: Symetra denies that the case meets the requirements for class certification**
 22 **and otherwise denies the allegations of Paragraph 72.**

23 73. Plaintiff and class members have been injured by Defendant's unfair and deceptive
 24 acts or practices. Plaintiff and class members have a property interest in their Cash Values and the
 25 funds wrongfully deducted by Defendant. Defendant's wrongful conduct injured that property by
 26 reducing its value and depriving Plaintiff and class members of interest payments that would
 27

1 otherwise have accrued. This injury was caused by Defendant's Cost of Insurance deductions in
2 unauthorized amounts and material omissions regarding the calculation of these deductions.

3 **ANSWER: Paragraph 73 contains legal conclusions that do not require a response.**

4 **To the extent a response is required, Symetra denies the allegations of Paragraph 73.**

5 **Symetra denies that the case meets the requirements for class certification.**

6
7 74. Plaintiff and class members are entitled to recover from Defendant their actual
8 damages, treble damages, costs, and attorneys' fees.

9 **ANSWER: Paragraph 74 contains legal conclusions that do not require a response.**

10 **To the extent a response is required, Symetra denies that the case meets the requirements**
11 **for class certification and otherwise denies the allegations of Paragraph 74.**

12 **COUNT V: DECLARATORY AND INJUNCTIVE RELIEF**

13
14 75. The preceding paragraphs are incorporated by reference as if fully alleged herein.

15 **ANSWER: Symetra incorporates and restates by reference its responses to all**
16 **preceding allegations.**

17 76. An actual controversy has arisen and now exists between Plaintiff and the class, on
18 the one hand, and Defendant, on the other, concerning the respective rights and duties of the parties
19 under the Policy and Class Policies.

20 **ANSWER: Paragraph 76 contains legal conclusions that do not require a response.**

21 **To the extent a response is required, Symetra denies that there has been any injury to**
22 **Plaintiff and therefore denies standing. Symetra denies that the case meets the requirements**
23 **for class certification and otherwise denies the allegations of Paragraph 76.**

24
25 77. Plaintiff contends that Defendant has breached the Policy and Class Policies in the
26 following respects:
27

a. By using unauthorized and undisclosed factors to compute the monthly Cost of Insurance Rates under the Policy and Class Policies, Defendant impermissibly increased monthly Cost of Insurance Rates for the Policy and Class Policies and, as a result, made Cost of Insurance deductions from the Cash Values of Plaintiff and the class in amounts greater than those authorized by the Policy and Class Policies.

b. By failing to reduce Cost of Insurance Rates to reflect Defendant's improving expectations as to future mortality experience.

ANSWER: Symetra denies that the case meets the requirements for class certification and otherwise denies the allegations of Paragraph 77.

78. Plaintiff therefore seeks a declaration of the parties' respective rights and duties under the Policy and Class Policies and requests the Court to declare the aforementioned conduct of Defendant as unlawful and in material breach of the Policy and Class Policies so that future controversies may be avoided.

ANSWER: Paragraph 78 contains legal conclusions that do not require a response. To the extent a response is required, Symetra denies that the case meets the requirements for class certification and otherwise denies the remaining allegations of Paragraph 78.

79. Pursuant to a declaration of the parties' respective rights and duties under the Policy and Class Policies, Plaintiff further seeks an injunction temporarily, preliminarily, and permanently enjoining Defendant (1) from continuing to engage in conduct in breach of the Policy and Class Policies, and from continuing to deduct unlawfully inflated amounts for the Cost of Insurance in violation of the Policy and Class Policies; and (2) ordering Defendant to comply with terms of the Policy and Class Policies in regards to its Cost of Insurance deductions from Plaintiff and class members' Cash Values.

ANSWER: Symetra denies that the case meets the requirements for class certification and otherwise denies the remaining allegations of Paragraph 79.

DEFENSES

1 Symetra's inclusion of any defenses below is not a concession that Symetra carries any
2 burden under law to prove its defenses. It remains Plaintiff's burden to prove all claims asserted
3 in the Complaint and all alleged grounds for relief.
4

5 **FIRST DEFENSE**

6 Plaintiff's claim is barred, in whole or in part, by the applicable statute of limitations.
7 Plaintiff's life insurance policy was issued in 1987, more than 33 years before he filed his
8 Complaint, and he cannot demonstrate fraudulent concealment by Symetra or other facts that could
9 arguably toll the running of the applicable statute of limitation.

10 **SECOND DEFENSE**

11 Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel. Plaintiff
12 received the entire benefit of the bargain and cannot now mount a claim for breach.
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THIRD DEFENSE

Plaintiff's claims are barred, in whole or in part, due to Plaintiff's own actions, negligence or legal fault.

FOURTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver, including without limitation the voluntary payment doctrine.

FIFTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by his failure to mitigate damages, if any.

SIXTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the filed rate doctrine.

SEVENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches because Plaintiff waited many years to bring the claims in this action and Symetra is prejudiced and disadvantaged by this undue delay.

EIGHTH DEFENSE

Plaintiff's claims and the claims of the putative class are barred by or otherwise did not survive the surrender or termination of the policy.

NINTH DEFENSE

Claims of the putative class are barred by or otherwise did not survive either the death of the owner of the policies or the death of the insured.

TENTH DEFENSE

Plaintiff's and the putative class's claims are barred in whole or in part by the doctrines of payment, accord and satisfaction, recoupment, set-off, and/or election of remedies.

ELEVENTH DEFENSE

The breach of contract claims of any class member who did not pay a premium for the alleged coverage for which they seek to recover payment fail for lack of consideration.

TWELFTH DEFENSE

Plaintiff's request for treble damages violates Symetra's right to procedural and substantive due process, violates Symetra's right to protection from excessive fines, violates the guarantees against undue burdens upon commerce, and denies Symetra equal protection under the United States Constitution and the Washington Constitution. The prayer for punitive damages recovery should therefore be stricken.

THIRTEENTH DEFENSE

The Complaint, and each purported cause of action alleged therein, is barred by the conduct, actions and inactions of Plaintiff, and/or the persons on whose behalf he purports to bring this action, under the doctrine of ratification.

FOURTEENTH DEFENSE

The Complaint's prayers for equitable relief are barred because Plaintiff, and the persons on whose behalf Plaintiff purports to bring this action, has or have adequate remedies at law.

FIFTEENTH DEFENSE

The claims advanced in the Complaint by Plaintiff, and/or the persons on whose behalf he purports to bring this action, 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

1 to the exclusive jurisdiction of those regulatory or administrative agencies under the doctrines of
 2 primary and/or exclusive jurisdiction. Alternatively, such claims are barred by the absence of any
 3 private right of action with regard to conduct submitted to the discretion of a regulatory or
 4 administrative agency or body.

5 **SIXTEENTH DEFENSE**

6
 7 The claims and/or damages of Plaintiff and the alleged putative class may be barred, in
 8 whole or in part, by the terms, conditions, limitations, and exclusions contained within their
 9 respective policies and/or by public policy or express provision of law.

10 **SEVENTEENTH DEFENSE**

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

12 **EIGHTEENTH DEFENSE**

13
 14 Plaintiff and some or all members of the putative class lack standing to bring some or all
 15 of the claims set forth in the Complaint because they have not suffered any injury in fact.

16 **NINETEENTH DEFENSE**

17 Plaintiff has failed to state a claim for relief for conversion because, among other things,
 18 the only source of duty alleged arises from the life insurance policy with Symetra and the economic
 19 loss doctrine bars recovery of the purely economic damages alleged. Plaintiff does not have a
 20 property interest or other interest in the policy account value that arises from any source other than
 21 the contract that is legally sufficient to support a claim for conversion.

22 **TWENTIETH DEFENSE**

23
 24 Plaintiff cannot assert untimely claims based on fraudulent concealment as alleged in the
 25 Complaint as Symetra had no duty to disclose the conduct of which Plaintiff complains and
 26 Symetra had no intent to deceive Plaintiff or any other policyholder.
 27

TWENTY-FIRST DEFENSE

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

TWENTY-SECOND DEFENSE

Plaintiff has failed to state a claim for relief for conversion because, among other things, a claim for conversion cannot be based on an alleged overcharge.

TWENTY-THIRD DEFENSE

The claims of the class are barred, in whole or in part, to the extent that some of the putative class members have released the claims set forth in the Complaint.

TWENTY-FOURTH DEFENSE

As Plaintiff 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.

TWENTY-FIFTH DEFENSE

As Plaintiff and the putative class members' request for a declaratory judgment is duplicative of their breach of contract claims, Plaintiff and the putative class members are not entitled to recover under both.

TWENTY-SIXTH DEFENSE

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

TWENTY-SEVENTH DEFENSE

Plaintiff has failed to state a claim for relief under Washington's Consumer Protection Act because he has failed to allege and cannot establish that the alleged actions of Symetra "had the capacity to deceive a substantial portion of the public." *See* WPI 310.08 (7th Ed.).

TWENTY-EIGHTH DEFENSE

Plaintiff has failed to state a claim for relief under Washington's Consumer Protection Act because the alleged acts of Symetra are reasonable in relation to the development and preservation of business and are further not injurious to the public interest. *See* WPI 310.02 (7th Ed.).

TWENTY-NINTH DEFENSE

Some or all of Plaintiff's claims and the claims of 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.

RESERVATION OF OTHER DEFENSES

Symetra is informed and believes that it may have other defenses of which it is presently unaware. Symetra reserves the right to allege additional defenses upon discovery of additional facts during the course of discovery.

REQUEST FOR RELIEF

Wherefore, Symetra denies that Plaintiff is entitled to any of the relief he seeks, whether on behalf of himself or a putative class, and prays for judgment as follows:

1. That Plaintiff take nothing by his Complaint;
2. That the Court dismiss, with prejudice, Plaintiff's Complaint, and award Symetra its recoverable costs; and

3. That the Court award Symetra such other and further relief as it may deem just and proper.

Dated this 17th day of June, 2021.

KARR TUTTLE CAMPBELL

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I, Jan Likit, affirm and state that I am employed by Karr Tuttle Campbell in King County, in the State of Washington. I am over the age of 18 and not a party to the within action. My business address is: 701 Fifth Ave., Suite 3300, Seattle, WA 98101. On this day, I caused a true and correct copy of the foregoing document to be filed with the Court electronically. I caused the same to be served on the parties listed below in the manner indicated.

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Via U.S. Mail
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Attorneys for Defendant

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, to the best of my knowledge.

Executed on this 17th day of June, 2021, at Seattle, Washington.

s/Jan Likit

Jan Likit
 Assistant to Medora A. Marisseau