

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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KAREN L. BACCHI,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action
	:	No. 12-11280-JLT
MASSACHUSETTS MUTUAL LIFE	:	
INSURANCE COMPANY,	:	
	:	
Defendant.	:	
----- X		

**MASSMUTUAL’S ANSWER AND AFFIRMATIVE DEFENSES**

Pursuant to Rules 7 and 8 of the Federal Rules of Civil Procedure, Defendant Massachusetts Mutual Life Insurance Company (“MassMutual”) hereby answers Plaintiff’s Class Action Complaint And Jury Demand (“Complaint,” Docket No. 1) as follows:

1. MassMutual avers that paragraph 1 states legal conclusions that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of paragraph 1.

2. MassMutual lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2, except admits that MassMutual merged with Connecticut Mutual Life Insurance Company (“Connecticut Mutual”) in 1996, and admits that Plaintiff has held a participating whole life policy with MassMutual since that time.

3. MassMutual admits the allegations of the first sentence of paragraph 3. With respect to the second sentence of paragraph 3, MassMutual admits that it merged with Connecticut Mutual in 1996, and otherwise avers that the remaining allegations of that sentence state a legal conclusion that requires neither admission nor denial. To the extent that any further

response thereto is deemed required, MassMutual denies the remaining allegations of the second sentence of paragraph 3, except admits that in connection with its merger with Connecticut Mutual, it assumed Connecticut Mutual's rights and obligations under certain insurance policies issued by Connecticut Mutual.

4. MassMutual avers that paragraph 4 states legal conclusions that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual admits the allegations of paragraph 4.

5. MassMutual avers that paragraph 5 states legal conclusions that require neither admission nor denial, except admits that it is headquartered and transacts business in the District of Massachusetts. To the extent that any further response thereto is deemed required, MassMutual denies the remaining allegations of paragraph 5.

6. MassMutual avers that paragraph 6 states legal conclusions that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of paragraph 6, except that to the extent that paragraph 6 purports to quote from, rely on, or otherwise characterize insurance policies issued by MassMutual or other documents, MassMutual refers to the documents themselves for a true and correct statement of their contents.

7. MassMutual denies the allegations of paragraph 7, except avers that (a) to the extent paragraph 7 states legal conclusions, those conclusions require neither admission nor denial; and (b) to that to the extent that paragraph 7 purports to quote from, rely on, or otherwise characterize legislative history documents, enactments of the General Court of Massachusetts, or other documents, MassMutual refers to the documents themselves for a true and correct statement of their respective contents.

8. MassMutual avers that paragraph 8 states legal conclusions that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of paragraph 8, except that to the extent that paragraph 8 purports to quote from, rely on, or otherwise characterize the text of the General Laws of Massachusetts, MassMutual refers to the statutes themselves for a true and correct statement of their contents.

9. MassMutual avers that paragraph 9 states legal conclusions that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of paragraph 9, except that to the extent that paragraph 9 purports to quote from, rely on, or otherwise characterize the text of the General Laws of Massachusetts, MassMutual refers to the statutes themselves for a true and correct statement of their contents.

10. MassMutual avers that paragraph 10 states legal conclusions that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of paragraph 10, except that to the extent that paragraph 10 purports to quote from, rely on, or otherwise characterize the text of the General Laws of Massachusetts, MassMutual refers to the statutes themselves for a true and correct statement of their contents.

11. MassMutual avers that paragraph 11 states legal conclusions that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of paragraph 11, except that to the extent that paragraph 11 purports to quote from, rely on, or otherwise characterize the text of the General Laws of

Massachusetts, MassMutual refers to the statutes themselves for a true and correct statement of their contents.

12. MassMutual avers that paragraph 12 states legal conclusions that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of paragraph 12, except (a) admits that Plaintiff has held a participating whole life policy with MassMutual since MassMutual's merger with Connecticut Mutual in 1996; and (b) to the extent that paragraph 12 purports to quote from, rely on, or otherwise characterize the text of that policy, refers to the policy itself for a true and correct statement of its contents.

13. MassMutual admits that it merged with Connecticut Mutual in 1996. MassMutual avers that the remainder of paragraph 13 states legal conclusions that require neither admission nor denial. To the extent that any further response thereto is deemed required, MassMutual denies the allegations of the remainder of paragraph 13, except admits that in connection with its merger with Connecticut Mutual, it assumed Connecticut Mutual's rights and obligations under certain insurance policies issued by Connecticut Mutual, including a policy issued to Plaintiff.

14. MassMutual avers that paragraph 14 states legal conclusions that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of paragraph 14, except to the extent that paragraph 14 purports to quote from, rely on, or otherwise characterize the text of Plaintiff's insurance policy with MassMutual or the text of the General Laws of Massachusetts, MassMutual respectively refers to the policy and the statutes themselves for a true and correct statement of their contents.

15. MassMutual denies the allegations of paragraph 15, except (a) avers that in each year from 2001 to the present, it has made a voluntary annual filing with the Division of Insurance of the Commonwealth of Massachusetts relating to Chapter 175, Section 141 of the General Laws of Massachusetts (collectively, the “Voluntary Annual Filings”); and (b) to the extent that paragraph 15 purports to quote from, rely on, or otherwise characterize the text of MassMutual’s Voluntary Annual Filings, MassMutual refers to the Voluntary Annual Filings themselves for a true and correct statement of their contents.

16. MassMutual avers that paragraph 16 states Plaintiff’s legal conclusions and analyses that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of paragraph 16, except that to the extent that paragraph 16 purports to quote from, rely on, or otherwise characterize the text of MassMutual’s Voluntary Annual Filings, MassMutual refers to the Voluntary Annual Filings themselves for a true and correct statement of their contents.

17. MassMutual avers that paragraph 17 states Plaintiff’s legal conclusions and analyses that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of paragraph 17, except that to the extent that paragraph 17 purports to quote from, rely on, or otherwise characterize the text of MassMutual’s Voluntary Annual Filings, MassMutual refers to the Voluntary Annual Filings themselves for a true and correct statement of their contents.

18. MassMutual avers that paragraph 18 states Plaintiff’s legal conclusions and analyses that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of paragraph 18, except that to the extent that paragraph 18 purports to quote from, rely on, or otherwise characterize the text of

MassMutual's Voluntary Annual Filings, MassMutual refers to the Voluntary Annual Filings themselves for a true and correct statement of their contents.

19. MassMutual avers that the introductory sentence of paragraph 19 states Plaintiff's legal conclusions and analyses that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of the introductory sentence of paragraph 19, except that to the extent that the introductory sentence of paragraph 19 purports to quote from, rely on, or otherwise characterize the text of MassMutual's Voluntary Annual Filings, MassMutual refers to the Voluntary Annual Filings themselves for a true and correct statement of their contents. MassMutual answers the subsequent subparagraphs of paragraph 19 as follows:

- a. MassMutual avers that subparagraph 19(a) states Plaintiff's legal conclusions and analyses that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of subparagraph 19(a), except that to the extent that subparagraph 19(a) purports to quote from, rely on, or otherwise characterize the text of statutory accounting principles, the General Laws of Massachusetts, or MassMutual's Voluntary Annual Filings, MassMutual respectively refers to those documents for a true and correct statement of their contents.
- b. MassMutual avers that subparagraph 19(b) states Plaintiff's legal conclusions and analyses that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of subparagraph 19(b), except

that to the extent that subparagraph 19(b) purports to quote from, rely on, or otherwise characterize the text of MassMutual's Voluntary Annual Filings, statements of the Commissioner of Insurance, statutory accounting principles, or a decision of the Massachusetts Superior Court, MassMutual respectively refers to those documents themselves for a true and correct statement of their contents.

- c. MassMutual avers that subparagraph 19(c) states Plaintiff's legal conclusions and analyses that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of subparagraph 19(c), except that to the extent that subparagraph 19(c) purports to quote from, rely on, or otherwise characterize the text of MassMutual's Voluntary Annual Filings or statutory accounting principles, MassMutual respectively refers to those documents themselves for a true and correct statement of their contents.

20. MassMutual avers that the introductory sentence of paragraph 20 states Plaintiff's legal conclusions and analyses that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of the introductory sentence of paragraph 20, except that to the extent that the introductory sentence of paragraph 20 purports to quote from, rely on, or otherwise characterize the text of MassMutual's Voluntary Annual Filings, MassMutual refers to the Voluntary Annual Filings themselves for a

true and correct statement of their contents. MassMutual answers the subsequent subparagraphs of paragraph 20 as follows:

- a. MassMutual avers that subparagraph 20(a) states Plaintiff's legal conclusions and analyses that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of subparagraph 20(a), except that to the extent that subparagraph 20(a) purports to quote from, rely on, or otherwise characterize the text of MassMutual's Voluntary Annual Filings, other public filings by MassMutual, or statutory accounting principles, MassMutual respectively refers to those documents for a true and correct statement of their contents.
- b. MassMutual avers that subparagraph 20(b) states Plaintiff's legal conclusions and analyses that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of subparagraph 20(b), except that to the extent that subparagraph 20(b) purports to quote from, rely on, or otherwise characterize the text of MassMutual's Voluntary Annual Filings or statutory accounting principles, MassMutual respectively refers to those documents for a true and correct statement of their contents.

21. MassMutual avers that paragraph 21 states Plaintiff's legal conclusions and analyses that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of paragraph 21, except that to the extent



that paragraph 21 purports to quote from, rely on, or otherwise characterize the text of MassMutual's Voluntary Annual Filings, MassMutual refers to the Voluntary Annual Filings themselves for a true and correct statement of their contents.

22. MassMutual avers that paragraph 22 states Plaintiff's legal conclusions and analyses that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of paragraph 22, except that to the extent that paragraph 22 purports to quote from, rely on, or otherwise characterize the text of MassMutual's Voluntary Annual Filings, MassMutual refers to the Voluntary Annual Filings themselves for a true and correct statement of their contents.

23. MassMutual avers that paragraph 23 states Plaintiff's legal conclusions and analyses that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of paragraph 23.

24. MassMutual avers that paragraph 24 states Plaintiff's legal conclusions and analyses that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of paragraph 24, and specifically denies that Plaintiff or any member of the class that Plaintiff seeks to represent has been damaged in any way whatsoever.

25. MassMutual denies the allegations of paragraph 25, except (a) admits that it files an Annual Statement with the Division of Insurance each year (collectively, the "Annual Statements"), and (b) to the extent that paragraph 25 purports to quote from, rely on, or otherwise characterize the text of MassMutual's Voluntary Annual Filings or Annual Statements, MassMutual respectively refers to those documents for a true and correct statement of their contents.

26. MassMutual denies the allegations of paragraph 26, except that to the extent that paragraph 26 purports to quote from, rely on, or otherwise characterize the text of MassMutual's Voluntary Annual Filings, MassMutual refers to the Voluntary Annual Filings themselves for a true and correct statement of their contents.

27. MassMutual denies the allegations of paragraph 27, except that to the extent that paragraph 27 purports to quote from, rely on, or otherwise characterize the text of communications between MassMutual and its policyholders, MassMutual refers to those communications themselves for a true and correct statement of their contents.

28. MassMutual denies the allegations of paragraph 28, except that to the extent that paragraph 28 purports to quote from, rely on, or otherwise characterize the text of MassMutual's Voluntary Annual Filings, MassMutual refers to the Voluntary Annual Filings themselves for a true and correct statement of their contents.

29. MassMutual denies the allegations of paragraph 29.

30. MassMutual avers that paragraph 30 states a legal conclusion that requires neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of paragraph 30.

31. MassMutual denies the allegations contained in paragraph 31, except admits that Plaintiff seeks to represent the class described in paragraph 31.

32. MassMutual denies the allegations contained in paragraph 32, except admits that Plaintiff has held a participating whole life policy with MassMutual since MassMutual's merger with Connecticut Mutual in 1996.

33. MassMutual denies the allegations contained in paragraph 33.

34. MassMutual denies the allegations contained in paragraph 34, except that to the extent that paragraph 34 purports to quote from, rely on, or otherwise characterize the text of Plaintiff's life insurance policy with MassMutual and/or other life insurance policies, MassMutual respectively refers to those policies themselves for a true and correct statement of their contents.

35. MassMutual avers that paragraph 35 states Plaintiff's legal conclusions and analyses that require neither admission nor denial. To the extent that any response thereto is deemed required, MassMutual denies the allegations of paragraph 35.

36. MassMutual denies the allegations contained in paragraph 36.

37. MassMutual denies the allegations contained in paragraph 37.

38. MassMutual denies the allegations contained in paragraph 38.

39. MassMutual avers that paragraph 39 requires neither admission nor denial. To the extent that paragraph 39 requires a response, MassMutual incorporates herein by reference its responses to paragraphs 1 through 38.

40. MassMutual denies the allegations contained in paragraph 40, except that to the extent that paragraph 40 purports to quote from, rely on, or otherwise characterize the text of Plaintiff's life insurance policy with MassMutual, MassMutual refers to that policy itself for a true and correct statement of its contents.

41. MassMutual denies the allegations contained in paragraph 41, except that to the extent that paragraph 41 purports to quote from, rely on, or otherwise characterize the text of life insurance policies held by various persons with MassMutual, MassMutual refers to those policies themselves for a true and correct statement of their contents.

42. MassMutual denies the allegations contained in paragraph 42.

43. MassMutual denies the allegations contained in paragraph 43.

44. MassMutual denies the allegations contained in paragraph 44, and specifically denies that Plaintiff or any member of the class that Plaintiff seeks to represent has been damaged in any way whatsoever.

45. MassMutual avers that paragraph 45 requires neither admission nor denial. To the extent that paragraph 45 requires a response, MassMutual incorporates herein by reference its responses to paragraphs 1 through 44.

46. MassMutual denies the allegations contained in paragraph 46, except that to the extent that paragraph 46 purports to quote from, rely on, or otherwise characterize the text of the General Laws of Massachusetts, MassMutual refers to those statutes themselves for a true and correct statement of their contents.

47. MassMutual denies the allegations contained in paragraph 47.

48. MassMutual denies the allegations contained in paragraph 48.

49. MassMutual denies the allegations contained in paragraph 49.

50. MassMutual denies the allegations contained in paragraph 50.

51. MassMutual denies the allegations contained in paragraph 51, and specifically denies that Plaintiff or any member of the class that Plaintiff seeks to represent has been damaged in any way whatsoever.

52. MassMutual avers that paragraph 52 requires neither admission nor denial. To the extent that paragraph 52 requires a response, MassMutual incorporates herein by reference its responses to paragraphs 1 through 51.

53. MassMutual denies the allegations contained in paragraph 53.

54. MassMutual denies the allegations contained in paragraph 54.

55. MassMutual avers that paragraph 55 requires neither admission nor denial. To the extent that paragraph 55 requires a response, MassMutual incorporates herein by reference its responses to paragraphs 1 through 54.

56. MassMutual denies the allegations contained in paragraph 56.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

Each and every allegation in the Complaint fails to state a claim upon which relief may be granted.

#### **Second Affirmative Defense**

Each and every one of the causes of action that the Complaint seeks to assert is barred because it is subject to the primary and/or exclusive jurisdiction of the Division of Insurance of the Commonwealth of Massachusetts.

#### **Third Affirmative Defense**

Each and every one of the causes of action that the Complaint seeks to assert is barred because there is no private right of action for enforcement of Mass. Gen. Laws c. 175, §§ 140-141.

#### **Fourth Affirmative Defense**

This action is barred in whole or in part because of lack of standing.

#### **Fifth Affirmative Defense**

This action is barred in whole or in part by applicable statutes of limitation and/or the doctrines of laches, and/or estoppel, and/or unclean hands, and/or ratification, and/or waiver.

#### **Sixth Affirmative Defense**

This action is barred in whole or in part for failure to satisfy contractual conditions precedent, and/or on grounds of lack of ripeness.

**Seventh Affirmative Defense**

This action is barred in whole or in part for failure to satisfy real-party-in-interest requirements.

**Eighth Affirmative Defense**

This action is barred because MassMutual met all of its contractual and legal obligations.

**Ninth Affirmative Defense**

This action is barred because MassMutual at all times acted in good faith.

**Tenth Affirmative Defense**

This action is barred because MassMutual has not caused any damage.

**Eleventh Affirmative Defense**

This action is barred because of failure to act reasonably to mitigate damages, if any.

**Twelfth Affirmative Defense**

This action is barred because MassMutual has not breached any duty.

**Thirteenth Affirmative Defense**

This action is barred because of failure to join indispensable parties.

**Fourteenth Affirmative Defense**

This action is barred because all of MassMutual's actions were approved by the appropriate regulatory agency.

**Fifteenth Affirmative Defense**

To the extent (and without admitting that) there is any entitlement to recover benefits, such recovery is subject to setoff.

**Sixteenth Affirmative Defense**

To the extent that any claim in this action seeks exemplary or punitive damages, any such relief would violate statutory limitations on damages, and/or MassMutual's right to procedural and substantive due process under the Fourteenth Amendment of the United States and the Constitution of the Commonwealth of Massachusetts.

**Seventeenth Affirmative Defense**

This action is not maintainable as a class action under Rule 23 of the Federal Rules of Civil Procedure, because, alternatively,

- a. Part or all of the purported class is not numerous;
- b. Questions of law or fact common to the purported class do not exist;
- c. Plaintiff's claims are not typical of the claims of those she purports to represent;
- d. Plaintiff will not fairly and adequately protect the interests of the purported class;
- e. Common questions do not predominate;
- f. A class action is not superior to other available methods for the fair and effective adjudication of the controversy; or
- g. Other applicable requirements are not met.

**Eighteenth Affirmative Defense**  
**(Reservation Of Rights)**

MassMutual hereby gives notice that it intends to rely upon such other and further defenses as may become available or apparent during pre-trial proceedings in this case and hereby reserves its rights to amend its answer and assert such defenses.

**PRAYER FOR RELIEF**

WHEREFORE, MassMutual respectfully requests that this Court:

1. Deny any and all relief requested by the Plaintiff;
2. Dismiss the Complaint with prejudice and enter judgment in favor of MassMutual;
3. Determine that this action may not proceed as a class action and dismiss all purported class allegations with prejudice;
4. Pursuant to Mass. Gen. Laws c. 231, § 6F, award MassMutual its attorneys' fees and costs incurred in the defense of this action; and
5. Award MassMutual such further relief as the Court deems just and proper.

Dated: September 10, 2013  
Boston, Massachusetts

Respectfully submitted,

/s/ Kurt Wm. Hemr  
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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on September 10, 2013.

/s/ Kurt Wm. Hemr  
Kurt Wm. Hemr