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11 Attorneys for Plaintiff Cheri Poe, on behalf  
 12 of herself and all others similarly situated

13 UNITED STATES DISTRICT COURT  
 14 SOUTHERN DISTRICT OF CALIFORNIA

15 CHERI POE, on behalf of herself and  
 16 all others similarly situated,

17 Plaintiff,

18 v.

19 NORTHWESTERN MUTUAL LIFE  
 20 INSURANCE COMPANY,

21 Defendant.  
 22

) CASE NO.: '21CV1924 LAB RBB  
 )  
 ) **CLASS ACTION COMPLAINT FOR:**  
 ) **BREACH OF CONTRACT;**  
 ) **DECLARATORY RELIEF;**  
 ) **VIOLATION OF THE UNFAIR**  
 ) **COMPETITION LAW**  
 ) **DEMAND FOR JURY TRIAL**

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1 Plaintiff, Cheri Poe, on behalf of herself and all others similarly situated,  
2 brings this action against Defendant Northwestern Mutual Life Insurance  
3 Company (“Northwestern Mutual”) as follows:

4 **INTRODUCTION**

5 1. Insurance Code sections 10113.71 and 10113.72 (“the Statutes”)   
6 require insurers to: (1) provide a grace period of at least 60 days for nonpayment   
7 of premium; (2) mail a notice of termination for any nonpayment of premium to   
8 the policy owner and any other person designated to receive notice of the   
9 termination within 30 days of the premium due date and at least 30 days prior to   
10 the termination date; and (3) annually notify the policy owner of the right to   
11 change or make a designee for receiving the notice. The Statutes became effective   
12 January 1, 2013 and their requirements apply regardless of whether a policy was   
13 originally issued prior to that date. *McHugh v. Protective Life Insurance Company*   
14 (2021) 12 Cal.5th 213.

15 2. Plaintiff became a beneficiary under two life insurance policies issued   
16 to her husband in 2001 and 2002. Her husband dutifully paid premiums under the   
17 policies for years but, due to an apparent mistake by his bank, missed his   
18 December 2017 payment. Despite the Statutes’ clear mandate, Northwestern failed   
19 to observe a 60-day grace period, failed to provide the requisite notices, and   
20 terminated the policies before Plaintiff’s husband unexpectedly died in late April   
21 of 2018. When Northwestern Mutual was later advised of the death and queried   
22 regarding the status of the policies, it stated that no coverage was in effect on the   
23 date of the insured’s death and refused to allow a claim for the policies’ benefits.   
24 Plaintiff brings this class action to remedy Northwestern Mutual’s violations of the   
25 Statutes and its wrongful denial of life insurance claims for nonpayment of   
26 premium under policies issued in California prior to January 1, 2013.

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**JURISDICTION AND VENUE**

3. This Court has original jurisdiction of this case based on diversity of citizenship. Plaintiff is a citizen of the State of California, Northwestern Mutual is incorporated in and has its principal place of business in the State of Wisconsin, and the amount in controversy between Plaintiff and Northwestern Mutual is in excess of \$75,000.00. 28 U.S.C. § 1332.

4. The Court has personal jurisdiction over the Northwestern Mutual because it has conducted business in California by insuring various persons in California and administering claims for life insurance benefits due beneficiaries in California, as alleged herein.

5. Plaintiff's claims arise out of a life insurance benefit denied in Orange County, California by Northwestern Mutual. Thus, venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

**THE PARTIES**

6. Plaintiff Cheri Poe is an individual who, at relevant times, has resided in Orange County, California.

7. Northwestern Mutual is an insurance company licensed to do business in California and, at all relevant times, has been domiciled in Wisconsin.

**SUBSTANTIVE ALLEGATIONS**

8. In 2012, Assembly Bill 1747 was enacted and created the Statutes. They became effective January 1, 2013.

9. Insurance Code section 10113.71 provides in pertinent part:

(a) Each life insurance policy issued or delivered in this state shall contain a provision for a grace period of not less than 60 days from the premium due date. The 60-day grace period shall not run concurrently with the period of paid coverage. The provision shall provide that the policy shall remain in force during the grace period.

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1 (b)(1) A notice of pending lapse and termination of a life insurance  
2 policy shall not be effective unless mailed by the insurer to the named  
3 policy owner, a designee named pursuant to Section 10113.72 for an  
4 individual life insurance policy, and a known assignee or other person  
5 having an interest in the individual life insurance policy, at least 30  
6 days prior to the effective date of termination if termination is for  
7 nonpayment of premium.

8 10. Insurance Code section 10113.72 provides:

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

18 (b) The insurer shall notify the policy owner annually of the right to  
19 change the written designation or designate one or more persons. The  
20 policy owner may change the designation more often if he or she  
21 chooses to do so.

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

11. In enacting the Statutes, the Legislature intended to address the  
problem of long time policy owners—often seniors and/or those with health  
conditions—losing life insurance policies “they had spent years paying for.”

Moreover, the legislative history provides several indications that the  
Legislature enacted the grace period and notice protections in part to  
protect *existing* policy owners from losing the important life

1 insurance coverage they had spent years paying for. The Assembly  
2 and Senate materials on Assembly Bill No. 1747 (2011–2012 Reg.  
3 Sess.) include purpose and supporting argument statements like the  
4 following: “According to the author, the bill provides consumer  
5 safeguards from which *people who have purchased life insurance*  
6 *coverage, especially seniors, would benefit.* Under existing law,  
7 individuals can easily lose the critical protection of life insurance if a  
8 single premium is accidentally missed (even if they have been paying  
9 premiums on time for many years).

10 *McHugh v. Protective Life Insurance Company, supra*, 12 Cal.5th at 240-241.

11 12. Consistent with this purpose, the Statutes “appear to create a single,  
12 unified pretermination notice scheme. This scheme appears to include three  
13 components: (1) New and existing policy owners must have the opportunity to  
14 designate additional people to receive a notice of termination (§ 10113.72, subds.  
15 (a), (b)); (2) policy owners and any designees must receive notice within 30 days  
16 of a missed premium payment, and any termination for nonpayment will not be  
17 effective unless insurers send notice to these parties at least 30 days prior (§§  
18 10113.71, subd. (b)(1), (3), 10113.72, subd. (c)); and (3) each policy has a 60-day  
19 grace period, which lines up with the two 30-day notice windows (§ 10113.71,  
20 subd. (a)).” *McHugh v. Protective Life Insurance Company, supra*, 12 Cal.5th at  
21 240.

22 13. The Statutes’ requirements apply to policies issued in California prior  
23 to the Statutes’ January 1, 2013 effective date.

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

1 *McHugh v. Protective Life Insurance Company, supra*, 12 Cal.5th at 220.

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3 14. Additionally, “[a]n insurer's failure to comply with these statutory  
4 requirements means that the policy cannot lapse.” *Thomas v. State Farm Life*  
5 *Insurance Company* (9th Cir., Oct. 6, 2021, No. 20-55231) 2021 WL 4596286, at  
6 \*1, citing *McHugh v. Protective Life Insurance Company, supra*.

7 15. Northwestern Mutual has failed to comply with the Statutes for  
8 policies issued in California before 2013. When premiums have become due on or  
9 after January 1, 2013 under these policies, Northwestern Mutual has not provided a  
10 prospective 60-day grace period and has not mailed a notice of termination within  
11 30 days of the premium due date and at least 30 days before the termination date.  
12 Additionally, Northwestern Mutual has not provided an annual notice of the right  
13 to change or make a designee for receiving the notice of termination.

14 16. In connection with its disregard of the requirements of the Statutes for  
15 policies issued before 2013, Northwestern Mutual has improperly denied claims  
16 for deaths under those policies, refused to allow claims to be made, or just ignored  
17 its responsibility to pay benefits for the deaths, on the basis the policies were  
18 terminated for nonpayment of premium.

19 17. Northwestern Mutual issued two term life insurance policies on the  
20 the life of Scott Poe: Policy No. 15874906 in the amount of \$700,000 effective  
21 September 21, 2001 and Policy No. 16288790 in the amount of \$400,000 effective  
22 November 3, 2002. Northwestern agreed to pay the amounts of these policies in the  
23 event of Scott Poe’s death subject to the payment of premiums on their due dates.

24 18. Effective October 21, 2016, and after she was married to Scott Poe,  
25 Plaintiff was designated as a beneficiary under the policies along with Scott Poe’s  
26 sons from a prior marriage, Zachary Poe and Jacob Poe.

27 19. Each policy has a “Grace Period” provision that states “[a] grace  
28 period of 31 days will be allowed to pay a premium that is not paid on its due

1 date.” The provision further states that “[i]f the premium is not paid within the  
2 grace period, the policy will terminate as of the due date.”

3 20. Northwestern Mutual set up a Northwestern Mutual Insurance Service  
4 Account (“ISA”) to process Scott Poe’s monthly premiums that were to be  
5 deducted from his checking account with Citibank. Northwestern Mutual took the  
6 monthly premiums for the two policies from the ISA account on or about the 21st  
7 of each month.

8 21. Scott Poe paid the monthly premiums on both policies until the  
9 premiums due for December 21, 2017. Shortly before that date, and unbeknownst  
10 to Scott Poe, Citibank froze his checking account.

11 22. On December 27, 2017, Northwestern Mutual sent Scott Poe a  
12 “Returned Payment Notice” for both policies advising that “[c]overage remains in  
13 force until the end of the grace period.” For Policy No. 15874906, the notice stated  
14 a “Policy Paid to” date of December 21, 2017 and an “End of Grace Period” date  
15 of January 21, 2018. For Policy No. 16288790, the notice stated a “Policy Paid to”  
16 date of January 3, 2018 and an “End of Grace Period” date of February 3, 2018.

17 23. On January 24, 2018, Northwestern Mutual sent a notice to Scott Poe  
18 advising that his ISA account had been closed and that if payment was not received  
19 by the end of the grace period, the “non-payment provision becomes effective.”  
20 This notice stated the same “Policy Paid to” and “End of Grace Period” dates as  
21 the December 27, 2017 notice.

22 24. On January 24, 2018, Northwestern Mutual also sent a notice to Scott  
23 Poe advising that the grace period for Policy No. 15874906 “expires on January  
24 21, 2018 and the full protection under this policy terminates.” It further advised that  
25 he could submit a payment without evidence of insurability if received by February  
26 19, 2018.

27 25. On February 25, 2018, Northwestern Mutual sent Scott Poe two more  
28 notices on Policy No. 15874906 stating that the policy had lapsed and additional

1 premium was due by March 21, 2018 to keep the policy in force.

2 26. On March 11, 2018, Northwestern Mutual sent Scott Poe two more  
3 notices on Policy No. 16288790 stating that the policy had lapsed and additional  
4 premium was due by April 3, 2018 to keep the policy in force.

5 27. These actions by Northwestern Mutal violated the Statutes.  
6 Northwestern Mutual did not provide a prospective 60-day grace period from the  
7 premium due date, did not mail notices of termination within 30 days of the  
8 premium due dates and/or at least 30 days before the termination dates, and it did  
9 not provide an annual notice of the right to change or make a designee for  
10 receiving the notice of termination.

11 28. Scott Poe died on April 29, 2018.

12 29. Plaintiff and her co-beneficiaries, Zachary Poe and Jacob Poe, consulted  
13 with an attorney who notified Northwestern of Scott Poe's death and inquired  
14 about its position that the policies had terminated prior to the date of Scott Poe's  
15 death.

16 30. After reviewing its records, Northwestern Mutual wrote a letter to the  
17 attorney confirming its position that the policies terminated before Scott Poe's  
18 death and advised that "no death claim is payable, and a claim package will not be  
19 provided at this time."

20 31. Given Northwestern's refusal to entertain a formal claim, Plaintiff  
21 took no further action.

22 32. Northwestern Mutual's failure to comply with Statutes means that the  
23 policies issued to Scott Poe remained in force through the date of his death and  
24 Northwestern Mutual's refusal to entertain any claim for death benefits under the  
25 policies breached the terms of the policies and the obligations superimposed on  
26 those terms by California law.

27 33. As a result of Northwestern Mutual's actions, Plaintiff has not  
28 received the benefits due her under the policies.



1           34. Zachary Poe and Jacob Poe filed an action against Northwestern  
2 Mutual and another defendant based on Northwestern Mutual's refusal to pay  
3 benefits to them under the two policies. *Zachary Poe, et al. v. Northwestern Mutual*  
4 *Life Insurance Company, et al.*, Orange County Superior Court Case No. 30-2019-  
5 011117036-CU-BC-CJC. In that case, Northwestern Mutual took the position that  
6 it was not required to comply with the Statutes because the policies were issued  
7 prior to 2013. In September of 2021, Zachary Poe and Jacob Poe filed a request for  
8 dismissal with prejudice and their case was subsequently dismissed. Plaintiff was  
9 not a party to that litigation.

10                           **CLASS ACTION ALLEGATIONS**

11           35. Plaintiff brings this action on behalf of herself and all others similarly  
12 situated as a class action pursuant to Federal Rules of Civil Procedure Rule 23.  
13 Pursuant to Rule 23(b)(3) and 23(b)(2), Plaintiff seeks certification of the following  
14 class:

15           All persons designated as beneficiaries under individual life insurance  
16 policies issued in California prior to January 1, 2013 by Northwestern  
17 Mutual Life Insurance Company that were terminated for  
18 nonpayment of a premium due on or after January 1, 2013 and where  
the deaths of the insureds occurred within four years of the filing of  
this action while the policies were in a terminated status.

19           36. Plaintiff and the class members reserve the right under Federal Rule of  
20 Civil Procedure Rule 23(c)(1)(C) to amend or modify the class to include greater  
21 specificity, by further division into subclasses, or by limitation to particular issues.

22           37. This action has been brought and may be properly maintained as a class  
23 action under the provisions of Federal Rules of Civil Procedure Rule 23 because it  
24 meets the requirements of Rule 23(a), Rule 23(b)(3), and Rule 23(b)(2).

25                   **A. Numerosity.**

26           38. The potential members of the proposed class as defined are so  
27 numerous that joinder of all the members of the proposed class is impracticable.  
28 While the precise number of proposed class members has not been determined at

1 this time, Plaintiff is informed and believes that there are a substantial number of  
2 individuals who were beneficiaries under Northwestern Mutual policies issued  
3 before 2013 who have been similarly affected.

4 **B. Commonality.**

5 39. Common questions of law and fact exist as to all members of the  
6 proposed class because the claims at issue arise out of Northwestern Mutual's  
7 uniform and systemic violation of the Statutes, as alleged herein

8 **C. Predominant questions of law or fact.**

9 40. Questions of law or fact common to class members predominate over  
10 any questions affecting only individual members because Northwestern Mutual's  
11 liability for violating the Statutes is based upon its admitted non-compliance, as  
12 alleged herein.

13 **D. Typicality.**

14 41. The claims of the named Plaintiff are typical of the claims of the  
15 proposed class. Plaintiff and all members of the class are similarly affected by  
16 National Western's wrongful conduct as described herein.

17 **E. Adequacy of representation.**

18 42. Plaintiff will fairly and adequately represent and protect the interests of  
19 the members of the proposed class. Counsel who represents Plaintiff is competent  
20 and experienced in litigating large and complex class actions, including insurance  
21 class actions.

22 **F. Superiority of class action.**

23 43. A class action is superior to all other available means for the fair and  
24 efficient adjudication of this controversy. Individual joinder of all members of the  
25 proposed class is not practicable, and common questions of law and fact exist as to  
26 all class members.

27 44. Class action treatment will allow those similarly situated persons to  
28 litigate their claims in the manner that is most efficient and economical for the

1 parties and the judicial system. Plaintiff is unaware of any difficulties that are likely  
2 to be encountered in the management of this action that would preclude its  
3 maintenance as a class action.

4 45. Northwestern Mutual has also acted or refused to act on grounds  
5 generally applicable to the class, thereby making appropriate final injunctive relief  
6 or corresponding declaratory relief with respect to the class as a whole.

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8 **FIRST CLAIM FOR RELIEF**  
9 **BREACH OF CONTRACT**

10 46. Plaintiff and the class members repeat and re-allege each and every  
11 allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

12 47. As alleged herein, Northwestern Mutual issued two term life policies  
13 on the life of Scott Poe, Policy No. 15874906 in the amount of \$700,000 effective  
14 September 21, 2001 and Policy No. 16288790 in the amount of \$400,000 effective  
15 November 3, 2002. Northwestern agreed to pay the amounts of these policies in  
16 the event of Scott Poe's death subject to the payment of premiums on their due  
17 dates.

18 48. By operation of the Statutes, these life insurance policies and all the  
19 individual life insurance policies issued by Northwestern Mutual in California  
20 prior to 2013 provided a 60-day grace period and required Northwestern Mutual to  
21 give notice of any termination for nonpayment of premium within 30 days of the  
22 premium due date and at least 30 days before the termination date, and to provide  
23 an annual notice of the right to change or make a designee for receiving any notice  
24 of termination.

25 49. Scott Poe paid the monthly premiums on both policies until the  
26 premiums due for December 21, 2017. Shortly before that date, and unbeknownst  
27 to Scott Poe, Citibank froze his checking account.

28 50. As alleged herein, when Scott Poe and all other insureds covered  
under individual life insurance policies issued by Northwestern Mutual in

1 California prior to 2013 missed a premium payment due on or after January 1,  
2 2013, Northwestern Mutual failed to comply with the Statutes. Northwestern  
3 Mutual did not provide a prospective 60-day grace period from the premium due  
4 date, did not mail notices of termination within 30 days of the premium due dates  
5 and/or at least 30 days before the termination dates, and it did not provide an  
6 annual notice of the right to change or make a designee for receiving the notice of  
7 termination.

8 51. Despite its non-compliance with the Statutes, Northwestern Mutual  
9 terminated the policies issued Scott Poe and other insureds covered under life  
10 insurance policies issued by Northwestern Mutual in California prior to 2013 for  
11 nonpayment of premium.

12 52. When presented with death claims or inquiries regarding the status of  
13 such policies, Northwestern Mutual has affirmed its position that the policies  
14 terminated for nonpayment of premium as it did with respect to its position on  
15 Scott Poe's policies. Northwestern Mutual has also advised beneficiaries that it will  
16 not entertain claims under the policies given its position regarding the policies'  
17 terminated status.

18 53. Northwestern Mutual's failure to comply with the Statutes means that  
19 the policies could not be terminated for nonpayment of premium and its refusal to  
20 allow a claim to be made for the policies' benefits, and its attendant refusal to pay  
21 those benefits, breached the terms of the policies and the obligations superimposed  
22 on the policies' terms by California law.

23 54. As a proximate result of the systemic breach of the contracts issued to  
24 insureds such as Scott Poe, Plaintiff and beneficiaries like her have been deprived  
25 of policy benefits, and interest thereon, all to their damage in a sum to be proven at  
26 the time of trial.

27 55. Plaintiff requests attorney fees under Code of Civil Procedure section  
28 1021.5, the substantial benefit doctrine and/or a common fund theory.

**SECOND CLAIM FOR RELIEF  
DECLARATORY RELIEF**

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3           56. Plaintiff and the class members repeat and re-allege each and every  
4 allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

5           57. Under California Code of Civil Procedure section 1060, “[a]ny person  
6 interested under a written instrument . . . who desires a declaration of his or her  
7 rights or duties with respect to another . . . may, in cases of actual controversy  
8 relating to the legal rights and duties of the respective parties, bring an original  
9 action or cross-complaint in the superior court for a declaration of his or her rights  
10 and duties . . . including a determination of any question of construction or validity  
11 arising under the instrument or contract.”

12           58. As alleged herein, an actual controversy exists in this case regarding  
13 Northwestern Mutual’s contention that the Statutes do not apply to the life insurance  
14 policies it issued in California prior to 2013 and/or that its practices do not violate  
15 the notice requirements of the Statutes, assuming they apply. Plaintiff and the class  
16 members, on the other hand, contend that the Statutes apply to the life insurance  
17 policies issued by Northwestern Mutual in California prior to 2013 and that  
18 Northwestern Mutual’s notice practices violate the Statutes’ requirements.

19           59. Plaintiff and the class request a declaration regarding Northwestern  
20 Mutual’s obligation to provide the notices required by the Statutes to policies issued  
21 in California prior to 2013 and that its practices have violated those requirements  
22 further obligating it to treat those polices as remaining in force and to pay the death  
23 benefits provided under those policies with respect to any deaths that have occurred  
24 within four years of the filing of this action.

25           60. Plaintiff requests attorney fees under Code of Civil Procedure section  
26 1021.5, the substantial benefit doctrine and/or a common fund theory.

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**THIRD CLAIM FOR RELIEF**  
**VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW**

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61. Plaintiff and the class members repeat and re-allege each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

62. Business and Professions Code section 17200 *et seq.*, the Unfair Competition Law (“UCL”), prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising."

63. Northwestern Mutual has violated the “unlawful” prong of the UCL by violating the Statutes, as alleged herein.

64. Northwestern Mutual has violated the “unfair” prong of UCL by systematically and repeatedly breaching the terms of the life insurance policies, as amended by operation of law with respect to the Statutes, as alleged herein.

65. As a result of Northwestern Mutual’s violations, Plaintiff has suffered injury in fact and has lost money or property, as Northwestern Mutual has refused to entertain or pay any claim for life insurance benefits under the policies issued on the life of Scott Poe.

66. On behalf of herself and on behalf of the general public, Plaintiff requests declaratory and injunctive relief as remedies to correct Northwestern Mutual’s refusal to comply with the Statutes. Plaintiff requests that the Court order Northwestern Mutual to: a) conform its practices to the requirements of the Statutes; and b) re-process the termination of any policies for non-payment of premium due on or after January 1, 2013, return them to active status, determine and notify the beneficiaries that they have a claim for benefits for any death that has occurred, and pay the death benefits due.

67. Plaintiff requests attorney fees under Code of Civil Procedure section 1021.5, the substantial benefit doctrine and/or a common fund theory.

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**WHEREFORE, Plaintiff prays for judgment against Northwestern Mutual as follows:**

- 1. Policy benefits and interest as described herein;
- 2. Declaratory relief and injunctive relief as described herein;
- 3. Attorney fees as described herein;
- 3. Costs of suit incurred herein; and
- 4. For such other and further relief as the Court deems just and proper.

DATED: November 12, 2021

GIANELLI & MORRIS

By: /s/ Adrian J. Barrio  
 ROBERT S. GIANELLI  
 JOSHUA S. DAVIS  
 ADRIAN J. BARRIO  
 Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

On behalf of herself and all class members, Plaintiff hereby demands a trial by jury on all issues triable to a jury.

DATED: November 12, 2021

GIANELLI & MORRIS

By: /s/ Adrian J. Barrio  
 ROBERT S. GIANELLI  
 JOSHUA S. DAVIS  
 ADRIAN J. BARRIO  
 Attorneys for Plaintiff