

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 19-21147-CIV-ALTONAGA

ERIC ROMANO, et al., individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

JOHN HANCOCK LIFE INSURANCE
COMPANY (U.S.A.),

Defendant.

**DEFENDANT JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.)’S
ANSWER TO THE CLASS ACTION COMPLAINT**

Defendant John Hancock Life Insurance Company (U.S.A.) (“Defendant”) hereby responds to Plaintiffs’ Class Action Complaint. Defendant answers and avers as follows, with the numbered paragraphs and headings corresponding to the like-numbered paragraphs and headings in Plaintiffs’ Class Action Complaint.

NATURE OF CLAIMS

1. The allegations in the first and third sentences of Paragraph 1 describe Plaintiffs and their purported cause of action, and therefore require no response. The allegations of the second sentence of Paragraph 1 purport to characterize the Group Variable Annuity Contract that speaks for itself, and therefore require no response. To the extent a response is required, Defendant denies that Plaintiffs have any viable claims against Defendant.

2. Defendant admits that Plaintiffs seek damages and equitable relief, but it otherwise denies the allegations of Paragraph 2. The second sentence of Paragraph 2 identifies sources of law, which purport to assert legal conclusions to which no response is required.

JURISDICTION AND VENUE

3. The allegations of Paragraph 3 purport to characterize Plaintiffs' cause of action, which require no response, and purport to assert legal conclusions to which no response is required. To the extent a response is required, Defendant admits that Plaintiffs purport to assert the claims described in Paragraph 3, but denies any allegation that Defendant breached any duty or engaged in any wrongful conduct and denies that Plaintiffs have a viable claim against it.

4. The allegations of Paragraph 4 purport to characterize Plaintiffs' cause of action, which require no response, and purport to assert legal conclusions to which no response is required. To the extent a response is required, Defendant admits that Plaintiffs purport to assert the claims described in Paragraph 4, but denies any allegation that Defendant breached any duty or engaged in any wrongful conduct and denies that Plaintiffs have a viable claim against it.

5. The allegations of Paragraph 5 purport to assert legal conclusions, and therefore require no response. To the extent a response is required, Defendant denies that it breached any duty; denies that Plaintiffs have any viable claim against it; and denies that it has an office in Miami, Florida.

6. The allegations of Paragraph 6 purport to assert legal conclusions, and therefore require no response. To the extent a response is required, Defendant denies that it breached any duty and denies that Plaintiffs have any viable claim against it.

THE PARTIES

7. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7.

8. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8.

9. Defendant admits the allegations of Paragraph 9.

GENERAL FACTUAL ALLEGATIONS

10. The allegations in the first sentence of Paragraph 10 purport to assert legal conclusions, and therefore require no response. The allegations in the second sentence of Paragraph 10 purport to describe the terms of a plan document maintained by Plaintiffs, which document speaks for itself and requires no response.

11. The allegations of the first sentence of Paragraph 11 purport to assert legal conclusions, and therefore require no response. Defendant admits that it performs record-keeping services and provides investment options that had been selected by Plaintiffs for Plan participants pursuant to its contractual agreement. Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 11.

12. The allegations of Paragraph 12 purport to characterize a document that speaks for itself, and therefore require no response.

13. The allegations of Paragraph 13 purport to characterize a document that speaks for itself, and therefore require no response.

14. Defendant is unable to admit or deny the allegation of Paragraph 14 due to the vagueness of the term “bookkeeping entry,” but states that its separate accounts are more than just bookkeeping entries.

15. The allegations of Paragraph 15 purport to characterize a document that speaks for itself, and therefore require no response.

16. The allegations of Paragraph 16 purport to characterize a document that speaks for itself, and therefore require no response.

17. The allegations of Paragraph 17 purport to characterize a document that speaks for itself, and therefore require no response. Defendant specifically denies that the contract into which Plaintiffs entered with Defendant contains a “penalty fee.”

18. The allegations of Paragraph 18 purport to characterize a document that speaks for itself, and therefore require no response. Defendant specifically denies that the contract into which Plaintiffs entered with Defendant contains a “surrender fee.”

19. The allegations of Paragraph 19 purport to characterize a document that speaks for itself, and therefore require no response. Defendant admits that Plan Participants direct their own investments.

20. Defendant admits that under the Contract, Plaintiffs elected to make available to Plan participants various investment options that Defendant provides, including separate accounts that hold shares in mutual funds, and that Defendant performed its obligations under the Contract. Defendant denies all other allegations of Paragraph 20.

21. Defendant denies the allegations of Paragraph 21.

22. Defendant admits the allegations of Paragraph 22, but states that the “Sub-accounts” are more than just “bookkeeping records.”

23. The allegations of Paragraph 23 purport to characterize a document that speaks for itself, and therefore require no response.

24. Defendant admits that it performed all of its obligations under the Contract. Defendant further states that the Contract speaks for itself.

25. Defendant admits the allegations of Paragraph 25, but states that its performance with respect to other plans is determined by the specific terms of the individual contracts it has as to each plan.

26. Defendant denies the allegations of Paragraph 26 as they relate to the defined term “Participant Accounts.” Defendant is unable to admit or deny the remaining allegations of Paragraph 26 regarding the undefined plural term “Separate Accounts” as Defendant is not aware which accounts are being referenced in addition to the one “Separate Account” defined in Paragraph 13.

27. Defendant admits that it buys shares of mutual funds in its own name for the Sub-accounts held within its separate accounts made available to the Plan, but otherwise denies the allegations in the first sentence of Paragraph 27. Defendant is unable to admit or deny the allegation in the second sentence of Paragraph 27 due to the vagueness of the sentence.

28. Defendant denies the allegations of Paragraph 28.

29. The allegations of Paragraph 29 present hypothetical facts, and therefore require no response. Defendant admits that “netting” occurs.

30. Defendant admits that it provides investment options in which sub-accounts invest in mutual funds that in turn invest in securities of foreign-domiciled companies. Defendant denies the remaining allegations of Paragraph 30.

31. The allegations of Paragraph 31 purport to assert legal conclusions to which no response is required.

32. The allegations of Paragraph 32 purport to assert legal conclusions and cite to statutory provisions that speak for themselves, and therefore require no response.

33. The allegations of Paragraph 33 purport to assert legal conclusions and cite to a statutory provision that speaks for itself, and therefore require no response. Defendant admits that some mutual funds elect to operate under 26 U.S.C. § 253.

34. Defendant cannot admit or deny the allegations of Paragraph 34 because “Plan Foreign Tax Credits” is defined as “Plan Assets allocated to the International Investment Options,” and no participant in the Plaintiffs’ Plan elected to allocate funds to sub-accounts that held any investments in the seven mutual funds identified in Paragraph 30 as the “International Investment Options.” To the extent a response is required, Defendant denies the allegations of Paragraph 34.

35. Defendant cannot admit or deny the allegations of Paragraph 35 because “Plan Foreign Tax Credits” is defined as “Plan Assets allocated to the International Investment Options,” and no participant in the Plaintiffs’ Plan elected to allocate funds to sub-accounts that held any investments in the seven mutual funds identified in Paragraph 30 as the “International Investment Options.” To the extent a response is required, Defendant denies the allegations of Paragraph 35.

36. Defendant cannot admit or deny the allegations of Paragraph 36 because “Plan Foreign Tax Credits” is defined as “Plan Assets allocated to the International Investment Options,” and no participant in the Plaintiffs’ Plan elected to allocate funds to sub-accounts that held any investments in the seven mutual funds identified in Paragraph 30 as the “International Investment Options.” To the extent a response is required, Defendant denies the allegations of Paragraph 36.

37. Defendant cannot admit or deny the allegations of Paragraph 37 because “Plan Foreign Tax Credits” is defined as “Plan Assets allocated to the International Investment Options,” and no participant in the Plaintiffs’ Plan elected to allocate funds to sub-accounts that held any investments in the seven mutual funds identified in Paragraph 30 as the “International Investment Options.”

38. The allegations of Paragraph 38 purport to characterize a document that speaks for itself, and no response is required. To the extent a response is required, Defendant denies that it breached its agreement with Plaintiffs.

39. The allegations of Paragraph 39 purport to assert legal conclusions and cite to a document that speaks for itself, and therefore require no response. To the extent a response is required, Defendant denies that it violated any statutory provision or regulation. Defendant admits that it supplied a summary disclosure for the Plan pursuant to U.S. Department of Labor regulations promulgated under ERISA § 408(b)(2) as of August 31, 2018. Further, Defendant cannot admit or deny the allegations of Paragraph 39 to the extent that they relate to “Plan Foreign Tax Credits,” which is defined as “Plan Assets allocated to the International Investment Options,” because no participant in the Plaintiffs’ Plan elected to allocate funds to sub-accounts that held any investments in the seven mutual funds identified in Paragraph 30 as the “International Investment Options.”

40. The allegations of Paragraph 40 purport to assert legal conclusions, and therefore require no response.

41. Defendant denies the allegations of Paragraph 41, except that it admits that the Plan has no additional rights to payment from Defendant other than the value of the Assets, net of any gains, losses, and charges, and that Defendant performed certain administrative tasks set forth in the Contract, which speaks for itself. Defendant further cannot admit or deny the allegations of Paragraph 41 that relate to the defined term “Plan Foreign Tax Credits,” because no participant in the Plaintiffs’ Plan elected to allocate funds to sub-accounts that held any investments in the seven mutual funds identified in Paragraph 30 as the “International

Investment Options.” Defendant specifically denies that it is an ERISA fiduciary with respect to the claims asserted against it.

42. Defendant cannot admit or deny the allegations of Paragraph 42 because “Plan Foreign Tax Credits” is defined as “Plan Assets allocated to the International Investment Options,” and no participant in the Plaintiffs’ Plan elected to allocate funds to sub-accounts that held any investments in the seven mutual funds identified in Paragraph 30 as the “International Investment Options.” To the extent a response is required, Defendant denies the allegations of Paragraph 42, and specifically denies that it is an ERISA fiduciary with respect to the claims asserted against it. Defendant further specifically denies that any foreign tax credits that Defendant became eligible to claim pursuant to applicable tax law constitute assets of separate accounts or the Plan.

43. The allegations of Paragraph 43 purport to assert legal conclusions, and therefore require no response.

44. The allegations of Paragraph 44 purport to assert legal conclusions, and therefore require no response.

45. The allegations of Paragraph 45 purport to assert legal conclusions, and therefore require no response.

CLASS ACTION ALLEGATIONS

46. The allegations of Paragraph 46 purport to assert legal conclusions, and therefore require no response. To the extent a response is required, Defendant admits that Plaintiffs seek to define their putative class as set forth in Paragraph 46, but denies that the purported class meets the requirements of Rule 23 of the Federal Rules of Civil Procedure, and denies that the purported class is well defined, and otherwise denies the allegations of Paragraph 46.

47. Defendant admits that Plaintiffs seek to define their putative class as set forth in Paragraph 47, but denies that the purported class meets the requirements of Rule 23 of the Federal Rules of Civil Procedure and denies that the purported class is well defined.

Numerosity

48. The allegations of Paragraph 48 purport to assert legal conclusions, and therefore require no response.

49. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 49.

Predominance of Common Issues

50. The allegations of Paragraph 50 purport to assert legal conclusions, and therefore require no response. To the extent a response is required, Defendant denies the allegations of Paragraph 50.

Typicality

51. The allegations of Paragraph 51 purport to assert legal conclusions, and therefore require no response. To the extent a response is required, Defendant denies the allegations of Paragraph 51.

Adequate Representation

52. The allegations of Paragraph 52 purport to assert legal conclusions, and therefore require no response. To the extent a response is required, Defendant denies the allegations in the first sentence of Paragraph 52, and states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 52.

53. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 53.

Superiority

54. The allegations of Paragraph 54 purport to assert legal conclusions, and therefore require no response. To the extent a response is required, Defendant denies the allegations of Paragraph 54.

55. The allegations of Paragraph 55 purport to assert legal conclusions, and therefore require no response. To the extent a response is required, Defendant denies the allegations of Paragraph 55.

56. To the extent the allegations of Paragraph 56 purport to assert legal conclusions, they require no response. Defendant otherwise denies the allegations of Paragraph 56.

57. To the extent the allegations of Paragraph 57 purport to assert legal conclusions, they require no response. Defendant otherwise denies the allegations of Paragraph 57.

58. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 58.

REALLEGATION AND INCORPORATION BY REFERENCE

59. Defendant repeats and incorporates each of its responses to the allegations in the foregoing paragraphs as if fully set forth herein.

CLAIMS FOR RELIEF

COUNT 1

Breach of Fiduciary Duty

60. Defendant denies the allegations of Paragraph 60.

61. Defendant cannot admit or deny the allegations of Paragraph 61 because “Plan Foreign Tax Credits” is defined as “Plan Assets allocated to the International Investment Options,” and no participant in the Plaintiffs’ Plan elected to allocate funds to sub-accounts that

held any investments in the seven mutual funds identified in Paragraph 30 as the “International Investment Options.” To the extent a response is required, Defendant denies the allegations of Paragraph 61.

62. Defendant cannot admit or deny the allegations of Paragraph 62 because “Plan Foreign Tax Credits” is defined as “Plan Assets allocated to the International Investment Options,” and no participant in the Plaintiffs’ Plan elected to allocate funds to sub-accounts that held any investments in the seven mutual funds identified in Paragraph 30 as the “International Investment Options.” To the extent a response is required, Defendant denies the allegations of Paragraph 62.

63. Defendant cannot admit or deny the allegations of Paragraph 63 because “Plan Foreign Tax Credits” is defined as “Plan Assets allocated to the International Investment Options,” and no participant in the Plaintiffs’ Plan elected to allocate funds to sub-accounts that held any investments in the seven mutual funds identified in Paragraph 30 as the “International Investment Options.” To the extent a response is required, Defendant denies the allegations of Paragraph 63, and specifically denies that it breached any duty.

64. Defendant cannot admit or deny the allegations of Paragraph 64 because “Plan Foreign Tax Credits” is defined as “Plan Assets allocated to the International Investment Options,” and no participant in the Plaintiffs’ Plan elected to allocate funds to sub-accounts that held any investments in the seven mutual funds identified in Paragraph 30 as the “International Investment Options.” To the extent a response is required, Defendant denies the allegations of Paragraph 64, and specifically denies that it breached any duty and that its conduct caused the Plan to suffer losses.

65. Defendant denies the allegations of Paragraph 65.

66. Defendant admits that Plaintiffs purport to seek the relief listed in Paragraph 66, but denies that Plaintiffs have any right to relief against Defendant.

COUNT 2

Prohibited Transactions

67. The allegations of Paragraph 67 purport to assert legal conclusions and cite to a statutory provision that speaks for itself, and therefore require no response.

68. Defendant cannot admit or deny the allegations of Paragraph 68 because “Plan Foreign Tax Credits” is defined as “Plan Assets allocated to the International Investment Options,” and no participant in the Plaintiffs’ Plan elected to allocate funds to sub-accounts that held any investments in the seven mutual funds identified in Paragraph 30 as the “International Investment Options.” To the extent a response is required, Defendant denies the allegations of Paragraph 68, and specifically denies that it breached any duty.

69. The allegations of Paragraph 69 purport to assert legal conclusions and cite to a statutory provision that speaks for itself, and therefore require no response.

70. Defendant cannot admit or deny the allegations of Paragraph 70 because “Foreign Tax Credits” is an undefined term. To the extent a response is required, Defendant denies that it violated any provision of ERISA.

71. Defendant cannot admit or deny the allegations of Paragraph 71 because “Foreign Tax Credits” is an undefined term. To the extent a response is required, Defendant denies that it violated any provision of ERISA.

72. Defendant denies the allegations of Paragraph 72.

73. Defendant admits that Plaintiffs purport to seek the relief listed in Paragraph 73, but denies that Plaintiffs have any right to relief against Defendant.

PRAYER FOR RELIEF

Plaintiffs' prayers for relief contain no factual assertions that require a response. To the extent a response is required, Defendant admits that Plaintiffs purport to seek the relief requested, but denies that Plaintiffs have any viable claim against Defendant or any right to relief against Defendant.

DEMAND FOR JURY TRIAL

Defendant denies that Plaintiffs are entitled to a jury trial.

Defenses

Defendant advances the following defenses to the Complaint. The defenses asserted below will apply, or will not apply, in varying degrees to members of the putative class including the Plaintiffs, depending upon the particular factual circumstances of each individual member of the putative class. By setting forth these defenses, Defendant does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to the Plaintiffs. Nothing stated herein is intended or shall be construed as an admission that any particular issue or subject matter is relevant to Plaintiffs' allegations. Defendant gives notice that it will rely on any additional defenses, set-offs or counterclaims that become apparent in the course of this action.

First Defense

Plaintiffs cannot recover against Defendant because Defendant owns the separate account assets which gave rise to foreign tax credits that Defendant became eligible to claim pursuant to applicable tax law; tax credits are not assets of those separate accounts; Plaintiffs have no right to such tax credits under the annuity contract; and such tax credits are not transferrable under applicable tax law.

Second Defense

Plaintiffs cannot recover against Defendant because Defendant is not a fiduciary of the Plan under ERISA for the conduct subject to the Complaint.

Third Defense

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

Fourth Defense

Plaintiffs' claims, and those of the putative class members, are barred in whole or in part by the applicable statute of limitations and repose, including but not limited to ERISA § 413, 29 U.S.C. § 1113, to the extent that Plaintiffs and/or the putative class members had knowledge of the relevant facts underlying their alleged claims more than three years prior to filing the Complaint and/or that the conduct giving rise to Plaintiffs' claim occurred more than six years prior to the filing of the Complaint.

Fifth Defense

Neither the Plaintiffs nor the putative class members have suffered any legally cognizable losses or damages.

Sixth Defense

The claims of Plaintiffs and the putative class members are barred or reduced because Plaintiffs have proximately caused, contributed to, and/or failed to mitigate any and all harm and/or loss claimed.

Seventh Defense

To the extent any action challenged in the Complaint otherwise could constitute a prohibited transaction under ERISA § 406, 29 U.S.C. § 1106, that action falls within the scope of

one or more exemptions to ERISA § 406, including but not limited to the exemptions provided in and/or authorized by ERISA § 408, 29 U.S.C. § 1108.

Eighth Defense

The claims of Plaintiffs and the putative class members are barred in whole or in part by the doctrine of laches, waiver, unclean hands and/or estoppel.

Ninth Defense

The claims of Plaintiffs and the putative class members are barred in whole or in part to the extent that Plaintiffs assert claims that are exclusively reserved to the Departments of Labor and/or the Treasury, the regulatory entities responsible for enforcing ERISA and the Internal Revenue Code.

Tenth Defense

The claims of Plaintiffs and the putative class members are barred in whole or in part for lack of ripeness.

Eleventh Defense

The claims of Plaintiffs and the putative class members are barred in whole or in part because of lack of standing.

Twelfth Defense

The claims of Plaintiffs and the putative class members are barred in whole or in part because Plaintiffs and the members of the putative class consented to and voluntarily assumed the risks associated with the actions at issue in this action.

Thirteenth Defense

The claims of Plaintiffs and the putative class members are barred in whole or in part because Defendant has acted in good faith at all times.

Dated this 3rd day of May, 2019.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2019, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on this Service List in the manner specified, via transmission of Notices of Electronic Filing generated by CM/ECF.

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