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

LORIN NIEWINSKI, JOHN BAKER MCCLANAHAN as Personal Representative of THE ESTATE OF MELISSA BUCHANAN, ROBERT A. BOZAICH, RONNIE JACKSON, and SHERIF B. BOTROS, Individually and on Behalf of All Others Similarly Situated,	)	
Plaintiffs,	)	Case No. 2:23-cv-04159-BP
vs.	)	
STATE FARM LIFE INSURANCE COMPANY and STATE FARM LIFE AND ACCIDENT ASSURANCE COMPANY,	)	
Defendants.	)	

UNOPPOSED[*] MOTION PURSUANT TO RULE 23(e) FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND MEMORANDUM IN SUPPORT

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[*] Defendants do not oppose the relief sought by this motion and agree that the Court should grant preliminary approval and allow notice to issue to the Settlement Class. By not opposing this relief, State Farm does not concede the factual basis for any claim and denies liability. The description of the proceedings, including prior proceedings and proceedings in the related cases, as well as legal, factual and expert arguments, is Plaintiffs', and State Farm may disagree with certain of those characterizations and descriptions. State Farm reserves the right to challenge Plaintiffs' characterizations and descriptions.

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I. INTRODUCTION

Plaintiffs Lorin Niewinski, John Baker McClanahan as personal representative of the Estate of Melissa Buchanan, Robert A. Bozaich, Ronnie Jackson, and Sherif B. Botros ("Representative Plaintiffs")[1] brought this Action against State Farm Life Insurance Company and the related entity State Farm Life and Accident Assurance Company (collectively, "State Farm") for the alleged breach of the terms of their standardized universal life insurance policies by deducting cost of insurance charges from policy owners' Cash Values in amounts greater than authorized by standardized life insurance policies sold by State Farm on Form 86040.[2]

Representative Plaintiffs allege State Farm breaches the Policies' express terms in at least five ways: (a) by using unauthorized and undisclosed factors to compute the monthly cost of insurance rates under the Policies; (b) by using expenses to compute the monthly cost of insurance rates that are in excess of the monthly expense charge permitted by the Policies; (c) by failing to reduce monthly cost of insurance rates when State Farm's expectations as to future mortality experience improved; (d) by failing to consider and use only its expectations of future mortality experience when State Farm adjusted its monthly cost of insurance rates; and (e) by failing to reduce monthly cost of insurance rates to the full extent of the mortality improvements experienced by State Farm when State Farm adjusted its monthly cost of insurance rates. *See* Compl. ¶¶ 117-126. This case consolidates two lawsuits pending against State Farm in other federal courts for

[1] Consistent with the Agreement, "Plaintiffs" refers to the Representative Plaintiffs and Gettys Bryant Millwood, the class representative for the certified class in *Millwood v. State Farm Life Ins. Co.*, No. 7:19-cv-01445-DCC (D.S.C.). Plaintiff Millwood supports the Settlement but is not named as a class representative in this lawsuit. *See* Decl. of Norman E. Siegel, ¶ 34 (hereinafter, "Siegel Decl."; attached as **Exhibit 2**).

[2] State Farm also sold universal life insurance on Forms A86040, 86075, and A86075, which are materially identical to Form 86040. *See* Siegel Decl., ¶ 27. These policies are collectively referred to herein as the "Policies." *See* Compl. ¶ 1 (ECF No. 1).

these alleged contractual breaches[3] and asserts claims on behalf of a nationwide class.

Now, after more than four years of intensive and contentious litigation in multiple District Courts, which included a dispositive ruling favoring State Farm in one action and a class certification ruling favoring Plaintiffs in the other action, Plaintiffs and State Farm (the "Parties") have agreed to a nationwide settlement (the "Settlement"). They have executed a binding Settlement Agreement ("Agreement"; attached as **Exhibit 1**), under which State Farm will pay $65,000,000 into a non-reversionary Settlement Fund that will be used to provide payments to members of the Settlement Class. *See* Siegel Decl., ¶ 28. As explained below, the Agreement is an excellent result for the Settlement Class and should ultimately be approved as fair, reasonable, and adequate.

Pursuant to Federal Rule of Civil Procedure 23(e)(1)(B), the first step in effectuating the terms of the Settlement is to issue Notice to the Settlement Class. Under Rule 23(e), directing notice to a settlement class is justified where the Court concludes it will likely be able to (1) approve the settlement as fair, reasonable, and adequate, and (2) certify the settlement class for purposes of judgment on the settlement. Notice to the Settlement Class should issue here because the terms of the Agreement are a fair, reasonable, and adequate settlement of the claims asserted in this litigation, and the proposed Settlement Class satisfies the requirements of Rule 23. The Agreement is the product of arm's length negotiations between the Parties and was reached only after extensive discovery, thorough vetting of the procedural and merits issues through a lengthy litigation process, and a full day mediation session with the assistance of a highly respected, neutral mediator. The pre-settlement risks Plaintiffs faced make the non-reversionary cash Settlement

[3] *Millwood v. State Farm Life Ins. Co.*, No. 7:19-cv-01445-DCC (D.S.C.) and *McClanahan v. State Farm Life Ins. Co.*, No. 22-cv-01031-STA (W.D. Tenn.).

Fund in the amount of $65,000,000 an outstanding recovery for the Settlement Class Members.

The Settlement Fund will be used to pay (1) all payments to Settlement Class Members; (2) fees and expenses incurred in providing Class Notice and administering the Settlement, including those fees and expenses incurred by the Settlement Administrator; (3) any Service Awards to Plaintiffs awarded by the Court; and (4) any attorneys' fees and reimbursement of expenses awarded by the Court. Importantly, Settlement Class Members are not required to submit a "claim" or otherwise perform any steps to receive their Settlement checks. Settlement checks will be issued upon final approval of the Settlement and resolution of any appeals. Finally, dissemination of Class Notice by first-class mail is appropriate and the Parties have engaged a third-party administrator, Epiq Class Action and Claims Solutions, Inc. ("Epiq"), with extensive experience in this area to administer the Settlement and Class Notice plan. *See* Declaration of Cameron R. Azari ("Azari Decl."), ¶¶ 4-10, 20-21 (attached as **Exhibit 4**).

Accordingly, pursuant to Rule 23(e), Representative Plaintiffs request that the Court preliminarily approve the Settlement and permit the issuance of Notice to the Settlement Class; appoint the undersigned Plaintiffs' counsel as Class Counsel under Rule 23(g)(3); approve the form and manner of Notice to the Settlement Class; appoint Epiq to administer the Class Notice plan and to fulfill the duties of the Settlement Administrator as outlined in the Agreement; and schedule a Fairness Hearing to determine whether the Settlement should be finally approved.[4]

[4] The Parties have notified the United States District Court for the District of South Carolina and the United States Court of Appeals for the Sixth Circuit that the Parties have reached a settlement.

II. SUMMARY OF THE LITIGATION

A. The Claims.

Plaintiffs each own at least one Policy. Compl. ¶¶ 20-24. The Policies are valid and enforceable contracts between each policy owner and State Farm. *Id.*, ¶ 28; *see also* Policy at 11 (ECF No. 1-1). The Policies' terms are not subject to individual negotiation and are the same for all policy owners. Compl. ¶ 30. The Policies cannot be altered by the agent's representations at the time of sale, or by any other discussions or writings, *id.*; and State Farm's obligations (like the policy owner's) cannot be obviated by informal consent, waiver, or some other act because "[o]nly an officer has the right to change this [P]olicy. No agent has the authority to change the [P]olicy or to waive any of its terms." *Id.*, ¶ 31; *see also* Policy at 11.

The Policies are "universal life" insurance products, which are sold as permanent life insurance providing both a death benefit and an investment feature that allows the owner to pay premiums into a policy account called the Cash Value. Compl. ¶ 32. The monthly calculation of the Cash Value is set forth in the Policies. *Id.*, ¶ 38. The Cash Value can grow over time with additional premium payments and applicable interest as identified in the Policies. *Id*. The Policies describe the formula for calculation of the Cash Value each month:

> The cash value on any deduction date after the policy date is the cash value on the prior deduction date:
>
> (1) plus 92½% of any premiums received since the prior deduction date,
>
> (2) less the deduction for the cost of insurance for any increase in Basic Amount and the monthly charges for any riders that became effective since the prior deduction date,
>
> (3) less any withdrawals since the prior deduction date,
>
> (4) ***less the current monthly deduction***,
>
> (5) plus any dividend paid and added to the cash value on the

current deduction date, and

(6) plus any interest accrued since the prior deduction date.

Id.; *see also* Policy at 9 (emphasis added).

The "Monthly Deduction" is comprised of two distinct component charges: the cost of insurance charge ("COI Charge") and the "monthly expense charge" equal to $4 a month ("Monthly Expense Charge").[5] Compl. ¶¶ 41- 43; *see also* Policy at 3, 9-10. If the Cash Value is not sufficient to cover the Monthly Deduction, then the life insurance terminates. Compl. ¶ 8; *see also* Policy at 3, 9. The Policies provide that the COI Charges are determined by multiplying the Monthly Cost of Insurance Rates ("COI Rates") by the Policies' net amount at risk, which is the amount by which the death benefit amount exceeds the Cash Value (*i.e.*, the amount of its own funds State Farm must pay if the insured dies). Compl. ¶ 43; *see also* Policy at 10. The Policies state that the COI "rates for each policy year are based on the Insured's age on the policy anniversary, sex, and applicable rate class," and that "[s]uch rates can be adjusted for projected changes in mortality but cannot exceed the maximum monthly cost of insurance rates." Compl. ¶ 44; *see also* Policy at 10.

Plaintiffs allege that State Farm breached the terms of these Policies in five ways.

First, Plaintiffs allege that the factors specified in the COI Rates provisions of the Policies are characteristics known to define an insured's mortality risk, and that the Policies do not authorize State Farm to consider additional factors beyond the identified mortality factors to determine policy owners' COI Rates. Compl. ¶¶ 47-51. Plaintiffs allege that despite lacking authorization in the Policies to do so, State Farm uses unlisted, non-mortality factors to load the

[5] If applicable, monthly charges for any riders make up a third component of the Monthly Deduction. Compl. ¶ 41; *see also* Policy at 10.

COI Rates to recover expenses and additional profits in repeated breach of the Policies' COI Rates provisions. *Id*. ¶¶ 53-56, 122, 130-131.

Second, Plaintiffs allege that the Monthly Deduction's Monthly Expense Charge prohibits State Farm from deducting more than $4 in expenses in each Monthly Deduction. *Id*. ¶¶ 42, 52. Plaintiffs allege that despite this limitation, State Farm deducts both the full Monthly Expense Charge disclosed by the Policies through each Monthly Deduction and additional undisclosed expenses through each Monthly Deduction's COI Charge in repeated breach of the Policies' Monthly Expense Charge provision. *Id*. ¶¶ 58-61, 122, 130-131.

Third, Plaintiffs allege that State Farm was required to lower COI Rates when its expectations as to future mortality experience improved. *Id*. ¶¶ 63-64. Plaintiffs allege that State Farm's mortality expectations improved, however, State Farm failed to lower its COI Rates in breach of the Policies' COI Rates provisions. *Id*. ¶¶ 65-77, 122, 130-131.

Fourth, Plaintiffs allege that State Farm failed to consider and use only its expectations of future mortality experience when State Farm adjusted its COI Rates. *Id*. ¶¶ 78-80, 122, 130-131.

Fifth, Plaintiffs allege that State Farm failed to reduce monthly COI Rates to the full extent of the mortality improvements experienced by State Farm when State Farm adjusted its COI Rates. *Id*. ¶¶ 122, 127-132.

Plaintiffs assert that each of these failures gives rise to four claims: breach of contract, breach of the covenant of good faith and fair dealing, conversion, and declaratory judgement. *Id*. ¶¶ 117-146.

B. History of the Litigation.

The Settlement follows extensive litigation, a short summary of which follows.

1. Rogowski

In April 2023, the court in *Rogowski v. State Farm Life Ins. Co.*, entered its Order of final approval and Final Judgment on a $325 million settlement on behalf of approximately 760,000 policy owners against State Farm. *See* 4:22-cv-00203-RK, Docs. 66, 67 (W.D. Mo. Apr. 18 and 21, 2023). The *Rogowski* litigation consolidated for nationwide settlement claims and cases involving policies issued on Form 94030 and related universal life insurance policies issued and administered by State Farm. Prior to the nationwide settlement, claims involving Form 94030 were litigated for over 6 years in 10 federal district courts, including the trial of a state-wide class of Missouri policyholders in *Vogt v. State Farm Life Ins. Co.*, No. 2:16-CV-04170-NKL (W.D. Mo.). The claims and policy language at issue in the instant case are substantially similar to those at issue in *Rogowski* in that Form 94030, the policy form on which the policies in *Rogowski* were principally issued, is a successor policy form to State Farm's Form 86040, the form principally at issue here. And, the extensive negotiations that culminated in the *Rogowski* settlement paved the way to the successful resolution of the claims in this case.

2. Millwood

On May 17, 2019, Plaintiff Millwood and Plaintiff McClanahan, as personal representative to the Estate of Melissa Buchanan, filed a Class Action Complaint against State Farm asserting claims under South Carolina and Tennessee law related to the Form 86040 Policy. Siegel Decl., ¶ 14. State Farm filed its Answer and Affirmative Defenses on July 19, 2019. *Id*. Plaintiff Millwood and Plaintiff McClanahan filed a motion for class certification on January 18, 2022. *Id*., ¶ 15. State Farm filed its opposition on February 25, 2022, and Plaintiff Millwood and Plaintiff McClanahan replied on March 23, 2022. *Id*., ¶ 17. The parties filed cross-motions for summary judgment and motions to exclude each other's experts on March 10, 2022 (State Farm) and May 4, 2022 (Plaintiffs). *Id*. The parties filed their response briefs on April 7, 2022 (Plaintiffs) and June 1, 2022

(State Farm). *Id*. Reply briefs were filed on April 28, 2022 (State Farm) and June 22, 2022 (Plaintiffs). *Id*.

On February 18, 2022, with the consent of the parties, the Court severed Plaintiff McClanahan's claims and transferred them to the United States District Court for the Western District of Tennessee. *Id*., ¶ 16. On September 23, 2022, the Court granted Plaintiff Millwood's motion for class certification and certified a litigation class of South Carolina owners of the Form 86040 Policy. *Id*., ¶ 19. State Farm sought interlocutory appeal of this class certification order with the United States Court of Appeals for the Fourth Circuit, pursuant to Federal Rule of Civil Procedure 23(f) on October 7, 2022. *Id*. The Fourth Circuit denied State Farm's petition on December 21, 2022. *Id*.

On April 19, 2023, the Court heard oral arguments on the parties' respective motions for summary judgment and to exclude the other's experts, and on April 20, 2023, the Court (a) denied Plaintiff Millwood's motions, (b) took State Farm's motions under advisement, and (c) requested supplemental briefing on State Farm's statute of limitations defense. *Id*., ¶ 22. On November 14, 2022, due to medical issues, Plaintiff Millwood filed a motion seeking to have his power-of-attorney appointed by the Court to act on his and the Class's behalf. *Id*., ¶ 20. State Farm filed its response to that motion on April 24, 2023, and Plaintiff Millwood filed his reply brief on May 1, 2023. *Id*. The Court heard oral arguments on that motion on June 6, 2023, and denied the motion that same day. *Id*.

On May 1, 2023, State Farm filed its supplemental brief concerning its statute of limitations defense. *Id*., ¶ 23. Plaintiff Millwood filed his response brief on May 16, 2023. *Id*. At the time the Settlement was reached, the Court had not yet ruled on State Farm's motions or the statute of limitations issue. *Id*.

3. McClanahan

Following the agreed severance of Plaintiff McClanahan's claims to the Western District of Tennessee (noted above), the parties submitted modified versions of their class certification and summary judgment briefing—to address Sixth Circuit, as opposed to Fourth Circuit law—to that Court. *Id*., ¶ 18. On February 7, 2023, that Court granted State Farm's motion for summary judgment on statute of limitations grounds. *Id*., ¶ 21. Plaintiff McClanahan filed a motion for reconsideration and a motion for certification of state law questions on March 7, 2023, which State Farm opposed on March 21, 2023. *Id*. The Court denied Plaintiffs' motions on May 22, 2023, and Plaintiff McClanahan filed his notice of appeal on June 20, 2023. *Id*. The Settlement was reached after Plaintiff McClanahan filed his notice of appeal. *See id*.; Agreement, pp. 32-33.

C. Settlement Negotiations

No meaningful negotiations took place prior to the mediation, which was overseen by the Honorable Layn Phillips, retired U.S. District Judge, who also oversaw the *Rogowski* negotiations and came to the process well versed in the contested issues. Siegel Decl., ¶ 25. During the June 23, 2023, session, the Parties were not successful in reaching agreement. *Id*. However, the Parties made significant progress during that session, such that, with the mediator's assistance, they were able to reach an agreement on the material terms of the Agreement shortly thereafter. *Id*.

Throughout the process, the settlement negotiations were conducted by highly qualified and experienced counsel on both sides at arm's length. *Id*., ¶ 26. Plaintiffs' counsel was well informed of the material facts and legal risks and the negotiations were hard-fought and non-collusive. *Id*. Having litigated the various legal and factual issues over more than four years, Plaintiffs' counsel was well-positioned to evaluate State Farm's positions and the risks facing the Settlement Class Members, advocated in the settlement negotiation process for a fair and reasonable Settlement that serves the best interests of the Settlement Class, and made fair and

reasonable settlement demands of State Farm. *Id*.

III. SUMMARY OF THE SETTLEMENT

The Agreement represents a compromise between Plaintiffs and the proposed Settlement Class and State Farm regarding the claims pled in the Complaint. If the Settlement is finally approved, State Farm will fund a non-reversionary cash Settlement Fund in the amount of $65,000,000. Siegel Decl., ¶ 28. Under the Agreement, Class Counsel will move for an attorneys' fee award to be paid from the Settlement Fund not to exceed one-third of the Settlement Fund and reimbursement of expenses from the Settlement Fund not to exceed $1,100,000. *Id*. Class Counsel will also move for Service Awards for the Plaintiffs to be paid from the Settlement Fund in an amount not to exceed $25,000 each. *Id*. The Settlement Fund will also cover the fees and expenses of the Settlement Administrator. *Id*.

There is no "claims process." Each Settlement Class Member will receive their share of the Net Settlement Fund pursuant to a distribution plan developed by Class Counsel and approved by the Court. *Id*., ¶ 31.[6] In exchange for these benefits, the Parties will seek the entry of judgment on the claims asserted in this case and Settlement Class Members agree to release all claims arising out of the facts asserted in this case. Agreement, ¶ 3 *et seq*.

The Agreement allocates the value of the Settlement Fund across the Settlement Class pursuant to an objective distribution plan. Siegel Decl., ¶¶ 29-30. Specifically, the plan of distribution is designed to provide each Settlement Class Member a minimum payment of $10,

[6] Although the Settlement is designed to distribute 100% of the Settlement Fund, where any Settlement Class Members do not cash their checks within 180 days of issuance, such checks will be cancelled, and the check amounts sent to the unclaimed property division of the state in which each such Settlement Class Member was last sent Notice, unless otherwise ordered by the Court. Agreement, ¶ 2.4. However, checks shall be re-issued by the Settlement Administrator if requests to do so are received from Settlement Class Members prior to the date when the transfer to the unclaimed property divisions has occurred. *Id*.

plus an approximate *pro rata* portion of the Net Settlement Fund according to the amount of Monthly Deductions for COI Charges and Monthly Expense Charges paid by each Settlement Class Member, with equitable adjustments for current policy owners. Decl. of Scott Witt, ¶¶ 16-17 (attached as **Exhibit 3**).

The Agreement permits any Settlement Class Member to file an objection to the Settlement terms or opt-out of the Settlement Class within thirty-five (35) days after the date the Notice is mailed. Agreement, ¶¶ 5.1, 5.4.

IV. THE SETTLEMENT CLASS

The proposed Settlement Class includes the persons or entities who own or owned one or more of approximately 450,000 Policies issued or administered by State Farm or its predecessors in interest on Forms 86040, A86040, 86075, or A86075. Siegel Decl., ¶ 27. The Settlement Class is made up of the Owners of the Policies.[7] Agreement, ¶¶ 1.27, 1.37.

V. ISSUING NOTICE TO THE SETTLEMENT CLASS IS JUSTIFIED.

A. Standard for Issuance of Notice.

Class action settlements must be approved by the Court. *See* Fed. R. Civ. P. 23(e). The first step in the approval process is the Court's evaluation of whether directing notice of the proposed settlement to the settlement class is justified. Notice should issue if the parties have demonstrated to the court that it will likely be able to: (i) approve the proposed settlement under Rule 23(e)(2) as fair, reasonable, and adequate; and (ii) certify the class for purposes of judgment on the proposed settlement. *See* Fed. R. Civ. P. 23(e)(1)-(2).

[7] The Settlement Class excludes State Farm; any entity in which State Farm has a controlling interest; any of the officers or members of the board of directors of State Farm; the legal representatives, heirs, successors, and assigns of State Farm; anyone employed with Plaintiffs' counsel's firms; and any Judge to whom this case, or the *Millwood* or *McClanahan* actions, has been assigned, and his or her immediate family. *Id*., ¶ 1.37.

In determining whether a proposed settlement should be approved as fair, reasonable, and adequate, courts in the Eighth Circuit consider the factors set forth in the 2018 amendment to Federal Rule of Civil Procedure 23(e)(2) as well as those commonly known as the "*Van Horn* factors" from the Eighth Circuit opinion, *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988). *See Holt v. Community Am. Credit Union*, No. 4:19-CV-00629-FJG, 2020 WL 12604383, at *2 (W.D. Mo. Sept. 4, 2020) (citing *Van Horn*, 840 F.2d at 607; *Swinton v. SquareTrade, Inc.*, No. 4:18-CV-00144-SMR-SBJ, 2020 WL 1862470, at *5 (S.D. Iowa Apr. 14, 2020) (holding that it is "appropriate for the Court to consider the Rule 23(e)(2) factors along with the *Van Horn* Factors."); *In re Pre-Filled Propane Tank Antitrust Litig.*, No. 14-02567-MD-W-GAF, 2019 WL 7160380, at *1 (W.D. Mo. Nov. 18, 2019)).[8]

The factors identified in Federal Rule of Civil Procedure 23(e)(2) are whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

[8] *See also* Fed. R. Civ. P. 23(e)(2) Committee Notes to 2018 amendments ("The goal of this amendment [to Rule 23(e)(2)] is not to displace any [circuit case-law] factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.").

And the four *Van Horn* factors are as follows: (1) the merits of the plaintiffs' case weighed against the terms of the settlement; (2) the defendants' financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement. *Van Horn*, 840 F.2d at 607.

Importantly, "[n]o one factor is determinative, but the 'most important factor in determining whether a settlement is fair, reasonable, and adequate is a balancing of the strength of the plaintiff's case against the terms of the settlement.'" *Holt*, 2020 WL 12604383, at *2 (quoting *Van Horn*, 840 F.2d at 607).

B. The Proposed Settlement Is Fair, Reasonable, and Adequate Pursuant to the Factors Identified in Rule 23(e) and *Van Horn*.

As demonstrated below, the proposed Settlement is fair, reasonable, and adequate under Rule 23(e) and the *Van Horn* factors. As such, the Court should conclude it will likely be able to approve the Settlement, and therefore, that issuing Notice to the Settlement Class is justified.

1. The Plaintiffs and Class Counsel Have Provided Excellent Representation to the Class.

The adequacy of representation factor supports finding that the Settlement is fair, reasonable, and adequate and thus that Notice to the Settlement Class should issue. *See* Fed. R. Civ. P. 23(e)(2)(A).

First, the Representative Plaintiffs have shown their dedication to representing the Settlement Class. Each Representative Plaintiff has provided information and documents, and Plaintiff McClanahan has been deposed, in connection with this litigation. Siegel Decl., ¶ 35. Each Representative Plaintiff has worked with counsel to advance the litigation on behalf of themselves and all members of the proposed Settlement Class and each supports the Settlement and advocates

for its approval. *Id.*[9]

Second, the undersigned counsel are competent, experienced and qualified with expertise in class actions and cost of insurance cases on this and other life insurance policies and have vigorously prosecuted the claims asserted in this case. *Id.*, ¶¶ 9-12. Plaintiffs' counsel have been appointed as class counsel in dozens of class actions throughout the country, including several cases against State Farm,[10] and have significant experience handling complex disputes, including lawsuits involving other life insurance contracts. *Id.*, Exs. A-E (attached thereto).

For example, in June 2018, Stueve Siegel and Miller Schirger successfully tried the *Vogt v. State Farm Life Insurance Co.* case, securing a jury verdict of $34,333,495.81 for Missouri Form 94030 State Farm policy owners, which was affirmed on appeal. *See Vogt v. State Farm Life Ins. Co.*, No. 2:16-cv-04170-NKL, Doc. 358 & 360 (W.D. Mo. June 6, 2018), *aff'd*, 963 F.3d 753 (8th Cir. 2020), *cert. denied*, 141 S. Ct. 2551 (Apr. 19, 2021). Following *Vogt*, undersigned counsel recently settled the Form 94030 litigation on a nationwide basis for $325,000,000. *See Rogowski v. State Farm Life Ins. Co.*, 4:22-cv-00203-RK, Doc. 67 (W.D. Mo. Apr. 21, 2023). In December 2022, Stueve Siegel and Miller Schirger successfully tried to a jury verdict a similar case against Kansas City Life Insurance Company resulting in a jury verdict of $28,362,830.96 for Missouri

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[9] Plaintiff Millwood has also provided information and documents, has been deposed in connection with this litigation, has worked with counsel to advance the litigation, and supports the Settlement. Siegel Decl., ¶ 35.

[10] *See Millwood v. State Farm Life Ins. Co.*, No. 7:19-CV-01445-DCC, 2022 WL 4396199 (D.S.C. Sept. 23, 2022); *Vogt v. State Farm Life Ins. Co.*, No. 2:16-CV-04170-NKL, 2018 WL 1955425 (W.D. Mo. Apr. 24, 2018), *aff'd*, 963 F.3d 753 (8th Cir. 2020); *Bally v. State Farm Life Ins. Co.*, 335 F.R.D. 288 (N.D. Cal. 2020); *Whitman v. State Farm Life Ins. Co.*, No. 3:19-cv-6025-BJR, 2021 WL 4264271 (W.D. Wash. Sept. 20, 2021); *Jaunich v. State Farm Life Ins. Co.*, 569 F. Supp. 3d 912 (D. Minn. 2021); *Page v. State Farm Life Ins. Co.*, 584 F. Supp. 3d 200 (W.D. Tex. 2022); *McClure v. State Farm Life Ins. Co.*, 341 F.R.D. 242 (D. Ariz. Apr. 29, 2022); *Toms v. State Farm Life Ins. Co.*, No. 8:21-CV-0736-KKM-JSS, 2022 WL 5238841 (M.D. Fla. Sept. 26, 2022).

policy owners. *Karr v. Kansas City Life Ins. Co.*, No. 1916-CV26645 (Mo. Cir. Ct. May 10, 2023). In 2021, Stueve Siegel and Miller Schirger settled a similar case against USAA Life Insurance Company, obtaining $90 million for a class of universal life insurance policy owners. *Spegele v. USAA Life Ins. Co.*, No. 5:17-CV-967-OLG, 2021 WL 4935978, at *3 (W.D. Tex. Aug. 26, 2021). And in 2018, Stueve Siegel and Miller Schirger settled a similar case against John Hancock Life Insurance Company, obtaining $59.75 million for a class of life insurance policy owners. *See Larson v. John Hancock Life Ins. Co.*, No. RG16813803 (Alameda Cty., Cal.). In 2016, Stueve Siegel and Miller Schirger settled another similar case against Lincoln National Life Insurance Company, obtaining $2.25 billion of guaranteed term life insurance with a market value of approximately $171.8 million for a class of universal life policy owners. *See Lincoln Nat'l Life Ins. Co. v. Bezich*, No. 02C01-0906-PL-73 (Allen Cty., Ind.).

As to Hausfeld, The Van Winkle Firm, and Kaliel Gold, in *Millwood*, the court appointed these firms as class counsel finding the firms "qualified" due to their "extensive experience prosecuting class actions and cost of insurance cases." *See Millwood*, 2022 WL 4396199, at *7. For instance, in *In re Blue Cross Blue Shield Antitrust Litigation* (M.D. Ala.), Hausfeld and its co-counsel, including the Van Winkle Firm, reached a settlement providing for $2.67 billion in monetary relief, as well as substantial, injunctive relief for the class they represented. *Id*., Ex. C at 3. And in *Hale v. State Farm Mutual Automobile Insurance Co.* (S.D. Ill.), Hausfeld and its co-counsel reached a $250 million settlement with State Farm shortly before opening statements at trial. *Id*. Kaliel Gold and Van Winkle have similarly extensive experience, having been appointed as lead counsel or co-lead counsel in numerous consumer class actions in state and federal courts across the United States. *Id*., Ex. D at 1; Ex. E at 1.

Counsel's depth of knowledge and experience gained through the litigation here and cases

challenging cost of insurance provisions in other similar life insurance policies allowed them to accurately evaluate and weigh the risks of continued litigation to reach a fair settlement of the claims asserted in this litigation, which Plaintiffs' counsel believe to be in the best interests of Plaintiffs and the Settlement Class. Siegel Decl., ¶ 34.

This factor thus supports finding that the Settlement is fair, reasonable, and adequate, that it will likely be approved, and therefore justifies issuing Notice of the Settlement to the Settlement Class. *See DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995) (stating class counsel's "experience in this type of litigation" supports providing deference to their views as to the fairness of the settlement).

2. The Settlement Is the Product of Arm's Length Negotiations.

The extent and scope of litigation confirms that the Settlement is the product of arm's length negotiations. *See* Fed. R. Civ. P. 23(e)(2)(B).

As set forth above, the proposed Settlement is the product of significant negotiation by experienced counsel on both sides with the assistance of an experienced, well-respected neutral mediator, culminating in the execution of the Agreement. *See* Part II-C, *supra*; Siegel Decl., ¶ 25. The arm's length nature of the negotiations amongst experienced counsel supports a finding that the Settlement is fair, reasonable, and adequate and will likely be approved such that issuing Notice to the Settlement Class is justified. *See Vill. Bank v. Caribou Coffee Co., Inc.*, No. 19-CV-1640 (JNE/HB), 2020 WL 13558808, at *2 (D. Minn. July 24, 2020) (finding that "[t]he assistance of a retired United States Magistrate Judge as a mediator in the settlement process supports the conclusion that the Settlement was non-collusive and fairly negotiated at arm's length"); *Kelly v. Phiten USA, Inc.*, 277 F.R.D. 564, 570 (S.D. Iowa 2011) (finding the proposed settlement's fairness was supported by the fact that it was reached "after significant investigation and extensive

arm's-length negotiations").[11] Accordingly, this factor supports issuing Notice of the Settlement to the Settlement Class.

3. The Relief Provided by the Settlement Is Excellent.

The Settlement's substantial monetary relief supports finding that the Settlement is fair, reasonable, and adequate and thus that Notice to the Settlement Class should issue. *See* Fed. R. Civ. P. 23(e)(2)(C)(i).[12]

a. The duration, costs, risks, and delay of trial and appeal support approval of the Settlement.

The $65,000,000 cash settlement is an excellent result for the Settlement Class. The size of the fund represents a material recovery for members of the Settlement Class, especially considering the fact that State Farm's experts presented attacks on Plaintiffs' damages computation that, if credited (either through a *Daubert* motion or by the jury) could have resulted in Plaintiffs and the Class recovering little to no damages, even if State Farm was found liable. Siegel Decl., ¶ 33.

The result is even more impressive in light of the duration, costs, risks, and delay of trial and appeal, which supports a finding that the Court will likely be able to approve the Settlement, and thus, that Notice should issue to the Settlement Class. Specifically, in the absence of the Settlement, the Settlement Class Members face significant risks, costs, and delay in reaching a litigated judgment in their favor. *Id.*, ¶¶ 32-33. As set forth above, the only court reaching the merits dismissed the lawsuit on statute of limitations grounds and none have interpreted the

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[11] *See also* Cmt. to December 2018 Amendment to Fed. R. Civ. P. 23(e) ("[T]he involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests.").

[12] Plaintiffs also address herein *Van Horn* factors 1 and 3: "[T]he merits of the plaintiffs' case weighed against the terms of the settlement," and "the complexity and expense of further litigation." *Van Horn*, 840 F.2d at 607.

relevant policy language. *See* Part II-B, *supra*. As such, it is unknown if, going forward, courts would have coalesced around a reading in favor of the policy owners or State Farm, or even whether they would have coalesced at all. Consequently, there remains a significant risk that the class could recover nothing through further litigation.

Further, State Farm has consistently and forcefully argued that Plaintiffs' expert's damages calculations are unreliable and cannot be used to prove damages class-wide. No court has ruled on State Farm's challenges to the admissibility of Plaintiffs' expert's opinions nor have they been tested at trial. If Plaintiffs' expert's opinions were excluded by the court or not credited by the jury, Plaintiffs could face a substantially reduced award of damages, or a finding of no damages even if they were to prevail on liability. In addition, State Farm has disclosed four experts in these cases, including experts on consumer behavior, actuarial science and pricing, and insurance regulation. None of these experts have been tested at trial; and, to date, none of the courts presiding over these cases have excluded the testimony of any State Farm experts. Siegel Decl., ¶ 32. If these opinions were ultimately credited by the jury, the result would have been either a substantial reduction in the damages calculated by Plaintiffs' expert or a finding of no damages. *Id*. Thus, even if Plaintiffs had prevailed on liability, they faced significant risk at trial of a zero-dollar or damages award by a jury of a significantly reduced amount. *Id*.

Moreover, State Farm contends significant factual differences exist between the Policies at issue here and the State Farm Form 94030 policies at issue in *Rogowski*. For example, State Farm claims that it had no obligation to lower COI Rates at all under the Policies, but it lowered COI Rates for the Policies four times in 1987, 1990, 2002, and 2008 (compared to only once for the Form 94030 policies), and as a result, policyholders should be found to be differently situated in terms of the COI Rates charged and how the rate reductions impacted them, if at all. *Id.*

Additionally, State Farm alleges it developed COI Rates differently for the Policies compared to the Form 94030 policies, and that the COI Rates for the Policies are approximately 3% lower than the Form 94030 policies, and thus, are much closer to State Farm's mortality-only rates and argues this means a sizable number of policyholders may not have suffered any damages. *Id.* In short, State Farm has potential defenses in this litigation that were not available to it in the Form 94030 litigation settled through *Rogowski*.

Finally, State Farm—which has retained several lawyers from multiple respected and resourced law firms—has demonstrated it will not shy away from litigation. Indeed, in *Vogt*, even though the class prevailed at trial in June 2018, they were not paid until 2022. *Id.*, ¶ 33. Thus, even if Plaintiffs were to prevail on all issues in their respective cases, an uncertain proposition that itself would take considerable time for the reasons explained above, they would likely not obtain their due recovery for years. *Id.*

This delay further supports a finding that the Settlement, which provides certain recovery in the near-term in an amount representing a material amount of money for Settlement Class Members—especially considering State Farm's defenses, including a statute of limitations defense that had already been credited by one court, and attacks on Plaintiffs' expert's damages computations—is a fair, reasonable, and adequate result, and should therefore ultimately be approved. *See, e.g.*, *Kelly*, 277 F.R.D. at 570 (finding the "significant risks" the settlement class members faced in adjudicating their claims; the uncertain "possibility of a large monetary recovery through future litigation" which "would occur only after considerable additional delay;" the "long and costly" litigation ahead where the defendant "has capable counsel at its disposal and intended to challenge nearly every aspect of Settlement Class Members' case;" and because even if the settlement class members were "to receive a favorable trial verdict, they still would have faced

costly and lengthy appeals, delaying the receipt of benefits," all supported approving the settlement).[13] Therefore, "[w]eighing the uncertainty of relief against the immediate benefit provided in the settlement" supports approval here. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 933 (8th Cir. 2005).

For these reasons, even if the Settlement Class Members were to prevail on their interpretation of the Policies' language, thereby establishing State Farm's liability for breach, there is significant uncertainty as to the damages that would be recovered at trial. Proving the Plaintiffs' claims through trial would thus be a lengthy, costly, and uncertain process. *See Keil*, 862 F.3d at 698 ("Class actions, in general, place an enormous burden of costs and expense upon parties. Here, the application of numerous states' laws made this a particularly complex case.") (quotations omitted); *In re Zurn Pex Plumbing Prods. Liab. Litig.*, No. 08–MDL–1958 ADM/AJB, 2013 WL 716088, at *7 (D. Minn. Feb. 27, 2013) (recognizing that "[t]he complexity and expense of class action litigation is well-recognized" and that "various procedural and substantive defenses . . ., the expense of proving class members' claims, the certainty that resolution under [a] settlement will foreclose any subsequent appeals, and the fear that, unsettled, the ultimate resolution of the action . . . could well extend into the distant future, all weigh in favor of the settlement's approval."). In contrast, a settlement that provides an immediate monetary recovery is an excellent result.

Thus, "[t]he single most important factor" in evaluating the Settlement—"the merits of the plaintiffs' case weighed against the terms of the settlement," *Van Horn*, 840 F.2d at 607, as well

[13] *See also Keil v. Lopez*, 862 F.3d 685, 696 (8th Cir. 2017) ("As courts routinely recognize, 'a settlement is a product of compromise and the fact that a settlement provides only a portion of the potential recovery does not make such settlement unfair, unreasonable or inadequate.'") (quoting *In re BankAmerica Corp. Sec. Litig.*, 210 F.R.D. 694, 708 (E.D. Mo. 2002); *Marshall v. Nat'l Football League*, 787 F.3d 502, 515 (8th Cir. 2015) ("We have repeatedly rejected arguments that compromise was unnecessary because the party would have prevailed at trial.") (quotations omitted).

as the "the complexity and expense of further litigation," *id.*, and "the duration, costs, risks, and delay of trial and appeal," Fed. R. Civ. P. 23(e)(2)(C)(i), support approval of the Settlement. Therefore, the Court should conclude that issuing Notice to the Settlement Class is justified.

b. The effectiveness of the proposed method of distributing relief to the Settlement Class supports approval of the Settlement.

Subject to Court approval, the Net Settlement Fund will be distributed pursuant to a proposed distribution formula that will provide each Settlement Class Member a minimum payment of $10, plus an approximate *pro rata* portion of the fund according to the amount of Monthly Deductions for COI Charges and Monthly Expense Charges paid by the Settlement Class Member, with an upward adjustment for current owners. Siegel Decl., ¶ 30. Settlement checks will be delivered to each Settlement Class Member without the submission of a claim. Agreement, ¶ 2.3.

That each Settlement Class Member is receiving an equitable portion of the Settlement Fund according to the proportional amount of Monthly Deductions for COI Charges and Monthly Expense Charges paid (and, therefore, an amount proportional to the alleged loss suffered) without needing to submit a claim supports approval of the Settlement. *See, e.g.*, *In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d 1330, 1351 (S.D. Fla. 2011) ("The absence of a claims-made process further supports the conclusion that the Settlement is reasonable."); 4 Newberg and Rubenstein on Class Actions § 13:53 (6th ed.) (stating a class settlement distribution method should be "in as simple and expedient a manner as possible"). Given the simplified process for paying each Settlement Class Member and the fact that no funds will revert to State Farm, this factor weighs in favor of approval.

c. The terms for the award of attorneys' fees, including the timing of payment, support approval of the Settlement.

Class Counsel will seek their fee as a percentage of the $65,000,000 Settlement Fund

created for the Settlement Class. Agreement, ¶ 8.1. Class Counsel will file their fee motion at least 21 days before the deadline for Settlement Class Members to file objections or to exclude themselves from the Settlement.

The Agreement's provision for an attorneys' fee award paid from the Settlement Fund is fair and reasonable under the common fund doctrine. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."); *Barfield v. Sho-Me Power Elec. Co-op.*, No. 11-CV-4321-NKL, 2015 WL 3460346, at *3 (W.D. Mo. June 1, 2015) (noting that under the "common fund" doctrine, Class Counsel is entitled to an award of reasonable attorneys' fees "'equal to some fraction of the common fund that the attorneys were successful in gathering during the course of the litigation.'") (quoting *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 244-45 (8th Cir. 1996)).[14]

In addition, the Agreement's provision for an award of up to one-third of the Settlement Fund is reasonable. District courts in the Eighth Circuit frequently assess the reasonableness of an attorney fee award paid from a common fund by the percentage sought and frequently approve awards of one-third as reasonable, particularly under facts like those here, involving extensive litigation undertaken with significant contingent risk. *See, e.g., West v. PSS World Med., Inc.*, No. 4:13 CV 574 CDP, 2014 WL 1648741, at *1 (E.D. Mo. April 24, 2014) ("[W]here attorney fees and class members' benefits are distributed from one fund, a percentage-of-the-benefit method may be preferable to the lodestar method for determining reasonable fees") (citations omitted).[15]

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[14] *See also* Fed. R. Civ. P. 23(h) (permitting the court to award "reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement").

[15] *See also, e.g., Rogowski*, Doc. 67 (awarding one-third of $325,000,000 settlement fund); *Vogt v. State Farm Life Ins. Co.*, No. 2:16-CV-04170-NKL, 2021 WL 247958, at *3 (W.D. Mo.

Accordingly, the Agreement's provision for an award of up to one-third of the Settlement Fund is within the range generally deemed reasonable.

Class Counsel will provide a thorough analysis of the reasonableness of their forthcoming

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Jan. 25, 2021) (awarding one-third of approximately $40 million common fund); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (36% fee award reasonable); *Barfield*, 2015 WL 3460346, at *4 (one-third fee and expense award of $6,500,000 is a reasonable); *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1110 (D. Kan. 2018) (one-third of $1.51 billion common fund was reasonable); *In re: Urethane Antitrust Litig.*, No. 04-1616-JWL, 2016 WL 4060156, at *5 (D. Kan. July 29, 2016) (a "one-third fee is customary in contingent-fee cases" and awarding one third of $835 million common fund); *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079, at *16 (S.D. Ill. Dec. 16, 2018) (awarding one-third of $250 million common fund); *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.*, No. 17-MD-2785-DDC-TJJ, 2022 WL 2663873, at *4 (D. Kan. July 11, 2022) (awarding "one-third of the $264 million" common fund); *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.*, No. 17-MD-2785-DDC-TJJ, 2021 WL 5369798, at *3 (D. Kan. Nov. 17, 2021), judgment entered, No. 17-MD-2785-DDC-TJJ, 2021 WL 5369815 (D. Kan. Nov. 17, 2021) (awarding "one-third of the $345 million" fund); *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1061-62, 1067 (D. Minn. 2010)) (awarding one-third of $16 million settlement fund, plus separate reimbursement from the fund of $245,000 in expenses); *Carlson v. C.H. Robinson Worldwide, Inc.*, No. 02-3780, 2006 WL 2671105, at *8 (D. Minn. Sept. 18, 2006) (35.5% fee award reasonable); *In re E.W. Blanch Holdings, Inc. Sec. Litig.*, No. 01-258, 2003 WL 23335319, at *3 (D. Minn. June 16, 2003) (awarding 33.3% of a $20 million settlement); *KK Motors v. Brunswick Corp.*, No. 98-2307, Doc. 67, pp. 2-3 (D. Minn. March 6, 2000) (awarding one-third of a $30 million settlement); *In re Airline Ticket Commission Antitrust Litig.*, 953 F. Supp. 280, 285-86 (D. Minn. 1997) (awarding 33.3% of $86.9 million fund); *In re Iowa Ready-Mix Concrete Antitrust Litig.*, No. C 10-4038-MWB, 2011 WL 5547159, at *3-4 (N.D. Iowa Nov. 9, 2011) (awarding attorneys 36.04% of $18.5 million common fund in fees, plus separate reimbursement from settlement fund of over $900,000 in expenses); *West*, 2014 WL 1648741, at *1 (33%); *Wiles v. Sw. Bill Tel. Co.*, No. 09-4236-CV-C-NKL, 2011 WL 2416291, at *5 (W.D. Mo. June 9, 2011) (awarding attorneys one-third of $900,000 common fund); *Ray v. Lundstrom*, No. 8:10CV199, 2012 WL 5458425, at *4-5 (D. Neb. Nov. 8, 2012) (awarding one-third of $3.1 million fund in fees, plus separate reimbursement from the settlement fund of $77,900 in expenses); *Brehm v. Engle*, No. 8:07CV254, 2011 U.S. Dist. LEXIS 35127, at *6 (D. Neb. Mar. 30, 2011) (awarding one-third of $340,000 settlement fund in fees, plus separate reimbursement from the fund of $45,000 in expenses); *Kelly v. Phiten USA, Inc.*, 277 F.R.D. 564, 571 (S.D. Iowa 2011) (awarding 33% of the settlement award in fees); *see also In re Xcel*, 364 F. Supp. 2d 980, 996 (D. Minn. 2005) (listing various settlements, including *In re Select Comfort Corp. Secs. Litig.*, No. 99-884, 2003 U.S. Dist. LEXIS 26409 (D. Minn. Feb. 28, 2003) (awarding 33.3% of the $5,750,000 settlement), and *In re Control Data Sec. Litig.*, No. 85-1341 (D. Minn. Sept. 23, 1994) (awarding 36.96% of $8 million fund)); *Tussey v. ABB, Inc.*, No. 06-CV-04305-NKL, 2019 WL 3859763, at *4 (W.D. Mo. Aug. 16, 2019) (awarding 1/3 of $55 million fund).

attorneys' fee and expense award request in their fee motion. But importantly, the Parties' Agreement is not conditioned upon the Court's approval of the fee award. Agreement, ¶ 8.5. Accordingly, at this stage, the Court can and should conclude that it is likely to approve the Settlement for purposes of sending Notice to the Settlement Class, without regard to the issue of attorneys' fees and expenses.[16]

d. There is no agreement required to be identified under Rule 23(e)(3).

Under Rule 23(e)(3), "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal." There is no agreement between the Parties here, except those set forth or explicitly referenced in the Settlement Agreement. Agreement, ¶ 11.19. Accordingly, this factor is not relevant to whether the Settlement is likely to be approved.

4. The Settlement Treats Class Members Equitably Relative to Each Other, Supporting Approval of the Settlement.

The fact that the Settlement treats class members equitably relative to one another supports finding that the Settlement is fair, reasonable, and adequate and thus that Notice to the Settlement Class should issue. *See* Fed. R. Civ. P. 23(e)(2)(D). Specifically, and as set forth above, the Settlement's proposed distribution formula determines each Settlement Class Member's recovery under the Settlement according to the actual deductions each paid under their Policy for COI and Monthly Expense Charges. *See* Part III, *supra*. There is an upward adjustment proposed for current policy owners to reflect that they are still paying COI Charges. *Id*. This factor thus supports preliminary approval of the Settlement.

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[16] Similarly, Class Counsel will request a Service Award of up to $25,000 for each Plaintiff in their forthcoming motion. Agreement, ¶ 8.3. Service awards of this size have been found reasonable. *See, e.g.*, *Tussey v. ABB, Inc.*, 850 F.3d 951, 961-62 (8th Cir. 2017) (approving $25,000 service awards); *see also Rogowski*, Doc. 67 (awarding $25,000 service awards). In addition, the Parties' Agreement is not conditioned on the Court's approval of this request. *Id.*, ¶ 8.5.

5. State Farm's Financial Condition.

State Farm's financial condition is another factor to consider. *See Van Horn*, 840 F.2d at 607 (factor 2). State Farm has shown both its willingness and financial ability to litigate this case to the greatest extent possible and use every procedural and legal challenge available to it, and also is able to comply with its financial obligations under the Settlement. Plaintiffs thus submit that this factor is neutral. *See Marshall*, 787 F.3d at 512 (finding this factor neutral where defendant was "in good financial standing, which would permit it to adequately pay for its settlement obligations or continue with a spirited defense in the litigation"); *Keil*, 862 F.3d at 697-98 (affirming finding that the defendant's financial condition factor was neutral where "[t]here is no evidence in the record calling [defendant's] financial condition into question," and the defendant had already funded the settlement).

6. The Amount of Opposition to the Settlement Supports Approval.

The extent of opposition from Settlement Class members is also relevant. *See Van Horn*, 840 F.2d at 607 (factor 4). As explained above, Representative Plaintiffs and Class Counsel believe the Settlement is an excellent result for the Settlement Class, especially given the risks and delay of continued litigation, as detailed above. Siegel Decl., ¶ 32. Specifically, Class Counsel's experience litigating the cases in this litigation and similar ones has provided them a thorough understanding of the risks and potential ranges of recovery in this case, which has allowed Class Counsel to fairly consider the merits of the claims here and the value of the Settlement to the Settlement Class. *Id.*, ¶¶ 28-33. In addition, Representative Plaintiffs also support and approve the Settlement, believing it to be in the best interests of the Settlement Class. *Id.*, ¶ 34.

While the Settlement Class Members have not yet had the opportunity to provide their views on the proposed Settlement, Class Counsel believe it will be well received, and any objections thereto will be provided to the Court and addressed in advance of the Fairness Hearing.

Accordingly, this factor supports issuing Notice of the Settlement to the Settlement Class. *See Claxton v. Kum & Go, L.C.*, No. 6:14-CV-03385-MDH, 2015 WL 3648776, at *6 (W.D. Mo. June 11, 2015) (recognizing that when evaluating a settlement, the court should accord "deference to the attorneys in assessing their clients' claims/defenses"); *DeBoer*, 64 F.3d at 1178 (stating class counsel's "experience in this type of litigation" supports providing deference to their views as to the fairness of the settlement).

* * *

Accordingly, the Rule 23(e) and Eighth Circuit *Van Horn* factors support a finding that the Court will likely be able to approve the Settlement, and that therefore, Notice of the Settlement should issue to the Settlement Class.

VI. THE SETTLEMENT CLASS MEETS THE REQUIREMENTS FOR CERTIFICATION FOR PURPOSES OF SETTLEMENT.

The second requirement in Rule 23(e)(1) for issuance of notice to the class is a finding that the Court will "likely be able to . . . certify the class for purposes of judgment" on the proposed settlement. Fed. R. Civ. P. 23(e)(1).

Here, the Court is not being asked to evaluate certification in a vacuum. The only court to consider whether the facts of this case support class certification under Rule 23 has concluded that the requirements for certification are satisfied. *See Millwood*, 2022 WL 4396199. And because the Court need not consider the manageability issues at trial resulting from the application of multiple states' laws, the Court should conclude that it will likely be able to certify the Settlement Class.

A. Standard for Settlement Class Certification.

A motion for class certification under Federal Rule of Civil Procedure 23 involves a two-part analysis. First, under Rule 23(a), the proposed class must satisfy the requirements of numerosity, commonality, typicality, and fair and adequate representation. Second, the proposed

class must meet at least one of the three requirements of Rule 23(b). *See Vogt*, 2018 WL 1955425, at *2; Fed. R. Civ. P. 23(a)-(b). Representative Plaintiffs request certification for settlement purposes only under Rule 23(b)(3), which requires that the common questions predominate over any individualized questions, and that a class action is a superior to other methods of adjudication. *See* Fed. R. Civ. P. 23(b)(3). A district court has broad discretion in deciding whether a particular action complies with the requirements of Rule 23. *See Vogt*, 2018 WL 1955425, at *2.

B. The Settlement Class Satisfies the Requirements of Rule 23.

1. The Settlement Class Meets Each of the Requirements of Rule 23(a).

The Settlement Class satisfies Rule 23(a)'s numerosity, commonality, typicality, and adequacy requirements.

First, the Settlement Class is comprised of owners of approximately 450,000 Policies sold by State Farm throughout the country. *See* Siegel Decl., ¶ 27. This readily satisfies the numerosity requirement. *See Vogt*, 2018 WL 1955425, at *2 ("In assessing whether the numerosity requirement has been met, courts examine factors such as the number of persons in the proposed class, the nature of the action, the size of the individual claims, and the inconvenience of trying individual claims," concluding numerosity was satisfied for a class of approximately 24,000 Missouri policy owners) (quoting *Paxton v. Union Nat'l Bank*, 688 F.2d 552, 561 (8th Cir. 1982)).

Second, commonality is satisfied because the Policies are standard form contracts and State Farm performs uniformly under them as to its inclusion of unlisted profit and expense factors in the COI Rates as to all Settlement Class Members. *See Millwood*, 2022 WL 4396199, at *3 (finding commonality satisfied because the claims "all turn on the interpretation of the Policy, which is a standard form contract to which each putative class member was a party, and specifically, the

interpretation of State Farm's uniform determination of COI rates").[17]

Third, because each Plaintiff is the owner of one of the Policies and, like every policy owner, was charged COI Rates containing the allegedly improper amounts, their claims are typical of the Settlement Class and their interests are aligned with all policy owners in seeking to recover the amounts that allegedly violated the Policies. *See Millwood*, 2022 WL 4396199, at *7 (finding the plaintiff satisfied the typicality and adequacy requirements because "the Policy terms and methodology used to determine the COI rates that were charged were the same for every class member; thus, Plaintiff's interests are substantively identical to those of the other class members").[18]

Finally, and as explained in Part V.B.1., *supra*, Class Counsel also satisfy the adequacy requirement because they are competent, experienced, and qualified with significant expertise in class actions and cost of insurance cases, including those asserted in this litigation.

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[17] *See also, e.g.*, *Vogt*, 2018 WL 1955425, at *3 (finding commonality satisfied because plaintiff's claims all turned on interpretation of the standard form policy and State Farm's uniform incorporation of non-mortality factors into its COI Rates); *Bally*, 335 F.R.D. at 301-02 (same); *Whitman*, 2021 WL 4264271, at *3 n.3 (same); *Advance Tr. & Life Escrow Servs., LTA v. ReliaStar Life Ins. Co.*, No. 18-2863 (DWF/BRT), 2022 WL 911739, at *9 (D. Minn. Mar. 29, 2022) (finding commonality satisfied for similar claims for breach of universal life insurance policies as to multi-state class because "each turn on the interpretation of materially similar provisions in form UL insurance policies"); *McKeage v. TMBC, LLC*, 847 F.3d 992, 999 (8th Cir. 2017) (finding commonality satisfied where breach arose from form contract term).

[18] *See also Vogt*, 2018 WL 1955425, at *4-5 (finding the plaintiff had no conflicts with other policy owners and that his claims were typical of those of the class because the claims arose from and related to the interpretation and application of the Policy and the policy language, and State Farm's methodology for determining COI Rates was uniform for all class members), *aff'd*, 963 F.3d at 767 ("[T]o forestall class certification the intra-class conflict must be so substantial as to overbalance the common interests of the class members as a whole.") (quoting *Matamoros v. Starbucks Corp.*, 699 F.3d 129, 138 (1st Cir. 2012)); *Whitman*, 2021 WL 4264271, at *4 ("Plaintiff's claims as well as each of the putative class members' claims all arise out of the interpretation and application of the Policy—a standard form, non-negotiated insurance policy"); *Bally*, 335 F.R.D. at 302 (same); *Jaunich*, 569 F. Supp. 3d at 919 n.4 (same); *Page*, 584 F. Supp. 3d at 220 (same); *McClure*, 341 F.R.D. at 250 (same); *Toms*, 2022 WL 5238841, at *7-8 (same).

Thus, the Settlement Class satisfies the Rule 23(a) requirements.

2. The Settlement Class Meets the Requirements of Rule 23(b)(3).

Rule 23(b)(3) "requires that 'questions of law or fact common to class members predominate over any questions affecting only individual members, and [that] a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *Vogt*, 2018 WL 1955425, at *5 (quoting Fed. R. Civ. P. 23(b)(3)). The question whether State Farm's uniform conduct violated the common form Policies is a common, predominating one. *See, e.g.*, *Millwood*, 2022 WL 4396199, at *4-6 (finding predominance satisfied where "the terms of the Policy are the same for all class members, and all of Plaintiff's claims require the same proof for each policyholder"); *Vogt*, 2018 WL 1955425, at *6 (finding predominance satisfied because "[t]he major portion of the evidence on the claims for breach of contract, conversion, and declaratory judgment is capable of consideration on a class wide basis. The terms of the Policy are the same for all class members. State Farm has not suggested that the determination of COI rates varied on a case-by-case basis.").[19]

This is so even though Settlement Class Members' Policies were issued throughout the country and could be governed by the substantive laws of their respective States because States' breach of contract laws are materially the same, and the contracts at issue are uniform. *See Am. Airlines, Inc v. Wolens*, 513 U.S. 219, 233, n.8 (1995) ("[C]ontract law is not at its core diverse, nonuniform, and confusing."); *Burnett v. CNO Fin. Grp., Inc.*, No. 1:18-cv-00200-JPH-DML, 2022 WL 896871, at *13 (S.D. Ind. Mar. 25, 2022) (certifying multi-state class for breach of COI provision of life insurance policies, noting that "in cases arising under common law, the legal

[19] *See also Bally*, 335 F.R.D. at 303-04 (same); *Whitman*, 2021 WL 4264271, at *5-9 (same); *Jaunich*, 569 F. Supp. 3d at 919 (same); *Page*, 584 F. Supp. 3d at 220-24 (same); *McClure*, 341 F.R.D. at 251-54 (same); *Toms*, 2022 WL 5238841, at *8-9 (same).

'principles are the same, or materially the same, in many or even all U.S. states.'") (quoting *Thomas v. UBS AG*, 706 F.3d 846, 849 (7th Cir. 2013)); *Advance Trust & Life Escrow Services, LTA v. North Am. Co. for Life and Health Ins.*, 592 F. Supp. 3d 790, 809 (S.D. Iowa 2022) (finding predominance satisfied for similar claims for proposed multi-state class of policy owners because "'the relevant contract term was uniform.'") (quoting *Custom Hair Designs by Sandy v. Cent. Payment Co.*, 984 F.3d 595, 601 (8th Cir. 2020)).

At least one court has recognized that under the facts here, proceeding as a class action is superior to individualized proceedings. *See Millwood*, 2022 WL 4396199, at *7 (finding superiority satisfied because the case involved the "interpretation of a form contract, the interpretation of which will apply to all class members, making class action an efficient form of adjudication" and because there "is nothing to indicate that individual class members have any significant interest in litigating their claims separately" as "the costs of prosecuting each class member's claims individually would likely exceed each member's damages," and thus, "[b]ecause the recoveries of each individual class member will be relatively small, a class action is superior to other methods of adjudication.").

The requested certification here for purposes of effectuating the Settlement is likewise superior "because a class-wide settlement is a more efficient use of the parties'—and the judiciary's—resources." *See Komoroski v. Util. Serv. Partners Priv. Label, Inc.*, No. 4:16-CV-00294-DGK, 2017 WL 3261030, at *6 (W.D. Mo. July 31, 2017).

Further, because Plaintiffs seek class certification for purposes of Settlement, the Court need not consider whether certifying a nationwide class for trial would raise manageability concerns. *See Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if

tried, would present intractable management problems, *see* Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial."); *Keil*, 862 F.3d at 695 (recognizing that certification of a multi-state class for litigation may have created "intractable management problems," but that these issues do not prevent certification for purposes of settlement and instead indicated settlement was the best outcome). Thus, the Settlement Class satisfies Rule 23(b)(3).

* * *

Therefore, because the proposed Settlement Class satisfies the requirements for class certification, the Court should conclude that it will likely be able to certify the Settlement Class for purposes of judgment on the Settlement, *see* Fed. R. Civ. P. 23(e), and therefore that issuing Notice to the Settlement Class is justified.

VII. THE COURT SHOULD APPOINT PLAINTIFFS' COUNSEL AS INTERIM CLASS COUNSEL.

As explained at Part V.B.1., *supra*, the undersigned counsel are highly experienced in class actions and litigation of this type, and have developed an unmatched depth of knowledge on the facts and legal issues related to the claims in this case. The undersigned have also shown perseverance and dedication to advancing the claims of the Settlement Class. *See* Siegel Decl., ¶¶ 13-26. Several courts have recognized the adequacy of Plaintiffs' counsel here to represent the interests of State Farm policy owners. *Id*., ¶¶ 10-12.

Representative Plaintiffs thus request that the undersigned counsel be appointed as interim Class Counsel pursuant to Rule 23(g)(3) pending certification of the Settlement Class at Final Approval, for purposes of carrying out the issuance of Notice to the Settlement Class.

VIII. THE NOTICE SATISFIES RULE 23 AND DUE PROCESS REQUIREMENTS.

Under Rule 23(e)(1)(B), "[t]he court must direct notice in a reasonable manner to all class members who would be bound by a [settlement] proposal." Likewise, in directing notice "to a class

proposed to be certified for purposes of settlement under Rule 23(b)(3)—the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). "[T]he notice need only satisfy the 'broad 'reasonableness' standards imposed by due process.'" *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1153 (8th Cir. 1999) (quoting *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975), *cert. denied*, 423 U.S. 864 (1975)). The Supreme Court has found that the notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 314 (1950).[20]

As set forth in the accompanying Declaration of Cameron R. Azari, who courts have recognized as an expert on class action notice, the proposed Notice (Exhibit A to the Agreement) readily meets these requirements. *See* Azari Decl., ¶ 19. Specifically, the notice program, using direct mail delivery, constitutes the best practicable notice under the circumstances of this case. *Id*., ¶ 21. The Notice uses "plain English" to inform Settlement Class Members of, among other things, the nature of the class claims, the essential terms of the Settlement, the date, time and place of the Fairness Hearing, how to object or opt-out of the Settlement, and the binding effect of the Settlement on Settlement Class Members. *Id*., ¶ 18. The Notice also contains information regarding Class Counsel's forthcoming request for fees and expenses, and the proposed Service Awards to Plaintiffs. Agreement at Ex. A (Class Notice), ¶ 13. In addition, the Notice identifies and directs Settlement Class Members to the Settlement Website, where they can view the Settlement

[20] *See also* Am. Law Inst., *Principles of the Law of Aggregate Litig.* § 3.04(a) (2010) ("The purpose of a notice of a proposed class settlement is to set forth the major contours of the proposal and to inform class members of their right to attend the fairness hearing and to lodge written objections by a prescribed date should they so desire.").

documents and relevant pleadings and motions. Azari Decl., ¶ 15. Thus, the Notice satisfies the requirements of Federal Rule of Civil Procedure 23(c)(2)(B), informs Settlement Class Members of the terms of the proposed Settlement and their available options, is the best notice that is practicable under the circumstances, and should be approved by the Court. *See, e.g.*, *Rogowski v. State Farm Life Ins. Co.*, No. 4:22-CV-00203-RK, 2022 WL 19263357, at *2 (W.D. Mo. Dec. 16, 2022) (approving materially identical class notice and notice plan).

IX. THE COURT SHOULD APPOINT EPIQ AS SETTLEMENT ADMINISTRATOR.

Representative Plaintiffs also request that the Court appoint Epiq to serve as Settlement Administrator. Epiq is well-versed in administering class action settlements, including in the cost of insurance litigation context. Azari Decl., ¶¶ 4-5, 9 (setting forth qualifications and experience). And, Epiq is willing, able, and prepared to fulfill the role of Settlement Administrator in this case.

X. PROPOSED TIMELINE OF EVENTS

In connection with its determination on whether it is likely to approve the Settlement, the Court should set a Fairness Hearing date; dates for Notice; deadlines for objecting or opting out of the Settlement, and a schedule for further court submissions, among other items. The Parties propose the schedule set forth in **Appendix A** hereto, which is keyed off of the date of the order granting preliminary approval and permitting the issuance of notice.

XI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter the Proposed Order, which is attached at Exhibit B to the Agreement, permitting issuance of notice of the proposed Settlement, appointing the undersigned counsel as interim Class Counsel of the proposed Settlement Class, directing dissemination of the Notice, appointing Epiq as Settlement Administrator, and setting a Fairness Hearing for the purpose of deciding whether to grant final approval of the Settlement.

Date: August 22, 2023

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APPENDIX A

EVENT	TIMING
Deadline for Settlement Administrator to disseminate CAFA notices	[10 days from filing of Motion for Preliminary Approval]
Deadline for State Farm to provide Notice List to Settlement Administrator	[14 business days after Preliminary Approval Date]
Deadline for the Settlement Administrator to mail Court-approved Class Notice to Settlement Class	[45 days after Preliminary Approval Date]
Deadline for Class Counsel to file motion for Fees and Expenses and for Service Awards	[21 days prior to Objection deadline]
Deadline for motion for final approval of Settlement	[7 days prior to the Fairness Hearing]
Objection deadline	[35 days after Notice Date]
Opt-out deadline	[35 days after Notice Date]
Deadline for Class Counsel to file with the Court all objections served on the Settlement Administrator	[10 business days after Objection deadline]
Deadline for responses to any timely objections	Any time prior to the Fairness Hearing
Fairness Hearing	[Approximately 100 days after Preliminary Approval Date]