

**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,)

Case No. 23-04159-CV-C-BP

Plaintiffs,)

vs.)

STATE FARM LIFE INSURANCE COMPANY)
and STATE FARM LIFE AND ACCIDENT)
ASSURANCE COMPANY)

Defendants.)

**ORDER GRANTING UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Pending is Plaintiffs’ unopposed motion for preliminary approval of the Parties’ Settlement and request that the Court permit the issuance of Notice of the proposed Settlement to the putative Settlement Class (Doc. 3).¹ The Parties have entered a Settlement Agreement dated August 10, 2023 (the “Agreement”), which, together with the Exhibits to the Agreement, sets forth the terms and conditions for a proposed Settlement of this Action and for a dismissal of the Action with prejudice.² The Court **GRANTS** the motion and further orders as follows:

¹ The Representative Plaintiffs are Lorin Niewinski, John Baker McClanahan as personal representative of the Estate of Melissa Buchanan, Robert A. Bozaich, Ronnie Jackson, and Sherif B. Botros. The Defendants are State Farm Life Insurance Company and its related entity State Farm Life and Accident Assurance Company and are collectively referred to as “State Farm” or “Defendants.” Both Defendants consent to the Court granting the relief sought. (*See* Doc. 18.)

² All defined terms in this Order have the same meanings ascribed to them in the Agreement.

1. **Jurisdiction.** The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2), and personal jurisdiction over the Parties for purposes of considering the Settlement. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2).

2. **Giving Notice of the Settlement to the Class is Justified.** Federal Rule of Civil Procedure 23(e) requires court approval of class action settlements. The first stage in the approval process requires the Court to determine whether giving notice of the proposed settlement to the putative settlement class “is justified by the parties’ showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B).

a. The Court will likely approve the Settlement.

The Court finds that it will likely approve the Settlement as “fair, reasonable, and adequate” under the relevant factors identified in Federal Rule of Civil Procedure 23(e) and the additional factors considered by courts within the Eighth Circuit. *See* Fed. R. Civ. P. 23(e)(2); *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988). The Settlement creates a Settlement Fund in the amount of \$65,000,000, and provides for settlement checks mailed directly to the Settlement Class Members without the need to submit a claim. The Settlement returns to class members a material portion of the actual cost of insurance overcharges they allegedly suffered under Plaintiffs’ theory of the case, as adjusted according to the Distribution Plan proposed by Class Counsel. This is an excellent result for the Settlement Class when compared to the very substantial litigation risks facing the Settlement Class Members going forward, considering (1) the only liability ruling with respect to these policies was negative and (2) the ensuing appellate risk. Further, the length of time and expense that would be necessary to continue to litigate Plaintiffs’ cases through trials and appeals would be considerable.

In addition, the Court finds that: the Representative Plaintiffs and Class Counsel have provided adequate representation to the Settlement Class; the proposed Settlement, which is the product of several informal discussions culminating in a full-day mediation session before a well-respected mediator, was negotiated at arm's length; and the Settlement treats the Settlement Class Members equitably relative to each other by awarding them a proportion of the Cost of Insurance and Monthly Expense Charge charges they each actually paid, in addition to providing equitable adjustments for Settlement Class Members whose policies remain in effect. The Court also finds that the Settlement's provision for an award of attorneys' fees of up to one-third of the Settlement Fund and reimbursement of litigation expenses supports approval because the Settlement is not conditioned on the Court's approval of the fee and expense. The Court will separately consider the reasonableness of the requested fee and expense award upon further briefing by Class Counsel, on which Settlement Class Members will have the opportunity to express their views.

b. The Court is likely to certify the Settlement Class.

The Settlement Class consists of the Owners of approximately 450,000 Policies. The Policies are all Form 86040, Form A86040, Form 86075, or Form A86075 flexible premium adjustable whole life (universal life) insurance policies that were issued and administered by Defendants or their predecessors in interest.³

³ The Settlement Class is formally defined as: All persons or entities who own or owned one of approximately 450,000 Form 86040/A86040 universal life insurance policies or Form 86075/A86075 universal life insurance policies in the United States that were issued and administered by State Farm or their predecessors in interest, including all applications, schedules, riders, and other forms specifically made a part of the policies at the time of their issue, plus all riders and amendments issued later, or otherwise part of "The Contract," as defined in the Policy or Policies. Excluded from the Class are 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; and anyone employed with Plaintiffs' counsel's law firms. Also excluded is any Judge to whom this action or a Related Action is assigned, and his or her immediate family; the Related Actions consist of *Millwood v. State Farm Life Insurance Company*, Case No. 7:19-cv-01445-DCC, currently pending in the United States District Court for the

The Court finds that it will likely be able to certify the Settlement Class for purposes of entering judgment on the Settlement under Rule 23(a) and (b)(3). The Settlement Class, which includes Owners of approximately 450,000 Policies, is sufficiently numerous. Also, because the Policies are materially identical and State Farm’s alleged conduct relevant to the Settlement Class Members’ claims was uniform, the Representative Plaintiffs are adequate to represent the Settlement Class. In other words, their claims are typical of those of the Settlement Class Members. Further, the meaning of the Policies, and whether State Farm’s conduct complied with the Policies, are common, predominating questions, and a class action is a superior form of adjudication over individual lawsuits. Additionally, because this matter is being settled rather than litigated, the Court need not consider manageability issues that may be presented by a trial. There is also no issue with this Court certifying a multi-state classes of insurance policy owners making similar claims on form policies for purposes of settlement because issue related to application of potentially different state laws do not predominate.

3. Class Counsel. Plaintiffs’ counsel, Stueve Siegel Hanson LLP and Miller Schirger LLC, have experience litigating complex cost-of-insurance overcharge cases and have been appointed as class counsel in dozens of class actions, including those asserting the same claims in other courts as are at issue here. Likewise, the Van Winkle Law Firm, Hausfeld LLP, and Kalieel Gold PLLC have been found to be “qualified” in a Related Action due to their “extensive experience prosecuting class actions and cost of insurance cases.” *See Millwood v. State Farm Life*

District of South Carolina, and *McClanahan v. State Farm Life Ins. Co.*, Case No. 1:22-cv-01031-STA-JAY originally filed in the Western District of Tennessee, and now on appeal in the U.S. Sixth Circuit Court of Appeals, under the name *Gettys Millwood, et al v. State Farm Life Insurance Company*, Case No. 23-5578.

Ins. Co., No. 7:19-CV-01445-DCC, 2022 WL 4396199, at *7 (D.S.C. Sept. 23, 2022). Accordingly, the Court finds these counsel are competent, experienced, and qualified to represent the proposed Settlement Class and therefore appoints these counsel as interim class counsel of the proposed Settlement Class pursuant to Rule 23(g)(3), pending certification of the Settlement Class, for purposes of issuing Class Notice.

4. **Settlement Administrator.** The Court appoints Epiq Class Action and Claims Solutions, Inc. (“Epiq”) as the Settlement Administrator, with responsibility for claims administration (including distribution of Class Notices).

5. **Notice.** The proposed Class Notice program set forth in the Agreement and the amended Class Notice submitted to the Court via email on October 6, 2023, are hereby approved. Non-material modifications to the Class Notice, including insertion of hyperlinks and dates, may be made without further order of the Court so long as counsel for *all* Parties have reviewed and agree to the phrasing of the non-material modifications.

The Court finds that the proposed form, content, and method of giving Class Notice (a) will constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated to apprise putative class members of the pendency of the Action, of the terms of the proposed Settlement, and their rights under the proposed Settlement, including their rights to object to or exclude themselves from the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to all putative class members; and (d) meet all applicable requirements of law, including Federal Rule of Civil Procedure 23(c) and the Due Process Clause of the United States Constitution. The Court further finds that the Class Notice is written in plain language, uses simple terminology, and is designed to be understandable by the putative class members.

The Settlement Administrator and the Parties are directed to carry out the Class Notice provisions of Section 4 of the Agreement.

6. **Exclusion from Class.** Any class member who wishes to be excluded from the Settlement Class must mail a written notification of the intent to be excluded from the Settlement Class to the Settlement Administrator at the address and in the manner provided in the Class Notice. Requests for exclusion must meet the opt-out deadline established by this Order and stated in the Court-approved Class Notice.

7. **Class Action Fairness Act Notice.** Within 10 days after the filing of the motion for preliminary approval and to permit issuance of notice, the Settlement Administrator shall serve or cause to be served a notice of the proposed Settlement on appropriate officials in accordance with the requirements under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715(b).

8. **Fairness Hearing.** A Fairness Hearing shall be held on March 28, 2024, at 19L99 a.m., at the United States District Court for the Western District of Missouri at Kansas City, Missouri, in Courtroom 7A, to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes pursuant to Fed. R. Civ. P. 23(b)(3) and (e); (b) the Settlement should be approved as fair, reasonable and adequate, and finally approved pursuant to Fed. R. Civ. P. 23(e); (c) this case should be dismissed with prejudice pursuant to the terms of the Agreement; (d) Settlement Class Members should be bound by the releases set forth in the Agreement; (e) the application for Class Counsel’s Fees and Expenses should be approved pursuant to Fed. R. Civ. P. 23(h); and (f) the application for Plaintiffs’ Service Awards should be approved.

9. **Objections and Appearances.** Any Settlement Class Member may appear and explain why the proposed Settlement should or should not be approved as fair, reasonable, and

adequate, why a judgment should or should not be entered, why Class Counsel’s Fees and Expenses should or should not be awarded, and/or why Plaintiffs’ Service Awards should or should not be awarded. However, no Settlement Class Member or any other person shall be entitled to contest such matters unless he or she has complied with the deadline established by this Order and the requirements for objections set forth in the Court-approved Class Notice. Any Settlement Class Member who does not properly make his or her objection shall be deemed to have waived any objection and shall forever be foreclosed from objecting to the fairness or adequacy of the proposed Settlement and to the award of Class Counsel’s Fees and Expenses or Plaintiffs’ Service Awards, unless otherwise ordered by the Court.

10. **Continuance of Hearing**. The Court reserves the right to adjourn or continue the Fairness Hearing and related deadlines without further mailed notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement Administrator. The Court may approve the Settlement, with such modifications as may be agreed by the Parties, if appropriate, without further notice to the Settlement Class.

11. **Schedule and Deadlines**. The Court orders the following schedule for the specified actions and further proceedings:

EVENT	TIMING
Deadline for Settlement Administrator to disseminate CAFA notices	According to the parties, this should have already been completed.
Deadline for State Farm to provide Notice List to Settlement Administrator	November 2, 2023

Deadline for the Settlement Administrator to mail Court-approved Class Notice to Settlement Class	December 4, 2023
Deadline for Class Counsel to file motion for Fees and Expenses and for Service Awards	March 7, 2024
Deadline for motion for final approval of Settlement	March 7, 2024 ⁴
Objection deadline	February 9, 2024
Opt-out deadline	February 9, 2024
Deadline for Class Counsel to file with the Court all objections served on the Settlement Administrator	February 29, 2024
Deadline for responses to any timely objections	March 14, 2024
Fairness Hearing	March 28, 2024 at 10:00 a.m.

IT IS SO ORDERED.

/s/ Beth Phillips
 BETH PHILLIPS, CHIEF JUDGE
 UNITED STATES DISTRICT COURT

Date: October 18, 2023

⁴ In addition to the typical requirements for such a motion, the Motion for Final Approval should advise the Court (1) how many Notices were mailed and (2) how many Notices were returned as undeliverable.