UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: LINCOLN NATIONAL COI LITIGATION	Case No.: 2:16-cv-6605-GJP
IN RE: LINCOLN NATIONAL 2017 COI RATE LITIGATION	Case No.: 2:17-cv-04150-GJP

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR CONSOLIDATION OF ACTIONS FOR SETTLEMENT PURPOSES ONLY, PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS AND APPOINTMENT OF CLASS COUNSEL, PRELIMINARY APPROVAL OF PROPOSED CLASS SETTLEMENT, SCHEDULING OF A FAIRNESS HEARING AND APPROVAL OF CLASS NOTICE

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I. PRELIMINARY STATEMENT

Plaintiffs seek preliminary approval of a settlement that provides a non-reversionary fund to the Final Settlement Class[1] of up to $117,750,000, to be distributed in cash directly to tens of thousands of similarly situated Owners of certain universal life insurance ("UL") policies ("Policies") issued by Jefferson Pilot, predecessor to Lincoln National Life Insurance Company, or by Lincoln National Life Insurance Company. The Policies are flexible-premium universal life ("UL") policies originally sold by Jefferson Pilot in the 1980s, 1990s, and early 2000s, and later assumed by Lincoln National Life Insurance Company as part of a merger in 2006, or sold by Lincoln National Life Insurance Company after the aforesaid merger. The Policies are standardized contracts that constrain, in nearly identical terms, the amount Lincoln may charge the Policies' current Owners for insurance coverage and other Policy benefits. Defendant Lincoln National Life Insurance Company and its parent company, Defendant Lincoln National Corporation, are collectively referred to herein as "Lincoln."

Lincoln determines the charges it withdraws each month from the Policies' account values by applying, *inter alia*, a "cost of insurance" ("COI") rate. Under the terms of the Policies, Lincoln is permitted to increase the COI rates based on stated factors (the "Permissible Factors"). Plaintiffs allege that Lincoln applied erroneous assumptions, and assumptions that were not subsumed under the Permissible Factors when it raised COI rates on approximately 48,500 Policies in 2016 and 2017 (the "COI Increases"). The disputed COI Increases accelerated the rate at which the Policies' accounts are depleted. Lincoln denies Plaintiffs' allegations.

Reached through arms' length negotiations under the auspices of well-respected mediator the Honorable Diane Welsh (Ret.), the Settlement is intended to mitigate the impact of the

[1] Capitalized terms not otherwise defined in this memorandum have the same meaning as those defined in the Joint Stipulation and Settlement Agreement ("Settlement Agreement").

allegedly impermissible COI increases imposed by Lincoln, through: (i) direct cash payments to each Final Settlement Class Member that will return the same percentage of the disputed overcharges imposed on each Final Settlement Class Policy owned by such Final Settlement Class Member (subject to a minimum payment of $200); (ii) a five-year COI rate freeze prohibiting Lincoln from imposing any further COI rate increases on those Owners who choose to participate in the Final Settlement Class; and (iii) limitations on Lincoln's ability to cancel Policies or deny death claims based on a purported lack of insurable interest or misrepresentations in Policy applications.

II. BACKGROUND

A. Procedural History

1. The 2016 Action

Beginning on December 23, 2016, certain Plaintiffs filed putative class actions against Lincoln arising from the COI rate increase imposed in the fall of 2016. The cases were consolidated into one matter entitled *In re: Lincoln National COI Litigation*, Case No. 2:16-cv-6605-GJP (E.D. Pa.) (the "2016 Action") [2016 Action ECF 29]. On June 8, 2017, Lincoln filed a motion to dismiss the consolidated complaint in the 2016 Action. [2016 Action ECF 40]. Plaintiffs responded on July 28, 2017, and Lincoln replied on August 17, 2017. The Court heard oral argument on the motion to dismiss on August 22, 2017, and denied the motion, in substantial part, on September 11, 2017. [2016 Action ECFs 44, 47, 48, 51]. The Parties thereafter engaged in a robust, intensive and protracted discovery process, including – together with discovery in the 2017 Action described below – the production of more than 585,000 pages of documents by Lincoln and third party consultants Milliman, Inc., Towers Watson, and Ernst & Young (many of them including complex native files and spreadsheets), procurement of a license allowing Plaintiffs and their experts to operate the MG_ALFA system used to model the COI Increases, and the taking

of more than 30 fact and expert witness depositions. Declaration of Jeffrey W. Golan (the "Golan Decl."), ¶ 3. Plaintiffs in the 2016 Action also filed a Second Amended Complaint. [2016 Action ECF 72].

Plaintiffs moved for class certification in the 2016 Action on June 25, 2019. [ECF 111]. While Plaintiffs' class certification motion was pending, the Parties participated in an unsuccessful mediation before The Honorable Barbara Jones (Ret.). Plaintiffs' motion for class certification in the 2016 Action was denied on August 9, 2022; however, Plaintiffs were given leave to file a new class certification motion by February 21, 2023. [2016 Action ECF 237, 244]. Before Plaintiffs filed their new class certification motion, the Parties agreed to participate in another mediation before The Honorable Diane Welsh (Ret.) on December 13, 2022. That mediation and a series of follow-on discussions and negotiations between the Parties resulted in the proposed Settlement Agreement that is the subject of this motion. Golan Decl., ¶ 4. The Parties filed a joint request to stay these proceedings, including the deadline for filing a renewed motion for class certification, while the Court considered approval of the proposed Settlement. [2016 Action ECF 246].

2. The 2017 Action

Beginning on September 18, 2017, certain Plaintiffs filed claims against Lincoln related to the COI rate increase announced in June and July 2017. Those cases were likewise consolidated into one matter entitled *In re: Lincoln National 2017 COI Rate Litigation*, Case No. 2:17-cv-04150-GJP (E.D. Pa.) ("2017 Action"). [2017 Action ECF 17]. Lincoln filed an Answer to the Amended Complaint on May 24, 2018. [2017 Action ECF 24]. After that, discovery began in tandem with discovery in the 2016 Action. Plaintiffs in the 2017 Action moved for class certification on November 23, 2020. [2017 Action ECF 56]. On August 9, 2022, the Court denied the motion for class certification, but provided leave to file a new class certification motion by February 21, 2023, just as it did in the 2016 Action. [2017 Action ECF 111, 118]. The 2017 Action

also proceeded to mediation with Judge Welsh on December 13, 2022 and was part of the follow-on negotiations between the Parties. Golan Decl., ¶ 4.

B. Terms of the Proposed Settlement

The Settlement Agreement is attached as Exhibit 1 to the accompanying Motion. The proposed Settlement Agreement is intended to resolve all putative Owner claims arising out of the challenged COI Increases alleged at any time in either the 2016 Action or the 2017 Action.

Under the Settlement Agreement, in exchange for a release of liability from those Settlement Class members who choose to remain in the Final Settlement Class, Lincoln has agreed to establish a common settlement cash fund of up to $117,750,000 ("the Settlement Fund"). Ex. 1, at pp. 8-9. Lincoln's obligation to fund the Settlement Fund shall be reduced by deducting therefrom an amount equal to $117,750,000.00 multiplied by the sum of the Policy Claim Percentages for all Class Policies that are not Final Settlement Class Policies ("the Final Settlement Fund").[2] After payment of the costs to administer the Settlement Fund, attorneys' fees, reimbursed litigation expenses, and Service Awards, the Settlement Administrator will distribute the net Final Settlement Fund to the Settlement Class Members in proportion to their respective Policy Claim Amounts. No portion of the Settlement Fund will be returned to Lincoln.

[2] The Policy Claim Percentage for any Class Policy means the percentage obtained by dividing the Policy Claim Amount for that Class Policy by the total of all Policy Claim Amounts. Policy Claim Amount means the dollar amount based on the difference between: (a) the sum of the monthly deductions withdrawn from the policy value of the Class Policy for all months through September 30, 2022 in which the COI charge following the applicable COI Increase was greater than the COI charge under the COI rate schedule in effect immediately prior to the applicable COI Increase, and (b) the sum of the monthly deductions that would have been withdrawn from the policy value of the Class Policy for such months under the cost of insurance rate schedule in effect immediately prior to the COI Increase applicable to the Class Policy; provided however that the minimum Policy Claim Amount for each Class Policy will be $200.

In addition, under the Settlement Agreement Lincoln also agrees: (i) for a period of five (5) years following the date of the Order and Judgment approving the Settlement, it will not apply to the Final Settlement Class Policies any increase in COI rates over those COI rates included in the COI rate schedules applied to the Final Settlement Class Policies implemented in 2016 or 2017 and challenged in the Actions, unless ordered to do so by a state regulatory body; and (ii) not to take legal action (including asserting an affirmative defense or counterclaim) that seeks to void, rescind, cancel, have declared void, or seek to deny a death claim for any Final Settlement Class Policy based on: (1) an alleged lack of valid insurable interest under any applicable law or equitable principles; or (2) any misrepresentation allegedly made on or related to the application for, or otherwise made in applying for, the Final Settlement Class Policy, except as set forth in the Settlement Agreement. Ex. 1, at pp. 9-10.

III. ARGUMENT

The *Manual for Complex Litigation* describes a three-step process for approving a class action settlement: (i) preliminary approval of the proposed settlement; (ii) dissemination of notice of the settlement to class members; and (iii) a final approval hearing. *Manual for Complex Litigation*, § 21.63 (4th ed. 2004). At this juncture, Plaintiffs request consolidation of the two Actions for settlement purposes only, preliminary certification of the Settlement Class, and preliminary approval of the Settlement Agreement. Plaintiffs also seek approval of the proposed plan for Class Notice of (a) the pendency of the Actions, (b) the proposal for class-wide settlement benefits and release, and (c) each Owner's opportunity to opt-out or object in advance of the Fairness Hearing to be scheduled by the Court.

For the reasons stated below, Plaintiffs' requested relief should be granted.

A. The Court Should Consolidate the 2016 Action and the 2017 Action for Purposes of Settlement Only

In the interest of economy and efficiency, the Parties request that the 2016 Action and 2017 Action be consolidated for purposes of settlement only. Where the interests of judicial economy and convenience of the parties are served, separate actions may be consolidated when they present a common issue of law or fact. *See* Fed. R. Civ. P. 42(a) ("If actions before the court involve a common question of law or fact the court may . . . consolidate the actions."); *accord*, *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 496-97 (1933) ("[C]onsolidation is permitted as a matter of convenience and economy in administration …."); *In re Cmty. Bank of N. Va. & Guar. Nat'l Bank of Tallahassee Second Mortg. Loan Litig.*, 418 F.3d 277, 298 n. 12 (3d Cir. 2005). A district court has broad discretion to determine whether consolidation is appropriate. *See In re Mock*, 398 Fed. App'x. 716, 718 (3d Cir. 2010).

Here, there is no doubt that by virtue of the proposed Settlement Agreement the Actions share a predominant common issue: all Parties to both Actions have through a common Settlement Agreement reached a proposed joint resolution of all class claims alleged in both Actions. The Court will accordingly determine whether the proposed Settlement Agreement best serves the interests of the Settlement Class, which includes all Owners within the scope of the putative classes alleged in both Actions. If so, both Actions will be dismissed in their entirety, with prejudice. If not, the Parties will resume litigation of their respective actions through non-consolidated proceedings. Consolidation for settlement purposes will also permit Lincoln to serve a single CAFA notice on the requisite officials.

B. The Court Should Preliminarily Grant Certification of the Proposed Settlement Class

The benefits of the Settlement Agreement can only be realized through the certification of the Settlement Class. *See, e.g.*, *McDermid v. Inovio Pharmaceuticals, Inc.*, 2023 WL 227355, at

*2-3 (E.D. Pa. Jan. 18, 2023) ("*Inovio*") (Pappert, J.) (certifying settlement class). Consistent with the Settlement Agreement and Rule 23, the Parties seek certification of a settlement class ("Settlement Class") of all Owners of:

> Any JP Legend 300, JP Lifewriter Legend 100, 200, and 400 series, JP Legend 3000, LifeSight 30, LifeSight 31, LifeSight 32, JP UL 101, JP UL 102, JP UL 103, JP UL 130, JP UL 131, and Vision 20 life insurance policy subjected to an increase in the cost of insurance rates as announced by Lincoln in 2016 or 2017, excluding the Excluded Policies.[3]

Excluded from the Settlement Class are or will be:

(a) all Owners of Class Policies who submit a valid Opt-Out Request, but solely with respect to the Class Policy that is the subject of the Opt-Out Request;

(b) the Honorable Gerald J. Pappert, United States District Court Judge of the Eastern District of Pennsylvania (or other Circuit, District, or Magistrate Judge presiding over the Actions) and court personnel employed in Judge Pappert's (or such other judge's) chambers or courtroom;

(c) Lincoln and its affiliates, parents, subsidiaries, successors, predecessors, and any entity in which Lincoln has a controlling interest;

(d) any officer or director of Lincoln identified in the Form 10-K Annual Report of either Lincoln National Corporation or The Lincoln National Life Insurance Company, filed with the United States Securities and Exchange Commission for the fiscal year ended December 31, 2021;

(e) those Owners of Class Policies who have commenced a lawsuit challenging the COI Increases through an individual action and served Lincoln with the complaint or other operative pleading in the lawsuit prior to the conclusion of the Opt-Out/Objection Period, but solely with respect to the Class Policy that is the subject of such aforementioned lawsuit;

(f) the legal representatives, successors, or assigns of any of the individuals or entities described in (a) through (e), but only in their capacity as legal representative, successor, or assignee.

[3] The Excluded Policies are identified with particularity on a spreadsheet attached to the Settlement Agreement as Exhibit B. See, Ex. 1, at Exhibit B.

For the reasons set forth below, the proposed Settlement Class amply satisfies all prerequisites under Rule 23 of the Federal Rules of Civil Procedure for preliminary certification in furtherance of the settlement approval process.[4]

1. Legal Standard for Preliminary Class Certification

Rule 23(e) authorizes the certification of "a class proposed to be certified for purposes of settlement…with the court's approval." Preliminary certification of a settlement class "employs a 'less rigorous analysis than that necessary for final certification' because courts conduct a 'fairness hearing in order to issue a final class certification and approve the settlement." *In re Comcast Corp. Set-Top Cable Television Box Antitrust Litig.,* Civ. A. No. 09-md-2034, 2018 U.S. Dist. LEXIS 150712, at *18 (E.D. Pa. Sept. 5, 2018) (quoting *In re: Amtrak Train Derailment,* MDL No. 2654, 2016 U.S. Dist. LEXIS 46552, at *2, *4 (E.D. Pa. Apr. 6, 2016)); *see also In re Nat'l Football League Players Concussion Inj. Litig.,* 775 F.3d 570, 586 (3d Cir. 2014). At the preliminary approval stage, the court decides whether "the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b)." *In re Comcast Corp. Set-Top Cable Television Box Antitrust Litig.,* 2018 U.S. Dist. LEXIS 150712, at * 18 (citations omitted).

2. The Proposed Class Satisfies the Requirements of Rule 23(a)

The Settlement Class meets the four requirements of Rule 23(a) for purposes of preliminary approval.

a. Numerosity and Ascertainability

[4] Notably, many courts have certified litigation or settlement classes in cases challenging COI increases to universal life policies. *See Hanks v. Lincoln Life & Annuity Co. of N.Y.* ("*VOYA COI*"), 330 F.R.D. 374 (S.D.N.Y. 2019); *Feller v. Transamerica Life Ins. Co.*, No. 2:16-cv-01378-CAS-AJW, 2017 WL 6496803, at *6 (C.D. Cal. Dec. 11, 2017) ("*Transamerica COI*"); *Fleisher v. Phoenix Life Ins. Co*, No. 11 Civ. 8405 (CM), 2013 WL 12224042, at *9 (S.D.N.Y. July 12, 2013); *In re Conseco Life Ins. Co. LifeTrend Ins. Sales & Mktg. Litig.*, 270 F.R.D. 521, 532 (N.D. Cal. 2010).

The Settlement Class is "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Joinder is presumptively impracticable when the number of potential class members exceeds forty, although that number is not always necessary nor is it always sufficient. *Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001); *Allen v. Ollie's Bargain Outlet,* 37 F.4th 890, 896 (3d Cir. 2022). According to documents produced by Lincoln, over 40,000 Policies were subjected to the COI Increases at issue in this lawsuit. *See* Ex. 1, at Ex A. Membership in the proposed Settlement Class is furthermore readily ascertainable, using objective criteria contained in Lincoln's policyholder business records. *Id*.

b. Commonality

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). To satisfy this element, the class claims must be predicated on a common contention, capable of resolution across the entire class. *Ebner v. Merchs. & Med. Credit Corp.*, 2017 WL 1079966, at *2 (E.D. Pa. Mar. 22, 2017) (citing *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 527-28 (3d Cir. 2004)). When, as here, a group of plaintiffs are impacted by a uniform course of conduct or policy, the commonality test is readily satisfied. *Id.*

Common questions of fact and law are prevalent in this case because Plaintiffs' claims turn on across-the-board actions taken by Lincoln with respect to common standardized contract provisions. As the Court found in ruling on Plaintiffs' initial motion for class certification, "[t]he proper interpretation of their contracts is a question common to all class members. Whether the list of factors in the policies' cost of insurance provision is exhaustive, whether reinsurance utilization and investment earnings are permitted factors, and whether the policy prohibits Lincoln from recouping past losses will be answered the same way for each policy. Answering these questions is 'apt to drive the resolution of the litigation.'" [2016 Action

ECF 237, at 25; *see* 2017 Action ECF 110, at 27]. In short, whether Lincoln's actions breached uniform contract provisions or were otherwise unlawful pose common questions with common answers.

c. Typicality

"Where claims of the representative plaintiffs arise from the same alleged wrongful conduct on the part of the defendant, the typicality prong is satisfied." *Ebner*, 2017 WL 1079966, at *2 (internal quotation marks and citation omitted). In this case, the Plaintiffs complain of the same unlawful conduct as every other member of the proposed Settlement Class, in that all were subjected to the COI Increases in alleged violation of the terms of their Policies. The Court previously determined that the Plaintiffs claims satisfy the typicality requirement, noting that "Plaintiffs' legal theories and claims do not differ from those of the class." [2016 Action ECF 237, at 26]; *accord VOYA COI*, 330 F.R.D. at 380-81; *Transamerica COI*, 2017 WL 6496803, at *8 (likewise finding typicality satisfied where all policyholders were subjected to the challenged COI rate increases). In reaching this conclusion, the Court acknowledged "[t]hat plaintiffs do not own policies from every rate class and product in the proposed class does not render their claims atypical." [2016 Action ECF 237, at 26; 2017 Action ECF, at 29]*; accord Marcus v. BMW of N. Amer., LLC*, 687 F.3d 583, 598 (3d Cir. 2012).

d. Adequacy

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To evaluate whether Plaintiffs are adequate class representatives, "[t]he Court must inquire into the 'qualifications of counsel to represent the class,' and then assess whether there are 'conflicts of interest between named parties and the

class they seek to represent.'" *Ebner*, 2017 WL 1079966, at *2 (quoting *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 312 (3d Cir. 1998) ("*Prudential*")).

Here, Class Counsel are highly qualified and experienced in in class action litigation against major insurance companies, including other class actions challenging COI rate increases imposed on universal life products. Golan Decl., ¶ 5. As the Court concluded earlier in these cases, "Plaintiffs' counsel have extensive experience litigating class actions…they have successfully certified classes challenging cost of insurance increases…[t]hey have performed ably in this case, and the Court has no reason to doubt their adequacy." [2016 Action ECF 237, at 27; 2017 Action ECF 110, at 29-30].

Moreover, none of the Plaintiffs has any conflicts of interest with other members of the Settlement Class that would preclude their service as adequate class representatives. Plaintiffs have diligently fulfilled their responsibilities as proposed class representatives throughout these actions, conferring with Class Counsel and participating in the discovery process. [2016 Action ECF 237, at 28; 2017 Action ECF, at 30]. Because the Released Claims include all claims that were or could have been asserted in these Actions arising from the facts, transactions and acts that were either alleged or otherwise put at issue in the Actions, final approval of the Settlement Agreement will once and for all resolve all such claims, including those for violations of state consumer laws and for breaches of the implied covenant of good faith and fair dealing.

"It is not unusual for a class settlement to release all claims arising out of a transaction or occurrence" as a "judgment pursuant to a class settlement can bar later claims based on the allegations underlying the claims in the settled class action." *Halley v. Honeywell Int'l, Inc.*, 861 F.3d 481, 494 (3d Cir. 2017). Furthermore, the fact that the Settlement Agreement encompasses claims involving different state laws or speculation that some claims may be "stronger" than others

does not create a disabling conflict between the Plaintiffs and the Settlement Class Members. *See In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333, 347-348 (3d Cir. 2010) ("*Pet Food Prods*.") ("…alleged differences in the strength of the various claims asserted in this class action do not, by themselves, demonstrate conflicting or antagonistic interests within the class … [nor do] differences in state law create conflicts among class members that preclude a finding of adequate representation").

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

The Rule 23(b)(3) predominance requirement is readily satisfied in cases like this, "which involve allegations arising from form contracts or documents present[ing] the classic case for treatment as a class action." *Robinson v. Countrywide Credit Indus.*, No. CIV.A. 97-2747, 1997 WL 634502, at *3 (E.D. Pa. Oct. 8, 1997) (internal quotation marks omitted); *accord Zeno v. Ford Motor Co.*, 238 F.R.D. 173, 197 (W.D. Pa. 2006) (same); *Meyer v. CUNA Mut. Grp.*, No. CIV.A. 03-602, 2006 WL 197122, at *23 (W.D. Pa. Jan. 25, 2006) (same). As the Third Circuit stated: "Because form contracts should be interpreted uniformly as to all signatories, Pennsylvania and federal courts have recognized that claims involving the interpretation of standard form contracts are particularly well-suited for class treatment." *Gillis v. Respond Power, LLC*, 677 F. App'x 752, 756 (3d Cir. 2017). And in the context of a proposed ***settlement*** class, as opposed to a litigation class, the Court is "not as concerned with formulating some prediction as to how [variances] would play out at trial, for the proposal is that there be no trial." *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 304 (3d Cir. 2011). Consequently, "[t]he proposed settlement [itself] … obviates the difficulties inherent in proving the elements of varied claims at trial…" *Id.*

Here, Plaintiffs alleged that Lincoln breached its obligations under the Class Policies by imposing the COI Increases based in part on factors that were not allowed by uniform COI

provisions of standardized policy contracts. This claim is provable through class-wide evidence because it turns on the interpretation of contract provisions common to all Class Policies (presenting a common issue of law) and whether Lincoln considered the alleged impermissible factors (presenting numerous common factual issues). As the Court previously recognized, if "Lincoln considered impermissible factors when adjusting cost of insurance rates" as Plaintiffs allege, "Rule 23(b)(3)'s predominance inquiry would be easily satisfied." [2016 Action ECF 237, at 48].

This result is not altered by the inclusion of different products within the Settlement Class. *Reyes v. Netdeposit, LLC*, 802 F.3d 469, 491 (3d Cir. 2015).[5] Nor is predominance undermined by the existence of differing alleged factual theories presenting manageability issues or by the fact that some members of the Settlement Class might lack legally cognizable claims against Lincoln. *Pet Food Prods.*, 629 F.3d at 341 (manageability issues not relevant to certification of settlement class); *Sullivan*, 667 F.3d at 310 (predominance does not require that each settlement class member must have a viable claim: "[n]o class would ever by certified because it would be impossible to demonstrate that every class member has a 'colorable legal claim'"). Despite differences in the amount of damages sustained by the Settlement Class Members (a matter addressed by the Settlement Agreement allocation formula that will be considered by the Court), all members of the Settlement Class were by definition subjected to and allegedly injured by the COI Increases. Plaintiffs allege that Owners who paid or were charged higher COI rates sustained objectively measurable damages and those who did not immediately pay higher charges faced the certainty of

[5] The Third Circuit has acknowledged that, in applying the predominance requirement for settlement-only classes, an important consideration is the "ability of a defendant to achieve 'global peace' by obtaining releases from all those who might wish to assert claims, meritorious or not." *Sullivan*, 667 F.3d at 310.

increased charges in the future or the concrete risk that Lincoln would impose future COI rate increases based on the same impermissible factors (a foreseeable injury that is directly redressed by the 5-year COI rate freeze required by the Settlement Agreement). And ultimately, even if some Class Policies sustained no quantifiable damages whatsoever, their inclusion in the Settlement Class does not obviate predominance. *Sheet Metal Workers Local 441 Health & Welfare Plan v. GlaxoSmithKline, PLC*, Civil Action No. 04-5898, 2010 WL 3855552 at *28 (E.D. Pa. Sept. 30, 2010) ("Class certification is not precluded by the 'possibility or indeed inevitability' that the class includes members uninjured by the defendant's conduct").

Thus, all requirements for preliminary certification of the Settlement Class under Rule 23(a) and (b)(3) have been met.

C. Interim Class Counsel Should Be Appointed Class Counsel

Federal Rule of Civil Procedure 23(e) requires a court to appoint class counsel when certifying a class action. Plaintiffs ask that the same counsel previously appointed to the Interim Class Counsel Steering Committees ("Interim Class Counsel") for these cases – Barrack, Rodos & Bacine; Bonnett Fairbourn Friedman & Balint, PC; Susman Godfrey L.L.P.; The Moskowitz Law Firm, PLLC; and Girard Sharp LLP – be appointed as Class Counsel in accordance with the Settlement Agreement. [2016 Action ECF 29; 2017 Action ECF 17]. Interim Class Counsel have decades of experience handling class action litigation (including specifically class challenges to COI rate increases), have demonstrated a sound knowledge of the legal and factual issues pertaining to the challenged 2016 and 2017 COI Increases, having already successfully steered both putative class actions past Lincoln's motion to dismiss and mediated and negotiated the proposed Settlement. These facts amply support appointing Interim Class Counsel as Class Counsel pursuant to the Settlement Agreement and Rule 23(e). *See, e.g., In re Pfizer Secs. Litig.*, 282 F.R.D. 38, 47 (S.D.N.Y. 2012) (appointing class counsel that had "devoted considerable

resources to this case since it was first filed, and has effectively protected the interests of the Plaintiffs and the putative class").

D. The Court Should Grant Preliminary Approval of the Proposed Settlement

Under Federal Rule of Civil Procedure 23(e), a class action settlement may be approved upon a judicial finding that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *In re Nat'l Football League Players Concussion Inj. Litig.*, 821 F.3d 410, 436 (3d Cir. 2016) ("*NFL Players*"); *Prudential*, 148 F.3d at 316. There is a "strong presumption in favor of voluntary settlement agreements." *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594 (3d Cir. 2010); *see also In re Gen. Motors Corp. Pick-Up Trucks Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) ("*GMC Trucks*") ("[t]he law favors settlement"). The presumption in favor of settlement is "especially strong in 'class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.'" *Ehrheart*, 609 F.3d at 595 (quoting *GMC Trucks*, 55 F.3d at 784).

The ultimate determination of whether a proposed class action settlement warrants approval lies within the court's discretion. *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry v. Anderson*, 390 U.S. 414, 424-25 (1968); *Warfarin* , 391 F.3d at 535. "Courts judge the fairness of a proposed compromise by weighing the plaintiff's likelihood of success on the merits against the amount and form of the relief offered in the settlement…. They do not decide the merits of the case or resolve unsettled legal questions." *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981); *see also Walsh v. Great Atl. & Pac. Tea Co.*, 96 F.R.D. 632, 642-43 (D.N.J.), *aff'd*, 726 F.2d 956 (3d Cir. 1983). In determining the adequacy of a proposed settlement, a court should ascertain whether the settlement is within a range that responsible and experienced attorneys could accept, considering all relevant risks. *See Serrano v. Sterling Testing Sys., Inc.*, 711 F. Supp. 2d 402, 414 (E.D. Pa. 2010). That analysis recognizes the "'uncertainties of law and

fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.'" *Id*. (citation omitted).

A proposed class action settlement is considered presumptively fair where, as here, the parties have engaged in arm's length negotiations through experienced counsel after sufficient discovery. *See, e.g.*, *NFL Players*, 821 F.3d at 436; *Warfarin*, 391 F.3d at 535; *In re ViroPharma Inc. Sec. Litig.*, No. 12-2714, 2016 WL 312108, at *8 (E.D. Pa. Jan. 25, 2016). It is appropriate to give "substantial weight to the recommendations of experienced attorneys" who have engaged in arm's length negotiations. *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 240 (D.N.J. 2005) ("Class Counsel's approval of the Settlement also weighs in favor of the Settlement's fairness."); *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 509 (W.D. Pa. 2003) (lead counsel's "assessment of the settlement as fair and reasonable is entitled to considerable weight."); *In re Cendant Corp. Sec. Litig.*, 109 F. Supp. 2d 235, 255 (D.N.J. 2000) (affording "significant weight" to counsel's recommendation), *aff'd in relevant part*, 264 F.3d 201 (3d Cir. 2001).

Federal Rule of Civil Procedure 23(e)(2) directs the Court to consider 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). "The purpose of Rule 23(e) is to protect the unnamed members of the class." *Ehrheart*, 609 F.3d at 593; *see also Pet Food Prods.*, 629 F.3d at 349 (citation omitted). As this Court has stated:

> These factors are like the *Girsh* factors previously applied to decide whether a class action settlement is fair and reasonable in the Third Circuit. *See Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975.); *see also Hall v. Accolade, Inc.*, No. 17-3423, 2019 WL 3996621, at *2 n.1 (E.D. Pa. Aug. 23, 2019) ("The *Girsh* factors predate

> the recent revisions to Rule 23, which now explicitly identifies the factors that courts should apply in scrutinizing proposed class settlements, and the discussion in *Girsh* substantially overlaps with the factors identified in Rule 23.")

Teh Shou Kao & T S Kao v. Cardconnect Corp., 2021 WL 698173, *6 n.3 (E.D. Pa. Feb. 23, 2021) ("*Cardconnect*") (Pappert, J.) (analyzing the fairness and adequacy of a class action settlement without specifically applying the *Girsh* factors and observing that they are mostly duplicative of Rule 23(e)).

The Third Circuit has also advised courts to consider, where applicable, certain additional factors:

> [T]he maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; the existence and probable outcome of claims by other classes and subclasses; the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved – or likely to be achieved – for other claimants; whether class or subclass members are accorded the right to opt out of the settlement; whether any provisions for attorneys' fees are reasonable; and whether the procedure for processing individual claims under the settlement is fair and reasonable.

Prudential, 148 F.3 at 323; *see also ViroPharma*, 2016 WL 312108, at *9.

As shown below, the proposed Settlement Agreement is a favorable result for the Settlement Class in light of the risks, costs and delays attendant to continued litigation, is presumptively fair, and the Rule 23(e)/*Girsh* factors and applicable *Prudential* considerations weigh strongly in favor of preliminary approval of the Settlement Agreement. Accordingly, the Court should enter the [Proposed] Preliminary Approval Order.

1. The Proposed Settlement Is Presumptively Fair and Falls within a Range of Fairness

The first two factors under Rule 23(e)(2) are the adequacy of representation for the class and the arm's-length nature of the settlement negotiations. *See* Fed. R. Civ. P. 23(e)(2)(A)-(B). These

two factors overlap with the third *Girsh* factor, which focuses on the stage of the proceedings and the amount of discovery completed. *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 102 (D.N.J. 2012) ("*Ins. Brokerage*") (courts have held that "a presumption of fairness exists where a settlement has been negotiated at arm's length, discovery is sufficient, the settlement proponents are experienced in similar matters and there are few objectors.").

Plaintiffs and their counsel have adequately represented the members of the proposed Settlement Class as required by Rule 23(e)(2)(A) by diligently and zealously prosecuting this litigation on their behalf, including, *inter alia*, by engaging in extensive document review, retaining expert consultants, taking and defending numerous fact and expert depositions, filing briefs in opposition to Lincoln's dismissal motion, pursuing discovery motions, moving for class certification, appearing at numerous hearings before this Court and the Special Master and engaging in extensive settlement negotiations, including thorough pre-mediation briefing. *See ViroPharma*, 2016 WL 312108, at *11 (approving settlement after arm's length negotiation overseen by Phillips ADR Enterprises after the parties "had fully briefed the main issues in the case and conducted merits-based . . . discovery"). Further, Plaintiffs' counsel are highly experienced in prosecuting complex class actions in this Circuit and throughout the country, including in many other actions relating to cost of insurance policy provisions, and were previously appointed as Interim Class Counsel in the two Actions. Golan Decl., ¶ 5.

Rule 23(e)(2)(B) also looks at whether the Settlement was negotiated at arm's length. As detailed above, the first mediation – which was not successful – took place in October 2021. After further litigation in the Actions, and the rulings entered by the Court on August 9, 2022 and October 3, 2022, settlement discussions began anew and culminated in a second mediation before former Magistrate Judge Welsh on December 13, 2022, and through follow-on discussions and

negotiations between the Parties. Golan Decl., ¶ 4. The December 13, 2022 mediation was conducted with each side having full knowledge of the crucial issues in the case and the benefit of full fact discovery which was completed prior to the mediation. All negotiations were difficult, adversarial, and vigorously conducted by both sides, as Lincoln too is represented by highly sophisticated counsel with extensive experience in COI rate litigation. Golan Decl., ¶ 4.

The direct participation of an experienced mediator further ensures that the negotiations were non-collusive and conducted properly. *Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745, at *10 (D.N.J. Apr. 8, 2011) ("Participation of an independent mediator in settlement negotiations 'virtually insures that the negotiations were conducted at arm's length and without collusion between the parties.'"); *Sanders v. CJS Sols. Grp.*, LLC, 2018 WL 1116017, at *2 (S.D.N.Y. Feb. 28, 2018) ("[T]he settlement was negotiated for at arm's length with the assistance of an independent mediator, which reinforces the non-collusive nature of the settlement."). The Parties chose to mediate with Judge Welsh because she is highly skilled and widely recognized in this judicial district and elsewhere as a leader in complex dispute resolution. In this regard, the Parties respectfully submit the Declaration of Mediator Diane Welsh, attached hereto as Exhibit A, in support of preliminary approval of the Settlement, which attests to the hard fought nature of the negotiations and the Parties' thorough understandings of the strengths and weaknesses of the cases. Golan Decl., ¶ 4.

Since extensive litigation and discovery have already taken place, "counsel had an adequate appreciation of the merits of the case before negotiating" the Settlement Agreement. *Warfarin*, 391 F.3d at 537. As detailed above, given the voluminous documents reviewed, numerous depositions taken and extensive motion practice, Plaintiffs knew what important witnesses would testify to and what hurdles would need to be overcome at trial. All of this, combined with Plaintiffs' counsel's

extensive class action litigation experience, was more than sufficient to evaluate the relative strengths and weaknesses of the claims and defenses in this case at the mediation. *See ViroPharma*, 2016 WL 312108, at *11; *In re Philips/Magnavox Television Litig.*, 2012 WL 1677244, at *11 (D.N.J. May 14, 2022) ("'Where this negotiation process follows meaningful discovery, the maturity and correctness of the settlement become all the more apparent.'") (citation omitted).

Plaintiffs and their counsel believe that the Settlement Agreement is in the best interests of the Settlement Class and their conclusion is to be afforded considerable weight. Golan Decl., ¶ 6. *See ViroPharma*, 2016 WL 312108, at *11 ("when the settlement results from arm's-length negotiations, the Court 'affords considerable weight to the views of experienced counsel regarding the merits of the settlement'"); *In re Nat'l Football League Players' Concussion Inj. Litig.*, 307 F.R.D. 351, 387 (E.D. Pa. 2015) ("'[A] presumption of correctness is said to attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.'"), *aff'd*, 821 F.3d 410 (3d Cir. 2016); *Alves v. Main*, 2012 WL6043272, at *22 (D.N.J. Dec. 4, 2012) ("[C]ourts in this Circuit traditionally 'attribute significant weight to the belief of experienced counsel that settlement is in the best interest of the class.'"), *aff'd*, 559 F. App'x 151 (3d Cir. 2014).

2. The Proposed Settlement Is Presumptively Adequate

Rule 23(e)(2)(C)(i), which overlaps *Girsh* factors 1 and 4-9, instructs the Court to consider the adequacy of the settlement relief in light of the costs, risks, and delay that trial and appeal could inevitably impose. Fed. R. Civ. P. 23(e)(2)(C)(i); *Girsh*, 521 F.2d at 157 (factor one focuses on the complexity, expense, and likely duration of the litigation; factors four through nine focus on the risks). These factors likewise weigh in favor of preliminary approval of the Settlement Agreement.

These consolidated cases, filed in 2016 and 2017, face the same risks inherent in any federal litigation, compounded by the length of time that summary judgment, trial, and any appeals would

consume. *See Ins. Brokerage*, 282 F.R.D. at 103 ("By reaching a favorable Settlement with most of the remaining Defendants prior to the disposition of Defendant's renewed dismissal motions or even an eventual trial, Class Counsel have avoided significant expense and delay, and have also provided an immediate benefit to the Settlement Class.").

The negotiation of a common cash fund requiring Lincoln to pay up to $117,750,000 is, Plaintiffs and their counsel submit, fair, reasonable, and adequate considering the risks of continued litigation, which would require Plaintiffs to prove Lincoln's liability under the provisions of the Policies at issue, in light of the actions taken by Lincoln in setting the increased COI rates and the anticipated opposing views of the parties' respective experts, as well as damages issues at trial. Golan Decl., ¶ 6. *See Girsh*, 521 F.2d at 157 (risks of establishing liability and damages are factors that can support settlement approval). Lincoln has been consistently zealous in its opposition to Plaintiffs' claims, and to Plaintiffs' position that a class would ultimately have been certified and sustained on appeal. The same degree of zealous defense can be expected at all future phases of these proceedings (including *Daubert* motions and motions for summary judgment) should the Settlement Agreement not be approved. There is certainly no guarantee that Plaintiffs, who carry the burden of proof on the claims asserted in the Actions, would succeed on new motions for class certification or the anticipated summary judgment and *Daubert* motions, let alone at trial. And as with any case that goes before a jury, there is significant risk of losing. Plaintiffs believe their case is strong but acknowledge, as they must, that there are risks to the ultimate recovery, if litigation continues. Settlement removes all risk, uncertainty, and delay, and confers immediate monetary and other benefits to the class.

Taking into account that this litigation has been ongoing for over six years, the uncertainty of continued litigation, and the significant amount of the recovery, Plaintiffs and their counsel

respectfully submit that the Settlement Agreement is reasonable and should be preliminarily approved. *See Girsh*, 521 F.2d at 157. Indeed, a cash recovery with a total value of $117,750,000 (before any reductions to account for those Class Policies that are not Final Settlement Class Policies), in addition to the significant non-monetary relief secured, is a significant achievement for the Settlement Class and easily satisfies the adequacy element.

Finally, Rule 23(e)(2)(C) requires the Court to consider the effectiveness of the proposed method for distributing relief, the terms of the proposed attorneys' fees, and the existence of any other "agreement[s]." Fed. R. Civ. P. 23(3)(2)(C)(ii)-(iv). The mechanics and efficacy of the distribution process are straight-forward: in return for the release of any conceivable claims challenging the COI Increases, all Settlement Class Members who choose to remain in the Final Settlement Class and thus participate in the Settlement will receive a cash payment equal to a portion of the difference in their COI charges before and after the challenged COI Increases, subject to a minimum payment of $200. *Inovio*, 2023 WL 227355, at *6 ("The settlement … treats class members equitably relative to each other because each member's recovery is proportional to his or her actual loss suffered. "). Lincoln has reliable contact information for every such Owner, to whom relief will be automatically delivered without need for any claim submission process. The other benefits of the Settlement Agreement – such as the five-year freeze on future COI rate increases – are also self-executing.

This leaves only the issue of proposed attorneys' fees to be considered before determining that the Settlement is reasonable and adequate. Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." The Settlement Agreement provides that Class Counsel, on behalf of all Plaintiffs' Counsel, will apply to this Court for an award of attorneys' fees and reimbursed litigation expenses before the objection deadline and thus

well in advance of the Fairness Hearing. Class Counsel will request approval of attorneys' fees not to exceed 33.3% of the Settlement Fund, and reimbursement of documented litigation expenses, both to be paid only after the Court's Final Approval Order itself becomes "final." Ex. 1, at pp. 13-14. The Settlement Agreement is not conditioned on the Court's approval of these fee and expense requests. Ex. 1, at p. 14.

A 33.3% fee request is well-within the norm for awards in common fund cases, since such fee awards "generally range from 19% to 45% of the settlement fund." *Inovio*, 2023 WL 227355 at *12 (quotation and citation omitted); *accord In re Ravisent Technologies, Inc. Sec. Litig*., 2005 WL 906361, at *11 (E.D. Pa. 2005) ("[C]ourts within this Circuit have typically awarded attorneys' fees of 30% to 35% of the recovery, plus expenses."); *Teh Shou Kao v. CardConnect Corp.*, 2021 WL 698173, at *9 (E.D. Pa. Feb. 23, 2021) (awarding attorney's fees of 33.3% in class settlement that created a fund with a value up to $7.65 million); *In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 102 (E.D. Pa. 2013) (awarding attorneys' fees of 33.3% on $35 million settlement fund); *McDonough v. Toys "R" Us, Inc.*, 834 F.Supp.2d 329, 340-43 (E.D. Pa. 2011) (awarding attorneys' fees of 33 percent of the settlement fund, while noting that fees may range as high as 45 percent of a common fund), *vac. on other grounds*, *In re Baby Products Antitrust Litig*., 708 F.3d 163 (3d Cir. 2013). Counsel in a class action are furthermore routinely entitled to reimbursement of those litigation expenses that are "adequately documented and reasonable and appropriately incurred in the prosecution of the class action." *Abrams v. Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995). In short, there are no "red flags" with respect to either fees or expenses that otherwise undermine the Settlement Agreement's suitability for preliminary approval.

E. The Court Should Set a Fairness Hearing, and Approve the Proposed Class Notice and Method for Sending Notice to Class Members

Under Rule 23, the Court "must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). Rule 23 requires the Court to "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). Here, the Parties have negotiated the form of the notice to be disseminated to all persons who fall within the definition of the Settlement Class, attached as Exhibit 2 to the Motion.

The proposed form of Class Notice apprises Settlement Class Members of (among other disclosures) the nature of the Actions, the definition of the Settlement Class, the claims and issues in the Actions, and the claims that will be released through the Settlement Agreement. The Class Notice also: (i) advises that a Settlement Class Member may enter an appearance through counsel, if desired, but that no affirmative action is required to join the Settlement Class; (ii) describes the binding effect of a judgment on Settlement Class Members under Rule 23(c)(3); (iii) states the procedures and deadlines for Settlement Class Members to exclude themselves from the Settlement Class and to file an objection to any aspect of the proposed Settlement, including the requested approval of Class Counsel's attorneys' fees and expenses; (iv) states the basis, method of calculation, and timeline to recover from the Settlement; and (v) provides the date, time, and location of the Fairness Hearing. *Accord Inovio*, 2023 WL 277355, at *4.

The Parties have already identified the Policies at issue and the identity of the respective Owners. The Class Notice will be sent using the reliable mailing information maintained by Lincoln. Additionally, the Class Notice will be posted on a settlement website. Such manner of providing notice, which includes individual notice by mail to all Settlement Class Members who

can be reasonably identified, represents the best way practicable under the circumstances and thus satisfies the requirements of due process and Rule 23. *See Inovio*, 2023 WL 227355, at *4.

Class Counsel also requests that the Court appoint JND Legal Administration as Notice and Claims Administrator to provide all notices approved by the Court to Settlement Class Members and to assist in administering the Settlement as provided in the Settlement Agreement. JND Legal Administration (www.jndla.com), which was selected pursuant to a "request for proposal" process undertaken by Class Counsel, is a recognized leader in legal administration services for class action settlements.

F. The Proposed Settlement Approval Deadlines

The Parties respectfully propose the following schedule for the Court's consideration, which is incorporated into the [Proposed] Preliminary Approval Order:

Lincoln deadline to serve notices of the proposed Settlement upon the appropriate officials as defined by, and in compliance with, the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715 ("CAFA").	10 days after filing of Plaintiffs' Motion for Preliminary Approval.
Deadline for commencing mailing of the Class Notice to Settlement Class Members and posting the Notice on the Settlement website.	21 days after entry of the Preliminary Approval Order.
Fairness Hearing.	To be set by the Court at least 100 days after entry of the Preliminary Approval Order, or at the Court's earliest convenience thereafter.
Deadline for Plaintiffs to file papers in support of application for Plaintiffs' service awards and attorneys' fees and expenses.	60 days prior to the Fairness Hearing.

Deadlines for receipt of exclusion (opt-out) requests and objections.	45 days prior to the Fairness Hearing.
Deadline for Plaintiffs to file papers in support of final approval.	30 days prior to the Fairness Hearing.
Deadline for submitting proof of mailing of Notice to Class Member and list of all valid opt-out requests.	7 days prior to the Fairness Hearing.

IV. CONCLUSION

For each and all of the foregoing reasons, Plaintiffs' Motion is well-taken and should be granted in its entirety, through the entry of the [Proposed] Preliminary Approval Order.

Dated: March 24, 2023

BARRACK, RODOS & BACINE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: LINCOLN NATIONAL COI LITIGATION	No. 16-cv-6605-GJP
&	&
IN RE: LINCOLN NATIONAL 2017 COI RATE INCREASE LITIGATION	No. 17-cv-04150-GJP

DECLARATION OF JEFFREY W. GOLAN

I, Jeffrey W. Golan, declare as follows:

1. I am a Partner in the law firm of Barrack Rodos & Bacine and am one of the attorneys for Plaintiffs in the above-captioned actions (collectively "the Actions"). I have also served as the Chair of the Plaintiffs' Steering Committee for the 2016 COI Action and as a Co-Chair of the Plaintiffs' Steering Committee for the 2017 COI Action. I have personal knowledge of the facts set forth below and, if called as a witness, I could and would competently testify to these facts. I respectfully submit this declaration in support of Plaintiffs' Unopposed Motion for Consolidation of Actions for Settlement Purposes Only, Preliminary Certification of Settlement Class and Appointment of Class Counsel, Preliminary Approval of Proposed Class Settlement, Scheduling of a Fairness Hearing and Approval of Class Notice (the "Preliminary Approval Motion").[1]

2. Attached to this declaration is a true and correct copy of the following document offered in support of the Preliminary Approval Motion:

[1] Capitalized terms not otherwise defined in this declaration have the same meaning as those defined in the Joint Stipulation and Settlement Agreement ("Settlement Agreement").

Exhibit A: Declaration of the Hon. Diane Welsh.

3. The Parties to the Actions engaged in a robust, intensive and protracted discovery process, including the production of more than 585,000 pages of documents by Lincoln and third party consultants Milliman, Inc., Towers Watson, and Ernst & Young (many of them including complex native files and spreadsheets), procurement of a license allowing Plaintiffs and their experts to operate the MG_ALFA system used to model the COI Increases, and the taking of more than 30 fact and expert witness depositions.

4. Plaintiffs moved for class certification in the 2016 Action on June 25, 2019. [ECF 111]. While Plaintiffs' class certification motion was pending, the Parties participated in an unsuccessful mediation before The Honorable Barbara Jones (Ret.). Plaintiffs' motion for class certification in the 2016 Action was denied on August 9, 2022; however, Plaintiffs were given leave to file a renewed class certification motion by February 21, 2023. [2016 Action ECF 237, 244]. Before Plaintiffs filed their renewed class certification motion, the Parties agreed to participate in another mediation before The Honorable Diane Welsh (Ret.) on December 13, 2022. That mediation and a series of follow-on discussions and negotiations between the Parties resulted in the proposed Settlement that is the subject of this motion. The 2017 Action also proceeded to mediation with Judge Welsh on December 13, 2022 and was part of the follow-on negotiations between the Parties. All negotiations were difficult, adversarial, and vigorously conducted by both sides, as Lincoln is represented by highly sophisticated counsel with extensive experience in COI rate litigation. The Parties chose to mediate with Judge Welsh because she is highly skilled and widely recognized in this judicial district and elsewhere as a leader in complex dispute resolution. *See*, Ex. A, Welsh Decl. at ¶ 2.

5. Interim Class Counsel are highly qualified and experienced in class action litigation

against major insurance companies, including other class actions challenging COI increases imposed on universal life products. As the Court concluded earlier in the Actions, "Plaintiffs' counsel have extensive experience litigation class actions…they have successfully certified classes challenging cost of insurance increases…[t]hey have performed ably in this case, and the Court has no reason to doubt their adequacy." [2016 Action ECF 237, at 27; 2017 Action ECF 110, at 29-30]. Further, Plaintiffs' counsel are highly experienced in prosecuting complex class actions in this Circuit and throughout the country, including in many other actions relating to cost of insurance policy provisions, and were previously appointed as Interim Class Counsel in the two Actions.

6. Plaintiffs and their counsel believe that this Settlement is in the best interests of the Settlement Class. We believe that the negotiation of a common cash fund requiring Lincoln to pay up to $117,750,000 is fair, reasonable, and adequate considering the risks of continued litigation, which would require Plaintiffs to prove Lincoln's liability under the provisions of the Policies at issue, in light of the actions taken by Lincoln in setting the increased rates and the anticipated opposing views of the parties' respective experts, as well as damages issues at trial.

I declare under penalty of perjury the foregoing is true and correct.

Executed this 24th day of March, 2023, at Philadelphia, Pennsylvania.

Jeffrey W. Golan

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: LINCOLN NATIONAL COI LITIGATION and IN RE: LINCOLN NATIONAL 2017 COI RATE LITIGATION	No.: 16-cv-06605-GJP No.: 17-cv-4150-GJP

DECLARATION OF HON. DIANE M. WELSH (RET.)

I, Diane M. Welsh, declare that the following is true and correct:

1. I am a competent adult, over the age of 18, and have personal knowledge of the facts and information set forth herein.

2. I served as a Magistrate Judge in the U.S. District Court for the Eastern District of Pennsylvania from 1994 to 2005. Thereafter, I became a mediator with JAMS. With 29 years of experience as both a neutral and a United States Magistrate Judge, I have presided over the successful resolution of over 5000 matters, including many class actions and mass torts. A copy of my curriculum vitae is attached hereto as Exhibit 1.

3. I submit this Declaration in my capacity as the mediator of a proposed class settlement of the above-captioned class actions (the "Actions") brought by numerous Plaintiffs (collectively "Plaintiffs") against Lincoln Life Insurance Company and the Lincoln Financial Group (collectively "Lincoln").

4. I was contacted by the parties in the Actions to serve as a neutral mediator in a session that took place at the JAMS offices in Philadelphia on December 13, 2022. At my request the parties provided me with detailed submissions in advance of the mediation addressing the claims and defenses asserted in the Actions, the prior procedural history and the current procedural posture of the Actions. I closely reviewed the mediation statements and supporting materials to familiarize myself with the nature of the claims and defenses asserted, the status of the parties' prior settlement negotiations and the underlying economics of the COI rate increases at issue in the Actions.

5. The mediation was attended by: (a) counsel for the Plaintiffs from Barrack Rodos & Bacine, Bonnett Fairbourn Friedman & Balint PC, Susman Godfrey L.L.P., The Moskowitz Law Firm, PLLC and Girard Sharp; (b) outside counsel for Lincoln from Milbank LLP and Fried, Frank, Harris, Shriver and Jacobson LLP; and (c) in-house counsel for Lincoln.

6. The mediation session lasted approximately eight (8) hours. Although the parties were very far apart at the outset of the mediation, they made considerable progress towards a consensual resolution. Despite that progress, the parties were unable to reach agreement on the economic terms of a proposed settlement but agreed to continue their settlement discussions in the days immediately following the mediation. The parties subsequently reported to me on December 23, 2022, that they were able to resolve their differences and reach an agreed upon settlement structure and economic terms.

7. Based on my involvement in the parties' mediations, I can attest that the negotiations were fair, at arms' length, and in good faith. I have no cause to believe that there was any kind of improper collusion between the parties. Throughout the mediation process, the parties engaged in extensive adversarial negotiations. There were extensive discussions of the strengths and weaknesses of the parties' respective positions concerning the merits, damages, and possible resolution. While both sides zealously advocated their respective positions, they also both recognized the significant risks they faced if they proceeded with the litigation, as well as the substantial costs to pursue the matter through continued class certification proceedings, merits expert discovery, summary judgment, trial, and appeal.

8. The facilitated negotiations were lengthy, principled, exhaustive, informed, and sometimes contentious, but, as noted, were always conducted at arm's length. I note that the Actions were far advanced -- with all fact discovery having been completed through extensive document discovery and numerous depositions and substantial motion practice – thereby providing the parties with ample information to engage in fully informed negotiations.

9. In my opinion, the proposed Settlement was the result of arm's-length negotiations between highly capable, experienced, and informed counsel. The Settlement resulted from counsel's efforts after thoroughly investigating the case, considering the risks, strengths, and weaknesses of their respective positions on substantive issues, the

risks, burdens, delays and costs of continued litigation, and the best interests of their respective clients.

10. I believe the proposed Settlement aptly reflects the risks and potential rewards of the claims being settled. Although the Court will need to make its own determination as to the proposed Settlement's fairness under Fed. R. Civ. P. 23(e)(2), I can say that, from an experienced mediator's perspective, the negotiated settlement produced by the mediation process represents a thorough, deliberative, and comprehensive resolution that will benefit class members through meaningful monetary relief and avoids the considerable risks and costs inherent in class action litigation.

I declare under penalty of perjury that the foregoing is true and correct pursuant to 28 U.S.C. § 1746.

Executed on March 14, 2023.

/s/ Diane M. Welsh

Diane M. Welsh
Mediator, Arbitrator, and Referee/Special Master with JAMS

Local Solutions.
Global Reach.

Hon. Diane M. Welsh (Ret.)

JAMS Mediator, Arbitrator and Referee/Special Master

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Hon. Diane M. Welsh (Ret.) is highly respected for her ability to successfully resolve disputes with sensitivity, patience, and persistence. Over the past 27 years, as a JAMS neutral and a United States Magistrate Judge, she has successfully resolved over 5000 matters, covering virtually every type of complex dispute. Specifically, Judge Welsh has extraordinary skill in resolving high-stakes multi-party commercial disputes, employment matters, catastrophic personal injury cases, class actions, mass torts and multi-district litigations (MDL's). She was recognized as a 2016-2018 "ADR Champion" by the National Law Journal.

Class Actions, Mass Torts, and MDLs

Judge Welsh is nationally recognized for her work as a neutral and Special Master in complex class actions, mass torts, and multi-district litigations (MDLs). Select examples of this work include:

- ointed Special Master of the Amtrak Train Derailment Settlement Program related to the 2015 ailment of a Philadelphia passenger train. The program will distribute $265m in claims arising

from the incident.

- Successful mediation in the multi-district litigation, Wright Medical Technology, Inc. Conserve Hip Implant Products Liability Litigation.
- Mediated a global settlement of the state and federal products liability proceedings brought against Stryker Orthopedics -- In re: HOC Rejuvenate and ABG II Hip Implant Products Liability Litigation, a federal multi-district litigation venued in the United States District Court for the District of Minnesota, and In re: HOC Rejuvenate Hip Stem and ABG II Modular Hip Stem Litigation Case, a New Jersey state multi-county litigation venued in Bergen County, New Jersey. Prior to mediating the global settlement, between 2013 and June 2014, Judge Welsh mediated more than 20 bellwether cases in the New Jersey multi-county litigation. Ninety-five percent of registered eligible patients have enrolled in the settlement program under the master settlement agreement. She currenty serves as Claims Administrator overseeing the implementation of the settlement and continues to mediate opt-out cases.
- Appointed Special Master for all proceedings in In re: Constar International Inc. Securities Litigation in the Eastern District of Pennsylvania
- As a Magistrate Judge, presided over all aspects of discovery in In re: Diet Drugs (Phentermine/Fenfluramine/Defenefuramine) Product Liability Litigation.

ADR Experience and Qualifications

- Conducted nearly 1,800 settlement conferences as a U.S. Magistrate Judge in virtually every area of civil litigation, including complex commercial, insurance, class action, mass torts, employment, serious personal injury, product liability, professional liability malpractice, antitrust, securities, government, civil rights, environmental, education, aviation, intellectual property, maritime, product liability, real estate, construction, consumer, sports, and entertainment
- Served on the Alternative Dispute Resolution committee for the United States District Court for the Eastern District of Pennsylvania for 10 years, drafting local federal court rules for court-annexed mediation program
- Frequent speaker at Continuing Legal Education programs on settlement negotiation, mediation, and the ADR Act

Representative Matters

- **Antitrust**
    - Claims of conspiracy by Internet bond trader against major brokers and dealers; claims of price fixing of blood reagent products; claims of price fixing in the pharmaceutical industry
- **Aviation**
    - Mediated claims by passengers of Swissair flight 111; accidents involving private planes; plane that crashed into a house resulting in injuries to the resident

- **Business/Commercial**
    - Successfully mediated hundreds of business disputes involving breach of contract, corporate, franchise, licensing, partnership, shareholder's rights, and breach of warranty claims
- **Civil Rights**
    - High profile case on behalf of severely abused child against private foster care placement agency and government agencies; claim against school district on behalf of special education student raped by their students in classroom supervised by a substitute teacher; cases involving alleged hazing, harassment and sexual misconduct on a University sports team; multiple Title IX and Tort cases including claims of sexual abuse involving faculty, clergy and students in colleges, universities, primary and secondary schools, boarding schools and foster care
- **Class Action/Mass Tort**
    - In addition to the class action matters listed above; RICO allegations brought by home buyers alleging specific violations; claims involving federal and state consumer protection statutes against Builder, Mortgage Brokers, Appraiser, and Mortgage Lender; ERISA/Securities Fraud class action by former employees of a national insurance company; multiple wage and hour class actions; unfair, deceptive and bad faith billing for supplying electricity to residential customers; claims involving a defective component part on a water supply line; breach of contract and breach of the covenant of good faith and fair dealing related to pricing practices on electric energy bills; violations of the Telephone Consumer Protection Act; consumer class action in connection with the repossession and resale of financed vehicles; cases involving the Fair Credit Reporting Act and the Fair Debt Collection Practices Act
- **Construction Defect**
    - Claim by general contractor against regional transportation authority totaling more than $20 million dollars of cost overruns due to post contract federal requirements regarding lead paint abatement
- **Employment**
    - Successfully mediated thousands of claims of discrimination (age, disability, gender, national origin); hostile work environment; retalitation; wage & hour; FLSA, ADA; FMLA, state statues, whistleblower/False Claims Act; harassment; denial of long-term disability insurance; employment contract; denial of employment due to criminal background checks issued uder the FCRA
- **Entertainment and Sports**
    - Copyright and royalty claims by songwriters and artists against record producers and distributors; contract and breach of fiduciary duty claim by heavyweight boxing champion against a promoter; employment discrimination and contract claims by various employees against professional sports teams; personal injury claims brought by professional football players against NFL teams

- **Environmental**
    - Claims by the USA and state against more than twenty defendants in major environmental Superfund case
- **Estate Probate Trusts**
    - Breach of fiduciary duty by placing trust assets in underperforming proprietary funds
- **Insurance**
    - Mediated claims of bad faith, coverage, property damage, reinsurance, and subrogation; coverage disputes over damages sustained by commercial properties in the wake of Superstorm Sandy.
- **International**
    - Dispute between two Mexican agribusinesses who claimed breach of warranty against the manufacturers of an anti-viral vaccine
- **Maritime/Admiralty**
    - Multiple Jones Act cases; disputes between ship owners and insurers over cause of loss-mechanical failure or human error
- **Personal Injury/Torts**
    - Successfully mediated cases involving complex catastrophic personal injury and wrongful death, workplace injuries, nursing home negligence, product liability (including multiple defective medical device claims), motor vehicle, toxic torts, municipal and governmental tort liability, Dram shop/liquor liability, and premises liability
- **Professional Liability**
    - Mediated numerous cases involving legal malpractice, fee disputes, medical malpractice, chiropractic malpractice, accounting, executives, directors, and officers
- **Real Estate**
    - Partnership, joint venture, and contract disputes in major real estate development projects; disputes over real estate commissions; violation of franchise agreements
- **Securities**
    - Numerous individual and class actions involving claims of fraud; cases alleging breach of fiduciary duty by financial advisors and brokers; anticompetitive acts and practices as a part of an overall scheme to improperly maintain and extend monopoly power in the making for a pharmaceutical drug, causing the payment of overcharges
- **Sexual Abuse**
    - Successfully mediated settlements in numerous cases involving highly sensitive claims of sexual and physical abuse concerning adult and minor children and group/class action plaintiffs. Disputes included matters involving: alleged abuse at a prestigious boarding school; sex abuse leading to suicide of a college student; allegations of sexually charged hazing and misconduct in connection with university-sponsored sports teams; numerous cases involving sexual abuse claims against Archdioceses, Catholic and other religious schools, and nonsectarian private and public schools; disputes involving victims of incest

and church officials; and matters regarding sex trafficking allegations against a major hotel chain

Honors, Memberships, and Professional Activities

- Included on "National Mediators" list, *Chambers USA America's Leader Lawyers for Business*, 2022
- Completed Virtual ADR training conducted by the JAMS Institute, the training arm of JAMS
- Listed as a "Recognized Practitioner," *Chambers USA*, 2019
- Recognized as an “ADR Champion”, *National Law Journal*, 2016-2018
- Voted “BEST ADR INDIVIDUAL” by the readers of *ALM’s Legal Intelligencer*, Best of 2007-2016
- Recognized as Mediation "Lawyer of the Year", Philadelphia, *Best Lawyers in America*, 2014
- Recognized as a Best Lawyer, Alternative Dispute Resolution Category, *Best Lawyers in America*, 2007-2022
- Recognized as a Pennsylvania Super Lawyer, Alternative Dispute Resolution Category, *Law & Politics Magazine*, 2008-2009
- Voted "Best Individual Mediator", *National Law Journal*, "Best Of" Survey, 2012
- Member, Federal Magistrate Judges Association; Third Circuit Director, 1999-2004
- Member, The Forum of Executive Women
- Member, American Inns of Court; President, Temple American Inn of Court, 2002-2003
- Member, National Association of Woman Judges, Federal Bar Association, Montgomery Bar Association, Philadelphia Bar Association,
- Bucks County Bar Association, Pennsylvania Bar Association, and other professional organizations
- Member of Third Circuit and U.S. District Court for the Eastern District of Pennsylvania court committees, including Federal-State
- Judicial Council, Committee on Bankruptcy and Magistrate Judges, Alternative Dispute Resolution Committee, Court Interpreters
- Committee, Bench Bar Public Relations and Educational Programs Committee, and Congressional Delegation Committee

Background and Education

- U.S. Magistrate Judge, U.S. District Court for the Eastern District of PA, 1994-2005
- Private Law Practice, 1984-1994
- Deputy District Attorney, Bucks County District Attorney’s Office, 1981-1984
- Legal Counsel, Pennsylvania Senate Judiciary Committee, 1980-1981
- J.D., Villanova University School of Law, 1979

  ., Political Science, *Magna Cum Laude*, La Salle University, 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: LINCOLN NATIONAL COI LITIGATION	Case No.: 2:16-cv-6605-GJP
IN RE: LINCOLN NATIONAL 2017 COI RATE LITIGATION	Case No.: 2:17-cv-04150-GJP

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2023, a copy of Plaintiffs' Unopposed Motion for Consolidation of Actions for Settlement Purposes Only, Preliminary Certification of Settlement Class and Appointment of Class Counsel, Preliminary Approval of Proposed Class Settlement, Scheduling of Fairness Hearing and Approval of Class Notice (the "Motion"), [Proposed] Preliminary Approval Order, Plaintiffs' Memorandum of Law in Support of the Motion, the exhibits attached hereto, and Declaration of Jeffrey W. Golan dated March 24, 2023, were filed and submitted electronically, served via email on Counsel for Defendants, and are available for viewing and downloading from the CM/ECF system. Notice of this filing will be sent to all parties entered of record on the Court's docket.

/s/ Jeffrey W. Golan
Jeffrey W. Golan

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: LINCOLN NATIONAL COI LITIGATION	Case No.: 2:16-cv-6605-GJP
IN RE: LINCOLN NATIONAL 2017 COI RATE LITIGATION	Case No.: 2:17-cv-04150-GJP

[PROPOSED] PRELIMINARY APPROVAL ORDER

AND NOW, this ____ day of _____, 2023, upon consideration of Plaintiffs' Unopposed Motion for Consolidation of Actions for Settlement Purposes Only, Preliminary Certification of Settlement Class and Appointment of Class Counsel, Preliminary Approval of Proposed Class Settlement, Scheduling of Fairness Hearing and Approval of Class Notice filed March 24, 2023 (the "Motion"), it is hereby **ORDERED** that the Motion is **GRANTED** as follows:

1. The request to consolidate the two above-captioned Actions for settlement purposes only is **GRANTED** in the interests of judicial economy and efficiency.

2. Upon review of the record, the Court finds that the Joint Stipulation and Settlement Agreement (the "Settlement Agreement") between the Plaintiffs and the Defendants Lincoln National Corporation and The Lincoln National Life Insurance Company (collectively, "Lincoln") attached as Exhibit 1 to the Motion was arrived at by arm's length mediation and negotiations by

highly experienced counsel, will likely be finally approved, and is hereby **PRELIMINARILY APPROVED**, subject to further consideration at the Fairness Hearing provided for below. Unless otherwise defined, all terms used herein have the same meaning as set forth in the Settlement Agreement.

3. The Court will likely be able to certify the Settlement Class, defined below, and certification is therefore **PRELIMINARILY GRANTED**, subject to further consideration at the Fairness Hearing. The Settlement Class means all Owners of:

> Any JP Legend 300, JP Lifewriter Legend 100, 200, and 400 series, JP Legend 3000, LifeSight 30, LifeSight 31, LifeSight 32, JP UL 101, JP UL 102, JP UL 103, JP UL 130, JP UL 131, and Vision 20 life insurance policy subjected to an increase in the cost of insurance rates as announced by Lincoln in 2016 or 2017, excluding the Excluded Policies.[1]

Excluded from the Settlement Class are or will be:

(a) all Owners of Class Policies who submit a valid Opt-Out Request, but solely with respect to the Class Policy that is the subject of the Opt-Out Request;

(b) the Honorable Gerald J. Pappert, United States District Court Judge of the Eastern District of Pennsylvania (or other Circuit, District, or Magistrate Judge presiding over the Actions) and court personnel employed in Judge Pappert's (or such other judge's) chambers or courtroom;

(c) Lincoln and its affiliates, parents, subsidiaries, successors, predecessors, and any entity in which Lincoln has a controlling interest;

(d) any officer or director of Lincoln identified in the Form 10-K Annual Report of either Lincoln National Corporation or The Lincoln National Life Insurance Company, filed with the United States Securities and Exchange Commission for the fiscal year ended December 31, 2021;

(e) those Owners of Class Policies who have commenced a lawsuit challenging the COI Increases through an individual action and served Lincoln with the complaint or other operative pleading in the lawsuit prior to the conclusion of the Opt-Out/Objection Period, but solely with respect to the Class Policy that is the subject of such aforementioned lawsuit; and

[1] Policies excluded from the Settlement Class are identified with particularity on a spreadsheet attached to the Settlement Agreement as Exhibit B.

(f) the legal representatives, successors, or assigns of any of the individuals or entities described in (a) through (e), but only in their capacity as legal representative, successor, or assignee.

The Court further appoints Barrack, Rodos & Bacine; Bonnett Fairbourn Friedman & Balint, PC; Susman Godfrey L.L.P.; The Moskowitz Law Firm, PLLC; and Girard Sharp LLP as Class Counsel for the Settlement Class.

4. The following Plaintiffs will likely be appointed as class representatives for the Settlement Class: Robert Rombro and Harriet Kanter, as Trustees for the Alan Norman Kanter Trust; Ivan Mindlin, as Trustee of the Mindlin Irrevocable Trust, and Alan Mindlin, as the insured who funded the policy; Richard Weinstein, as an owner of a life insurance policy insuring the life of Jay Weinstein; Lowell Rauch and Carol Anne Rauch; Bharti R. Bharwani; Robert A. Zirinsky; US Life 1 Renditefonds GmbH & Co. Kg and US Life 2 Renditefonds GmbH & Co. Kg, as owners of life insurance policies insuring the life of Loucille Martindale; Milgrim Investments, LP; Barbara Valentine; Patricia A. Trinchero, as Trustee of the Trinchero 2015 Revocable Trust; Marshall Lewis Tutor; Arthur M. Kesselhaut; and Warren M. Stanton as Trustees of the Kesselhaut Trust Agreement dated August 24, 1989; William Lin Patterson; and Barry Mukamal, as Trustee of the Mutual Benefits Keep Policy Trust.

5. To allow the parties and the Court sufficient time to comply with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715 ("CAFA"), a hearing on final settlement approval ("Fairness Hearing") shall be held before this Court at least 100 days[2] following issuance of this Order. The Fairness Hearing will be held on _____ __, 2023, at _____ _.m.,

[2] CAFA requires that Defendants serve notice of the proposed settlement on certain officials within 10 days of the filing of this Proposed Order, and that the Court not issue an order finally approving the settlement until 90 days after service of such notice.

Eastern, in the courtroom then assigned to the Honorable Gerald J. Pappert, U.S.D.J., at the United States District Court for the Eastern District of Pennsylvania, James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 10106. At the Fairness Hearing, the Court will consider, *inter alia*, (i) the fairness, reasonableness, and adequacy of the Settlement Agreement; (ii) whether the Court should certify the proposed Settlement Class for purposes of settlement; (iii) whether a Final Judgment and Order terminating the Actions should be entered in the form submitted by the Parties; (iv) whether the Court should approve the Plaintiffs' proposed plan of allocation; (v) whether the Court should grant an award of attorneys' fees and reimbursement of expenses to Class Counsel, and the amounts thereof; and (vi) whether the Court should grant service awards to Plaintiffs, and the amounts thereof. The Fairness Hearing may be rescheduled or continued; in that event, the Court will furnish all counsel with appropriate notice. The Court may approve the Settlement Agreement with only such material modifications (if any) as may be agreed to in a writing signed by all parties to the Settlement, if appropriate, without further notice to the Settlement Class.

6. The form of Class Notice to the Settlement Class submitted to the Court and attached to the Motion as Exhibit 2 satisfies the requirements of Rule 23(e) of the Federal Rules of Civil Procedure and due process, is otherwise fair and reasonable, and is thus **APPROVED** for dissemination to the Class.

7. The proposed manner of disseminating the Class Notice is also **APPROVED**. Class Counsel, through the Settlement Administrator, shall commence mailing the Class Notice within 21 days after the Court enters this Order. Class Counsel shall cause proof of mailing on the Settlement Class to be filed no fewer than 7 days of the Fairness Hearing.

8. The retention of JND Legal Administration to perform the duties of the Settlement Administrator as specified in the Settlement Agreement is **APPROVED**, including in respect to issuance of the Class Notice. All expenses incurred by JND Legal Administration must be reasonable, are subject to Court approval, and shall be payable solely from the Settlement Fund.

9. Defendants shall serve notices of the proposed Settlement upon the appropriate officials as defined by, and in compliance with, the requirements CAFA.

10. A member of the Settlement Class may object to the Settlement Agreement by filing a written objection with the Court no fewer than 45 days prior to the Fairness Hearing. The objection must contain: (1) the full name, address, telephone number, and email address, if any, of the Settlement Class Member; (2) Class Policy number; (3) a written statement of all grounds for the objection accompanied by any legal support for the objection (if any); (4) copies of any papers, briefs, or other documents upon which the objection is based; (5) a list of all persons who will be called to testify in support of the objection (if any); (6) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing; (7) the signature of the Settlement Class Member or his/her/their counsel; and (8) a list of any objections by the Settlement Class Member and/or counsel in any class action settlements submitted to any state or federal court in the United States in the previous five years. If an objecting Settlement Class Member intends to appear at the Fairness Hearing through counsel, the written objection must also state the identity of all attorneys representing the objecting Settlement Class Member who will appear at the Fairness Hearing. Settlement Class Members who do not timely make their objections as provided in this paragraph will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the Settlement.

11. All Final Settlement Class Members shall be bound by the Settlement, if granted final approval by the Court, and all determinations and judgments in the Actions, whether favorable or unfavorable. The opt-out procedure and requirements for excluding oneself from the Final Settlement Class, as set forth in the Class Notice, is **APPROVED**. The Opt-Out/Objection Period shall expire 45 days before the Fairness Hearing. Class Counsel shall, through the Settlement Administrator, file with the Court a list of all valid Settlement Class Members who have submitted Opt-Out Requests no fewer than 7 days before the Fairness Hearing.

12. Class Counsel must file any papers in support of an application for service awards, Class Counsel's attorneys' fees, and reimbursement of litigation expenses no fewer than 60 days before the Fairness Hearing. All other briefs and materials relevant to the final approval of the Settlement and entry of the final judgment proposed by the Parties to the Settlement must be filed with the Court and served on any objectors no fewer than 30 days prior to the Fairness Hearing.

13. All proceedings in the Actions now consolidated for settlement purposes are hereby **STAYED** until such time as the Court renders a final decision regarding the approval of the Settlement Agreement and, if it approves the Settlement Agreement, enters a final judgment as and in the form provided in the Settlement Agreement and dismisses the Actions with prejudice.

14. In event the Settlement Agreement is terminated or otherwise does not become final for any reason whatsoever, then the Actions will resume their *status quo ante* consistent with the terms of the Settlement Agreement, without prejudice to the rights of the settling Parties.

SO ORDERED:

_____

Gerald J. Pappert, U.S.D.J.