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

DAVID M. ROGOWSKI, ELIZABETH A. BALLY, KATHY BAUER, KIM BOTTE, JOHN E. JAUNICH, MYLENE MCCLURE *as personal representative of* THE ESTATE OF EARL L. MCCLURE, RONALD K. PAGE, CHANDRA B. SINGH, JOYCE THOMAS, DAVID TOMS, and WILLIAM T. WHITMAN, Individually and On Behalf Of All Others Similarly Situated, Plaintiffs, vs. STATE FARM LIFE INSURANCE COMPANY and STATE FARM LIFE AND ACCIDENT ASSURANCE COMPANY, Defendants.	Case No. 4:22-cv-00203-RK

UNOPPOSED[1] MOTION PURSUANT TO RULE 23(E) FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND MEMORANDUM IN SUPPORT

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

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I. INTRODUCTION

Plaintiffs David M. Rogowski, Elizabeth A. Bally, Kathy Bauer, Kim Botte, John E. Jaunich, Mylene McClure as personal representative of the Estate of Earl L. McClure, Ronald K. Page, Chandra B. Singh, Joyce Thomas, David Toms, and William T. Whitman ("Plaintiffs") brought this Action against State Farm Life Insurance Company and the related entity State Farm Life and Accident Assurance Company (collectively, "State Farm") for the alleged breach of the terms of their standardized universal life insurance policies by deducting cost of insurance charges from policy owners' Account Value in amounts greater than the policies authorize. This case, as recently amended, consolidates 10 pending lawsuits against State Farm for these alleged contractual breaches, and asserts claims on behalf of a nationwide class.

Now, after over 6 years of intensive and contentious litigation in multiple district and appellate courts, which included dispositive rulings favoring both sides, Plaintiffs and State Farm (the "Parties") have agreed to a nationwide settlement (the "Settlement"). They have executed a binding Settlement Agreement ("Agreement"), under which State Farm will pay $325,000,000 into a non-reversionary Settlement Fund that will be used to provide payments to members of the Settlement Class in amounts representing a material portion of the alleged overcharges they each suffered. As far as counsel can discern, this is the largest cash settlement in a lawsuit challenging cost of insurance rates for universal life insurance. And, as explained below, the Agreement is an outstanding result for the Settlement Class and should ultimately be approved as fair, reasonable, and adequate.

Pursuant to Federal Rule of Civil Procedure 23(e)(1)(B), the first step in effectuating the terms of the Settlement is to issue Notice to the Settlement Class. Under Rule 23(e), directing notice to a settlement class is justified where the Court concludes it will likely be able to (1) approve the settlement as fair, reasonable, and adequate, and (2) certify the settlement class for

purposes of judgment on the settlement. Notice to the Settlement Class should issue here because the terms of the Agreement are a fair, reasonable, and adequate settlement of the claims asserted in this litigation, and the proposed Settlement Class satisfies the requirements of Rule 23. The Agreement is the product of arm's length negotiations between the Parties and was reached only after extensive discovery, thorough vetting of the procedural and merits issues through a lengthy litigation process, and three mediation sessions with the assistance of two highly respected, neutral mediators. The pre-settlement risks Plaintiffs faced make the non-reversionary cash Settlement Fund in the amount of $325,000,000 an excellent result for the Settlement Class Members.

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

Accordingly, pursuant to Rule 23(e), Plaintiffs request that the Court preliminarily approve the Settlement and permit the issuance of Notice to the Settlement Class; appoint the undersigned Plaintiffs' counsel as Class Counsel under Rule 23(g)(3); approve the form and manner of Notice to the Settlement Class; appoint Epiq to administer the Class Notice plan and to fulfill the duties

of the Settlement Administrator as outlined in the Agreement; and schedule a Fairness Hearing to determine whether the Settlement should be finally approved.[2]

II. SUMMARY OF THE LITIGATION

A. The Claims

Plaintiffs each own at least one standardized life insurance policy sold by State Farm on Form 94030/A94030 (the "Policy"). Doc. 46 (Second Amended Class Action Complaint) ("Compl.") ¶¶ 6-16, 22-24. The Policy is or was a valid and enforceable contract between each policy owner and State Farm. Compl. ¶ 27; Policy at 11. The Policy's terms are not subject to individual negotiation and are the same for all policy owners. The Policy cannot be altered by the agent's representations at the time of sale, or by any other discussions or writings; and State Farm's obligations (like the policy owner's) cannot be obviated by informal consent, waiver, or some other act because "[o]nly an officer has the right to change this [P]olicy. No agent has the authority to change the [P]olicy or to waive any of its terms." Compl. ¶¶ 29-30; Policy at 11.

The Policy is a "universal life" insurance product, which is sold as permanent life insurance providing both a death benefit and an investment feature that allows the owner to pay premiums into a policy account called the Account Value. Compl. ¶¶ 3, 31-32. The monthly calculation of the Account Value is set forth in the Policy. *Id.* ¶ 37. The Account Value can grow over time with additional premium payments and applicable interest as identified in the Policy. *Id.* ¶¶ 32, 37. The Policy describes the formula for calculation of the Account Value each month:

> The account value on any deduction date after the policy date is the account value on the prior deduction date:
>
> (1) plus 95% of any premiums received since the prior deduction date,

[2] The Parties have notified all the courts overseeing the constituent cases of the Settlement, and, contemporaneous with this filing, have filed joint motions to stay those actions until the settlement approval process is completed in this case. Most of the courts have already granted the motions, staying their proceedings until conclusion of the approval process in this Court.

(2) less the deduction for the cost of insurance for any increase in Basic Amount and the monthly charges for any riders that became effective since the prior deduction date,
(3) less any withdrawals since the prior deduction date,
(4) *less the current monthly deduction*,
(5) plus any dividend paid and added to the account value on the current deduction date, and
(6) plus any interest accrued since the prior deduction date.

Id. ¶ 37; Policy at 9 (emphasis added).

The "Monthly Deduction" is comprised of two distinct component charges: the cost of insurance charge ("COI Charge") and the "monthly expense charge" equal to $5 a month ("Expense Charge").[3] Compl. ¶¶ 40-42; Policy at 3, 9-10. If the Account Value is not sufficient to cover the Monthly Deduction, then the life insurance terminates. Compl. ¶ 5; Policy at 3, 9. The Policy provides that the COI Charges are determined by multiplying the Monthly Cost of Insurance Rates ("COI Rates") by the Policy's net amount at risk (the amount by which the death benefit amount exceeds the Account Value, i.e., the amount of its own funds State Farm must pay if the insured dies). Compl. ¶ 42; Policy at 10. The Policy states that the COI "rates for each policy year are based on the Insured's age on the policy anniversary, sex, and applicable rate class," and that "[s]uch rates can be adjusted for projected changes in mortality but cannot exceed the maximum monthly cost of insurance rates." Compl. ¶ 43; Policy at 10. State Farm also sold universal life insurance on Form 94080, which is materially identical to Form 94030/A94030 except the COI Rates are not differentiated by the sex of the insured. Compl. ¶ 43; Ex. 2 (Siegel Dec.), ¶ 182.

Plaintiffs allege that the factors specified in the COI Rates provisions of Forms 94030/A94030 and 94080/A94080 (collectively, the "Policies") are characteristics known to define an insured's mortality risk, and that the Policies do not authorize State Farm to consider

[3] If applicable, monthly charges for any riders make up a third component of the Monthly Deduction. Compl. ¶ 40; Policy at 9.

additional factors beyond the identified mortality factors to determine policy owners' COI Rates. Compl. ¶¶ 44-49. Plaintiffs allege that despite lacking authorization in the Policies to do so, State Farm uses unlisted, non-mortality factors to load the COI Rates to recover expenses and additional profits in repeated breach of the Policies' COI Rates provisions. Compl. ¶¶ 51-53, 71-78. Plaintiffs also allege that the Monthly Deduction's $5 Expense Charge prohibits State Farm from deducting more than $5 in expenses in each Monthly Deduction. Plaintiffs allege that despite this limitation, State Farm deducts both the full $5 Expense Charge disclosed by the Policies through each Monthly Deduction and additional undisclosed expenses through each Monthly Deduction's COI Charge in repeated breach of the Policies' Expense Charge provision. *Id.* ¶¶ 54-55, 79-82. Plaintiffs further allege that these unauthorized deductions are conversions of their money. *Id.* ¶¶ 83-89.

B. History of the Litigation.

This settlement follows a jury verdict in a now-resolved case raising claims related to the Cost of Insurance charges taken under the Policies and directly resolves similar claims brought in this and nine other cases with differing results that have been extensively litigated by the Parties across the country before nine different judges. A summary of the litigation is recounted below.

Vogt v. State Farm Life Insurance Co.

The first case against State Farm asserting these claims was filed in the Western District of Missouri on June 15, 2016, by Plaintiff Michael Vogt. *See Vogt v. State Farm Life Ins. Co.*, No. 16-CV-04170-NKL. After the district court denied State Farm's motion to dismiss (*see id.*, Docs. 52 and 71),[4] the parties engaged in an extensive discovery process involving several rounds of

[4] *Vogt*, 2017 WL 471574 (W.D. Mo. Feb. 3, 2017) (denying motion to dismiss on the basis of the statute of limitations but granting the motion as to the plaintiff's conversion claim pursuant to the economic loss doctrine); *Vogt*, 2017 WL 1498073 (W.D. Mo. Apr. 26, 2017) (reconsidering dismissal of conversion claim and reinstating that claim).

written discovery and numerous fact and expert witness depositions by both parties. Siegel Dec., ¶ 9. On November 14, 2017, the plaintiff moved for certification of a class of Missouri Form 94030 policy owners. *Vogt*, Docs. 145, 150. In December 2017, at the same time that State Farm filed its opposition to the motion for class certification, it also moved for summary judgment on each of Vogt's claims, contending the Policy's "based on" language permitted State Farm to include unlisted factors in the COI Rates under the reasoning in *Norem v. Lincoln Benefit Life Co.*, 737 F.3d 1145 (7th Cir. 2013), and that plaintiff's claims were barred by the statute of limitations. *Vogt*, Docs. 166, 172, 173. On April 10, 2018, the district court denied State Farm's motion for summary judgment, finding the Policy did not permit State Farm to load the COI Rates with undisclosed factors and concluding plaintiff's claims were not barred by the statute of limitations because the COI overcharges were not ascertainable. *Vogt*, 2018 WL 1747336 (W.D. Mo. Apr. 10, 2018).

On April 24, 2018, the court granted plaintiff's motion for class certification, *Vogt*, 2018 WL 1955425 (W.D. Mo. Apr. 24, 2018), and set the jury trial to commence on June 1, 2018. The court later granted Plaintiffs partial summary judgment on the class's contract claims, leaving only the assessment of damages for trial, but concluding judgment could not be entered on the class's conversion claim without the assessment of the amount converted at trial, and granting judgment in favor of the class on State Farm's statute of limitations defense. *Id.*, Doc. 335. Also, on June 2, the court entered judgment in favor of the class on State Farm's defense that policy owners had consented to State Farm's COI deductions. *Id.*, Doc. 336.

Following a trial, the jury announced its verdict in favor of the class for breach of contract and conversion, finding damages of $34,333,495.81. *Id.* Following various post-trial motions, both parties exhausted their appellate rights, which ultimately resulted in affirmance of the jury's

verdict plus post-judgment interest awarded to the class. *See* Eighth Circuit Case Nos. 18-3419, 18-3434.

Bally v. State Farm Life Insurance Co.

On August 15, 2018, Plaintiff Elizabeth A. Bally, a Form 94030 policy owner whose Policy was issued by State Farm in California, filed a class action complaint in the Northern District of California asserting the same claims on behalf of California policy owners that were asserted in *Vogt*. *See Bally v. State Farm Life Ins. Co.*, 3:18-CV-04954-CRB (N.D. Cal.).

On May 21, 2019, during the discovery phase of the case, State Farm filed its first motion for summary judgment on all claims, contending that the Policy permitted State Farm's inclusion of non-mortality loads in the COI Rates under the reasoning of the Seventh Circuit in *Norem*, that a claim for conversion could not be stated under California law on an overcharge theory, and that Plaintiff's claims were barred by the statute of limitations. *Bally*, Doc. 63.

On August 19, 2019, the court issued its order denying State Farm's motion for summary judgment, concluding Plaintiff's interpretation of the Policy was reasonable considering its plain language, common usage of the terms, and other courts' interpretations of similar COI rates provisions, including the district court in *Vogt*. *Bally*, 2019 WL 3891149, at *4-8 (N.D. Cal. Aug. 19, 2019). The court also concluded Plaintiff's conversion claim was not premised on a mere overcharge; instead, it was for the improper transfer of funds from policy owners' Account Values, and therefore was properly stated under California law. *Id.* at *4. The court also concluded policy owners' claims were not barred by the statute of limitations pursuant to California's discovery rule. *Id.* at *3-4. On September 16, 2019, State Farm moved for leave to file an interlocutory appeal pursuant to 28 U.S.C. § 1292(b) as to the interpretation of the Policy and for a stay of the case. *Bally*, Doc. 81.

On November 15, 2019, Plaintiff filed a motion for certification of a class of California Form 94030 policy owners with the expert report of Plaintiff's class certification damages expert, Scott Witt. *Id.*, Doc. 93. On November 25, 2019, the court granted State Farm's motion to file an interlocutory appeal, finding that its ruling was subject to reasonable grounds for a difference of opinion, but denied its request for a stay. *Id.*, Doc. 99. On December 5, 2019, State Farm filed a petition for permission to appeal pursuant to § 1292(b) in the Ninth Circuit Court of Appeals. *See* Ninth Circuit Case No. 19-80160.

On January 27, 2020, after full briefing, the Ninth Circuit denied State Farm's petition to appeal the district court's interpretation of the Policy. *See* Ninth Circuit Case No. 19-80160. On February 10, 2020, State Farm filed its motion for reconsideration of the denial, which the Ninth Circuit denied on May 14, 2020. *Id.*

On October 26, 2020, Plaintiff moved for partial summary judgment, arguing: the court's prior conclusion that Plaintiff's interpretation of the Policy was reasonable entitled Plaintiff and the class to judgment as a matter of law on State Farm's liability for breach of the COI Rates provision and for conversion; that State Farm should be deemed collaterally estopped from challenging facts found by the *Vogt* jury, leaving no material facts in dispute as to the damages suffered by the class; and that the class was entitled to summary judgment on State Farm's statute of limitations defense on the basis of the discovery rule. *Bally*, Doc. 142. On November 12, 2020, and January 20, 2021, Plaintiff served trial and rebuttal reports from Mr. Witt. Siegel Dec., ¶ 44. On January 8, 2021, State Farm filed its opposition to Plaintiff's motion for partial summary judgment. *Bally*, Doc. 160. On February 6, 2021, State Farm filed a motion for leave to file a second motion for summary judgment, which the court granted on February 11, 2021. *Id.*, Docs. 185, 187.

On February 24, 2021, State Farm filed a second motion for summary judgment on all claims, arguing: the COI Rates provision unambiguously does not set forth obligations as to how State Farm must determine its COI Rates; instead arguing the provision only references the factors on which State Farm would assign the COI Rates and thus does not prohibit State Farm from including amounts for non-mortality factors in the COI Rates (the "assigned-by" interpretation); that this reading of the COI Rates provision necessarily defeats Plaintiff's reading of the Expense Charge provision; and that the conversion claim failed because State Farm's obligations were merely contractual. *Id.*, Doc. 191

On April 28, 2021, the court issued its order granting State Farm's motion for summary judgment for breach of the COI Rates provision and for conversion and denying Plaintiff's motion for summary judgment on those claims. The court concluded that while the COI Rates provision's use of the term "based on" could infer that the factors that followed were exclusive (as it had previously concluded in denying State Farm's first motion for summary judgment), it concluded that one of the listed factors—"applicable rate class"—unambiguously permitted State Farm to include non-mortality factors therein. *Bally*, 536 F. Supp. 3d 495, 507-508 (N.D. Cal. 2021). The court stated that the district court and Eighth Circuit in *Vogt*, in concluding the COI Rates provision did not unambiguously permit State Farm to use unlisted factors to determine the COI Rates, had focused on the meaning of the phrase "based on," but that neither court "meaningfully considered the meaning of the phrase 'applicable rate class.'" *Id.* at 504 n.6. The court also concluded Plaintiff's conversion claim was barred by the economic loss doctrine. *Id.* at 512-13. However, the court denied State Farm's motion for summary judgment on Plaintiff's claim for State Farm's breach of the Expense Charge provision, concluding Plaintiff's interpretation of that provision as limiting State Farm to $5 in monthly expense deductions was reasonable, invited Plaintiff to file a

motion for partial summary judgment on that claim, and instructed Plaintiff to submit a class-wide damages model specific to that claim. *Id.* at 509-11, 516-17. The court also granted Plaintiff's motion for summary judgment in favor of the class on the statute of limitations. *Id.* at 514-16.

On June 30, 2021, Plaintiff filed a motion for partial summary judgment on State Farm's liability for breach of the Expense Charge provision and for declaratory judgment that State Farm's conduct violated this provision, along with a declaration by Mr. Witt explaining how damages should be calculated on this claim. *Bally*, Doc. 237.

After full briefing on the pending motions, on February 24, 2022, the court granted Plaintiff's motion for partial summary judgment, concluding the Policy's Expense Charge provision unambiguously prohibited State Farm from including undisclosed expenses in the COI Rates,[5] denied State Farm's motion to exclude Mr. Witt's damages methodology,[6] denied State Farm's motion to decertify the class,[7] and denied Plaintiff's motion to exclude State Farm's experts' opinions.[8] The jury trial in this matter was set to commence on January 23, 2023. *Bally*, Doc. 306. The trial setting and related deadlines were vacated upon the Parties' notification to the court that they had signed a term sheet to settle the matter. *Id.*, Doc. 307.

[5] *Bally*, 587 F. Supp. 3d 996 (N.D. Cal. 2022).
[6] *Bally*, 2022 WL 594798 (N.D. Cal. Feb. 24, 2022).
[7] *Id.*
[8] *Bally*, 2022 WL 594559 (N.D. Cal. Feb. 24, 2022).

Whitman v. State Farm Life Insurance Co.

On October 30, 2019, Plaintiff William T. Whitman, a Form 94030 policy owner whose Policy was issued by State Farm in Washington, filed a class action complaint in the Western District of Washington asserting the same claims on behalf of Washington policy owners as were asserted in *Vogt* and *Bally*, and an additional claim for State Farm's violation of the Washington Consumer Protection Act (WCPA). *See Whitman v. State Farm Life Ins. Co.*, 19-CV-06025-BJR (W.D. Wash.). State Farm filed its Answer on March 30, 2020, denying liability on all claims and asserting thirty-two affirmative defenses, including statute of limitations, laches, and voluntary payment and filed-rate doctrines. *Id.*, Doc. 39.

On February 16, 2021, Plaintiff filed a motion to certify a class of Washington Form 94030 policy owners supported by an expert report of Scott Witt containing a damages methodology and calculations for the putative class. *Id.*, Doc. 67. After full briefing, on September 20, 2021, the court granted Plaintiff's motion for class certification and rejected State Farm's challenges to Mr. Witt's calculation of damages. *Whitman*, 2021 WL 4264271 (W.D. Wash. Sept. 20, 2021). The district court set the case for a jury trial commencing on October 10, 2022, later stating that it would be held by Zoom, with the parties' Joint Pretrial Statement due on September 6, 2022. *Whitman*, Doc. 139.

On May 2, 2022, Plaintiff filed a motion for summary judgment on behalf of the class, arguing that the Policy should be construed to prohibit State Farm's loaded COI Rates; that State Farm should be deemed collaterally estopped from challenging facts found by the *Vogt* jury, leaving no remaining fact disputes as to damages; and that the statute of limitations should be deemed tolled under the discovery rule. *Id.*, Doc. 147. State Farm also filed a motion for summary judgment, arguing the *Bally* court's interpretation of "applicable rate class" along with State

Farm's "assigned-by" interpretation comprised the only reasonable interpretation of the Policy, and State Farm supported its motion with declarations from its insurance industry, consumer expectations, and damages experts. *Id.*, Doc. 154. State Farm also argued that the undisputed facts did not support a claim for conversion or under the WCPA and that the class's claims were barred by the statute of limitations and were not tolled under Washington law by the discovery rule or the fraudulent concealment doctrine. *Id.*

On September 6, 2022, the court entered its order granting State Farm's motion for summary judgment and denying Plaintiff's, and, like the *Bally* court, ruling that the Policy's COI Rates provision unambiguously permitted State Farm to include profit and expense loads in the COI Rates through the Policy's applicable rate class factor. *Whitman*, 2022 WL 4081916, at *4-6 (W.D. Wash. Sept. 6, 2022). Like the *Bally* court, the court also concluded the Eighth Circuit had not considered this theory of policy interpretation. *Id.* at *4. However, unlike *Bally*, the *Whitman* court rejected Plaintiff's interpretation of the Expense Charge provision, concluding instead that the court's interpretation of the COI Rates provision necessarily resolved the proper interpretation of the Expense Charge provision. *Id.* at *7. The court also found Plaintiff's conversion and WCPA claims failed under its interpretation of the Policy. *Id.*

On September 21, 2022, Plaintiff filed a notice of appeal to the Ninth Circuit. *Whitman*, Doc. 199. On October 5, 2022, State Farm filed its notice of conditional cross-appeal as to the court's class certification order. *Id.*, Doc. 202; Ninth Circuit Case Nos. 22-35745, 22-35787. Plaintiff's opening brief on appeal was due November 25, 2022, but the briefing deadlines were stayed upon the parties' notification to the Ninth Circuit's mediation office that they had signed a term sheet to settle the matter.

Page v. State Farm Life Insurance Co.

On May 11, 2020, Plaintiff Ronald K. Page, a Form 94030 policy owner whose Policy was issued by State Farm in Texas, filed a class action complaint asserting the same claims on behalf of Texas policy owners as the cases preceding it. Originally filed in the Southern District of Texas, the case was later transferred to the Western District of Texas. *See Page v. State Farm Life Ins. Co.*, 5:20-CV-00945-FB (W.D. Tex.).[9] State Farm filed its Answer to the operative complaint on March 23, 2021, denying liability on all claims and asserting thirty-seven affirmative defenses, including statute of limitations, laches, estoppel, the filed-rate doctrine, voluntary payment, and ratification. *Page v. State Farm Life Ins. Co.*, 5:20-CV-00617-FB (W.D. Tex.), Doc. 76.

On June 15, 2021, Plaintiff filed a motion to certify a class of Texas Form 94030 policy owners as to his breach of contract and conversion claims, which was supported by the expert report of Scott Witt, including Mr. Witt's proposal for a class-wide damages methodology. *Id*., Doc. 79. After full briefing and two hearings by Zoom to address the pending motions, Magistrate Judge Elizabeth S. Chestney issued on February 10, 2022, a Report and Recommendation to District Judge Fred Biery recommending that Plaintiff's motion for class certification be granted and an Order denying State Farm's motion to exclude Mr. Witt's testimony. *Page*, 584 F. Supp. 3d 200 (W.D. Tex. 2022). On March 10, 2022, the Magistrate Judge further issued a Report and Recommendation recommending that State Farm's motion for summary judgment be denied, except as to Plaintiff's conversion claim. *Page*, 2022 WL 718789 (W.D. Tex. Mar. 10, 2022). As

[9] Plaintiff's case was initially docketed in the Western District of Texas under case number 5:20-CV-00945-FB, but it was later consolidated with a case filed by another Texas Form 94030 policy owner, Anna Gonzalez, at case number 5:20-CV-00617-FB. Ms. Gonzalez later voluntarily dismissed her claims. *See id.*, Doc. 75. Plaintiff Page later filed an amended complaint that included claims for breach of the duty of good faith and fair dealing, violation of the Texas Insurance Code, and violation of the Texas Deceptive Trade Practices-Consumer Protection Act. *Id.*, Doc. 72.

to the interpretation of the Policy, the court disagreed that the Policy unambiguously permitted State Farm to include profit and expense loads in the COI Rates, thus rejecting State Farm's "assigned-by" interpretation and the *Bally* (and later *Whitman*) court's interpretation as the only reasonable way an ordinary policy owner could read the Policy. *Id.* at *5-10. The court also concluded that Plaintiff's interpretation of the Expense Charge provision was reasonable. *Id.* at *11. On the statute of limitations, the court concluded there was evidence supporting a finding that the claims were tolled by the discovery rule and fraudulent concealment doctrine under Texas law, and thus recommended that summary judgment be denied as to the statute of limitations. *Id.* at *15. The court also recommended that summary judgment be denied as to Plaintiff's good faith and fair dealing and statutory claims. *Id.* at *14-15. However, the court concluded Plaintiff's conversion claim was barred by Texas's economic loss doctrine. *Id.* at *12-14.

State Farm filed objections as to the summary judgment and class certification rulings, and Plaintiff filed an objection as to the summary judgment ruling on the conversion claim. *See Page*, Docs. 142, 150, 151. These objections were fully briefed and pending when the parties notified the court that they had signed a term sheet to settle the matter and requested a stay.

Jaunich v. State Farm Life Insurance Co.

On July 13, 2020, Plaintiff John E. Jaunich, a Form 94030 policy owner whose Policy was issued by State Farm in Minnesota, filed a class action complaint in the District of Minnesota asserting the same claims on behalf of Minnesota policy owners as the cases preceding it. *See Jaunich v. State Farm Life Ins. Co.*, No. 20-CV-01567-PAM/JFD (D. Minn.).

On September 14, 2020, State Farm moved to dismiss Plaintiff's conversion and declaratory judgment claims. *Id.*, Doc. 20. After full briefing and a hearing by Zoom, the court granted State Farm's motion. *Id.*, Doc. 40. State Farm filed its Answer on December 16, 2020,

denying liability on Plaintiff's remaining breach of contract claims, and asserting twenty-four affirmative defenses, including statute of limitations, laches, estoppel, ratification, and the filed-rate and voluntary payment doctrines. *Id.*, Doc. 44.

On June 16, 2021, Plaintiff filed a motion to certify a class of Minnesota Form 94030 policy owners supported by the expert report of Scott Witt, including his calculation of class-wide damages. *Id.*, Doc. 51.

After full briefing on the pending motions and a hearing, on November 1, 2021, the court denied State Farm's motion for summary judgment and motion to exclude Mr. Witt's testimony and granted Plaintiff's motion for class certification. *Jaunich*, 569 F. Supp. 3d 912 (D. Minn. 2021). The court rejected the interpretation adopted by the *Bally* and (later) *Whitman* courts as the only reasonable reading of the Policy, and in so doing, concluded the Policy was at a minimum ambiguous given the Eighth Circuit's interpretation of the Policy in *Vogt* and rejected State Farm's reliance on industry experts for its contrary interpretation because "the standard for interpreting an insurance policy is how a reasonable lay person, not an industry expert, would interpret the policy." *Id.* at 916. The court also rejected State Farm's request for summary judgment on the statute of limitations. On November 8, 2021, State Farm requested leave to file a motion for reconsideration of the court's rulings, which the court denied on November 9, 2021. *Jaunich*, Docs. 145, 147. On November 15, 2021, State Farm filed in the Eighth Circuit a petition for permission to appeal the court's class certification order pursuant to Rule 23(f). *See* Eighth Circuit Case No. 21-8009. After full briefing, the Eighth Circuit denied State Farm's petition on December 14, 2021. On February 10, 2022, State Farm again deposed Mr. Witt. Siegel Dec., ¶ 102.

On April 1, 2022, Plaintiff filed a motion for summary judgment in favor of the class, arguing that: the Policy's ambiguity must be construed against State Farm as the drafter; collateral

estoppel prevented State Farm from challenging issues related to the calculation of damages that were resolved by the *Vogt* jury, leaving no material facts in dispute on damages; and there were no facts in dispute and the class was entitled to judgment as a matter of law on equitable tolling under the court's prior summary judgment ruling. *Jaunich*, Docs. 164, 168

After full briefing and a hearing on the pending motions, the court entered its order granting Plaintiff's motion for summary judgment on State Farm's liability for breach of contract, denying Plaintiff's motion as to damages, and denying Plaintiff's motion as to the statute of limitations. *Jaunich*, 2022 WL 2318560 (D. Minn. June 28, 2022). The court held that the Eighth Circuit's conclusion that the COI Rates provision "is at least ambiguous and thus must be construed against State Farm" must govern over the interpretation by the court in *Bally* (and later, *Whitman*). *Id.* at *2. The court also concluded that Plaintiff's interpretation of the Expense Charge provision was reasonable, as it noted that all other courts had likewise concluded (until the later *Whitman* court summary judgment order). *Id.* The court declined, however, to apply collateral estoppel to the *Vogt* jury's damages award. *Id.* at *3. On the statute of limitations, the court concluded that Plaintiff had failed to come forward with evidence that State Farm had fraudulently concealed its conduct to entitle the class to equitable tolling. *Id.* at *4. The court then stated that "Jaunich's Motion is denied as the statute of limitations, and any claim arising before July 2014 is time-barred." *Id.* at *4. The court denied State Farm's motion to exclude Mr. Witt's testimony, noting that "State Farm repeats many of the arguments it raised in its first *Daubert* Motion in this matter, as well as arguments that have failed before other courts." *Id.* The court denied Plaintiff's *Daubert* motion as moot. *Id.*

On October 3, 2022, the parties notified the court that they had signed a term sheet to settle the matter. Siegel Dec., ¶ 109.

McClure v. State Farm Life Insurance Co.

On July 13, 2020, Earl E. McClure, a Form 94030 policy owner whose Policy was issued by State Farm in Arizona, filed a class action complaint in the District of Arizona asserting the same claims on behalf of Arizona policy owners as the cases preceding it. *See McClure v. State Farm Life Ins. Co.*, No. CV-20-01389-PHX-SMB (D. Ariz.). State Farm filed its Answer on September 14, 2020, denying liability on all claims and asserting thirty-one affirmative defenses, including statute of limitations, various equitable defenses, and the filed-rate doctrine. *Id.*, Doc. 11; *see also id.*, Doc. 24.

On October 25, 2021, McClure filed a motion to certify a class of Arizona Form 94030 policy owners supported by the expert report of Scott Witt, including his damages methodology and calculations of class-wide damages. *McClure*, Doc. 39. On December 9, 2021, State Farm filed its opposition to the motion for class certification and a motion to strike the expert class certification declaration and testimony of Mr. Witt, along with the expert declarations and reports of Hudson, Reynolds, Kirk Fair, and Stiroh; five declarations from sales agents and a State Farm underwriter, and the declaration of State Farm's Assistant Vice President and actuary Alan Hendren. *McClure*, Docs. 52, 54. On December 10, 2021, State Farm filed its motion for summary judgment, arguing that the court should adopt the assigned-by/applicable rate class interpretation of the Policy, the conversion claim was not properly stated under Arizona law, and the statute of limitations barred the claims. *Id.*, Doc. 74

After full briefing on the pending motions and an in-person hearing, the court both granted the motion for class certification and denied State Farm's motion to strike Mr. Witt's class certification declaration and testimony on April 29, 2022. *McClure*, 341 F.R.D. 242 (D. Ariz. 2022).

On June 23, 2022, the court denied State Farm's motion for summary judgment on the breach of contract claims and on the basis of the statute of limitations and granted the motion as to the conversion claim under Arizona's economic loss doctrine. *McClure*, --- F. Supp. 3d ----, 2022 WL 2275665 (D. Ariz. June 23, 2022). The court ruled that McClure's interpretation of the Policy as limiting State Farm to using the listed mortality factors to determine the COI Rates was reasonable and that the *Bally* (and later, *Whitman*) court's interpretation, while plausible, was not the only reasonable way a layperson could read the Policy. *Id.* at *3-4. The court also rejected State Farm's reliance on expert testimony regarding actuarial and insurance regulatory standards because there was no indication lay policy owners would be aware of these standards in understanding the Policy. *Id.* at *5. The court further concluded that the fact several courts had concluded McClure's reading of the Policy was reasonable and the disagreement on this issue "bolster[ed] the Court's conclusion that the COI language in the Policy is ambiguous." *Id.* at *6.

As to the Expense Charge provision, the court concluded the language was "at best, ambiguous," and agreed with other courts that policy owners could reasonably read the provision "as including all monthly expenses for the Policy" and was the "mostly likely" way a layperson would read the language. *Id.* at *7. The court also denied State Farm's motion as to the statute of limitations, concluding there was at least a dispute of fact as to whether the claims were discoverable pursuant to Arizona's discovery rule. *Id.* at *9.

On July 18, 2022, McClure filed a motion for partial summary judgment in favor of the Arizona class on State Farm's liability for breach of the Policy's COI Rates and Expense Charge provisions and on the statute of limitations. *McClure*, Doc. 108. After full briefing, the motion was set for in person oral argument to be held on November 2, 2022. *Id.*, Doc. 115. Following the judgment in *Whitman*, State Farm subsequently moved for reconsideration of the *McClure* court's

summary judgment order and policy interpretation. The court ordered plaintiff to respond and indicated it would hear argument on November 2. Doc. 117. On September 29, 2022, upon the parties notifying the court of the Settlement, the court vacated a trial setting conference set for September 30, 2022, and the oral argument on summary judgment set for November 2, 2022. *Id.*, Doc. 125.

Mr. McClure died on October 2, 2022. Siegel Dec., ¶ 133. His wife, the nominated personal representative of his estate, is proceeding on behalf of the estate to effectuate this settlement. *See* McClure Dec. (Ex. 6). A motion to continue the stay currently in place in *McClure* was submitted to the court on November 21, 2022. *McClure*, Doc. 126

Singh v. State Farm Life Insurance Co.

On February 4, 2021, Plaintiff Chandra B. Singh, a Form 94030 policy owner whose Policy was issued by State Farm in Oregon, filed a class action complaint in the District of Oregon asserting the same claims on behalf of Oregon policy owners as inthe cases preceding it. *See Singh v. State Farm Life Ins. Co.*, No. 3:21-CV-00190-AR (D. Ore.), Doc. 1. On April 12, 2021, State Farm filed its Answer, denying liability on all claims and asserting thirty-three affirmative defenses, including statute of limitations, several equitable defenses, and the filed-rate doctrine. *Id.*, Doc. 10.

On January 27, 2022, Plaintiff filed a motion to certify a class of Oregon Form 94030 policy owners supported by the expert declaration of Scott Witt, including a damages methodology and his calculation of class-wide damages. *Singh*, Doc. 30. On March 12, 2022, State Farm filed its opposition to Plaintiff's motion for class certification and a motion to exclude the class certification declaration and testimony of Mr. Witt, along with the declarations and reports of its insurance industry, consumer expectations, and damages experts, several declarations from sales

agents and a State Farm underwriter, and the declaration of State Farm's Assistant Vice President and actuary Alan Hendren. *Id.*, Docs. 43, 44. These motions were fully briefed and pending when the parties notified the court that they had agreed to a term sheet to settle the matter.

Toms v. State Farm Life Insurance Co.

On March 26, 2021, Plaintiff David Toms, a Form 94030 policy owner whose Policy was issued by State Farm in Florida, filed a class action complaint in the Middle District of Florida asserting the same claims on behalf of Florida policy owners as in the cases preceding it. *See Toms v. State Farm Life Ins. Co.*, No. 8:21-CV-00736-KKM-JSS (M.D. Fla.).[10] On May 26, 2021, State Farm filed its Answer, denying liability on all claims and asserting forty-two affirmative defenses, including statute of limitations, various equitable defenses, and the filed-rate doctrine. *Id.*, Doc. 21.

On October 28, 2021, State Farm filed a motion for judgment on the pleadings as to Plaintiff's conversion and declaratory judgment claims. *Toms*, Doc. 49. On January 28, 2022, Plaintiff filed his motion to certify a class of Florida Form 94030 policy owners supported by the expert report of Scott Witt regarding his methodology and calculation of class-wide damages. *Toms*, Doc. 60. On July 14, 2022, the court granted State Farm's motion for judgment on the pleadings as to Plaintiff's conversion and declaratory judgment claims. *Id.*, Doc. 116.

On September 26, 2022, the court entered its order granting Plaintiff's motion for class certification and denying State Farm's motion to exclude the testimony of Mr. Witt. *Toms*, 2022 WL 5238841 (M.D. Fla. Sept. 26, 2022). With dispositive motions due on October 7, 2022, and

[10] Proceeding through different counsel, another Florida Form 94030 policy owner filed a putative class action complaint on December 4, 2019, *see Lech v. State Farm Life Ins. Co.*, No. 8:19-CV-02983-MSS (M.D. Fla.), which was voluntarily dismissed with prejudice on July 27, 2021. *See id.*, Doc. 76.

the case set for trial in April 2023, the court stayed the deadlines upon the parties' notification that they had signed a term sheet to settle the litigation. *See Toms*, Doc. 132.

Bauer v. State Farm Life Insurance Co.

On January 29, 2021, Plaintiff Kathy Bauer, a Form 94030 policy owner whose Policy was issued by State Farm in Georgia, filed a class action complaint in the Northern District of Georgia asserting claims on behalf of Georgia policy owners for breach of contract for State Farm's use of unlisted factors to determine the COI Rates and for not reducing the COI Charges to reflect decreasing mortality rates, breach of the covenant of good faith and fair dealing, conversion, fraud, and declaratory relief. *See Bauer v. State Farm Life Ins. Co.*, No. 1:21-CV-00464-SDG (N.D. Ga.).

On May 28, 2021, Plaintiff filed a First Amended Complaint asserting the same claims as the cases preceding Plaintiff Bauer's. *Id.*, Doc. 35. On July 12, 2021, State Farm filed a motion to dismiss Plaintiff's conversion and declaratory relief claims and to strike Plaintiff's request for punitive damages. *Id.*, Doc. 39.

After full briefing, on March 28, 2022, the court granted State Farm's motion for partial dismissal. *Id.*, Doc. 53. On April 11, 2022, State Farm filed its Answer, denying liability on the remaining claims and asserting thirty-six affirmative defenses, including statute of limitations, several equitable defenses, and the filed-rate doctrine. *Id.*, Doc. 54. Under the scheduling order, Plaintiff's motion for class certification was due December 16, 2022. *Id.*, Doc. 66. The court stayed all deadlines upon the parties' notification to the court that they had reached a settlement. A formal motion to stay pending this Court's consideration of the settlement was filed on November 21, 2022. *Id.*, Doc. 71.

Botte v. State Farm Life and Accident Assurance Co.

On May 16, 2022, proceeding through different counsel, Plaintiff Kim Botte, a Form A94030 policy owner whose Policy was issued by State Farm in New York, filed a class action complaint in the Eastern District of New York asserting that State Farm breached the Policy's Expense Charge provision by including expenses in the COI Rates, a claim for declaratory and injunctive relief, and a claim under the New York Deceptive Trade Practices Act, New York Gen. Bus. Law § 349, *et seq*., on behalf of New York policy owners. *See Botte v. State Farm Life Ins. Co.*, No. 2:22-cv-02842-JMA-JMW (E.D.N.Y.), Doc. 1. State Farm indicated it intended to move to dismiss the case against State Farm Life Insurance Company because a different State Farm entity, State Farm Life and Accident Assurance Company, issued Form A94030 in New York. On August 15, 2022, now with the undersigned counsel, Plaintiff filed an Amended Complaint against State Farm Life and Accident Assurance Company asserting the same claims as the cases preceding Plaintiff Botte's, in addition to a claim under the New York Deceptive Trade Practices Act. *Id*., Doc. 39.

On August 29, 2022, State Farm requested a pre-motion conference regarding an anticipated motion to dismiss asserting the statute of limitations largely barred Plaintiff's claims and that Plaintiff's claims for declaratory relief and conversion should be dismissed because they merely duplicated the contract claims. *Id.*, Doc. 40. On September 2, 2022, Plaintiff filed a response letter arguing that Plaintiff had plausibly alleged facts showing Plaintiff's claims were equitably tolled under New York law and that Plaintiff's other claims were properly pleaded. *Id.*, Doc. 41. On September 15, 2022, both parties served interrogatories and document requests. Siegel Dec., ¶ 176. On October 25, 2022, in response to State Farm's pre-letter request (*Botte*, Doc. 40) to file a motion to dismiss, the court permitted plaintiff to amend his complaint and denied the

request to hear a motion to dismiss without prejudice. On November 22, 2022, the parties filed a motion to stay the settlement pending this Court's consideration of it. *Id.*, Doc. 43.

Rogowski v. State Farm Life Ins. Co. & State Farm Life and Accident Assurance Co.

On March 25, 2022, Plaintiffs David Rogowski and Joyce Thomas, filed a class action complaint in this Court on behalf of themselves and all Missouri policy owners who had continued to suffer alleged COI overcharges since the *Vogt* judgment, asserting claims for breach of contract, conversion, and declaratory and injunctive relief. *Rogowski v. State Farm Life Ins. Co.*, No. 4:22-CV-00203-RK (W.D. Mo.), Doc. 1. On May 31, 2022, State Farm filed its Answer denying liability on all claims and asserting twenty-two affirmative defenses, including various equitable defenses and res judicata. *Id.*, Doc. 8. On June 7, 2022, Plaintiffs filed an amended complaint to assert their claims on behalf of all Form 94030 policy owners whose policies were issued in any state except those for which a case was already pending. *Id.*, Doc. 11. On July 28, 2022, State Farm filed a motion to dismiss for lack of jurisdiction and failure to state a claim or in the alternative to strike the class allegations in part. *Id.*, Doc. 28. Following the completion of briefing, the Court denied the motion. *Id.*, Doc. 40.

On November 22, 2022, for the purpose of effectuating the Settlement, Plaintiffs Rogowski, Bally, Bauer, Botte, Jaunich, Mylene McClure as personal representative of the Estate of Earl L. McClure, Page, Singh, Thomas, Toms, and Whitman filed before this Court a Second Amended Class Action Complaint against both State Farm entities on behalf of themselves and a nationwide class of policy owners of Forms 94030/A94030 and 94080.

C. Settlement Negotiations

The Parties participated in three separate full-day mediation sessions on June 21, 2022, August 10, 2022, and September 27, 2022, with the assistance of two highly respected, experienced, neutral mediators. During the first two sessions, the Parties mediated with the

Honorable John Bonner, retired U.S. District Judge. The third session was overseen by the Honorable Layn Phillips, retired U.S. District Judge. During the September 27, 2022, session, the Parties were successful in reaching agreement on the material terms of the Settlement Agreement now submitted for approval. Siegel Dec., ¶ 190. Prior to these mediation sessions, State Farm had never offered to settle the litigation, even in part. *Id.*, ¶¶ 190-91.

Throughout the process, the settlement negotiations were conducted by highly qualified and experienced counsel on both sides at arm's length. Plaintiffs' counsel was well informed of the material facts and legal risks and the negotiations were hard-fought and non-collusive. Having litigated the various legal and factual issues over more than six years, including two cases to judgment and one through the entire appellate process twice, Plaintiffs' counsel was well-positioned to evaluate State Farm's positions and the risks facing the Settlement Class Members, advocated in the settlement negotiation process for a fair and reasonable Settlement that serves the best interests of the Settlement Class, and made fair and reasonable settlement demands of State Farm. *Id.* ¶ 191.

III. SUMMARY OF THE SETTLEMENT

The Agreement represents a compromise between Plaintiffs and the proposed Settlement Class and State Farm regarding the claims pled in the Second Amended Class Action Complaint. If the Settlement is finally approved, State Farm will fund a non-reversionary cash Settlement Fund in the amount of $325,000,000. Agreement, ¶¶ 1.38, 2.1. Under the Agreement, Class Counsel will move for an attorneys' fee award to be paid from the Settlement Fund not to exceed one-third of the Settlement Fund and reimbursement of expenses from the Settlement Fund not to exceed $1,500,000. *Id.* ¶ 8.1. Class Counsel will also move for Service Awards for the Plaintiffs to be paid from the Settlement Fund in an amount not to exceed $25,000 each. *Id.* ¶ 8.2. The Settlement Fund will also cover the fees and expenses of the Settlement Administrator. *Id.* ¶¶ 1.19, 1.34, 1.38.

There is no "claims process." Each Settlement Class Member will receive their share of the Net Settlement Fund pursuant to a distribution plan developed by Class Counsel and approved by the Court. *Id.* ¶¶ 2.2-2.3.[11] In exchange for these benefits, the Parties will seek the entry of judgment on the claims asserted in this case and Settlement Class Members agree to release all claims arising out of the facts asserted in this case. *Id.* ¶¶ 3.1-3.7.

The Agreement allocates the value of the Settlement Fund across the Settlement Class pursuant to an objective distribution plan that is designed to provide each Settlement Class Member a minimum payment of $10 plus an approximate pro rata portion of the Net Settlement Fund according to the amount of Monthly Deductions for COI Charges and Expense Charges paid by each Settlement Class Member,[12] with equitable adjustments for current policy owners and Settlement Class Members who already received a share of the *Vogt* judgment. *See* Witt Dec., & Ex. B.

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

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

[12] Because Settlement Class Members who were a part of the *Vogt* class have already received a share of that judgment, their settlement share will be calculated using charges deducted after the cutoff date for the calculation of damages in the *Vogt* judgment. *See* Ex. 3 (Witt Dec.), & Ex. 3.B.

IV. THE SETTLEMENT CLASS

The proposed Settlement Class includes the persons or entities who own or owned one or more of approximately 760,000 Policies issued or administered by State Farm or its predecessors in interest on Form 94030/A94030 or Form 94080. The Settlement Class is made up of the Owners of the Policies on the Class List.[13] *Id.* ¶¶ 1.6, 1.27, 1.36.

V. ISSUING NOTICE TO THE SETTLEMENT CLASS IS JUSTIFIED.

A. Standard for Issuance of Notice.

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

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

[13] The Settlement Class excludes State Farm; any entity in which State Farm has a controlling interest; any of the officers or board of directors of State Farm and their immediate family; the legal representatives, heirs, successors, and assigns of State Farm; anyone employed with Plaintiffs' counsel's firms; and any Judge to whom this case is assigned, and his or her immediate family. Agreement, ¶ 1.36.

"appropriate for the Court to consider the Rule 23(e)(2) factors along with the *Van Horn* Factors."); *In re Pre-Filled Propane Tank Antitrust Litig.*, No. 14-02567-MD-W-GAF, 2019 WL 7160380, at *1 (W.D. Mo. Nov. 18, 2019)); *see also* Fed. R. Civ. P. 23(e)(2) Committee Notes to 2018 amendments ("The goal of this amendment [to Rule 23(e)(2)] is not to displace any [circuit case-law] factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.").

> The factors identified in Federal Rule of Civil Procedure 23(e)(2) are whether:
>
> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> > (i) the costs, risks, and delay of trial and appeal;
> >
> > (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> >
> > (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> >
> > (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). The four *Van Horn* factors are: (1) the merits of the plaintiffs' case weighed against the terms of the settlement; (2) the defendants' financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement. *Van Horn*, 840 F.2d at 607. "No one factor is determinative, but the 'most important factor in determining whether a settlement is fair, reasonable, and adequate is a balancing of the strength of the plaintiff's case against the terms of the settlement.'" *Holt*, 2020 WL 12604383, at *2 (quoting *Van Horn*, 840 F.3d at 607).

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

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

1. The Class Representatives and Class Counsel Have Provided Excellent Representation to the Class.[14]

The adequacy of representation factor supports finding that the Settlement is fair, reasonable, and adequate and thus that Notice to the Settlement Class should issue. First, the Plaintiffs have shown their dedication to representing the Settlement Class, each providing information and documents, and many sitting for depositions, in connection with this litigation. Each Plaintiff has worked with counsel to advance the litigation on behalf of themselves and all members of the proposed Settlement Class, and each supports the Settlement and advocates for its approval.

Second, the undersigned counsel are competent, experienced and qualified with expertise in class actions and cost of insurance cases on this and other life insurance policies and have vigorously prosecuted the claims asserted in this case. Plaintiffs' counsel have been appointed as class counsel in dozens of class actions throughout the country, including the *Vogt* case that commenced this litigation, as well as the several cases against State Farm that followed *Vogt*,[15] and have significant experience handling complex disputes, including lawsuits involving other life insurance contracts. *See* Siegel Dec., ¶¶ 5-8, 193 & Ex. A; Ex. 4 (Schirger Dec.), ¶ 14. For example,

[14] *See* Fed. R. Civ. P. 23(e)(2)(A).

[15] *See Bally*, 335 F.R.D. at 303; *Whitman*, 2021 WL 4264271, at *4; *Page*, 584 F. Supp. 3d at 220; *McClure*, 341 F.R.D. at 251; *Toms*, 2022 WL 5238841, at *8.

in June 2018, Stueve Siegel and Miller Schirger successfully tried the *Vogt* case, securing a jury verdict of $34,333,495.81 for Missouri policy owners, which was affirmed on appeal. *See Vogt*, Doc. 358 & 360, *aff'd*, 963 F.3d 753 (8th Cir. 2020), *cert. denied*, 141 S. Ct. 2551 (Apr. 19, 2021). In 2021, the undersigned counsel settled a similar case against USAA Life Insurance Company, obtaining $90 million for a class of universal life insurance policy owners. *Spegele v. USAA Life Ins. Co.*, No. 5:17-CV-967-OLG, 2021 WL 4935978, at *3 (W.D. Tex. Aug. 26, 2021), and in 2018, the undersigned counsel settled a similar case against John Hancock Life Insurance Company, obtaining $59.75 million for a class of whole life insurance policy owners. *See Larson v. John Hancock Life Ins. Co.*, No. RG16813803 (Alameda Cty., Cal.). In 2016, counsel settled another similar case against Lincoln National Life Insurance Company, obtaining $2.25 billion of guaranteed term life insurance with a market value of approximately $171.8 million for a class of universal life policy owners. *See Lincoln Nat'l Life Ins. Co. v. Bezich*, No. 02C01-0906-PL-73 (Allen Cty., Ind.).

Counsel's depth of knowledge and experience gained through the litigation here and cases challenging cost of insurance provisions in other similar life insurance policies allowed them to accurately evaluate and weigh the risks of continued litigation to reach a fair settlement of the claims asserted in this litigation, which Plaintiffs' counsel believe to be in the best interests of Plaintiffs and the Settlement Class. Siegel Dec., ¶ 5-8, 193; Schirger Dec., ¶¶ 14, 19. This factor thus supports finding that the Settlement is fair, reasonable, and adequate, that it will likely be approved, and therefore justifies issuing Notice of the Settlement to the Settlement Class. *See DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995) (stating class counsel's "experience in this type of litigation" supports providing deference to their views as to the fairness of the settlement).

2. The Settlement Is the Product of Arm's Length Negotiations.[16]

The extent and scope of litigation confirms that the Settlement is the product of arm's length negotiations. And, as explained in Part II.C., *supra*, the proposed Settlement is the product of significant negotiation by experienced counsel on both sides with the assistance of two experienced, well-respected neutral mediators, culminating in the execution of the Agreement attached hereto as Exhibit 1. Siegel Dec., ¶¶ 190-91. The arm's length nature of the negotiations amongst experienced counsel supports a finding that the Settlement is fair, reasonable, and adequate and will likely be approved such that issuing Notice to the Settlement Class is justified. *See* Comment to December 2018 Amendment to Fed. R. Civ. P. 23(e) ("[T]he involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests."); *Vill. Bank v. Caribou Coffee Co., Inc.*, No. 19-CV-1640 (JNE/HB), 2020 WL 13558808, at *2 (D. Minn. July 24, 2020) (finding that "[t]he assistance of a retired United States Magistrate Judge as a mediator in the settlement process supports the conclusion that the Settlement was non-collusive and fairly negotiated at arm's length"); *Kelly v. Phiten USA, Inc.*, 277 F.R.D. 564, 570 (S.D. Iowa 2011) (finding the proposed settlement's fairness was supported by the fact that it was reached "after significant investigation and extensive arm's-length negotiations"). Accordingly, this factor supports issuing Notice of the Settlement to the Settlement Class.

[16] *See* Fed. R. Civ. P. 23(e)(2)(B).

3. The Relief Provided by the Settlement Is Excellent.[17]

a. The duration, costs, risks, and delay of trial and appeal support approval of the Settlement.[18]

The $325,000,000 cash settlement is an excellent result for the Settlement Class and likely reflects the largest cash settlement in any litigation involving how an insurance company sets their cost of insurance charge. The size of the fund represents almost 100 percent of the claimed damages for the Settlement Class under the damages methodology set forth by Plaintiffs' expert for Count II; and, it represents a material portion of the damages set forth by that expert under Count I. The result is even more impressive in light of the duration, costs, risks, and delay of trial and appeal, which supports a finding that the Court will likely be able to approve the Settlement, and thus, that Notice should issue to the Settlement Class. In the absence of the Settlement, the Settlement Class Members face significant risks, costs, and delay in reaching a litigated judgment in their favor. As explained in Part II.B, *supra*, courts have reached various readings of the relevant policy language, and it is unknown if, going forward, courts will coalesce around a reading in favor of the policy owners or State Farm or whether they will coalesce at all. It has been difficult to predict the outcome, even among courts in the same Circuit, as evidenced by the adverse statute-of-limitations ruling in *Jaunich* and the conflicting opinions in *Bally*, *McClure*, and *Whitman*. Absent settlement, the issue of policy interpretation would soon be before the Ninth Circuit, with State Farm urging application of the Seventh Circuit's interpretation in *Norem v. Lincoln Benefit Life Co.*, 737 F.3d 1145, 1146 (7th Cir. 2013) and the Eleventh Circuit's interpretation in *Slam Dunk I, LLC v. Connecticut General Life Ins. Co.*, 853 F. App'x 451 (11th Cir. 2021) to construe

[17] Fed. R. Civ. P. 23(e)(C).

[18] Fed. R. Civ. P. 23(e)(2)(C)(i). Plaintiffs also address herein *Van Horn* factors 1 and 3: "the merits of the plaintiffs' case weighed against the terms of the settlement," and "the complexity and expense of further litigation." *Van Horn*, 840 F.2d at 607.

the Policy as authorizing State Farm to use unlisted, non-mortality factors to determine the Policy's COI Rates. State Farm has, at least as to the *Bally* and *Whitman* courts, successfully argued that the Eighth Circuit's opinion in *Vogt* should not be followed because it did not consider the interpretation adopted by these district courts. Consequently, there remains a significant risk that the class could recovery nothing through further litigation.

Further, State Farm has consistently and forcefully argued that Plaintiffs' expert's damages calculations are unreliable, cannot be used to prove damages class-wide, and should be rejected by a jury. Since suffering the adverse judgment in *Vogt*, State Farm's defenses have evolved, and State Farm has disclosed four entirely different experts in these cases, including experts on consumer behavior, actuarial science and pricing, and insurance regulation. None of these experts have been tested at trial; and, to date, none of the courts presiding over these cases have excluded the testimony of any State Farm experts.

State Farm's new economist, Dr. Lauren Stiroh, also offered multiple damage-reducing opinions, including opinions that, if accepted, would reduce Count I damages by approximately 4 percent based on State Farm's "crossover" defense (which the *Vogt* jury accepted); 22 percent based on State Farm's "pooled rates" defense; and 18 percent based on State Farm's defense that it would not have credited interest above the minimum rate if it could not include profits and expenses in its COI Charge. Collectively, these opinions, if they had been accepted by a jury, would have reduced overall damages by approximately 44 percent even in cases where Plaintiffs prevailed on the issue of policy-interpretation and liability. Dr. Stiroh also opines that no policyowner suffered economic harm at all; and, therefore, no class member had damages in the "but for" world where State Farm did not breach the Policy. Thus, even if Plaintiffs had prevailed on liability, they faced significant risk at trial of a zero-dollar or damages award by a jury of a

significantly reduced amount. Except for the crossover and pooled-rate defenses, these other arguments were not tested in *Vogt*.

For these reasons, even if the Settlement Class Members were to prevail on their interpretation of the policy language, thereby establishing State Farm's liability for breach, there is significant uncertainty as to the damages that would be recovered at trial, particularly where State Farm has challenged Plaintiffs' claims as barred or substantially limited by the statute of limitations, requiring Plaintiffs to prevail on establishing that the statute of limitations was tolled to recover. Proving the Plaintiffs' claims through trial would thus be a lengthy, costly, and uncertain process. *Keil v. Lopez*, 862 F.3d 685, 698 (8th Cir. 2017) ("Class actions, in general, place an enormous burden of costs and expense upon parties. Here, the application of numerous states' laws made this a particularly complex case.") (quotations omitted); *In re Zurn Pex Plumbing Products Liab. Litig.*, 2013 WL 716088, at *7 (D. Minn. Feb. 27, 2013) (recognizing that "[t]he complexity and expense of class action litigation is well-recognized" and that "various procedural and substantive defenses . . ., the expense of proving class members' claims, the certainty that resolution under [a] settlement will foreclose any subsequent appeals, and the fear that, unsettled, the ultimate resolution of the action . . . could well extend into the distant future, all weigh in favor of the settlement's approval."). In contrast, a settlement that provides nearly full damages under Count II and a material portion of damages under Count I is a significant portion of the alleged damages and an excellent result.

Finally, State Farm—which has retained several lawyers from multiple large, well-respected, and resourced law firms—has demonstrated it will challenge Plaintiffs' claims to the highest appellate levels, as it did in *Vogt*, where it sought rehearing by the Eighth Circuit panel and en banc review, moved to recall that Court's mandate, and petitioned for certiorari to the

United States Supreme Court, before ultimately paying the judgment. As it litigated its various challenges to the maximum extent possible, the class members in *Vogt*, who prevailed at trial in June 2018, were not paid until 2022. Siegel Dec., ¶ 30. Thus, even if Plaintiffs were to prevail on all issues in their respective cases, an uncertain proposition that itself would take considerable time for the reasons explained above, they would likely not obtain their due recovery for years. This delay further supports a finding that the Settlement, which provides certain recovery in the near-term in an amount representing a material portion of the damages that Settlement Class Members could have obtained had they prevailed in full on the merits of their claims, and more than they could have recovered if State Farm prevailed on any one of its challenges or defenses, is a fair, reasonable, and adequate result, and should therefore ultimately be approved. *See, e.g.*, *Kelly*, 277 F.R.D. at 570 (finding the "significant risks" the settlement class members faced in adjudicating their claims; the uncertain "possibility of a large monetary recovery through future litigation" which "would occur only after considerable additional delay;" the "long and costly" litigation ahead where the defendant "has capable counsel at its disposal and intended to challenge nearly every aspect of Settlement Class Members' case;" and because even if the settlement class members were "to receive a favorable trial verdict, they still would have faced costly and lengthy appeals, delaying the receipt of benefits," all supported approving the settlement); *Keil*, 862 F.3d at 696 ("As courts routinely recognize, 'a settlement is a product of compromise and the fact that a settlement provides only a portion of the potential recovery does not make such settlement unfair, unreasonable or inadequate.'") (quoting *In re BankAmerica Corp. Sec. Litig.*, 210 F.R.D. 694, 708 (E.D. Mo. 2002); citing *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 n.2 (2d Cir. 1974) ("In fact there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery."), *abrogated on*

other grounds by Goldberger v. Integrated Res., Inc., 209 F.3d 43, 49-50 (2d Cir. 2000)); *Marshall v. Nat'l Football League*, 787 F.3d 502, 515 (8th Cir. 2015) ("We have repeatedly rejected arguments that compromise was unnecessary because the party would have prevailed at trial.") (quotations omitted). Therefore, "[w]eighing the uncertainty of relief against the immediate benefit provided in the settlement" supports approval here. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 933 (8th Cir. 2005).

Thus, "[t]he single most important factor" in evaluating the Settlement—"the merits of the plaintiffs' case weighed against the terms of the settlement," *Van Horn*, 840 F.2d at 607, as well as the "the complexity and expense of further litigation," *id.*, and "the duration, costs, risks, and delay of trial and appeal," Fed. R. Civ. P. 23(e)(2)(C)(i), support approval of the Settlement. Therefore, the Court should conclude that issuing Notice to the Settlement Class is justified.

b. The effectiveness of the proposed method of distributing relief to the Settlement Class supports approval of the Settlement.[19]

Subject to Court approval, the Net Settlement Fund will be distributed pursuant to a proposed distribution formula that will provide each Settlement Class Member a minimum payment of $10[20] plus an approximate pro rata portion of the fund according to the amount of Monthly Deductions for COI Charges and Expense Charges paid by the Settlement Class Member, with an equitable discount applied to Missouri policy owners and an upward adjustment for current owners. *See* Agreement, ¶ 2.2; Witt Dec., ¶ 13 & Ex. A to Ex. 3. Settlement checks will be delivered to each Settlement Class Member without the submission of a claim. Agreement, ¶ 2.3. That each Settlement Class Member is receiving an equitable portion of the Settlement Fund

[19] Fed. R. Civ. P. 23(e)(2)(C)(ii).

[20] This minimum amount addresses the few policies that terminated shortly after issuance. Policies held for any appreciable length of time will receive well in excess of the minimum.

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

c. The terms for the award of attorneys' fees, including the timing of payment, support approval of the Settlement.[21]

Class Counsel will seek their fee as a percentage of the $325,000,000 Settlement Fund created for the Settlement Class. Agreement, ¶ 8.1. Class Counsel will file their fee motion 21 days before the deadline for Settlement Class Members to file objections or to exclude themselves from the Settlement.

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

[21] Fed. R. Civ. P. 23(e)(2)(C)(iii).

Mortg. Corp., 83 F.3d 241, 244-45 (8th Cir. 1996)); *see also* Fed. R. Civ. P. 23(h) (permitting the court to award "reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement").

In addition, the Agreement's provision for an award of up to one-third of the fund is reasonable. District courts in the Eighth Circuit frequently assess the reasonableness of an attorney fee award paid from a common fund by the percentage sought, *West v. PSS World Med., Inc.*, No. 4:13 CV 574 CDP, 2014 WL 1648741, at *1 (E.D. Mo. April 24, 2014) ("where attorney fees and class members' benefits are distributed from one fund, a percentage-of-the-benefit method may be preferable to the lodestar method for determining reasonable fees") (citations omitted), and frequently approve awards of one-third as reasonable, particularly under facts like those here, involving extensive litigation undertaken with significant contingent risk.[22] Accordingly, the

[22] *See, e.g.*, *Vogt*, 2021 WL 247958, at *3 (W.D. Mo. Jan. 25, 2021) (awarding one-third of approximately $40 million common fund); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (36% fee award reasonable); *Barfield*, 2015 WL 3460346, at *4 (one-third fee and expense award of $6,500,000 is a reasonable); *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1110 (D. Kan. 2018) (one-third of $1.51 billion common fund was reasonable); *In re: Urethane Antitrust Litig..*, No. 04-1616-JWL, 2016 WL 4060156, at *5 (D. Kan. July 29, 2016) (a "one-third fee is customary in contingent-fee cases" and awarding one third of $835 million common fund); *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079, at *16 (S.D. Ill. Dec. 16, 2018) (awarding one-third of $250 million common fund); *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.*, No. 17-MD-2785-DDC-TJJ, 2022 WL 2663873, at *4 (D. Kan. July 11, 2022) (awarding "one-third of the $264 million" common fund); *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.*, No. 17-MD-2785-DDC-TJJ, 2021 WL 5369798, at *3 (D. Kan. Nov. 17, 2021), judgment entered, No. 17-MD-2785-DDC-TJJ, 2021 WL 5369815 (D. Kan. Nov. 17, 2021) (awarding "one-third of the $345 million" fund); *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1061–62, 1067 (D. Minn. 2010)) (awarding one-third of $16 million settlement fund, plus separate reimbursement from the fund of $245,000 in expenses); *Carlson v. C.H. Robinson Worldwide, Inc.*, No. 02-3780, 2006 WL 2671105, at *8 (D. Minn. Sept. 18, 2006) (35.5% fee award reasonable); *In re E.W. Blanch Holdings, Inc. Sec. Litig.*, No. 01-258, 2003 WL 23335319, at *3 (D. Minn. June 16, 2003) (awarding 33.3% of a $20 million settlement); *KK Motors v. Brunswick Corp.*, No. 98-2307, Doc. 67, pp. 2–3 (D. Minn. March 6, 2000) (awarding one-third of a $30 million settlement); *In re Airline Ticket Commission Antitrust Litig.*, 953 F. Supp. 280, 285–86 (D. Minn. 1997) (awarding 33.3% of $86.9 million fund); *In re Iowa Ready–Mix Concrete Antitrust Litig.*, No. C 10-4038-

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

Class Counsel will provide a thorough analysis of the reasonableness of their forthcoming attorneys' fee and expense award request in their fee motion. But importantly, the Parties' Agreement is not conditioned upon the Court's approval of the fee award. Agreement, ¶ 8.4. Accordingly, at this stage, the Court can and should conclude that it is likely to approve the Settlement for purposes of sending Notice to the Settlement Class, without regard to the issue of attorneys' fees and expenses.[23]

d. There is no agreement required to be identified under Rule 23(e)(3).[24]

Under Rule 23(e)(3), "[t]he parties seeking approval must file a statement identifying any

MWB, 2011 WL 5547159, at *3-4 (N.D. Iowa Nov. 9, 2011) (awarding attorneys 36.04% of $18.5 million common fund in fees, plus separate reimbursement from settlement fund of over $900,000 in expenses); *West*, 2014 WL 1648741, at *1 (33%); *Wiles v. Sw. Bill Tel. Co.*, No. 09-4236-CV-C-NKL, 2011 WL 2416291, at *5 (W.D. Mo. June 9, 2011) (awarding attorneys one-third of $900,000 common fund); *Ray v. Lundstrom*, No. 8:10CV199, 2012 WL 5458425, at *4-5 (D. Neb. Nov. 8, 2012) (awarding one-third of $3.1 million fund in fees, plus separate reimbursement from the settlement fund of $77,900 in expenses); *Brehm v. Engle*, No. 8:07CV254, 2011 U.S. Dist. LEXIS 35127, at *6 (D. Neb. Mar. 30, 2011) (awarding one-third of $340,000 settlement fund in fees, plus separate reimbursement from the fund of $45,000 in expenses); *Kelly v. Phiten USA, Inc.*, 277 F.R.D. 564, 571 (S.D. Iowa 2011) (awarding 33% of the settlement award in fees); *see also In re Xcel*, 364 F. Supp. 2d 980, 996 (D. Minn. 2005) (listing various settlements, including *In re Select Comfort Corp. Secs. Litig.*, No. 99-884, 2003 U.S. Dist. LEXIS 26409 (D. Minn. Feb. 28, 2003) (awarding 33.3% of the $5,750,000 settlement), and *In re Control Data Sec. Litig.*, No. 85-1341 (D. Minn. Sept. 23, 1994) (awarding 36.96% of $8 million fund)); *Tussey v. ABB, Inc.*, No. 06-CV-04305-NKL, 2019 WL 3859763, at *4 (W.D. Mo. Aug. 16, 2019) (awarding 1/3 of $55 million fund).

[23] Similarly, Class Counsel will request a Service Award of up to $25,000 for each Plaintiff in their forthcoming motion. Agreement, ¶ 8.2. Service awards of this size have been found reasonable. *See, e.g.*, *Tussey v. ABB, Inc.*, 850 F.3d 951, 961–62 (8th Cir. 2017) (approving $25,000 incentive awards). In addition, the Parties' Agreement is not conditioned on the Court's approval of this request. Agreement, ¶ 8.4.

[24] Fed. R. Civ. P. 23(e)(2)(C)(iv).

agreement made in connection with the proposal." There is no agreement between the Parties here, except those set forth or explicitly referenced in the Settlement Agreement. Accordingly, this factor is not relevant to whether the Settlement is likely to be approved.

4. The Settlement Treats Class Members Equitably Relative to Each Other, Supporting Approval of the Settlement.[25]

The Settlement's proposed distribution formula determines each Settlement Class Member's recovery under the Settlement according to the actual deductions each paid under their Policy for COI and Expense Charges. There is an upward adjustment proposed for current policy owners to reflect that they are still paying COI Charges and, for the Missouri policy owners, their share of the settlement will be calculated using COI and Expense Charges incurred after the damages period in *Vogt* because they have already received a share of the *Vogt* judgment to reflect damages incurred in the earlier period.

5. State Farm's Financial Condition.[26]

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

[25] *See* Fed. R. Civ. P. 23(e)(2)(D).
[26] *Van Horn*, 840 F.2d at 607 (factor 2).

6. The Amount of Opposition to the Settlement Supports Approval.[27]

As explained above, Plaintiffs and Class Counsel believe the Settlement is an excellent result for the Settlement Class, especially given the risks and delay of continued litigation, as detailed above. Siegel Dec., ¶¶ 191, 197; *see Claxton v. Kum & Go, L.C.*, No. 6:14-CV-03385-MDH, 2015 WL 3648776, at *6 (W.D. Mo. June 11, 2015) (recognizing that when evaluating a settlement, the court should accord "deference to the attorneys in assessing their clients' claims/defenses"); *DeBoer*, 64 F.3d at 1178 (stating class counsel's "experience in this type of litigation" supports providing deference to their views as to the fairness of the settlement). Here, Class Counsel's experience litigating the cases in this litigation and similar ones has provided them a thorough understanding of the risks and potential ranges of recovery in this case, which has allowed Class Counsel to fairly consider the merits of the claims here and the value of the Settlement to the Settlement Class. In addition, Plaintiffs also support and approve the Settlement, believing it to be in the best interests of the Settlement Class. Siegel Dec., ¶ 199.

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

* * *

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

[27] *Van Horn*, 840 F.2d at 607 (factor 4).

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

The second requirement in Rule 23(e)(1) for issuance of notice to the class is a finding that the Court will "likely be able to . . . certify the class for purposes of judgment" on the proposed settlement. Here, the Court is not being asked to evaluate certification in a vacuum. Every court to consider whether the facts of this case support class certification under Rule 23, including the Eighth Circuit Court of Appeals in *Vogt*, have concluded that the requirements for certification are satisfied, and because the Court need not consider the manageability issues at trial resulting from the application of multiple states' laws, the Court should conclude that it will likely be able to certify the Settlement Class.

A. Standard for Certifying Settlement Class.

A motion for class certification under Federal Rule of Civil Procedure 23 involves a two-part analysis. First, under Rule 23(a), the proposed class must satisfy the requirements of numerosity, commonality, typicality, and fair and adequate representation. Second, the proposed class must meet at least one of the three requirements of Rule 23(b). *Vogt*, 2018 WL 1955425, at *2; Fed. R. Civ. P. 23(a)-(b). Plaintiffs request certification for settlement purposes only under Rule 23(b)(3), which requires that the common questions predominate over any individualized questions, and that a class action is a superior to other methods of adjudication. Fed. R. Civ. P. 23(b)(3). A district court has broad discretion in deciding whether a particular action complies with the requirements of Rule 23. *Vogt*, 2018 WL 1955425, at *2.

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

1. The Settlement Class meets each of the requirements of Rule 23(a).

The Settlement Class satisfies Rule 23(a)'s numerosity, commonality, typicality, and adequacy requirements. First, the Settlement Class satisfies the numerosity requirement because it

is comprised of owners of approximately 760,000 Policies sold by State Farm throughout the country. Siegel Dec., ¶ 192; *Vogt*, 2018 WL 1955425, at *2 ("In assessing whether the numerosity requirement has been met, courts examine factors such as the number of persons in the proposed class, the nature of the action, the size of the individual claims, and the inconvenience of trying individual claims," concluding numerosity was satisfied for a class of approximately 24,000 Missouri policy owners) (quoting *Paxton v. Union Nat'l Bank*, 688 F.2d 552, 561 (8th Cir. 1982)).

Second, commonality is satisfied because the Policies are standard form contracts and State Farm performs uniformly under them as to its inclusion of unlisted profit and expense factors in the COI Rates as to all Settlement Class Members. *Vogt*, 2018 WL 1955425, at *3 (finding commonality satisfied because plaintiff's claims all turned on interpretation of the standard form policy and State Farm's uniform incorporation of non-mortality factors into its COI Rates); *see also, e.g.*, *Bally*, 335 F.R.D. 288, 301-02 (N.D. Cal. 2020); *Whitman*, 2021 WL 4264271, at *3 n.3; *Advance Tr. & Life Escrow Servs., LTA v. ReliaStar Life Ins. Co.*, 2022 WL 911739, at *9 (D. Minn. Mar. 29, 2022) (finding commonality satisfied for similar claims for breach of universal life insurance policies as to multi-state class because "each turn on the interpretation of materially similar provisions in form UL insurance policies"); *McKeage v. TMBC, LLC*, 847 F.3d 992, 999 (8th Cir. 2017) (finding commonality satisfied where breach arose from form contract term).

Further, because each Plaintiff is the owner of one of the Policies and, like every policy owner, was charged COI Rates containing the allegedly improper amounts, their claims are typical of the Settlement Class and their interests are aligned with all policy owners in seeking to recover the amounts that allegedly violated the Policies. *See Vogt*, 2018 WL 1955425, at *4-5 (finding the plaintiff had no conflicts with other policy owners and that his claims were typical of those of the class because the claims arose from and related to the interpretation and application of the Policy

and the policy language, and State Farm's methodology for determining COI Rates was uniform for all class members), *aff'd*, 963 F.3d at 767 ("[T]o forestall class certification the intra-class conflict must be so substantial as to overbalance the common interests of the class members as a whole.") (quoting *Matamoros v. Starbucks Corp.*, 699 F.3d 129, 138 (1st Cir. 2012)); *Bally*, 335 F.R.D. at 300; *Whitman*, 2021 WL 4264271, at *4; *Jaunich*, 2021 WL 5054461, at *4 n.4; *Page*, 2022 WL 406415, at *11; *McClure*, 341 F.R.D. at 250; *Toms*, 2022 WL 5238841, at *7-8.

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

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

2. The Settlement Class meets the requirements of Rule 23(b)(3).

Rule 23(b)(3) "requires that 'questions of law or fact common to class members predominate over any questions affecting only individual members, and [that] a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *Vogt*, 2018 WL 1955425, at *5 (quoting Fed. R. Civ. P. 23(b)(3)). As several courts have now concluded, the question whether State Farm's uniform conduct violated the common form Policies is a common, predominating one. *E.g.*, *id.* at *6 (finding predominance satisfied because "[t]he major portion of the evidence on the claims for breach of contract, conversion, and declaratory judgment is capable of consideration on a class wide basis. The terms of the Policy are the same for all class members. State Farm has not suggested that the determination of COI rates varied on a case-by-case basis."); *Bally*, 335 F.R.D. at 304; *Whitman*, 2021 WL 4264271, at *5-9; *Jaunich*, 2021 WL 5054461, at *4; *Page*, 2022 WL 406415, at *12-15; *McClure*, 341 F.R.D. at 251-54; *Toms*, 2022 WL 5238841, at *8-9. And that is so even though Settlement Class Members' Policies were issued throughout the country and could be governed by the substantive laws of their respective states

because states' breach of contract laws are materially the same, and the contracts at issue are uniform. *See Am. Airlines, Inc v. Wolens*, 513 U.S. 219, 233, n.8 (1995) ("[C]ontract law is not at its core diverse, nonuniform, and confusing."); *Burnett v. CNO Fin. Grp., Inc.*, 2022 WL 896871, at *13 (S.D. Ind. Mar. 25, 2022) (certifying multi-state class for breach of COI provision of life insurance policies, noting that "in cases arising under common law, the legal 'principles are the same, or materially the same, in many or even all U.S. states.'") (quoting *Thomas v. UBS AG*, 706 F.3d 846, 849 (7th Cir. 2013)); *Advance Trust & Life Escrow Services, LTA v. North Am. Co. for Life and Health Ins.*, --- F. Supp. 3d ----, 2022 WL 883750, at *13 (S.D. Iowa Mar. 22, 2022) (finding predominance satisfied for similar claims for proposed multi-state class of policy owners because "'the relevant contract term was uniform.'") (quoting *Custom Hair Designs by Sandy v. Cent. Payment Co.*, 984 F.3d 595, 601 (8th Cir. 2020)).

Courts have also repeatedly recognized that under the facts here, proceeding as a class action is superior to individualized proceedings. *Vogt*, 2018 WL 1955425, at *7; *Bally*, 335 F.R.D. at 305; *Whitman*, 2021 WL 4264271, at *10; *Jaunich*, 569 F. Supp. 3d at 919; *Page*, 584 F. Supp. 3d at 224; *McClure*, 341 F.R.D. at 254; *Toms*, 2022 WL 5238841, at *9. The requested certification here for purposes of effectuating the Settlement is likewise superior "because a class-wide settlement is a more efficient use of the parties'—and the judiciary's—resources." *See Komoroski v. Util. Serv. Partners Priv. Label, Inc.*, No. 4:16-CV-00294-DGK, 2017 WL 3261030, at *6 (W.D. Mo. July 31, 2017). Further, because Plaintiffs seek class certification for purposes of Settlement, the Court need not consider whether certifying a nationwide class for trial would raise manageability concerns. *See Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, *see* Fed. Rule Civ.

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

* * *

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

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

As explained at Part V.B.1., *supra*, the undersigned counsel are highly experienced in class actions and litigation of this type, and have developed an unmatched depth of knowledge on the facts and legal issues related to the claims in this case. The undersigned have also shown perseverance and dedication to advancing the claims of the Settlement Class. Several courts have recognized the adequacy of Plaintiffs' counsel here to represent the interests of State Farm policy owners. Plaintiffs thus request that the undersigned counsel be appointed as interim Class Counsel pursuant to Rule 23(g)(3) pending certification of the Settlement Class at Final Approval, for purposes of carrying out the issuance of Notice to the Settlement Class.

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

Under Rule 23(e)(1)(B), "[t]he court must direct notice in a reasonable manner to all class members who would be bound by a [settlement] proposal." Likewise, in directing notice "to a class proposed to be certified for purposes of settlement under Rule 23(b)(3)--the court must direct to class members the best notice that is practicable under the circumstances, including individual

notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). "[T]he notice need only satisfy the 'broad 'reasonableness' standards imposed by due process.'" *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1153 (8th Cir. 1999) (quoting *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975), *cert. denied*, 423 U.S. 864 (1975)). The Supreme Court has found that the notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 314 (1950); *see also* American Law Institute, Principles of the Law of Aggregate Litigation § 3.04(a) (2010) ("The purpose of a notice of a proposed class settlement is to set forth the major contours of the proposal and to inform class members of their right to attend the fairness hearing and to lodge written objections by a prescribed date should they so desire.").

The proposed Notice (Exhibit A to the Settlement Agreement) readily meets these requirements, and the notice program, using direct mail delivery, constitutes the best practicable notice under the circumstances of this case. *See* Ex. 5, Azari Dec., ¶ 11. The Notice uses "plain English" to inform Settlement Class Members of, among other things, the nature of the class claims, the essential terms of the Settlement, the date, time and place of the Fairness Hearing, how to object or opt-out of the Settlement, and the binding effect of the Settlement on Settlement Class Members. The Notice also contains information regarding Class Counsel's forthcoming request for fees and expenses, and the proposed Service Awards to Plaintiffs. In addition, the Notice identifies and directs Settlement Class Members to the Settlement Website, where they can view the Settlement documents and relevant pleadings and motions. Agreement, ¶¶ 1.40, 4.6. Thus, the Notice satisfies the requirements of Federal Rule of Civil Procedure 23(c)(2)(B), informs

Settlement Class Members of the terms of the proposed Settlement and their available options, is the best notice that is practicable under the circumstances, and should be approved by the Court.

IX. THE COURT SHOULD APPOINT EPIQ AS SETTLEMENT ADMINISTRATOR.

Plaintiffs also request that the Court appoint Epiq to serve as Settlement Administrator. Epiq is well-versed in administering class action settlements, including in the cost of insurance litigation context (*see generally* Azari Dec.), and is willing, able, and prepared to fulfill the role of Settlement Administrator in this case.

X. PROPOSED TIMELINE OF EVENTS

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

CONCLUSION

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

Date: November 22, 2022

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APPENDIX A

EVENT	**TIMING**
Deadline for Settlement Administrator to disseminate CAFA notices	[10 days from filing of Motion for Preliminary Approval]
Deadline for State Farm to provide Notice List to Settlement Administrator	[14 days after Preliminary Approval Date]
Deadline for the Settlement Administrator to mail Court-approved Notice to Settlement Class ("Notice Date")	[45 days after Preliminary Approval Date]
Deadline to file Class Counsel's motion for Fees and Expenses and for Service Awards	[21 days prior to the Objection deadline]
Deadline for motion for final approval of Settlement	[7 days prior to the Fairness Hearing]
Objection deadline	[35 days after Notice Date]
Opt-out deadline	[35 days after Notice Date]
Deadline for Class Counsel to file with the Court all objections served on the Settlement Administrator	[5 days after Objection deadline]
Deadline for responses to any timely objections	Any time prior to Fairness Hearing
Fairness Hearing	[Approx. 100 days after prelim approval order]

EXHIBIT 1

SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED AND AGREED by, between, and among Plaintiffs David M. Rogowski, Elizabeth A. Bally, Kathy Bauer, Kim Botte, John E. Jaunich, the Estate of Earl L. McClure, Ronald K. Page, David Toms, Chandra B. Singh, Joyce Thomas, and William T. Whitman, individually and on behalf of the Settlement Class defined below, and Defendants State Farm Life Insurance Company and State Farm Life and Accident Assurance Company, that the causes of action and matters raised by and related to this lawsuit, captioned *Rogowski v. State Farm Life Insurance Company*, Case No. 4:22-cv-00203-RK, in the United States District Court for the Western District of Missouri, as well as the causes of action and matters raised by the Related Actions, are hereby settled and compromised on the terms and conditions set forth in this Agreement, subject to approval of the Court.

This Agreement is made to fully, finally, and forever resolve, discharge, and settle the Released Claims on the terms and conditions of this Agreement.

TERMS AND CONDITIONS OF AGREEMENT

1. Definitions

Capitalized terms in this Agreement are defined as follows:

1.1. "Action" means the lawsuit captioned *Rogowski v. State Farm Life Insurance Company,* Case No. 4:22-cv-00203-RK, currently pending in the United States District Court for the Western District of Missouri.

1.2. "Agreement" means this Settlement Agreement.

1.3. "Claims" means all suits, claims, cross-claims, counterclaims, controversies, liabilities, demands, obligations, debts, indemnities, costs, fees, expenses, losses, liens, actions, or causes of action (however denominated), including Unknown Claims, of every nature, character,

and description, whether in law, contract, statute, or equity, direct or indirect, whether known or unknown, foreseen or not foreseen, accrued or not yet accrued, or present or contingent, for any injury, damage, obligation, or loss whatsoever, including compensatory damages, statutory liquidated damages, exemplary damages, punitive damages, losses, costs, expenses, or attorneys' fees.

1.4. "Class Counsel" means Stueve Siegel Hanson LLP and Miller Schirger LLC.

1.5. "Class Counsel's Fees and Expenses" means the amount of the award approved by the Court to be paid to Class Counsel from the Settlement Fund for attorneys' fees and reimbursement of Class Counsel's costs and expenses, all as more fully set forth in Section 8.

1.6. "Class List" means the Policies identified by policy number to be filed with the Court as an exhibit to Plaintiffs' motion for Final Approval of the Settlement. The Class List consists of the Policies in the Settlement Class.

1.7. "Class List Date" means a date 14 days following the execution of this Agreement.

1.8. "Class Notice" means the notice of the Settlement approved by the Court to be sent by the Settlement Administrator, as described in Section 4, to the persons and entities on the Notice List. The Parties will submit the Class Notice in the form attached to this Agreement as Exhibit A for the Court's approval.

1.9. "Confidential Information" means material designated as "Confidential Information" in accordance with the terms of the Protective Orders entered in the Action and the Related Actions.

1.10. "Cost of Insurance," "Monthly Expense Charge," "Premium Expense Charge," and "Monthly Deduction" have the same meaning or meanings ascribed by the Policy or Policies.

1.11. "Court" means the United States District Court for the Western District of Missouri and the Honorable Roseann A. Ketchmark, or any other judge assigned to the Action.

1.12. "Defendants" means State Farm Life Insurance Company and State Farm Life and Accident Assurance Company (collectively, "State Farm") and their predecessors and successors.

1.13. "Distribution Plan" means the formulae prepared by Class Counsel, after consulting State Farm, and as approved by the Court for allocation of the Net Settlement Fund.

1.14. "Excluded Claims" means new Claims against Defendants accruing and asserted after the Final Settlement Date that challenge future increases in Defendants' Monthly Cost of Insurance Rates above the rates challenged in the Action or Related Actions for reasons other than deterioration in Defendants' expectations as to future projected mortality. Excluded Claims are limited to Claims that could not have been recovered in the Action or the Related Actions. For avoidance of doubt, Excluded Claims do not include Claims involving (1) future increases in any portion of Defendants' Monthly Cost of Insurance Rates if deterioration in Defendants' expectations as to future projected mortality is a material or primary reason for the increase; (2) year-over-year increases in Defendants' Monthly Cost of Insurance Rates as an Insured ages; and (3) the use of Monthly Cost of Insurance Rates at or below the rates challenged in the Action or Related Actions.

1.15. "Fairness Hearing" means any hearing held by the Court on any motion for final approval of the Settlement for the purposes of: (i) entering the Order and Judgment; (ii) determining whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class Members; (iii) ruling on an application by Class Counsel for attorneys' fees and reimbursement of expenses and reasonable service award payments for the

Plaintiffs; or (iv) ruling on any other matters raised or considered in connection with the Settlement.

1.16. "Final Settlement Date" means the date when the Order and Judgment becomes final, which shall be the first business day after one of the following, as applicable: (i) if an appeal from the Order and Judgment is initiated, the date when the Order and Judgment has been affirmed or the appeal dismissed and the deadline for initiating any further appeal has expired; or (ii) if no appeal is filed, the deadline for initiating an appeal from the Order and Judgment.

1.17. "Maximum Monthly Cost of Insurance Rates" has the same meaning or meanings ascribed by the Policy or Policies and is the maximum Monthly Cost of Insurance Rates that State Farm can apply to the Policy or Policies.

1.18. "Monthly Cost of Insurance Rates" has the same meaning or meanings ascribed by the Policy or Policies and refers to Defendants' cost of insurance rates from tables applicable to the Policies. Monthly Cost of Insurance Rates includes Defendants' cost of insurance rates from tables for all ages, sexes, and applicable Rate Classes for the Policies, including but not limited to age and sex-distinct rate tables for tobacco, non-tobacco, standard, sub-standard, unisex rate tables used in Montana, flat extras, and table rated tables, as well as any combination of Rate Classes for an Insured. For clarity, "tables" referenced in this Paragraph does not refer to pricing or mortality tables. "Rate Class" and "Insured" have the same meaning or meanings ascribed by the Policy or Policies.

1.19. "Net Settlement Fund" means the Settlement Fund less Settlement Administration Expenses, Plaintiffs' Service Awards, and Class Counsel's Fees and Expenses, which shall be distributed to the Settlement Class Members pursuant to the Distribution Plan.

1.20. "Notice Date" means the date when the Settlement Administrator mails the Class Notice.

1.21. "Notice List" means the individuals or entities reflected as the last known policy Owner of the Policies on the Class List as of the Class List Date.

1.22. "Order and Judgment" means the Court's order fully and finally approving the Settlement and entering final judgment.

1.23. "Owner" or "Owners" means a Policy's owner or owners, whether a person or an entity and whether in an individual or representative capacity, as indicated in Defendants' records as of the Class List Date, except that if the Owner is deceased as of the Class List Date, the Owner shall mean the estate of the deceased Owner.

1.24. "Parties" means, collectively, Plaintiffs and Defendants.

1.25. "Plaintiffs" means David M. Rogowski, Elizabeth A. Bally, Kathy Bauer, Kim Botte, John E. Jaunich, the Estate of Earl L. McClure, Ronald K. Page, David Toms, Chandra B. Singh, Joyce Thomas, and William T. Whitman.

1.26. "Plaintiffs' Service Awards" means the amount of the awards approved by the Court to be paid to Plaintiffs, or their estate if deceased, from the Settlement Fund, as compensation for efforts undertaken by him or her on behalf of the Settlement Class.

1.27. "Policy" or "Policies" means all Form 94030/A94030 flexible premium adjustable whole life (or universal life) insurance policies, as well as all Form 94080/A94080 flexible premium adjustable whole life (or universal life) insurance policies in the United States that were issued and administered by Defendants or their predecessors in interest. Policy or Policies shall include 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.

1.28. "Preliminary Approval Date" means the date when the Court enters the order granting preliminary approval and permitting notice of the proposed Settlement.

1.29. "Related Action(s)" means the cases listed on Exhibit B.

1.30. "Released Claims" means any and all Claims asserted in the Action or the Related Actions, that might have been asserted in the Action or the Related Actions, or that may later be asserted arising out of or related to the facts, subject matter, conduct, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act alleged in the Action or the Related Actions, and/or based in whole or in part on allegations that Defendants or any of their predecessors or successors considered factors other than mortality when determining or developing Defendants' Monthly Cost of Insurance Rates, including, but not limited to, factors for expenses (for example, administrative, maintenance, and acquisition expenses), commissions, reinsurance costs, premium persistency, policy lapses, investment income, interest crediting projections, taxes, cash surrenders, withdrawals, sales volume, marketing costs, capital costs, competitiveness, profit objectives, or profit; recovering expenses through the Monthly Cost of Insurance Rates, including any expenses in excess of any of the Policy's stated Monthly Expense Charge, Premium Expense Charge, or any other expense charge or Policy charge; or failing to change the Monthly Cost of Insurance Rates in response to changes in Defendants' expectations as to future projected mortality for any age, sex or Rate Class. Released Claims expressly includes all Claims based in whole or in part on Defendants' development, calculation, recalculation, determination, or redetermination of Defendants' Monthly Cost of Insurance Rates and all Claims based in whole or in part on the Monthly Deduction, or the deduction of the Cost of Insurance, the Monthly Expense Charge,

and/or the monthly charges for any riders. All Claims relating to Defendants' use of the Monthly Cost of Insurance Rates at or below the rates challenged in the Action or Related Actions now or in the future for any reason whatsoever are expressly released. Released Claims also expressly includes all Claims that Defendants have for any future obligation to decrease Monthly Cost of Insurance Rates for any reason or in any specific amount, to any specific degree, or by any specific percentage. Released Claims also includes Claims involving (1) future increases in any portion of Defendants' Monthly Cost of Insurance Rates if deterioration in Defendants' expectations as to future projected mortality is a material or primary reason for the increase; (2) year-over-year increases in an Insured's Monthly Cost of Insurance Rates as an Insured ages; and (3) future increases in Monthly Cost of Insurance Rates as a result of an increase in an Insured's amount of coverage and new applicable Rate Class on the increased amount as a result of the underwriting process. Released Claims do not include Excluded Claims.

1.31. "Released Parties" means, individually and collectively, Defendants and Defendants' current and former shareholders, agents, representatives, principals, employees, independent contractors, attorneys, trustees, owners, directors, officers, fiduciaries, administrators, partners, subrogees, reinsurers, creditors, insurance providers, parent, subsidiaries, divisions, affiliates, related entities, predecessors, successors, assignees, and all other persons or entities acting by or through them; and Plaintiffs and each Settlement Class Member and their respective agents, beneficiaries, heirs, relatives, representatives, attorneys, predecessors, successors, insurers, trustees, subrogees, executors, assignees, and all other persons or entities acting by or through any of them.

1.32. "Releasing Parties" means Plaintiffs and each Settlement Class Member on behalf of themselves and their respective agents, beneficiaries, heirs, relatives, representatives, attorneys,

predecessors, successors, insurers, trustees, subrogees, executors, assignees, and all other persons or entities acting by or through any of them; and Defendants and Defendants' current and former shareholders, agents, representatives, principals, employees, independent contractors, attorneys, trustees, owners, directors, officers, fiduciaries, administrators, partners, subrogees, reinsurers, creditors, insurance providers, parent, subsidiaries, divisions, affiliates, related entities, predecessors, successors, assignees, and all other persons or entities acting by or through them.

1.33. "Settlement" means the settlement set forth in this Agreement.

1.34. "Settlement Administration Expenses" means all fees, costs, and expenses incurred by the Settlement Administrator, including Class Notice costs and claims administration, which shall be paid from the Settlement Fund.

1.35. "Settlement Administrator" means Epiq Class Action and Claims Solutions, Inc., a qualified third-party settlement administrator mutually agreed upon by Plaintiffs and Defendants to provide Class Notice and administer payment of settlement relief. A different Settlement Administrator may be substituted if approved by order of the Court.

1.36. "Settlement Class" means the Owners of approximately 760,000 Policies as reflected on the Class List. The Settlement Class excludes: State Farm; any entity in which State Farm has a controlling interest; any of the officers or board of directors of State Farm; the legal representatives, heirs, successors, and assigns of State Farm; anyone employed with Plaintiffs' law firms; and any Judge to whom this Action or a Related Action is assigned, and his or her immediate family.

1.37. "Settlement Class Members" means all persons and entities that are included in the Settlement Class who are not excluded by the Court in the Order and Judgment.

1.38. "Settlement Fund" means a non-reversionary cash fund consisting of the consideration paid by Defendants in the amount of $325,000,000.00. The Settlement Fund will be a single qualified settlement fund pursuant to 26 U.S.C. § 468 that will be used to pay Settlement Administration Expenses, Plaintiffs' Service Awards, Class Counsel's Fees and Expenses, and all settlement relief to Settlement Class Members. Other than pursuant to Paragraphs 5.5 and 11.14 of this Agreement, no portion of the Settlement Fund may revert to Defendants. Defendants shall have no financial obligations under this Settlement other than payment of the Settlement Fund.

1.39. "Settlement Fund Account" means the escrow account to be established by the Settlement Administrator in the United States, from which all payments out of the Settlement Fund will be made. The Settlement Fund Account shall be established at a depository institution insured by the Federal Deposit Insurance Corporation.

1.40. "Settlement Website" means a website established by the Settlement Administrator containing information about the Settlement with the URL www.nationalsfcoisettlement.com or a similar address as otherwise agreed by the Parties.

1.41. "Unknown Claims" means any Claims asserted in the Action or the Related Actions, that might have been asserted in the Action or the Related Actions, or that may later be asserted arising out of the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act that were alleged in the Action or the Related Actions that Plaintiffs or any Settlement Class Member does not know or suspect to exist in his or her favor at the time of the entry of the Order and Judgment, and which if known by him or her might have affected his or her decision to opt out of or object to the Settlement. With respect to any and all Claims described and released under Paragraphs 1.30, 3.1, and 3.2, the Parties stipulate and agree that, upon the Final Settlement Date, Plaintiffs and each Settlement Class Member understand that they

have and shall be deemed to have, and by operation of the Order and Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides:

> **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."**
>
> **PLAINTIFFS AND EACH SETTLEMENT CLASS MEMBER, UPON THE FINAL SETTLEMENT DATE, SHALL BE DEEMED TO HAVE, AND BY OPERATION OF THE ORDER AND JUDGMENT SHALL HAVE, WAIVED ANY AND ALL PROVISIONS, RIGHTS, AND BENEFITS CONFERRED BY ANY LAW OF ANY STATE OR TERRITORY OF THE UNITED STATES, OR PRINCIPLE OF COMMON LAW, WHICH IS SIMILAR, COMPARABLE, OR EQUIVALENT TO SECTION 1542 OF THE CALIFORNIA CIVIL CODE. PLAINTIFFS AND SETTLEMENT CLASS MEMBERS MAY HEREAFTER DISCOVER FACTS IN ADDITION TO OR DIFFERENT FROM THOSE THAT THEY NOW KNOW OR BELIEVE TO BE TRUE WITH RESPECT TO THE SUBJECT MATTER OF THE RELEASED CLAIMS, BUT PLAINTIFFS AND EACH SETTLEMENT CLASS MEMBER, UPON THE FINAL SETTLEMENT DATE, SHALL BE DEEMED TO HAVE, AND BY OPERATION OF THE**

ORDER AND JUDGMENT SHALL HAVE, FULLY, FINALLY, AND FOREVER SETTLED AND RELEASED ANY AND ALL RELEASED CLAIMS, KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, CONTINGENT OR NON-CONTINGENT, WHETHER OR NOT CONCEALED OR HIDDEN, WHICH NOW EXIST, OR HERETOFORE HAVE EXISTED UPON ANY THEORY OF LAW OR EQUITY NOW EXISTING OR COMING INTO EXISTENCE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, CONDUCT THAT IS NEGLIGENT, INTENTIONAL, WITH OR WITHOUT MALICE, OR ANY BREACH OF ANY DUTY, LAW, OR RULE WITHOUT REGARD TO SUBSEQUENT DISCOVERY OR EXISTENCE OF SUCH DIFFERENT OR ADDITIONAL FACTS. PLAINTIFFS AND EACH SETTLEMENT CLASS MEMBER AGREE THAT THIS IS AN ESSENTIAL TERM OF THE RELEASE.

1.42. The terms "he or she" and "his or her" include "it" or "its" or "their," where applicable. Defined terms expressed in the singular also include the plural form of the term, and vice versa, where applicable.

1.43. All references in this Agreement to sections and paragraphs refer to sections and paragraphs of this Agreement, unless otherwise expressly stated in the reference.

2. Settlement Relief

2.1. On or within one (1) business day after the Preliminary Approval Date, Class Counsel shall provide to Defendants written confirmation of all necessary information to complete the wire transfers of any funds due from Defendants pursuant to the Settlement into the Settlement

Fund Account. Within ten (10) business days of the Preliminary Approval Date, Defendants shall fund the Settlement Fund in full by wire transfer into the Settlement Fund Account.

2.2. The Net Settlement Fund shall be distributed to the Settlement Class Members pursuant to the distribution formulas proposed by Class Counsel, subject to Court approval. Any such revision required to obtain Court approval shall not constitute an amendment or modification to the Agreement subject to Paragraph 11.13.

2.3. Defendants shall provide the data necessary to apply the distribution formulas for Settlement Class Members on or prior to seven (7) days after the Preliminary Approval Date. Within 30 days after the Final Settlement Date, the Settlement Administrator shall calculate each Settlement Class Member's distribution pursuant to the distribution methodology and deliver to each Settlement Class Member by U.S. mail, first-class postage prepaid, a settlement check or other mechanism of payment in the amount of the share of the Net Settlement Fund to which the Settlement Class Member is entitled pursuant to the Distribution Plan. Settlement payments will be automatically delivered without any proof of claim or further action on the part of the Settlement Class Members.

2.4. Checks shall remain negotiable for 180 days from the date of mailing. Checks not cashed during this time will be canceled, and amounts of canceled checks will be sent to the unclaimed property division of the state in which each such Settlement Class Member was last sent Class Notice or distributed as otherwise ordered by the Court. Checks shall be re-issued by the Settlement Administrator if such requests are received from Settlement Class Members before the transfer to the unclaimed property divisions has occurred. Defendants shall have no obligations or responsibility relating to the redistribution or reissuance of any canceled checks or the transmission of any amounts of canceled checks.

2.5. The Parties agree that if the Court finds that the Distribution Plan submitted by Class Counsel is not fair and reasonable, and refuses to approve the Settlement on that basis, Class Counsel may, in consultation with Defendants, modify the Distribution Plan to resolve the issue to the satisfaction of the Court, and any such modification shall not constitute an amendment or modification of this Agreement. In no event will any modification to the Distribution Plan change Defendants' obligations under Paragraph 1.38 or any other provision of this Agreement.

3. Releases and Waivers

3.1. Upon the Final Settlement Date and Defendants' wiring of the Settlement Fund amount provided by Paragraph 2.1, the Releasing Parties shall be deemed to have, and by operation of the Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Parties of and from all Released Claims.

3.2. As part of the consideration for the benefits conveyed pursuant to Paragraphs 2.1 through 2.5, the Releasing Parties agree and understand that, among the explicitly Released Claims in the Agreement, Defendants may continue to use Monthly Cost of Insurance Rates equal to or lower than the Monthly Cost of Insurance Rates as of the date of the Settlement Agreement, and Defendants may continue to use and adjust Monthly Cost of Insurance Rates as set forth and described in Paragraphs 1.14 and 1.30 of the Agreement.

3.3. Upon the Final Settlement Date, the Releasing Parties shall be deemed to have, and by operation of the Order and Judgment shall have, waived any and all Released Claims against the Released Parties, other than Excluded Claims.

3.4. Nothing in this Section 3 shall preclude any action to enforce the terms of this Agreement.

3.5. The scope of the Released Claims or Released Parties shall not be impaired in any way by the failure of any Settlement Class Member to actually receive the benefits provided for under this Agreement.

3.6. The Parties acknowledge that the release provisions in this Section 3 constitute essential terms of this Agreement.

3.7. The Parties acknowledge and expressly agree that the release provisions in this Section 3 shall be, and may be raised as, a complete defense to and will preclude any action or proceeding encompassed by the Released Claims.

4. Notice to the Settlement Class

4.1. Subject to the requirements of any orders entered by the Court, and no later than 45 days after the Preliminary Approval Date or the date the Court approves the Class Notice plan, whichever is later, the Settlement Administrator will mail a Class Notice by first-class mail to the addresses on the Notice List. If more time is needed to prepare the Notice List and mail Class Notice, the Parties will agree on another date for mailing the Class Notice, unless otherwise ordered by the Court.

4.2. The mailing of a Class Notice to a person or entity that is not in the Settlement Class shall not render such person or entity a part of the Settlement Class or otherwise entitle such person to participate in the Settlement.

4.3. Defendants will deliver the Notice List to the Settlement Administrator within 14 days following the Preliminary Approval Date. This Notice List shall be designated Confidential Information.

4.4. The Settlement Administrator will run an update of the last known addresses provided by Defendants through the National Change of Address database before mailing the Class

Notice. If a Class Notice is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will: (i) re-mail any Class Notice returned with a forwarding address; and (ii) make reasonable attempts to find an address for any returned Class Notice that does not include a forwarding address. The Settlement Administrator will re-mail the Class Notice to every person and entity in the Notice List for which it obtains an updated address. If any member of the Settlement Class is known to be deceased, the Class Notice will be addressed to the deceased member's last known address and "To the Estate of [the deceased member of the Settlement Class]."

4.5. Within seven (7) days after the Notice Date, the Settlement Administrator shall provide the Parties with one or more declarations confirming that notice was completed in accordance with the Parties' instructions and the Court's approval. Class Counsel shall file such declaration(s) with the Court as an exhibit to or in conjunction with the motion for final approval of the Settlement.

4.6. The Settlement Administrator will establish, maintain, and update a Settlement Website to provide relevant information to the Settlement Class, including links to important documents relating to the Settlement.

4.7. The Agreement may be amended by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest, as provided in Paragraph 11.13. Unless otherwise ordered by the Court, notice of any such amendment will be provided to the Settlement Class through the Settlement Website.

5. Responses to Class Notice

5.1. The Class Notice shall advise members of the Settlement Class of their right to opt out of the Settlement and the manner required to do so. They may opt out of this Settlement by

serving a written notice on the Settlement Administrator postmarked no later than 35 days after the Notice Date, or such other date determined by the Court. The Settlement Administrator shall notify the Parties of the receipt of any written opt-out notice.

5.2. To be in proper form, the opt-out notice must include: (i) the member of the Settlement Class's full name, current address, telephone number, e-mail address, and Policy number; (ii) a clear statement that he, she, or it elects to be excluded from the Settlement Class and does not want to participate in the Settlement; and (iii) be signed by the member or by a person providing a valid power of attorney to act on behalf of the member. If there are multiple owners of a Policy, all owners must sign unless the signatory holds and submits a copy of a valid power of attorney to act on behalf of all then-current owners of the Policy.

5.3. Every member of the Settlement Class that does not file a timely and proper written opt-out notice will be bound by all subsequent proceedings, orders, and judgments in the Action.

5.4. The Class Notice shall advise the Settlement Class of their right to object and the manner required to do so. Any Settlement Class Member may object to this Settlement by serving a written objection on the Settlement Administrator postmarked no later than 35 days after the Notice Date, or such other date determined by the Court. Unless otherwise ordered by the Court, the objection must contain: (1) the full name, address, telephone number, and e-mail address, if any, of the Settlement Class Member; (2) the Settlement Class Member's 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 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) a statement whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;

and (8) the signature of the Settlement Class Member or his or her counsel. If an objecting Settlement Class Member intends to appear at the Fairness Hearing through counsel, the written objection must also identify all attorneys representing the objecting Settlement Class Member who will appear at the Settlement Hearing. Unless otherwise ordered by the Court, Settlement Class Members who do not timely object 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. The Settlement Administrator shall promptly provide the Parties with copies of all objections.

5.5. Notwithstanding anything in this Agreement, if the aggregate percentage of Settlement Class Members who properly and timely exercise their right to opt out of the Settlement exceeds the number set forth in a separate confidential agreement between the Parties executed and delivered with the execution of this Agreement, Defendants will have the right, in their sole and absolute discretion, but not the obligation, to withdraw from the Settlement and terminate the Agreement in writing no later than 14 days after receiving the final number of opt outs from the Settlement Administrator without penalty and without prejudice to its position on the issue of class certification or any other issue in the Action. If Defendants exercise their right to terminate under this provision, the Parties will be restored to their position existing immediately before the execution of this Agreement with the unused portion of the Settlement Fund being returned to the Defendants. The confidential termination agreement may be disclosed to the Court in camera should the Court so request. Notwithstanding any disclosure to the Court, the Parties agree to keep the content of the confidential termination agreement strictly confidential.

5.6. Class Counsel shall file with the Court all objections served on the Settlement Administrator within five (5) days after the deadline for Settlement Class Members to file

objections, or as otherwise directed by the Court. The Parties may serve and file responses to written objections any time prior to the Fairness Hearing, or as otherwise directed by the Court.

6. Notice Under the Class Action Fairness Act

6.1. Within ten (10) days following the filing of this Agreement for preliminary approval by the Court, the Defendants (or at Defendants' prior written request, the Settlement Administrator) will serve or cause to be served notices of the proposed Settlement upon the appropriate officials in compliance with the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715.

7. Communications with Settlement Class Members and Policyowners

7.1. Defendants will not be privy to or respond to inquiries between members of the Settlement Class and Class Counsel regarding the proposed Settlement or the Action. However, Defendants may communicate with agents and employees regarding the proposed Settlement or Action, and respond to inquiries from or on behalf of, agents, employees, insureds, beneficiaries, policyowners, and members of the Settlement Class, orally or in writing, regarding matters in the normal course of administering the Policies or in the ordinary course of business, including through appropriate agents or agencies. Notwithstanding the foregoing, prior to the Final Settlement Date, Defendants shall refer substantive inquiries relating to participation or objections from members of the Settlement Class to Class Counsel.

7.2. Class Counsel will respond to inquiries from Settlement Class Members, subject to review and comment by Defendants, should Class Counsel deem it helpful or necessary. The Settlement Administrator may respond to inquiries received directly from members of the Settlement Class and may communicate with both Class Counsel and Defendants about those inquiries.

8. Attorneys' Fees, Costs, and Expenses

8.1. For the settlement relief provided to Settlement Class Members, Class Counsel will seek an award of attorneys' fees in an amount not to exceed one-third of the Settlement Fund, and reimbursement of all costs and expenses in an amount not to exceed $1,500,000, subject to approval by the Court. Provided that neither Plaintiffs nor Class Counsel seek attorneys' fees, costs, and expenses in excess of the amounts set forth in this Paragraph, Defendants agree to take no position on Plaintiffs' or Class Counsel's request for approval of attorneys' fees, costs, and expenses. The Parties agree that this provision was negotiated after negotiating substantive relief to the Settlement Class, including the amount of the Settlement Fund.

8.2. Class Counsel may move the Court for, and Defendants agree not to oppose, a service award payment to each Plaintiff or, if deceased, their estate, in an amount not to exceed $25,000 each to compensate each Plaintiff for their efforts on behalf of the Settlement Class. Payment of Plaintiffs' Service Awards, if any, shall be made to Plaintiffs or, if deceased, their estate, in addition to any settlement relief he or she may be eligible to receive.

8.3. Defendants and Plaintiffs shall not be liable or obligated to pay any fees, expenses, costs, or disbursements to any person, either directly or indirectly, in connection with the Action or the Related Actions, this Agreement, or the Settlement, other than as expressly provided in this Agreement.

8.4. The Parties agree that the Settlement is not conditioned on the Court's approval of Plaintiffs' Service Awards or approval of the payment of Class Counsel's Fees and Expenses. Class Counsel will submit a separate order for the Court's consideration related to attorneys' fees, litigation costs and expenses, and Plaintiffs' Service Awards.

9. Tax Reporting and No Prevailing Party

9.1. Any person or entity receiving any payment or consideration pursuant to this Agreement shall be solely responsible for the reporting and payment of any federal, state, or local income or other tax on any payment made pursuant to this Agreement, and Defendants shall have no obligations to report or pay any federal, state, or local income or other tax on any payment made pursuant to this Agreement, except that Defendants shall provide any reasonably available data necessary for the Settlement Administrator to make any such reports. Defendants, Defendants' counsel, and Class Counsel have not provided and shall have no responsibility for providing any opinion concerning the tax consequences of the proposed Settlement to any Settlement Class Member, nor are any representations or warranties in this regard made by virtue of this Agreement.

9.2. No Party shall be deemed the prevailing party for any purposes of this Action or the Related Actions.

10. Preliminary and Final Approval

10.1. On or before the date in which they file for preliminary approval, Plaintiffs, through Class Counsel, will submit, by joint stipulation of the Parties, a second amended class action complaint that: (a) conforms the class allegations to match the definition of the Settlement Class; and (b) adds each Plaintiff, as a party plaintiff, that Class Counsel deem necessary to effectuate approval of this Agreement. Defendants shall file an answer to the second amended complaint in due course. In the event the Settlement is not approved and cannot be cured pursuant to Paragraph 11.1, the Parties agree that the second amended complaint shall be withdrawn and that the Action shall proceed as it was previously pled without prejudice to any Party.

10.2. The Parties shall, before the filing of Plaintiffs' motion for preliminary approval, inform the court in each Related Action of the pendency of this Agreement and also file joint

motions to stay all of the proceedings in the Related Actions pending the entry of the Order and Judgment in this Action. In the event any court in a Related Action raises any concerns regarding the Agreement, the Parties will work in good faith to resolve those concerns consistent with the terms and intent of this Agreement prior to or in conjunction with seeking preliminary approval in this Action. It is the Parties' intent to effectuate a global settlement encompassing the Related Actions in the *Rogowski* Action. However, in the event one or more Related Actions cannot be settled as part of *Rogowski*, the Parties agree that the portion of the Settlement Fund allocated under the Distribution Plan to Settlement Class Members covered by such Related Action(s) shall be divided into a separate settlement fund and a separate settlement agreement, with terms materially the same as this Agreement, which shall be executed and approval sought before the presiding judge in the relevant Related Action promptly. In the event such a division is necessary, the subsequent settlement shall be treated as an independent and separate settlement agreement. Failure of one settlement to be approved shall not affect the finality of any other settlement. No change may be made to the Distribution Plan or any allocation under the Distribution Plan that changes Defendants' financial obligations under this Agreement. Any disputes regarding the application of the terms of this Agreement to the new settlement agreement(s) shall be resolved with the assistance of the Hon. Layn Phillips (ret.).

10.3. Plaintiffs, through Class Counsel, will request that the Court enter a preliminary approval order in the form attached hereto as Exhibit C and schedule the Fairness Hearing for purposes of determining the fairness of the Settlement, considering the motions for approval of Class Counsel's Fees and Expenses and Plaintiffs' Service Awards, granting final approval of the Settlement and this Agreement, and entering the Order and Judgment.

10.4. Class Counsel will file a motion for Order and Judgment seeking certification of the Settlement Class, except for members who timely and validly seek exclusion, and final approval of the Settlement and a motion for Class Counsel's Fees and Expenses. The motion for Order and Judgment will include the Class List and a proposed Order and Judgment in a form agreed to by the Parties. The Order and Judgment proposed by the Parties will, among other things: (a) approve the proposed Settlement as fair, reasonable, and adequate; (b) dismiss the Action with prejudice pursuant to Federal Rule of Civil Procedure 41, with jurisdiction retained by the Court to enforce the terms of the Agreement; and (c) permanently enjoin all Settlement Class Members from filing, prosecuting, maintaining, or continuing litigation based on or related to the Released Claims. Class Counsel shall separately submit a proposed order with respect to Class Counsel's Fees and Expenses and Plaintiffs' Service Awards.

10.5. Within seven (7) days of the Final Settlement Date, Plaintiffs shall cause to be filed a stipulation of dismissal with prejudice signed by all Parties in each Related Action, including as applicable any Related Action currently pending on appeal. As a term of said stipulation, each Party shall bear its own costs and expenses.

11. Other Provisions

11.1. The Parties: (i) agree to cooperate in good faith to the extent reasonably necessary to implement all terms and conditions of the Agreement and to exercise their best efforts to fulfill the foregoing terms and conditions of the Agreement; and (ii) agree to cooperate in good faith to obtain preliminary and final approval of the Settlement and to finalize the Settlement. If preliminary or final approval of the Settlement is not obtained, the Parties agree to work in good faith to address any deficiencies in the Settlement and to submit a revised proposed settlement within thirty (30) days following the denial of preliminary or final approval of the Settlement;

provided, however, that Defendants shall have no obligation to agree to pay more than $325,000,000 in any revised proposed settlement.

11.2. Plaintiffs: (i) agree to serve as representative of the Settlement Class; (ii) remain ready, willing, and able to perform all of the duties and obligations of a representative of the Settlement Class; (iii) are familiar with the allegations in the Action and Related Actions; (iv) have consulted with Class Counsel about the Action (including discovery conducted in the Action and Related Actions), this Agreement, and the obligations of a representative of the Settlement Class; and (v) shall remain a representative of the Settlement Class until the terms of this Agreement are fully implemented, this Agreement is terminated in accordance with its terms, or the Court determines that Plaintiffs cannot represent the Settlement Class. The Parties agree that should any Plaintiff be rendered medically incompetent or die before the Final Settlement Date, any further obligation of that Plaintiff as a representative of the Settlement Class shall be carried out by the remaining class members or by an alternative class representative approved by the Court.

11.3. Class Counsel covenants, represents, and warrants to Defendants that: (i) Prior to Plaintiffs' execution of this Agreement, Class Counsel shall have explained the terms and effect of this Agreement to Plaintiffs; (ii) Class Counsel has not and will not make any undisclosed payment or promise to Plaintiffs for the direct or indirect purpose of obtaining Plaintiffs' consent to the Agreement; and (iii) Class Counsel will not use, distribute, give, sell, or transfer any materials obtained from Defendants as a result of the Action or Related Actions for use in any other litigation or for any other purpose.

11.4. Class Counsel further warrants and represents to Defendants that it has the full authority to enter into this Agreement on behalf of and bind the Settlement Class, other than those who validly opt out in the manner set forth above.

11.5. Class Counsel, the Settlement Class, and Defendants shall use their best efforts to conclude the Settlement and obtain the Final Order and Judgment. Class Counsel, the Settlement Class, and Defendants agree that it is essential that this Settlement be prosecuted to a successful conclusion in accordance with all applicable provisions of law and the exercise of good faith on the part of Class Counsel, the Settlement Class, and Defendants. The Parties further represent, agree, and acknowledge that the Settlement is a fair resolution of these claims for the Parties and the Settlement Class. Subject to their ethical obligations, neither the Parties nor their respective counsel shall make any statements suggesting the contrary, either before or after the Court's approval of the Settlement.

11.6. The Parties agree that the amounts paid in Settlement and the other terms of the Settlement were negotiated in good faith, and at arm's length, and reflect a Settlement that was reached voluntarily after consultation with competent legal counsel.

11.7. No person or entity shall have any claim against Class Counsel, the Settlement Administrator, Defendants' counsel, or any of the Released Parties based on actions taken substantially in accordance with the Agreement or further orders of the Court.

11.8. Defendants specifically and generally deny all liability or wrongdoing of any sort with regard to any of the claims or allegations in the Action and/or Related Actions and make no concessions or admissions of liability of any sort. Neither this Agreement nor the Settlement nor any drafts or communications related to them, nor any act performed or document executed pursuant to or in furtherance of the Agreement or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of any of the Released Parties; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Parties in any

civil, criminal, or administrative proceeding in any court, administrative agency, regulatory proceeding, or other tribunal. Nothing in this Paragraph shall prevent Defendants or any of the Released Parties from using this Agreement and Settlement or the Order and Judgment in any action against them to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, waiver, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion, issue preclusion, or similar defense or counterclaim.

11.9. Plaintiffs and Class Counsel agree that if this Agreement fails to be approved, fails to become effective, or otherwise fails to be consummated, or if there is no Final Settlement Date, the Parties shall retain, and expressly reserve, all of the rights they had before the execution of this Agreement to seek, maintain, oppose, or object to the maintenance of the Action and/or the Related Actions as a class action. Plaintiffs and Class Counsel agree that nothing in this Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument concerning whether the Action or any Related Action may properly be maintained as a class action, whether the purported class is ascertainable, or whether Class Counsel or Plaintiffs can adequately represent class members under applicable law. If the Agreement is deemed void or the Final Settlement Date does not occur, Plaintiffs and Class Counsel agree not to argue or present any argument, and hereby waive any argument, that Defendants could not contest (or are estopped from contesting) maintenance of this Action or any Related Action as a class action based on any grounds it had prior to the execution of this Agreement; and this Agreement shall not be deemed an admission by, or ground for estoppel against, Defendants that class certification or any claims brought in the Action and/or any Related Actions are proper. If the Agreement is declared void or the Final Settlement Date does not occur, Plaintiffs and Class Counsel retain all rights and arguments they had before execution of this Agreement to oppose Defendants' positions and

arguments. Each of the Parties will be restored to the place he, she or it was in as of the date this Agreement was signed with the right to assert in the Action or any Related Actions any argument or defense.

11.10. This Agreement does not, and will not be deemed to, create any fiduciary or similar relationship between Defendants and any of its current, past, or prospective policy owners. This Agreement does not impose, and will not be deemed to impose, any fiduciary or other similar duty on Defendants, and Defendants expressly disclaim any fiduciary or other similar duty. The duties and obligations assumed by Defendants as a result of this Agreement are limited to those expressly set forth in this Agreement.

11.11. Punitive or exemplary damages are not available to any Settlement Class Member under the proposed Settlement described in this Agreement.

11.12. The Parties agree, to the extent permitted by law, that all orders entered during the course of the Action or any Related Action relating to confidentiality of information shall survive this Agreement.

11.13. The Agreement may be amended only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest. No waiver of any provision of this Agreement or consent to any departure by either Party therefrom shall be effective unless in writing, signed by the Parties or their counsel, and any such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given. No amendment to this Agreement pursuant to this Paragraph shall require any additional notice to the Settlement Class Members, including written or publication notice, unless ordered by the Court. The Parties may provide updates on any amendments to this Agreement on the Settlement Website.

11.14. This Agreement will terminate at the sole option and discretion of Plaintiffs or Defendants if: (a) the Court or any appellate court with jurisdiction over any appeal taken from the Court rejects, modifies, or denies approval of any material portion of this Agreement; or (b) the Court or any appellate court with jurisdiction over any appeal taken from the Court does not enter or completely affirm, or modifies, alters, narrows, or expands, any material portion of the Order and Judgment. However, this Paragraph shall not apply to any modification, rejection, or denial of approval of any portion of Plaintiffs' Service Awards or Class Counsel's Fees and Expenses. The terminating Party must exercise the option provided in this Paragraph to withdraw from and terminate the Settlement in writing no later than 14 days after receiving notice of the event prompting the termination; notwithstanding the conditional right of termination herein, the Parties agree to act in good faith, pursuant to Paragraph 11.1, to attempt to cure any impediment to this Settlement becoming effective. If the Agreement is so terminated, the Parties will be returned to their ***status quo ante***.

11.15. The Parties agree to keep this Settlement confidential until it is submitted to the Court for preliminary approval except as otherwise contemplated and agreed by the Parties. The Parties shall work cooperatively to prepare an agreed statement that will be the only statement used at either Party's election to announce the Agreement or in response to press inquiries. The Parties and counsel shall refrain from making disparaging comments about any opposing Party related to the Action or its subject matter.

11.16. Each person executing the Agreement warrants that he or she has the full authority to do so.

11.17. The Agreement may be executed in one or more counterparts. All executed counterparts shall be deemed to be the same instrument. PDFs or copies of original signatures will

have the same effect as the original. A complete set of executed counterparts shall be filed with the Court.

11.18. The Agreement shall be binding upon, and inure to the benefit of, the successors, heirs, and assigns of the Parties; but this Agreement is not designed to and does not create any third-party beneficiaries, either express or implied, except as to the Settlement Class Members.

11.19. The language of all parts of this Agreement, including the Exhibits which are an integral part of the Agreement, shall in all cases be construed as a whole, according to its fair meaning, and not construed for or against either Party. No Party shall be deemed the drafter of this Agreement. The Parties acknowledge that the terms of the Agreement are contractual and are the product of negotiations between the Parties and their counsel. Each Party and his, her or its respective counsel cooperated in the drafting and preparation of the Agreement. No parol or other evidence may be offered to explain, construe, contradict, or clarify the terms of this Agreement, the intent of the Parties or the Parties' counsel, or the circumstances under which this Agreement was made or executed. The Parties acknowledge that there are no other agreements, arrangements, or understandings among or between them that are not expressed or referred to in this Agreement.

11.20. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Missouri, without reference to its choice-of-law or conflict-of-laws rules.

11.21. The Court shall retain exclusive and continuing jurisdiction with respect to implementation and enforcement of the Agreement and any discovery sought from or concerning objectors to the Settlement, unless a division is required under Paragraph 10.2 in which case the presiding judge of the Related Action(s) shall retain exclusive and continuing jurisdiction with respect to the settlement being processed in that court. All Parties submit to the jurisdiction of the Court, or as necessary for purposes of Paragraph 10.2 the court in the Related Action, for purposes

of implementing and enforcing the Settlement or a divided settlement as may be necessary under Paragraph 10.2.

11.22. Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided by e-mail and next-day (excluding Saturday and Sunday) express delivery service as follows:

If to Defendants, then to:

Cari K. Dawson
ALSTON & BIRD LLP
1201 West Peachtree Street
Atlanta, GA 30309
Telephone: 404-881-7766
cari.dawson@alston.com

Sharon L. Nelles
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004
Telephone: 212-558-4000
nelless@sullcrom.com

If to Plaintiffs, then to:

Norman E. Siegel
Bradley Wilders
Lindsay Todd Perkins
Ethan M. Lange
STUEVE SIEGEL HANSON LLP
460 Nichols Road, Suite 200
Kansas City, MO 64112
Telephone: 816-714-7100
siegel@stuevesiegel.com
wilders@stuevesiegel.com
perkins@stuevesiegel.com
lange@stuevesiegel.com

-and-

John J. Schirger
Matthew W. Lytle

Joseph M. Feierabend
MILLER SCHIRGER LLC
4520 Main St., Ste. 1570
Kansas City, MO 64111
Telephone: 816-561-6500
JSchirger@millerschirger.com
MLytle@millerschirger.com
JFeierabend@millerschirger.com

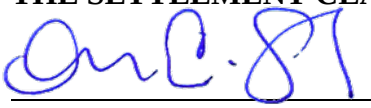
11.23. The Parties reserve the right to agree between themselves on any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

11.24. All time periods in this Agreement shall be computed according to Fed. R. Civ. P. 6 as it exists as of the date of this Agreement.

[Remainder of this page intentionally left blank.]

Stipulated and agreed to by,

CLASS COUNSEL ON BEHALF OF THE PLAINTIFFS (WHO HAVE SPECIFICALLY ASSENTED TO THE TERMS OF THIS AGREEMENT) AND THE SETTLEMENT CLASS:



On Behalf of Plaintiffs and the Settlement Class

By: Norman E. Siegel

Date: 11/18/2022

STATE FARM LIFE INSURANCE COMPANY *and*

STATE FARM LIFE AND ACCIDENT ASSURANCE COMPANY

_____

By:

Title:

Date:

On Behalf of Defendants

Stipulated and agreed to by,

CLASS COUNSEL ON BEHALF OF THE PLAINTIFFS (WHO HAVE SPECIFICALLY ASSENTED TO THE TERMS OF THIS AGREEMENT) AND THE SETTLEMENT CLASS:

_____

On Behalf of Plaintiffs and the Settlement Class

By:

Date:

STATE FARM LIFE INSURANCE COMPANY ***and***

STATE FARM LIFE AND ACCIDENT ASSURANCE COMPANY

Andrew P. Wiedowilt

By: Andrew P. Wiedowilt

Title: Vice President- Life

Date: 11/11/2022

On Behalf of Defendants

APPROVED ONLY AS TO FORM:

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Miller Schirger LLC
4520 Main St., Ste. 1570
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Telephone: 212-558-4000
nelless@sullcrom.com

Counsel for Defendants

EXHIBIT LIST TO SETTLEMENT AGREEMENT

Exhibit A: Class Notice

Exhibit B: Related Actions

Exhibit C: Preliminary Approval Order

EXHIBIT A

Notice of State Farm Cost of Insurance Class Action Settlement

Dear Class Member,

You have been sent this Notice of State Farm Cost of Insurance Class Action Settlement (the "Notice") because you have been identified as a Settlement Class Member in the class action lawsuit, *Rogowski et al. v. State Farm Life Insurance Company*, pending in the United States District Court for the Western District of Missouri, Case No. 4:22-cv-00203-RK. This Notice summarizes a recent Settlement that impacts your rights. A full description of the Settlement is contained in the Settlement Agreement, which includes the precise definitions of capitalized terms used in this Notice. The Agreement is available for you to read at [insert here]. Please read it and this Notice carefully to understand your rights and obligations under the Settlement.

Records provided by State Farm Life Insurance Company and State Farm Life and Accident Assurance Company indicate that you are currently the owner or were the owner at the time of termination of a Form 94030 (sometimes referred to as A94030), or Form 94080 (sometimes referred to as A94080), Universal Life insurance policy issued and administered by State Farm. Throughout this Notice, State Farm Life Insurance Company and State Farm Life and Accident Assurance Company are referred to as "State Farm."

The Settlement involves the Cost of Insurance that State Farm deducted from policy owners' account values for these life insurance policies. The Settlement provides that State Farm will fund a Settlement Fund in the amount of $325 million, which will be used to pay (1) cash to Settlement Class Members; (2) Class Counsel's attorneys' fees and expenses in an amount to be approved by the Court; (3) a service award to the class representatives in an amount to be approved by the Court; and (4) the expenses incurred in administering the Settlement.

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

If You Own or Owned a Form 94030 (or A94030) or 94080 (or A94080) Flexible Premium Adjustable Whole Life (or Universal Life) Insurance Policy Issued and Administered by State Farm, a Class Action Settlement May Affect Your Rights

A COURT AUTHORIZED THIS NOTICE.
THIS IS NOT A SOLICITATION FROM A LAWYER.
YOU ARE NOT BEING SUED.

- A Settlement has been reached with State Farm in a class action lawsuit about the Cost of Insurance deducted from policy owners' account values. If the Settlement is approved by the Court, you will automatically receive a payment. No further action is required.
- Generally, the Settlement includes current and former Form 94030/A94030, and 94080/A94080 Flexible Premium Adjustable Whole Life (or Universal Life) Insurance policy owners (*see* Question 4 below).
- As part of the Settlement, Settlement Class Members will be eligible to receive a portion of a cash Settlement Fund funded by State Farm in the amount of $325 million (see Question 6 below).

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
DO NOTHING	Automatically receive your share of the Settlement Fund.
ASK TO BE EXCLUDED	Get no benefits from the Settlement and preserve your right to separately sue State Farm about the claims in this case.
OBJECT	Write to the Court if you don't like the Settlement.
GO TO A HEARING	Make a request to speak in Court about the fairness of the Settlement.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to finally approve the Settlement. Settlement checks will be automatically issued to each Settlement Class Member if the Court approves the Settlement and after any appeals are resolved. **You do not need to take further action to receive payment if you are eligible under the Settlement. Please be patient.**

BASIC INFORMATION

1. Why did I get this Notice?

State Farm's records show that you own or owned one of the covered flexible premium adjustable whole life (or universal life) insurance policies (or were identified as the legal representative of such an owner) that was in force on or after January 1, 2002. A Court authorized this Notice because you have a right to know about the proposed Settlement and all of your options before the Court decides whether to approve the Settlement. This

Notice explains the lawsuit, the Settlement, and your legal rights.

United States District Judge Roseann A. Ketchmark of the United States District Court for the Western District of Missouri is overseeing this case. The case is known as *Rogowski v. State Farm Life Insurance Company*, Case No. 4:22-cv-00203-RK. The persons who sued, David M. Rogowski, Elizabeth A. Bally, Kathy Bauer, Kim Botte, John E. Jaunich, the Estate of Earl L. McClure, Ronald K. Page, David Toms, Chandra B. Singh, Joyce Thomas, and William T. Whitman are called the "Plaintiffs." State Farm is called the "Defendants."

The following is only a summary of the Settlement. A full description of the Settlement is in the Settlement Agreement. Nothing in this notice changes the terms of the Settlement Agreement. You can read the Settlement Agreement by visiting [insert]

2. What is this lawsuit about?

This lawsuit is about whether State Farm's Cost of Insurance deductions were consistent with the policy language in its Form 94030/A94030, and 94080/A94080 flexible premium adjustable whole life (or universal life) insurance policies ("Policies"). The Policies have an Account Value that earns interest at or above a minimum rate guaranteed under the Policies. The Policies expressly authorize State Farm to take a Monthly Deduction from the Account Value to cover various charges.

Plaintiff alleges that State Farm violated the Policies in two different ways. First, the Form 94030/A94030 Policy says that the Monthly Cost of Insurance Rates for each "policy year" will be "based on the Insured's age on the policy anniversary, sex, and applicable rate class," and the Form 94080/A94080 Policy says that the Monthly Cost of Insurance Rates for each "policy year" will be "based on the Insured's age on the policy anniversary and applicable rate class." Both Policies say that the rates "can be adjusted for projected changes in mortality." Plaintiffs allege that State Farm impermissibly used factors other than those identified in the Policies when setting Monthly Cost of Insurance Rates. Second, while the Policies permit a separate Monthly Expense Charge, Plaintiffs allege that State Farm exceeds the fixed amount of this charge by considering its expenses when setting Monthly Cost of Insurance Rates.

State Farm denies all of Plaintiffs' claims, including claims challenging the pricing of the Policies and development and application of the Monthly Cost of Insurance Rates, and asserts that, at all times, it complied with the plain language of the Policies by deducting charges from the Account Value, including but not limited to the Monthly Expense Charge and the Cost of Insurance, that are, and always have been, consistent with the language and terms of the Policies.

You can read Plaintiff's Second Amended Class Action Complaint and State Farm's Answer to the Second Amended Class Action Complaint at [insert].

3. What if I received another notice about a similar class action lawsuit?

Plaintiffs filed eleven lawsuits, including this case, against State Farm regarding the allegations listed in Paragraph 2. The first case, *Vogt v. State Farm Life Insurance Company*, consisted of Missouri policy owners and was tried to a jury several years ago. If you were a Missouri owner, you may have received notice and a payment in that lawsuit. Nine additional class action cases were filed on behalf of California, Washington, Minnesota, Texas, Arizona, Oregon, Florida, Georgia, and New York policy owners, and on behalf of policy owners in Missouri who continued to own their policies following the *Vogt* judgment. If you were a policy owner in California, Washington, Minnesota, or Arizona, you may have already received a class notice about those cases. **This Settlement and Notice supersedes all prior notices you may have received, including those in Missouri, California, Washington, Minnesota, and Arizona.** If you previously requested exclusion from those classes, you will need to request exclusion again to be excluded from the Settlement and this Class. This Settlement, if approved by the Court, will resolve all of these cases.

4. Why is there a Settlement?

The Parties negotiated the Settlement with an understanding of the factual and legal issues that would affect the outcome of this lawsuit. During the lawsuit, Plaintiffs, through their attorneys, thoroughly examined and investigated the facts and the law relating to the issues in this case.

Plaintiffs believe that the final outcome of the lawsuit and the other lawsuits identified in Paragraph 3, if they were to proceed through trial and appeals, is uncertain. A settlement avoids the costs and risks of further litigation and provides immediate relief to the Settlement Class Members. Based on their evaluation of the facts and law, Plaintiffs and their attorneys have determined that the proposed Settlement is fair, reasonable, and adequate. They have reached this conclusion based on the substantial benefits the Settlement provides to Settlement Class Members and the risks, uncertainties, and costs inherent in the lawsuit.

While there was a trial in the *Vogt* case, there has been no trial and there has been no final appellate determinations on the merits of the claims or defenses in this lawsuit or the other lawsuits. However, the trial courts in California, Washington, and Minnesota ruled against the owners of policies issued in those states as to some or all of their claims. Descriptions of these orders may be found on the settlement website. There will be no trial or final determination on the merits of the remaining claims and defenses if the Court approves the Settlement. The Settlement does not indicate that State Farm has done anything wrong, or that Plaintiffs and the Settlement Class Members would win or lose if this lawsuit or any of the other lawsuits were to go to trial.

5. Who is included in the Settlement Class?

The Settlement Class includes all persons or entities who own or owned one of the approximately 760,000 **Policies** issued by State Farm. Policies means all Form 94030/A94030 flexible premium adjustable whole life (or universal life) insurance policies, as well as all Form 94080/A94080 flexible premium adjustable whole life (or universal life) insurance policies that were issued and administered by State Farm or their predecessors in interest. This includes 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.

You are **not** part of the Settlement Class, however, if you are State Farm; any entity in which State Farm has a controlling interest; any of the officers or board of directors of State Farm; the legal representatives, heirs, successors, and assigns of State Farm; anyone employed with Plaintiffs' counsel's law firms; and any Judge to whom this case is assigned, and his or her immediate family.

If someone who would otherwise be a Settlement Class Member is deceased, his or her estate is a Settlement Class Member.

6. How can I confirm that I am in the Settlement Class?

If you are not sure whether you are included in the Settlement Class, you can get free help at [insert] or by calling 1-888-[insert].

7. What does the Settlement provide?

State Farm has agreed to fund a Settlement Fund in the amount of $325 million, which will be used to pay (1) all payments to Settlement Class Members; (2) Class Counsel's attorneys' fees and expenses in an amount to be approved by the Court; (3) any service awards to Plaintiffs in an amount to be approved by the Court; and (4) the expenses incurred in administering the Settlement. The Net Settlement Fund equals $325 million less the amounts described in (2) through (4) as approved by the Court.

If the Court approves the Settlement, settlement checks will be mailed to Settlement Class Members in amounts

that will vary according to a Distribution Plan. The Distribution Plan is designed to provide each Settlement Class Member an approximate *pro rata* portion of the Net Settlement Fund in proportion to the amount of monthly deductions actually paid by each Settlement Class Member for Cost of Insurance and Monthly Expense Charges subject to factors such as: a minimum cash payment; whether the Settlement Class Member was part of the class that received a share of the *Vogt* judgment;; and whether the Settlement Class Member's Policy is still in force.

The full Distribution Plan is attached to the Plaintiffs' Motion for Preliminary Approval and is available on the settlement website.

You should consult your own tax advisors about the tax consequences of the proposed Settlement, including any benefits you may receive and any tax reporting obligations you may have as a result.

8. How do I participate in the Settlement? Do I need to make a claim?

Settlement Class Members do not have to do anything to participate in the Settlement. No claims need to be filed. Upon approval of the Settlement, a settlement check will be sent to every Settlement Class Member in the amount determined by the Settlement Administrator using the method described in Question 7 above. If someone who would otherwise be a Settlement Class Member is deceased, his or her estate is a Settlement Class Member. If your address changes, you should contact the Settlement Administrator to give them your new address.

9. When will I receive my settlement check?

The settlement checks will be sent to Settlement Class Members within 30 days after the Final Settlement Date, which is the date that the approval process is formally completed. Settlement checks will be automatically mailed without any proof of claim or further action on the part of the Settlement Class Members. It could take several months to complete the settlement process and depends on factors that cannot be predicted at this time. Updates will be made available to you on the settlement website.

10. What happens if I do nothing?

If the Settlement is approved, you will receive a settlement check representing your share of the Settlement.

If the Settlement is approved, you cannot sue State Farm (or certain other released parties included as "Released Parties" in the Settlement Agreement) or be part of any other lawsuit against State Farm concerning the Release Claims, as that term is defined in the Settlement Agreement. Released Claims means:

> Any and all Claims asserted in the Action or the Related Actions, that might have been asserted in the Action or the Related Actions, or that may later be asserted arising out of or related to the facts, subject matter, conduct, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act alleged in the Action or the Related Actions, and/or based in whole or in part on allegations that Defendants or any of their predecessors or successors considered factors other than mortality when determining or developing Defendants' Monthly Cost of Insurance Rates, including, but not limited to, factors for expenses (for example, administrative, maintenance, and acquisition expenses), commissions, reinsurance costs, premium persistency, policy lapses, investment income, interest crediting projections, taxes, cash surrenders, withdrawals, sales volume, marketing costs, capital costs, competitiveness, profit objectives, or profit; recovering expenses through the Monthly Cost of Insurance Rates, including any expenses in excess of any of the Policy's stated Monthly Expense Charge, Premium Expense Charge, or any other expense charge or Policy charge; or failing to change the Monthly Cost of Insurance Rates in response to changes in Defendants' expectations as to future projected mortality for any age, sex or Rate

Class. Released Claims expressly include all Claims based in whole or in part on Defendants' development, calculation, recalculation, determination, or redetermination of Defendants' Monthly Cost of Insurance Rates and all Claims based in whole or in part on the Monthly Deduction, or the deduction of the Cost of Insurance, the Monthly Expense Charge, and/or the monthly charges for any riders. All Claims relating to Defendants' use of the Monthly Cost of Insurance Rates at or below the rates challenged in the Action or Related Actions now or in the future for any reason whatsoever are expressly released. Released Claims also expressly includes all Claims that Defendants have any future obligation to decrease Monthly Cost of Insurance Rates for any reason or in any specific amount, to any specific degree, or by any specific percentage. Released Claims also include Claims involving (1) future increases in any portion of Defendants' Monthly Cost of Insurance Rates if deterioration in Defendants' expectations as to future projected mortality is a material or primary reason for the increase; (2) year-over-year increases in an Insured's Monthly Cost of Insurance Rates as an Insured ages, and (3) future increases in Monthly Cost of Insurance Rates as a result of an increase in an Insured's amount of coverage and new applicable Rate Class on the increased amount as a result of the underwriting process. Released Claims do not include Excluded Claims (which is defined in the Settlement Agreement).

If your Policy is still in force, State Farm is not required to lower its Monthly Cost of Insurance Rates and may continue to use its current Monthly Cost of Insurance Rates. State Farm may also increase Monthly Cost of Insurance Rates if deterioration in Defendants' expectations as to future projected mortality is a material or primary reason for the increase.

The Settlement Agreement is available at [insert] and describes the claims that you are giving up. If you have any questions, you can talk to the law firms listed in Question 12 for free, or you can hire your own lawyer.

10. Can I exclude myself from the Settlement?

Yes. If you don't want a payment from the Settlement, and/or you want to keep the right to hire your own lawyer and sue State Farm at your own expense about the issues in this case, then you may request to be excluded from the Settlement Class by sending a written notice to the Settlement Administrator. The notice must include the following information:

- The Settlement Class Member's name (or the name of the entity that owns the Policy), current address, telephone number, and e-mail address;
- Policy number;
- A clear statement that the Settlement Class Member elects to be excluded from the Settlement Class and does not want to participate in the Settlement in *Rogowski v. State Farm Life Insurance Company*, Case No. 4:22-cv-00203-RK;
- The Settlement Class Member's signature, or the signature of a person providing a valid power of attorney to act on behalf of the Settlement Class Member. If there are multiple owners of a Policy, all owners must sign the notice, unless the signatory submits a copy of a valid power of attorney to act on behalf of all then-current owners of the Policy.

Policy owners in one of the certified class states listed in Paragraph 3 should carefully consider the procedural status of their pending case before asking to be excluded, as the rulings in those cases will remain binding upon you if you elect not to participate in this Settlement, including the adverse judgment issued against Washington policy owners on all the claims against State Farm, which was appealed to the Court of Appeals for the Ninth Circuit. That appeal and all the other cases will be dismissed if the Settlement is approved. If you want to exclude yourself from the Settlement, your written notice must be served on the Settlement Administrator by mailing it to [insert], postmarked no later than [insert].

11. How do I tell the Court if I do not like the Settlement?

You can object to the Settlement if you do not like some part of it. The Court will consider your views. To object to the Settlement, you must serve a written objection in the case, *Rogowski v. State Farm Life Insurance Company*, Case No. 4:22-cv-00203-RK. The objection must include the following information:

- The Settlement Class Member's name (or the name of the entity that owns the Policy), current address, telephone number, and email address;
- Policy number;
- A written statement of all grounds for your objection accompanied by any legal support for the objection (if any);
- Copies of any papers, briefs, or other documents upon which the objection is based;
- A list of all persons who will be called to testify in support of the objection (if any);
- An indication of whether you intend to appear at the Fairness Hearing and the identity of all attorneys (if any) who will appear at the Settlement Hearing on your behalf;
- A statement whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; and
- The signature of you or your counsel.

You must serve your objection on the Settlement Administrator by mailing it to [insert], postmarked no later than [insert].

12. Do I have a lawyer in this case?

Yes. The Court appointed the following lawyers as "Class Counsel" to represent all the members of the Class:

Norman E. Siegel, Bradley T. Wilders, Lindsay Todd Perkins, Ethan M. Lange **Stueve Siegel Hanson LLP** 460 Nichols Rd., Suite 200 Kansas City, MO 64112 [insert email]	John J. Schirger, Matthew W. Lytle, Joseph M. Feierabend **Miller Schirger LLC** 4520 Main St., Suite 1570 Kansas City, MO 64111 [insert email]

If you have questions, you may contact these lawyers. You will not be charged for contacting these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

13. How will the lawyers be paid?

Class Counsel and the other lawyers who were involved in the pending cases have not been paid for their work in this case. In addition to thousands of hours of labor spent on this case, Class Counsel have expended substantial expenses prosecuting this case. The Court will determine how much Class Counsel will be paid for fees and expenses. Class Counsel will seek an award for attorneys' fees of up to one-third of the Settlement Fund, plus reimbursement of Class Counsel's costs and expenses (no more than $[insert]), also to be paid from the Settlement Fund. You will not be responsible for payment of Class Counsel's fees and expenses.

Class Counsel will also request a service award payment of up to $25,000 for each Plaintiff for their service as representative on behalf of the Settlement Class. This payment will also be paid from the Settlement Fund. The

Court must approve any amounts paid to Class Counsel and to Plaintiffs.

14. When and where will the Court decide whether to approve the Settlement?

The Court will hold a hearing to decide whether to approve the Settlement and any requests for attorneys' fees and expenses, service awards to Plaintiffs, and the costs of settlement administration. You may attend and ask to speak, but you do not have to.

The Court will hold the hearing at [time] on [date], at the United States District Court for the Western District of Missouri, 400 E 9th St., Kansas City, Missouri 64106. The hearing may be moved to a different date or time without additional notice being mailed to you, so it is a good idea to check [insert settlement website] for any updates. At the hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and in the best interests of Settlement Class Members and whether to award the requested attorneys' fees, expenses, and service awards. If there are objections, the Court will consider them and will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long the Court's decision will take.

15. Do I have to attend the hearing?

No, but you or your own lawyer are welcome to attend the Fairness Hearing at your expense. If you send a timely objection but do not attend the Fairness Hearing, the Court will still consider your objection.

16. May I speak at the hearing?

You may speak at the Fairness Hearing by filing an objection that indicates your intention to do so. If you wish to appear through counsel, your written objection must list the attorneys representing you who will appear at the Fairness Hearing. Unless otherwise ordered by the Court, a Settlement Class Member who does not submit a timely objection with the proper notice will not be permitted to speak at the Fairness Hearing.

17. How do I get more information?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can find a copy of the Settlement Agreement at [insert settlement website]. You may also send your questions to the Settlement Administrator, in writing, at [insert] or call the Settlement Administrator at 1-888-[insert]. You can review the Court's docket in this case at www.pacer.gov.

If your address has changed or will change, please notify the Settlement Administrator by [insert].

DATE: [date]

EXHIBIT B

Related Cases

Bally v. State Farm Life Ins. Co., No. 3:18-cv-04954-CRB (N.D. Cal.)

Whitman v. State Farm Life Ins. Co., No. 3:19-cv-06025-BJR (W.D. Wash.)

Jaunich v. State Farm Life Ins. Co., No. 0:20-cv-01567-PAM-JFD (D. Minn.)

Page v. State Farm Life Ins. Co., No. 5:20-cv-00617-FB-ESC (W.D. Tex.)

McClure v. State Farm Life Ins. Co., No. 2:20-cv-01389-PHX-SMB (D. Ariz.)

Toms v. State Farm Life Ins. Co., No. 8:21-cv-00736-KKM-JSS (M.D. Fla.)

Bauer v. State Farm Life Ins. Co., No. 1:21-cv-00464-SDG (N.D. Ga.)

Singh v. State Farm Life Ins. Co., No. 3:21-cv-00190-AR (D. Or.)

Botte v. State Farm Life Ins. Co., No. 2:22-cv-02842-JMA-JMW (E.D.N.Y.)

EXHIBIT C

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

DAVID M. ROGOWSKI, ELIZABETH A. BALLY, KATHY BAUER, KIM BOTTE, JOHN E. JAUNICH, MYLENE MCCLURE *as personal representative of* THE ESTATE OF EARL L. MCCLURE, RONALD K. PAGE, CHANDRA B. SINGH, DAVID TOMS, JOYCE THOMAS, and WILLIAM T. WHITMAN, Individually and On Behalf Of All Others Similarly Situated, Plaintiffs, vs. STATE FARM LIFE INSURANCE COMPANY and STATE FARM LIFE AND ACCIDENT ASSURANCE COMPANY, Defendants.	Case No. 4:22-cv-00203-RK

[PROPOSED] ORDER GRANTING UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Before the Court 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. []). The Parties propose a Settlement of this Action in accordance with a Settlement Agreement dated November [], 2022 (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.[1] The Court hereby GRANTS the motion and further orders as follows:

[1] 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 be able to approve the Settlement.

The Court finds that it will likely be able to 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). In particular, the Court finds that the Settlement here, which creates a Settlement Fund in the amount of $325,000,000, and provides for settlement checks mailed directly to the Settlement Class Members without the need to submit a claim that will return 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, is an excellent result for the Settlement Class in comparison to the very substantial litigation risks facing the Settlement Class Members going forward given the various liability rulings and appellate risk. Further, the length of time and the 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 Class Representatives and Class Counsel have provided adequate representation to the Settlement Class; the proposed Settlement, which is the product of three full-day mediation sessions before two well-respected mediators, 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 as to Settlement Class Members pursuant to the Distribution Plan. 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 of the Settlement because the Court's approval of the fee and expense award is not a condition of the Settlement. 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 will likely be able to certify the Settlement Class.

The Settlement Class means the Owners of approximately 760,000 Policies as reflected on the Class List. The Policies are all Form 94030/A94030 or Form 94080/A94080 flexible premium adjustable whole life (universal life) insurance policies that were issued and administered by Defendants or their predecessors in interest.[2]

The Court finds that it will likely be able to certify the Settlement Class for purposes of

[2] The Settlement Class excludes State Farm; any entity in which State Farm has a controlling interest; any of the officers or board of directors of State Farm; the legal representatives, heirs, successors, and assigns of State Farm; anyone employed with Plaintiffs' law firms; and any Judge to whom this case is assigned, and his or her immediate family.

entering judgment on the Settlement under Rule 23(a) and (b)(3). The Settlement Class, which includes owners of approximately 760,000 Policies, is sufficiently numerous, and because the Policies are materially identical and State Farm's alleged conduct relevant to the Settlement Class Members' claims was uniform, the Class Representatives are adequate to represent the Settlement Class and their claims are typical of those of the Settlement Class Members. Further, whether State Farm's conduct complied with the Policies is a common, predominating question and a class action is a superior form of adjudication to individual lawsuits. And, because this matter is being settled rather than litigated, the Court need not consider manageability issues that may be presented by a trial. Nor is there any 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. *See Advance Trust & Life Escrow Services, LTA v. North Am. Co. for Life and Health Ins.*, --- F. Supp. 3d ----, 2022 WL 883750, at *13 (S.D. Iowa Mar. 22, 2022) (finding predominance satisfied for similar claims for proposed multi-state class of policy owners because "'the relevant contract term was uniform.'") (quoting *Custom Hair Designs by Sandy v. Cent. Payment Co.*, 984 F.3d 595, 601 (8th Cir. 2020)); *Advance Tr. & Life Escrow Servs., LTA v. ReliaStar Life Ins. Co.*, 2022 WL 911739, at *9 (D. Minn. Mar. 29, 2022).

3. **Class Counsel.** Plaintiffs' counsel, Stueve Siegel Hanson and Miller Schirger, have extensive experience in litigating complex cost of insurance overcharge cases and have been appointed as class counsel in dozens of class actions throughout the country, including those asserting the same claims in other courts as are at issue here. *See, e.g., Vogt*, 963 F.3d 753. 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 Class Notice and claims administration.

5. **Notice**. The proposed Class Notice program set forth in the Agreement and the declaration of INSERT of Epiq, and the Class Notice attached to the Agreement as Exhibit A, are hereby approved. Non-material modifications to the Class Notice may be made without further order of the Court.

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, under the circumstances, to apprise putative class members of the pendency of the Action, 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 (e), 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 readily 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 exclude herself or himself 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 _____, 2023, at _____ ___.M. at the United States District Court for the Western District of Missouri at 400 E. 9th Street, Kansas City, Missouri 64106, in Courtroom 8E, 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 of this case 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, or why Plaintiffs' Service Awards should or should not be awarded; provided, however, that no Settlement Class Member or any other person shall be heard or 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 make his or her objection in the manner provided shall be deemed to have waived any objection and shall forever be foreclosed from objecting to the fairness or adequacy of the proposed Settlement, or 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	[10 days from filing of Motion for Preliminary Approval]
Deadline for State Farm to provide Notice List to Settlement Administrator	[14 days after Preliminary Approval Date]
Deadline for the Settlement Administrator to mail Court-approved Class Notice to Settlement Class	[45 days after Preliminary Approval Date]
Deadline for Class Counsel to file motion for Fees and Expenses and for Service Awards	[21 days prior to Objection deadline]
Deadline for motion for final approval of Settlement	[7 days prior to the Fairness Hearing]
Objection deadline	[35 days after Notice Date]

Opt-out deadline	[35 days after Notice Date]
Deadline for Class Counsel to file with the Court all objections served on the Settlement Administrator	[5 days after Objection deadline]
Deadline for responses to any timely objections	Any time prior to the Fairness Hearing
Fairness Hearing	[No earlier than 90 days after CAFA notices disseminated]

Dated: _____

_____
Roseann A. Ketchmark
United States District Judge

EXHIBIT 2

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

DAVID M. ROGOWSKI, ELIZABETH A. BALLY, KATHY BAUER, KIM BOTTE, JOHN E. JAUNICH, MYLENE MCCLURE *as personal representative of* THE ESTATE OF EARL L. MCCLURE, RONALD K. PAGE, CHANDRA B. SINGH, JOYCE THOMAS, DAVID TOMS, and WILLIAM T. WHITMAN, Individually and On Behalf Of All Others Similarly Situated, Plaintiffs, vs. STATE FARM LIFE INSURANCE COMPANY and STATE FARM LIFE AND ACCIDENT ASSURANCE COMPANY, Defendants.	Case No. 4:22-cv-00203-RK

DECLARATION OF NORMAN E. SIEGEL IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION PURSUANT TO RULE 23(E) FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Norman E. Siegel, hereby declare as follows:

1. I am a founder and partner at the law firm of Stueve Siegel Hanson LLP, and since the beginning of this litigation have been the senior partner at Stueve Siegel Hanson responsible for this case against Defendants State Farm Life Insurance Company and State Farm Life and Accident Assurance Company (collectively, "State Farm"). I make this declaration based on my personal knowledge and if called to testify to the contents hereof, I could and would competently do so.

2. I founded Stueve Siegel Hanson in 2001. Located in Kansas City, Missouri, the firm's 25 lawyers practice complex litigation in state and federal courts across the country.

3. I have been a member of the Missouri bar since 1993 when I obtained my J.D. from Washington University School of Law in St. Louis, Missouri where I served as an Editor of the *Journal of Urban Contemporary Law*. Prior to starting Stueve Siegel Hanson, I served as an Assistant Attorney General for the state of Missouri and as a partner of the law firm currently named Dentons.

4. I have been appointed class counsel and represented clients in dozens of class actions in state and federal courts across the country. My firm has substantial experience handling large, complex class litigation, including trying class action cases to final judgment. A summary of Stueve Siegel Hanson's experience is shown on the attached firm resume.

Class Counsel's Experience in Cost of Insurance Litigation

5. Stueve Siegel Hanson, with our co-counsel, Miller Schirger, LLC, have been litigating against insurance companies for overcharging their universal life insurance policy owners for many years. The experience our firms have gained over these years has resulted in an unmatched depth of knowledge in this area of the law, which has culminated in several settlements on behalf of policy owners.

6. In 2015, we secured a settlement on behalf of 77,000 policy owners against Lincoln National Life Insurance Company, providing additional death benefits valued at $2.25 billion with a market value of approximately $171.8 million. *See Bezich v. The Lincoln National Life Insurance Co.*, No 02C01-0906-PL-73 (Allen Co., Ind.). In 2018, we secured nearly $60 million for approximately 90,000 John Hancock Life Insurance Company policy owners. *See Larson v. John Hancock Life Ins. Co.*, No. RG16813803 (Alameda Co., Cal.). In 2021, we secured a $90 million

settlement for approximately 110,000 USAA Life Insurance Company policy owners. *See Spegele v. USAA Life Ins. Co.*, No. 5:17-cv-967-OLG (W.D. Tex.). Stueve Siegel and Miller Schirger are also currently prosecuting similar cases against Connecticut General Life Insurance Company, Kansas City Life Insurance Company, Genworth Life and Annuity Insurance Company, and Symetra Life Insurance Company.

7. In June 2016, Stueve Siegel Hanson and Miller Schirger commenced litigation against State Farm on behalf of Plaintiff Michael Vogt and a putative class of similarly situated universal life insurance company policy owners. *See Vogt v. State Farm Life Ins. Co.*, No. 16-CV-04170-NKL. After extensive litigation, as more fully detailed below, in June 2018, we successfully tried the action to a jury verdict in favor of approximately 24,000 Missouri policy owners for $34,333,495.81, which was affirmed on appeal by the Eighth Circuit Court of Appeals. *See Vogt*, Docs. 358 & 360 (W.D. Mo. June 6, 2018), *aff'd*, 963 F.3d 753 (8th Cir. 2020). The Supreme Court subsequently denied State Farm's petition for certiorari. 141 S. Ct. 2551 (Apr. 19, 2021).

8. As set forth below, our firms filed several additional class action cases against State Farm in courts throughout the country involving the same insurance policy and claims, many of which proceeded through discovery, class certification, and dispositive motions. This extensive litigation history in several different federal courts allows us to fully analyze and weigh the risks of further litigation and the value of the Settlement now before the Court.

History of the Litigation

Vogt v. State Farm Life Insurance Co.

9. The first case against State Farm asserting these claims was filed in the Western District of Missouri on June 15, 2016, by Plaintiff Michael Vogt. *See Vogt v. State Farm Life Ins. Co.*, No. 16-CV-04170-NKL. After the district court denied State Farm's motion to dismiss (*see*

id., Docs. 52 and 71), the parties engaged in an extensive discovery process involving several rounds of written discovery and numerous fact and expert witness depositions by both parties.

10. On November 14, 2017, the plaintiff moved for certification of a class of Missouri Form 94030 policy owners. *Vogt*, Docs. 145, 150. In December 2017, at the same time that State Farm filed its opposition to the motion for class certification, it also moved for summary judgment on each of Vogt's claims, contending the Policy's "based on" language permitted State Farm to include unlisted factors in the COI Rates under the reasoning in *Norem v. Lincoln Benefit Life Co.*, 737 F.3d 1145 (7th Cir. 2013), and that plaintiff's claims were barred by the statute of limitations. *Vogt*, Docs. 166, 172, 173.

11. On April 10, 2018, the district court denied State Farm's motion for summary judgment, finding the Policy did not permit State Farm to load the COI Rates with undisclosed factors and concluding plaintiff's claims were not barred by the statute of limitations because the COI overcharges were not ascertainable. *Vogt*, 2018 WL 1747336 (W.D. Mo. Apr. 10, 2018).

12. On April 24, 2018, the court granted plaintiff's motion for class certification, *Vogt*, 2018 WL 1955425 (W.D. Mo. Apr. 24, 2018), and set the jury trial to commence on June 1, 2018. On May 2, 2018, the court denied State Farm's request for a stay of the action or a continuance of the trial date pending State Farm's forthcoming Rule 23(f) petition for permission to appeal the certification order to the Eighth Circuit. *Vogt*, Doc. 245. On May 4, 2018, State Farm filed its Rule 23(f) petition and an emergency motion asking the Eighth Circuit to stay the case pending the resolution of its petition and motion for stay. *See* Eighth Circuit Case No. 18-8004. After full briefing, on May 24, 2018, the Eighth Circuit entered its judgment denying State Farm's Rule 23(f) petition and denying the motion for a stay. *See id.*

13. On May 21, 2018, at the pretrial conference, plaintiff moved for the entry of partial summary judgment in favor of the Missouri class on the issue of State Farm's liability for breach of the Policy and conversion of policy owners' money, and on State Farm's statute of limitations defense because the damages were not ascertainable as a matter of law. *Vogt*, Doc. 287. After full briefing, on June 2, 2018, the court granted the motion in part and denied it in part, granting partial summary judgment on the class's contract claims, leaving only the assessment of damages for trial, but concluding judgment could not be entered on the class's conversion claim without the assessment of the amount converted at trial, and granting judgment in favor of the class on State Farm's statute of limitations defense. *Id.*, Doc. 335. Also, on June 2, the court entered judgment in favor of the class on State Farm's defense that policy owners had consented to State Farm's COI deductions. *Id.*, Doc. 336.

14. The jury trial commenced on June 1, 2018, with voir dire and jury selection. *Id.*, Doc. 325. On June 4 and 5, 2018, the parties presented their opening statements to the jury, and the class presented their evidence, including the testimony of Mr. Vogt, their damages expert, Scott Witt, and the video deposition testimony of State Farm witnesses Carl Streily and Jeffrey Holzbauer, and stipulated facts were read to the jury. *Id.*, Doc. 344, 348. At the close of the class's evidence, State Farm moved for judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50(a), contending Mr. Witt's testimony was not reliable and therefore could not provide sufficient evidence of class-wide damages, and also arguing Mr. Witt's calculation of the amount each class member's Account Value suffered, which incorporated the lost interest earnings, was improper for not isolating the COI overcharges. *Id.*, Doc. 347. The court took State Farm's motion under advisement. *Id.*, Doc. 348. State Farm then presented its case with the testimony of its

actuarial witness Alan Hendren, and its experts, economist Anne Gron and actuary David Weinsier. *Id.*

15. On June 6, 2018, the court held a jury instruction conference, State Farm renewed its motion for judgment as a matter of law, which the court took under advisement, jury instructions were read to the jury, the parties presented their closing arguments, and the jury was released to deliberate. *Id.*, Doc. 359. After just over 2 hours of deliberation, the jury announced its verdict in favor of the class for breach of contract and conversion, finding damages of $34,333,495.81. *Id.* The same day, before the announcement of the jury's verdict, State Farm moved to decertify the class, contending it improperly contained uninjured members and that removing those class members would result in a fail-safe class, and that plaintiff's liability theory and damages methodology would result in higher COI Rates for some class members, creating an intra-class conflict. *Id.*, Doc. 352.

16. On July 3, 2018, State Farm filed its renewed motion for judgment as a matter of law pursuant to Rule 50(b) and alternative motion for new trial, contending Mr. Witt's model was unreliable and thus could not support the jury verdict, that the jury's verdict was against the weight of the evidence, that the court erred in granting plaintiff's oral motion for partial summary judgment, and raising various evidentiary errors. *Id.*, Doc. 373. On July 5, 2018, plaintiff filed a motion to alter or amend the judgment to include a class definition, reduce the damages for individuals whose requests to be excluded from the class were received after the start of trial, to award pre- and post-judgment interest, and to adopt a damages allocation plan. *Id.*, Doc. 377.

17. On October 11, 2018, the court issued its orders on the various post-trial motions, denying State Farm's motion to decertify the class, *Vogt*, 2018 WL 4937069 (W.D. Mo. Oct. 11, 2018); denying State Farm's renewed motion for judgment as a matter of law and alternative

motion for new trial, *Vogt*, 2018 WL 4937330 (W.D. Mo. Oct. 11, 2018); and granting plaintiff's motion to amend the judgment to include the class definition and reduce the damages total to $34,322,414.84 for late-arrived opt-outs, adopting plaintiff's proposed plan of allocation of the damages award, awarding post-judgment interest, but denying plaintiff's request for prejudgment interest, *Vogt*, 2018 WL 11424058 (W.D. Mo. Oct. 11, 2018).

18. State Farm appealed and plaintiff cross-appealed the denial of prejudgment interest on behalf of the class. *See* Eighth Circuit Case Nos. 18-3419, 18-3434. On January 25, 2019, State Farm filed its opening brief on appeal with addendum and a 32-volume appendix. State Farm argued the district court's interpretation of the Policy's COI Rates provision was erroneous, that Mr. Witt's damages methodology was flawed and could not support the jury verdict, that the court abused its discretion in certifying the class, that numerous evidentiary rulings at trial necessitated reversal, that the class failed to establish its conversion claim as a matter of law, and that the court erred in granting summary judgment in favor of the class on State Farm's statute of limitations affirmative defense. On February 5, 2019, the Washington Legal Foundation, the Chamber of Commerce of the United States of America, and the American Council of Life Insurers filed amicus briefs in support of State Farm.

19. On April 2, 2019, plaintiff filed an answer brief responding to each of State Farm's bases for reversal and principal brief on cross-appeal, arguing the district court erred in denying prejudgment interest to the class. On April 8, 2019, Public Citizen filed an amicus brief in support of plaintiff's request for affirmance as to class certification. On November 13, 2019, after full briefing on each appeal, the parties appeared for oral argument before Eighth Circuit Judges Shepherd, Grasz, and Kobes.

20. On June 26, 2020, the panel issued its opinion affirming the district court's rulings in all respects as to State Farm's appeal and reversing as to the court's denial of prejudgment interest to the class on plaintiff's cross-appeal. *Vogt*, 963 F.3d 753 (8th Cir. 2020). On July 24, 2020, supported by its amicus curiae, State Farm filed a petition for rehearing by the panel and rehearing en banc, which the Eighth Circuit denied on August 24, 2020. The Eighth Circuit issued its mandate on August 31, 2020.

21. On September 14, 2020, on remand and pursuant to the Eighth Circuit's ruling that the class was "entitled to prejudgment interest at the 4% rate contained in the contract," *Vogt*, 963 F.3d at 776, plaintiff moved for an award of prejudgment interest for the class. *Vogt*, Doc. 423. State Farm opposed the motion, arguing, among other things, that the Eighth Circuit had not resolved the threshold issue of whether the damages were liquidated, and argued the damages were not liquidated. *Id.*, Doc. 430. On November 17, 2020, the court granted the motion, awarding prejudgment interest in the amount of $4,521,674.38. *Vogt*, 2020 WL 6747319 (W.D. Mo. Nov. 17, 2020). The court concluded that because the Eighth Circuit had ruled the class was entitled to prejudgment interest, it had considered the issue of liquidation and concluded that the damages were liquidated. The district court further found that even if the Eighth Circuit had not resolved the issue, the damages were liquidated. *Id.*

22. On November 25, 2020, State Farm filed its notice of appeal of the order granting prejudgment interest. On November 27, 2020, State Farm moved the Eighth Circuit to recall and stay its August 31, 2020 mandate on the basis that it intended to file a petition for certiorari to the United States Supreme Court on the issue of class certification for which it contended it had a fair chance of prevailing, and argued it would be irreparably harmed absent a stay because it would "be forced to pay over $34 million as a result of the jury's damages verdict and to take other steps

to implement the rate structure on which the verdict was based." *See* Eighth Circuit Case No. 18-3419. On December 3, 2020, the Eighth Circuit denied State Farm's motion.

23. On December 23, 2020, plaintiff filed an application for a writ of execution for the $34,322,414.84 judgment affirmed by the Eighth Circuit, along with post-judgment interest which continued to accrue, and the $4,521,674.38 in prejudgment interest. *Vogt*, Doc. 449. State Farm opposed the application, contending the pending appeal as to prejudgment interest allowed the district court to maintain a stay of execution of the $34,322,414.84 judgment even though the Eighth Circuit had issued its mandate and denied State Farm's request for a stay. *Id.*, Doc. 454.

24. On January 21, 2021, at or near the last day of the 150-day extended pandemic deadline for filing certiorari petitions, State Farm filed its petition for certiorari in the United States Supreme Court. *See* Supreme Court Case No. 20-1008. State Farm was represented by Theodore J. Boutrous Jr. of Gibson Dunn on the certiorari petition. The Chamber of Commerce of the United States of America and the American Council of Life Insurers filed amicus briefs supporting a grant of certiorari.

25. On January 25, 2021, the district court granted the attorneys' fee motion of Stueve Siegel Hanson and Miller Schirger in the amount of one-third of the common fund, which included the $34,322,414.84 judgment with accruing post-judgment interest, plus $4,521,674.38 in prejudgment interest, as well as expenses in the amount of $245,658.05. *Vogt*, 2021 WL 247958, at *3 (W.D. Mo. Jan. 25, 2021); *see also Vogt*, Doc. 426 (motion for same). On the same day, the district court entered an amended judgment which included the $34,322,414.84 judgment on the jury verdict, the $4,521,674.38 judgment for prejudgment interest, plus accruing post-judgment interest, as well as the attorney fees and expense award. *Vogt*, Doc. 460.

26. On February 16, 2021, State Farm moved for a stay of execution of the amended judgment and filed a notice of appeal on the amended judgment as to the prejudgment interest award, and the appeal was consolidated with the already pending appeal as to the prejudgment interest order. *Id.*, Doc. 462.

27. On April 19, 2021, after full briefing, the Supreme Court denied State Farm's petition for certiorari. *State Farm Life Ins. Co. v. Vogt*, No. 20-1008, 141 S. Ct. 2551 (Apr. 19, 2021). The plaintiff then argued that the district court should permit execution on the $34,322,414.84 judgment. *Vogt*, Doc. 468. State Farm opposed, arguing that because the court had issued an amended judgment that included the $34,322,414.84 and the $4,521,674.38 in prejudgment interest, that State Farm was entitled to a stay of execution as to the entire amount while the appeal as to prejudgment interest was pending. *Id.*, Doc. 471. On July 7, 2021, the district court issued its order concluding it did not have jurisdiction to permit execution of the $34,322,414.84 judgment while the prejudgment interest appeal was pending but stated that if the Eighth Circuit granted a limited remand for the purpose of execution on that amount the court would do so. *Id.*, Doc. 472. Plaintiff therefore filed a motion in the Eighth Circuit on July 12, 2021, asking that court to enter a limited remand for the purpose of allowing plaintiff to execute on the $34,322,414.84 judgment which was not at issue on appeal.

28. On September 23, 2021, the parties appeared for oral argument before Judges Shepherd, Wollman, and Kobes on the prejudgment interest appeal. On December 3, 2021, the Eighth Circuit granted plaintiff's motion for a limited remand for purposes of executing on the $34,322,414.84 judgment, Eighth Circuit Case No. 20-3481, and five days later on December 8, 2021, the Eighth Circuit issued its opinion affirming the district court's order awarding prejudgment interest in the amount of $4,521,674.38. *Vogt*, 19 F.4th 1071 (8th Cir. 2021).

29. On December 10, 2021, the district court entered its order severing the $34,322,414.84 damages judgment with post-judgment interest from the judgment for prejudgment interest, entered a stay of execution until December 17, 2021 with respect to the damages judgment, and ordered State Farm to post a bond by December 17, 2021 if it intended to seek a stay of execution as to the prejudgment interest judgment until the Eighth Circuit issued its mandate as to that judgment. *Vogt*, Doc. 476. On December 30, 2021, the Eighth Circuit issued its mandate as to the prejudgment interest appeal. *Vogt*, Doc. 481.

30. On December 13, 2021, State Farm paid the damages judgment, plus $2,771,447.67 in post-judgment interest, and on December 16, 2021, State Farm paid the prejudgment interest judgment. Thereafter, Class Counsel, in coordination with the appointed class administrator, issued checks to the Missouri class members.

Bally v. State Farm Life Insurance Co.

31. On August 15, 2018, while the first Eighth Circuit appeal in *Vogt* was pending, Plaintiff Elizabeth A. Bally, a Form 94030 policy owner whose Policy was issued by State Farm in California, filed a class action complaint in the Northern District of California asserting the same claims on behalf of California policy owners that were asserted in *Vogt*. *See Bally v. State Farm Life Ins. Co.*, 3:18-CV-04954-CRB (N.D. Cal.).

32. State Farm filed its Answer on October 15, 2018, denying liability on all claims, and asserting twenty-five affirmative defenses, including statute of limitations, laches, and the filed-rate doctrine. *Id.*, Doc. 37.

33. Plaintiff served written discovery on State Farm on November 30, 2018, including 45 requests for production of documents, 15 interrogatories, and 13 requests for admission. Among other things, Plaintiff requested that State Farm produce the discovery material and deposition

testimony from *Vogt*, which the *Bally* court later ruled could be used in the case over State Farm's objection. *Bally*, Doc. 59. The parties exchanged initial disclosures on December 14, 2018. Plaintiff served additional written discovery on State Farm on August 26, 2019.

34. The parties engaged in three separate meet and confers regarding State Farm's discovery responses and disputes over State Farm's production of policy owner data for the California policy owners. In total, State Farm produced over 79,000 pages of documents in nine separate document productions in response to Plaintiff's document requests. During 2019, Plaintiff responded to document requests and interrogatories by State Farm, and Plaintiff was deposed on May 1, 2019.

35. On May 21, 2019, State Farm filed its first motion for summary judgment on all claims, contending the Policy permitted State Farm's COI Rates containing non-mortality loads under the reasoning of the Seventh Circuit in *Norem*, that a claim for conversion could not be stated under California law on an overcharge theory, and contending Plaintiff's claims were barred by the statute of limitations. *Bally*, Doc. 63.

36. After full briefing and a hearing on July 26, 2019, *id.*, Doc. 73, on August 19, 2019, the court issued its order denying State Farm's motion for summary judgment, concluding Plaintiff's interpretation of the Policy was reasonable considering its plain language, common usage of the terms, and other courts' interpretations of similar COI rates provisions, including the district court in *Vogt*. *Bally*, 2019 WL 3891149, at *4-8 (N.D. Cal. Aug. 19, 2019). The court also concluded Plaintiff's conversion claim was not premised on a mere overcharge; instead, it was for the improper transfer of funds from policy owners' Account Values, and therefore was properly stated under California law. *Id.* at *4. The court also concluded policy owners' claims were not barred by the statute of limitations pursuant to California's discovery rule. *Id.* at *3-4.

37. On September 16, 2019, State Farm moved for leave to file an interlocutory appeal pursuant to 28 U.S.C. § 1292(b) as to the interpretation of the Policy and for a stay of the case. *Bally*, Doc. 81.

38. On November 15, 2019, Plaintiff filed a motion for certification of a class of California Form 94030 policy owners with the expert report of Plaintiff's class certification damages expert, Scott Witt. *Id.*, Doc. 93.

39. On November 25, 2019, the court granted State Farm's motion to file an interlocutory appeal, finding that its ruling was subject to reasonable grounds for a difference of opinion, but denied its request for a stay. *Id.*, Doc. 99. On December 5, 2019, State Farm filed a petition for permission to appeal pursuant to § 1292(b) in the Ninth Circuit Court of Appeals. *See* Ninth Circuit Case No. 19-80160.

40. On January 14, 2020, State Farm deposed Mr. Witt as to his class-wide damages methodology and opinions in support of class certification. On February 3, 2020, State Farm filed its opposition to Plaintiff's motion for class certification and a motion to strike the declaration of Mr. Witt, contending Mr. Witt's damages methodology was unreliable and did not fit Plaintiff's theory of liability, with the expert reports of consumer expectations expert Rebecca Kirk Fair and economist Lauren Stiroh. *Bally*, Docs. 108, 110.

41. On January 27, 2020, after full briefing, the Ninth Circuit denied State Farm's petition to appeal the district court's interpretation of the Policy. *See* Ninth Circuit Case No. 19-80160. On February 10, 2020, State Farm filed its motion for reconsideration of the denial, which the Ninth Circuit denied on May 14, 2020. *Id.*

42. On April 2, 2020, the district court issued its order denying State Farm's motion to strike Mr. Witt's class certification declaration and granting Plaintiff's motion for class

certification. *Bally*, 335 F.R.D. 288 (N.D. Cal. 2020). On April 16, 2020, State Farm filed in the Ninth Circuit a petition for permission to appeal pursuant to Rule 23(f), Ninth Circuit Case No. 20-80070, and requested a stay of proceedings in the district court. *Bally*, Doc. 125. On June 5, 2020, the district court stayed the issuance of class notice while the Rule 23(f) petition was pending, but otherwise denied a stay of the litigation. *Id.*, Doc. 133. After full briefing in the Ninth Circuit, on July 22, 2020, the Ninth Circuit denied State Farm's Rule 23(f) petition. No. 20-80070.

43. On October 26, 2020, Plaintiff moved for partial summary judgment, arguing: the court's prior conclusion that Plaintiff's interpretation of the Policy was reasonable entitled Plaintiff and the class to judgment as a matter of law on State Farm's liability for breach of the COI Rates provision and for conversion; that State Farm should be deemed collaterally estopped from challenging facts found by the *Vogt* jury, leaving no material facts in dispute as to the damages suffered by the class; and that the class was entitled to summary judgment on State Farm's statute of limitations defense on the basis of the discovery rule. *Bally*, Doc. 142.

44. On November 12, 2020, and January 20, 2021, Plaintiff served trial and rebuttal reports from Mr. Witt.

45. On January 8, 2021, State Farm filed its opposition to Plaintiff's motion for partial summary judgment. *Bally*, Doc. 160.

46. On February 6, 2021, State Farm filed a motion for leave to file a second motion for summary judgment, which the court granted on February 11, 2021. *Id.*, Docs. 185, 187. On February 24, 2021, State Farm filed a second motion for summary judgment on all claims, arguing: the COI Rates provision unambiguously does not set forth obligations as to how State Farm must determine its COI Rates; instead arguing the provision only references the factors on which State Farm would assign the COI Rates and thus does not prohibit State Farm from including amounts

for non-mortality factors in the COI Rates (the "assigned-by" interpretation); that this reading of the COI Rates provision necessarily defeats Plaintiff's reading of the Expense Charge provision; and that the conversion claim failed because State Farm's obligations were merely contractual. *Id.*, Doc. 191. In support of its summary judgment briefing, State Farm relied on declarations from insurance industry experts Craig Reynolds and Mary Jo Hudson, consumer expectations expert Kirk Fair, and economist Stiroh, as well as declarations from State Farm sales agents and an underwriter, and its actuary and Assistant Vice President, Alan Hendren. *See id.*

47. On February 12, 2021, State Farm deposed Mr. Witt a second time.

48. After full briefing, on April 1, 2021, the parties appeared for a hearing by Zoom on the pending summary judgment motions. *Bally*, Doc. 213.

49. On April 28, 2021, the court issued its order granting State Farm's motion for summary judgment for breach of the COI Rates provision and for conversion and denying Plaintiff's motion for summary judgment on those claims. The court concluded that while the COI Rates provision's use of the term "based on" could infer that the factors that followed were exclusive as it had previously concluded in denying State Farm's first motion for summary judgment, it concluded that one of the listed factors—"applicable rate class"—unambiguously permitted State Farm to include non-mortality factors therein. *Bally*, 536 F. Supp. 3d 495, 507-508 (N.D. Cal. 2021). The court stated that the district court and Eighth Circuit in *Vogt*, in concluding the COI Rates provision did not unambiguously permit State Farm to use unlisted factors to determine the COI Rates, had focused on the meaning of the phrase "based on," but that neither court "meaningfully considered the meaning of the phrase 'applicable rate class.'" *Id.* at 504 n.6. The court also concluded Plaintiff's conversion claim was barred by the economic loss doctrine. *Id.* at 512-13. However, the court denied State Farm's motion for summary judgment on Plaintiff's

claim for State Farm's breach of the Expense Charge provision, concluding Plaintiff's interpretation of that provision as limiting State Farm to $5 in monthly expense deductions was reasonable, invited Plaintiff to file a motion for partial summary judgment on that claim, and instructed Plaintiff to submit a class-wide damages model specific to that claim. *Id.* at 509-11, 516-17. The court also granted Plaintiff's motion for summary judgment in favor of the class on the statute of limitations. *Id.* at 514-16.

50. On May 12, 2021, Plaintiff filed a motion for leave to seek reconsideration of the court's order entering summary judgment against the class on State Farm's breach of the COI Rates provision, arguing the court's interpretation failed to consider the undisputed fact that "applicable rate class" is a mortality factor which State Farm used, along with the other policy-listed mortality factors, to create mortality-based rates, and it was to these rates that State Farm added the load for non-mortality profit and expense factors. *Bally*, Doc. 223. Therefore, Plaintiff argued, the court's conclusion that the Policy unambiguously permitted State Farm to include the non-mortality loads within the applicable rate class mortality factor was contrary to State Farm's own admissions, which is why State Farm had not argued to the Eighth Circuit that the applicable rate class factor supported its interpretation of the Policy. Plaintiff further argued that where the Eighth Circuit reviewed the same policy provision and concluded the plain language would not cause an ordinary insured to unambiguously understand that the COI Rates contained loads for unlisted factors, the *Bally* court's contrary interpretation supported that court's prior conclusion that the provision is ambiguous. *Id.* The court denied Plaintiff's request for leave on June 1, 2021. *Bally*, 2021 WL 2207233 (N.D. Cal. June 1, 2021).

51. On June 30, 2021, Plaintiff filed a motion for partial summary judgment on State Farm's liability for breach of the Expense Charge provision and for declaratory judgment that State

Farm's conduct violated this provision, along with a declaration by Mr. Witt explaining how damages should be calculated on this claim. *Bally*, Doc. 237. The class's damages for breach of the Expense Charge provision were approximately thirty percent of those for breach of the COI Rates provision.

52. On July 27, 2021, State Farm filed a motion for leave to file a third motion for summary judgment on the Expense Charge claim, which, after full briefing, the court denied on August 10, 2021. *Bally*, Docs. 239, 243.

53. On September 9, 2021, State Farm deposed Mr. Witt on his class-wide damages methodology as to the Expense Charge claim.

54. On September 23, 2021, State Farm filed its opposition to Plaintiff's motion for partial summary judgment and moved to exclude Mr. Witt's damages declaration as to the Expense Charge claim, arguing it was unreliable and improperly averaged damages across class members. *Bally*, Docs. 249, 250.

55. On November 18, 2021, Plaintiff moved to exclude State Farm's experts' opinions regarding State Farm's asserted compliance with insurance regulations and industry custom as irrelevant to the damages suffered by the class under Plaintiff's interpretation of the Policy. *Id.*, Doc. 260.

56. On December 1, 2021, State Farm moved to decertify the class, arguing Mr. Witt's class-wide damages methodology was unreliable and could not support class certification. *Id.*, Doc. 266.

57. After full briefing on the pending motions, on February 24, 2022, the court granted Plaintiff's motion for partial summary judgment, concluding the Policy's Expense Charge provision unambiguously prohibited State Farm from including undisclosed expenses in the COI

Rates, *Bally*, 587 F. Supp. 3d 996 (N.D. Cal. 2022); denied State Farm's motion to exclude Mr. Witt's damages methodology, *Bally*, 2022 WL 594798 (N.D. Cal. Feb. 24, 2022); denied State Farm's motion to decertify the class, *id.*; and denied Plaintiff's motion to exclude State Farm's experts' opinions, *Bally*, 2022 WL 594559 (N.D. Cal. Feb. 24, 2022).

58. The jury trial in this matter was set to commence on January 23, 2023. *Bally*, Doc. 306. The trial setting and related deadlines were vacated upon the parties' notification to the court that they had signed a term sheet to settle the matter. *Id.*, Doc. 307.

Whitman v. State Farm Life Insurance Co.

59. On October 30, 2019, while the first Eighth Circuit appeal in *Vogt* was pending, Plaintiff William T. Whitman, a Form 94030 policy owner whose Policy was issued by State Farm in Washington, filed a class action complaint in the Western District of Washington asserting the same claims on behalf of Washington policy owners as were asserted in *Vogt* and *Bally*, and an additional claim for State Farm's violation of the Washington Consumer Protection Act (WCPA). *See Whitman v. State Farm Life Ins. Co.*, 19-CV-06025-BJR (W.D. Wash.).

60. State Farm filed its Answer on March 30, 2020, denying liability on all claims and asserting thirty-two affirmative defenses, including statute of limitations, laches, and voluntary payment and filed-rate doctrines. *Id.*, Doc. 39.

61. On June 1, 2020, Plaintiff served written discovery on State Farm, including 49 document requests (including a request that State Farm produce the discovery and deposition testimony from *Vogt*), 13 requests for admission, and 15 interrogatories. On June 5, 2020, the parties exchanged initial disclosures.

62. After several rounds of correspondence and a meet and confer regarding Plaintiff's request for the discovery materials from *Vogt*, on August 6, 2020, Plaintiff filed a motion to compel

State Farm to produce discovery from the *Vogt* case. *Whitman*, Doc. 49. After full briefing, on September 15, 2020, the court granted the motion. *Id.*, Doc. 57.

63. State Farm produced over 213,100 pages of documents to Plaintiff in multiple document productions over the course of the litigation.

64. On October 18, 2020, State Farm served 22 requests for production of documents and 17 interrogatories on Plaintiff, to which Plaintiff responded and produced documents in November 2020. On January 8, 2021, State Farm served 26 additional document requests, to which Plaintiff responded and produced documents in February and March 2021.

65. On February 16, 2021, Plaintiff filed a motion to certify a class of Washington Form 94030 policy owners supported by an expert report of Scott Witt containing a damages methodology and calculations for the putative class. *Whitman*, Doc. 67.

66. On March 1, 2021, State Farm deposed Plaintiff, and on March 18, 2021, State Farm deposed Mr. Witt.

67. On March 29, 2021, State Farm filed its opposition to the motion to certify the class, including: its challenge to Mr. Witt's class-wide damages methodology; thirteen declarations from State Farm insurance sales agents and an underwriter, four declarations from its experts on the insurance industry, consumer expectations, and damages; and a declaration from State Farm's Assistant Vice President, Alan Hendren. *Whitman*, Docs. 83-107.

68. On April 23, 2021, State Farm served 73 requests for admission and 4 additional interrogatories on Plaintiff, to which Plaintiff served responses on May 26, 2021.

69. After full briefing, on September 20, 2021, the court granted Plaintiff's motion for class certification and rejected State Farm's challenges to Mr. Witt's calculation of damages. *Whitman*, 2021 WL 4264271 (W.D. Wash. Sept. 20, 2021). On October 4, 2021, State Farm filed

a petition for permission to appeal under Rule 23(f) in the Ninth Circuit, which, after full briefing, the Ninth Circuit denied on December 9, 2021. *See* Ninth Circuit Case No. 21-80104.

70. The district court set the case for a jury trial commencing on October 10, 2022, later stating that it would be held by Zoom, with the parties' Joint Pretrial Statement due on September 6, 2022. *Whitman*, Doc. 139.

71. On November 1, 2021, and April 15, 2022, Plaintiff served the trial and supplemental reports of Mr. Witt, which included his calculations of class-wide damages. On April 14, 2022, State Farm again deposed Mr. Witt.

72. In March, April, and May 2022, State Farm served numerous subpoenas to various flight training schools in Washington and another insurance company to which Plaintiff had applied for life insurance, and a Freedom of Information Act request to the Federal Aviation Administration. Some of these entities produced responsive documents.

73. On May 2, 2022, Plaintiff filed a motion for summary judgment on behalf of the class, arguing that the Policy should be construed to prohibit State Farm's loaded COI Rates; that State Farm should be deemed collaterally estopped from challenging facts found by the *Vogt* jury, leaving no remaining fact disputes as to damages; and that the statute of limitations should be deemed tolled under the discovery rule. *Id.*, Doc. 147.

74. State Farm also filed a motion for summary judgment on May 2, 2022, arguing the *Bally* court's interpretation of "applicable rate class" along with State Farm's assigned-by interpretation comprised the only reasonable interpretation of the Policy, and State Farm supported its motion with declarations from its insurance industry, consumer expectations, and damages experts. *Id.*, Doc. 154. State Farm also argued that the undisputed facts did not support a claim for conversion or under the WCPA and that the class's claims were barred by the statute of limitations

and were not tolled under Washington law by the discovery rule or the fraudulent concealment doctrine. *Id.* The parties also each filed *Daubert* motions as to the other's experts. *Id.*, Docs. 151, 155.

75. On July 19, 2022, State Farm deposed Mr. Witt on his supplemental damages report.

76. On August 29, 2022, the parties each filed motions in limine. *Whitman*, Docs. 195, 196.

77. On September 6, 2022, the court entered its order granting State Farm's motion for summary judgment and denying Plaintiff's, and, like the *Bally* court, ruling that the Policy's COI Rates provision unambiguously permitted State Farm to include profit and expense loads in the COI Rates through the Policy's applicable rate class factor. *Whitman*, 2022 WL 4081916, at *4-6 (W.D. Wash. Sept. 6, 2022). Like the *Bally* court, the court also concluded the Eighth Circuit had not considered this theory of policy interpretation. *Id.* at *4. However, unlike *Bally*, the *Whitman* court rejected Plaintiff's interpretation of the Expense Charge provision, concluding instead that the court's interpretation of the COI Rates provision necessarily resolved the proper interpretation of the Expense Charge provision. *Id.* at *7. The court also found Plaintiff's conversion and WCPA claims failed under its interpretation of the Policy. *Id.*

78. On September 21, 2022, Plaintiff filed a notice of appeal to the Ninth Circuit. *Whitman*, Doc. 199. On October 5, 2022, State Farm filed its notice of conditional cross-appeal as to the court's class certification order. *Id.*, Doc. 202; Ninth Circuit Case Nos. 22-35745, 22-35787. Plaintiff's opening brief on appeal was due November 25, 2022, but the briefing deadlines were stayed upon the parties' notification to the Ninth Circuit's mediation office that they had signed a term sheet to settle the matter.

Page v. State Farm Life Insurance Co.

79. On May 11, 2020, while the first Eighth Circuit appeal was pending, Plaintiff Ronald K. Page, a Form 94030 policy owner whose Policy was issued by State Farm in Texas, filed a class action complaint asserting the same claims on behalf of Texas policy owners as the cases preceding it. Originally filed in the Southern District of Texas, the case was later transferred to the Western District of Texas. *See Page v. State Farm Life Ins. Co.*, 5:20-CV-00945-FB (W.D. Tex.).

80. Plaintiff's case was initially docketed in the Western District of Texas under case number 5:20-CV-00945-FB, but it was later consolidated with a case filed by another Texas Form 94030 policy owner, Anna Gonzalez, at case number 5:20-CV-00617-FB. Ms. Gonzalez later voluntarily dismissed her claims. *See id.*, Doc. 75. Plaintiff Page later filed an amended complaint that included claims for breach of the duty of good faith and fair dealing, violation of the Texas Insurance Code, and violation of the Texas Deceptive Trade Practices-Consumer Protection Act. *Id.*, Doc. 72.

81. State Farm filed its Answer to the operative complaint on March 23, 2021, denying liability on all claims and asserting 37 affirmative defenses, including statute of limitations, laches, estoppel, the filed-rate doctrine, voluntary payment, and ratification. *Id.*, Doc. 76.

82. On January 11, 2021, the parties exchanged initial disclosures, and Plaintiff served his first request for production of documents and first interrogatories on State Farm, to which State Farm responded on February 10, 2021, and provided over 213,000 pages of documents through productions on April 30, 2021, May 21, 2021, July 23, 2021, and July 30, 2021. On January 27, 2021, State Farm served document requests and interrogatories on Plaintiff, to which Plaintiff responded on March 12, 2021.

83. On June 15, 2021, Plaintiff filed a motion to certify a class of Texas Form 94030 policy owners as to his breach of contract and conversion claims, which was supported by the expert report of Scott Witt, including Mr. Witt's proposal for a class-wide damages methodology. *Id.*, Doc. 79.

84. On July 16, 2021, State Farm deposed Mr. Witt, and on July 23, 2021, State Farm deposed Plaintiff.

85. On August 10, 2021, State Farm filed its opposition to Plaintiff's motion for class certification, and on August 13, 2021, State Farm filed it motion for summary judgment, arguing that: the Policy did not limit State Farm's authority to include profit and expenses in the COI Rates under its assigned-by interpretation and the *Bally* court's "applicable rate class" interpretation; even if it did so limit State Farm, Plaintiff could not establish damages; a conversion claim could not be stated under these facts under Texas law; Plaintiff's other claims were defeated by State Farm's interpretation of the Policy and were otherwise duplicative; and Plaintiff's claims were barred by the statute of limitations. *Id.*, Docs. 98, 105.

86. Also on August 13, 2021, State Farm filed a motion to exclude the expert testimony of Mr. Witt. *Id.*, Doc. 106. In support of State Farm's motion and class certification opposition, State Farm relied on reports from its insurance industry, consumer expectations, and damages experts, and the declarations of several State Farm sales agents, an underwriter, and State Farm's Assistant Vice President and actuary, Alan Hendren. *See id.*

87. After full briefing and two hearings by Zoom to address the pending motions, Magistrate Judge Elizabeth S. Chestney issued on February 10, 2022, a Report and Recommendation to District Judge Fred Biery recommending that Plaintiff's motion for class

certification be granted and an Order denying State Farm's motion to exclude Mr. Witt's testimony. *Page*, 584 F. Supp. 3d 200 (W.D. Tex. 2022).

88. On March 10, 2022, the Magistrate Judge further issued a Report and Recommendation recommending that State Farm's motion for summary judgment be denied, except as to Plaintiff's conversion claim. *Page*, 2022 WL 718789 (W.D. Tex. Mar. 10, 2022). As to the interpretation of the Policy, the court disagreed that the Policy unambiguously permitted State Farm to include profit and expense loads in the COI Rates, thus rejecting State Farm's assigned-by interpretation and the *Bally* (and later *Whitman*) court's interpretation as the only reasonable way an ordinary policy owner could read the Policy. *Id.* at *5-10. The court also concluded that Plaintiff's interpretation of the Expense Charge provision was reasonable. *Id.* at *11. On the statute of limitations, the court concluded there was evidence supporting a finding that the claims were tolled by the discovery rule and fraudulent concealment doctrine under Texas law, and thus recommended that summary judgment be denied as to the statute of limitations. *Id.* at *15. The court also recommended that summary judgment be denied as to Plaintiff's good faith and fair dealing and statutory claims. *Id.* at *14-15. However, the court concluded Plaintiff's conversion claim was barred by Texas's economic loss doctrine. *Id.* at *12-14.

89. State Farm filed objections as to the summary judgment and class certification rulings, and Plaintiff filed an objection as to the summary judgment ruling on the conversion claim. *See Page*, Docs. 142, 150, 151. These objections were fully briefed and pending when the parties notified the court that they had signed a term sheet to settle the matter and requested a stay.

Jaunich v. State Farm Life Insurance Co.

90. On July 13, 2020, after the Eighth Circuit issued its opinion on the first appeal in *Vogt*, Plaintiff John E. Jaunich, a Form 94030 policy owner whose Policy was issued by State

Farm in Minnesota, filed a class action complaint in the District of Minnesota asserting the same claims on behalf of Minnesota policy owners as the cases preceding it. *See Jaunich v. State Farm Life Ins. Co.*, No. 20-CV-01567-PAM/JFD (D. Minn.).

91. On September 14, 2020, Plaintiff served 48 requests for production of documents, 13 requests for admission, and 15 interrogatories on State Farm, to which State Farm responded on November 25, 2020, and produced over 213,000 pages of documents in productions occurring on December 30, 2020, April 9, 2021, April 26, 2021, and July 8, 2021. On October 23, 2020, the parties exchanged initial disclosures.

92. On September 14, 2020, State Farm moved to dismiss Plaintiff's conversion and declaratory judgment claims. *Jaunich*, Doc. 20. After full briefing and a hearing by Zoom, the court granted State Farm's motion. *Id.*, Doc. 40.

93. State Farm filed its Answer on December 16, 2020, denying liability on Plaintiff's remaining breach of contract claims, and asserting 24 affirmative defenses, including statute of limitations, laches, estoppel, ratification, and the filed-rate and voluntary payment doctrines. *Id.*, Doc. 44.

94. On April 9, 2021, State Farm served 24 document requests and 17 interrogatories on Plaintiff, to which Plaintiff responded on May 10, 2021.

95. On June 16, 2021, Plaintiff filed a motion to certify a class of Minnesota Form 94030 policy owners supported by the expert report of Scott Witt, including his calculation of class-wide damages. *Id.*, Doc. 51.

96. On July 9, 2021, State Farm deposed Plaintiff, and on July 16, 2021, State Farm deposed Mr. Witt.

97. On August 5, 2021, State Farm filed a motion for summary judgment, arguing that the Policy unambiguously must be read in accordance with its assigned-by interpretation and the *Bally* court's "applicable rate class" interpretation, and thus, the Policy did not limit State Farm to using the listed factors to determine the Policy's COI Rates; and that Plaintiff's claims were barred by Minnesota's statute of limitations. *Jaunich*, Docs. 84, 116.

98. On the same day, State Farm also filed its opposition to Plaintiff's motion for class certification and moved to exclude the declaration and testimony of Mr. Witt in support of Plaintiff's motion for class certification, relying on the opinions of the same insurance industry, consumer expectations, and damages experts that supplied declarations in *Bally*, *Whitman*, and *Page*, and the declarations of several State Farm sales agents, an underwriter, and actuary and Vice President, Alan Hendren. *Id.*, Docs. 86, 88, 92-106.

99. On October 29, 2021, Plaintiff served the trial expert report of Mr. Witt.

100. After full briefing on the pending motions and a hearing, on November 1, 2021, the court denied State Farm's motion for summary judgment and motion to exclude Mr. Witt's testimony and granted Plaintiff's motion for class certification. *Jaunich*, 569 F. Supp. 3d 912 (D. Minn. 2021). The court rejected the interpretation adopted by the *Bally* and (later) *Whitman* courts as the only reasonable reading of the Policy, and in doing so concluded the Policy was at a minimum ambiguous given the Eighth Circuit's interpretation of the Policy in *Vogt*, and rejected State Farm's reliance on industry experts for its contrary interpretation because "the standard for interpreting an insurance policy is how a reasonable lay person, not an industry expert, would interpret the policy." *Id.* at 916. The court also rejected State Farm's request for summary judgment on the statute of limitations. *Id.* at 917-18.

101. On November 8, 2021, State Farm requested leave to file a motion for reconsideration of the court's rulings, which the court denied on November 9, 2021. *Jaunich*, Docs. 145, 147.

102. On November 15, 2021, State Farm filed in the Eighth Circuit a petition for permission to appeal the court's class certification order pursuant to Rule 23(f). *See* Eighth Circuit Case No. 21-8009. After full briefing, the Eighth Circuit denied State Farm's petition on December 14, 2021. On February 10, 2022, State Farm again deposed Mr. Witt.

103. On April 1, 2022, Plaintiff filed a motion for summary judgment in favor of the class, arguing that: the Policy's ambiguity must be construed against State Farm as the drafter; collateral estoppel prevented State Farm from challenging issues related to the calculation of damages that were resolved by the *Vogt* jury, leaving no material facts in dispute on damages; and there were no facts in dispute and the class was entitled to judgment as a matter of law on equitable tolling under the court's prior summary judgment ruling. *Jaunich*, Docs. 164, 168.

104. Also on April 1, 2022, State Farm filed a motion to exclude Mr. Witt's expert testimony, *id.*, Docs. 166, 181, and Plaintiff moved to exclude the testimony from State Farm's experts going to policy interpretation, *id.*, Docs. 165, 177.

105. After full briefing and a hearing on the pending motions, the court entered its order granting Plaintiff's motion for summary judgment on State Farm's liability for breach of contract, denying Plaintiff's motion as to damages, and denying Plaintiff's motion as to the statute of limitations. *Jaunich*, 2022 WL 2318560 (D. Minn. June 28, 2022). The court held that the Eighth Circuit's conclusion that the COI Rates provision "is at least ambiguous and thus must be construed against State Farm" must govern over the interpretation by the court in *Bally* (and later, *Whitman*). *Id.* at *2. The court also concluded that Plaintiff's interpretation of the Expense Charge

provision was reasonable, as it noted that all other courts had likewise concluded (until the later *Whitman* court summary judgment order). *Id.* The court declined, however, to apply collateral estoppel to the *Vogt* jury's damages award. *Id.* at *3. On the statute of limitations, the court concluded that Plaintiff had failed to come forward with evidence that State Farm had fraudulently concealed its conduct to entitle the class to equitable tolling. *Id.* at *4. The court then stated that "Jaunich's Motion is denied as the statute of limitations, and any claim arising before July 2014 is time-barred." *Id.* at *4. The court denied State Farm's motion to exclude Mr. Witt's testimony, noting that "State Farm repeats many of the arguments it raised in its first *Daubert* Motion in this matter, as well as arguments that have failed before other courts." *Id.* The court denied Plaintiff's *Daubert* motion as moot. *Id.*

106. On June 28, 2022, Plaintiff filed a request for leave to seek reconsideration or clarification of the court's statute of limitations ruling, which the court denied on July 1, 2022. *Jaunich*, Docs. 229, 232. Limiting the class's claims to those arising after July 2014 had the effect of materially reducing damages for Minnesota policy owners.

107. On September 13, 2022, after the *Whitman* court entered its order granting summary judgment in State Farm's favor on policy interpretation, State Farm requested leave to seek reconsideration of the court's summary judgment order. *Id.*, Doc. 240.

108. On September 14, 2022, the court denied State Farm's request and stated that, while it held the *Bally* and *Whitman* judges in high regard, "[t]his Court's respect goes to the Eighth Circuit, which, in this Court's view, has established binding precedent in this matter." *Id.*, Doc. 242.

109. On October 3, 2022, the parties notified the court that they had signed a term sheet to settle the matter. On November 21, 2022, the parties moved to stay proceedings pending approval of this settlement, which the court granted on the same day.

McClure v. State Farm Life Insurance Co.

110. On July 13, 2020, the same day that Plaintiff Jaunich filed his complaint in the District of Minnesota, Earl E. McClure, a Form 94030 policy owner whose Policy was issued by State Farm in Arizona, filed a class action complaint in the District of Arizona asserting the same claims on behalf of Arizona policy owners as the cases preceding it. *See McClure v. State Farm Life Ins. Co.*, No. CV-20-01389-PHX-SMB (D. Ariz.).

111. State Farm filed its Answer on September 14, 2020, denying liability on all claims and asserting 31 affirmative defenses, including statute of limitations, various equitable defenses, and the filed-rate doctrine. *Id.*, Doc. 11; *see also id.*, Doc. 24.

112. On October 2, 2020, McClure served his first requests for production of documents, requests for admission, and interrogatories on State Farm, to which State Farm responded on March 19, 2021, and provided supplemental responses and produced documents on June 17, 2021, August 12, 2021, September 10, 2021, September 27, 2021, and April 8, 2022. On December 11, 2020, the parties exchanged initial disclosures.

113. On May 14, 2021, State Farm served document requests and interrogatories, to which McClure responded on June 14, 2021, and produced documents on June 18, 2021.

114. On September 14, 2021, State Farm deposed Mr. McClure.

115. On October 25, 2021, McClure filed a motion to certify a class of Arizona Form 94030 policy owners supported by the expert report of Scott Witt, including his damages methodology and calculations of class-wide damages. *Id.*, Doc. 39.

116. On December 2, 2021, State Farm deposed Mr. Witt as to his class certification opinions.

117. On December 9, 2021, State Farm filed its opposition to the motion for class certification and a motion to strike the expert class certification declaration and testimony of Mr. Witt, along with the expert declarations and reports of Hudson, Reynolds, Kirk Fair, and Stiroh; five declarations from sales agents and a State Farm underwriter, and the declaration of State Farm's Assistant Vice President and actuary Alan Hendren. *Id.*, Docs. 52, 54.

118. On December 10, 2021, State Farm filed its motion for summary judgment, arguing that the court should adopt the assigned-by/applicable rate class interpretation of the Policy, the conversion claim was not properly stated under Arizona law, and the statute of limitations barred the claims. *Id.*, Doc. 74.

119. On February 22, 2022, McClure served the trial expert report of Mr. Witt.

120. On April 8, 2022, State Farm served the trial expert reports of Hudson, Reynolds, Kirk Fair, and Stiroh.

121. After full briefing on the pending motions and an in-person hearing, the court both granted the motion for class certification and denied State Farm's motion to strike Mr. Witt's class certification declaration and testimony on April 29, 2022. *McClure*, 341 F.R.D. 242 (D. Ariz. 2022).

122. On May 13, 2022, Plaintiff served subpoenas on State Farm's experts Hudson, Reynolds, Kirk Fair, and Stiroh.

123. On June 6, 2022, plaintiff deposed State Farm's consumer expectations expert, Kirk Fair; on June 8, 2022, plaintiff deposed State Farm's insurance industry expert, Reynolds; on June

13, 2022, plaintiff deposed State Farm's insurance industry expert, Hudson; and on June 23, 2022, plaintiff deposed State Farm's damages expert, Stiroh.

124. On June 30, 2022, plaintiff served the trial expert report of Mr. Witt.

125. On August 31, 2022, plaintiff deposed Mr. Reynolds on a supplemental declaration served by State Farm on June 7, 2022.

126. On June 23, 2022, the court denied State Farm's motion for summary judgment on the breach of contract claims and on the basis of the statute of limitations and granted the motion as to the conversion claim under Arizona's economic loss doctrine. *McClure*, --- F. Supp. 3d ----, 2022 WL 2275665 (D. Ariz. June 23, 2022). The court ruled that McClure's interpretation of the Policy as limiting State Farm to using the listed mortality factors to determine the COI Rates was reasonable and that the *Bally* (and later, *Whitman*) court's interpretation, while plausible, was not the only reasonable way a layperson could read the Policy. *Id.* at *3-4. The court also rejected State Farm's reliance on expert testimony regarding actuarial and insurance regulatory standards because there was no indication lay policy owners would be aware of these standards in understanding the Policy. *Id.* at *5. The court further concluded that the fact that several courts had concluded McClure's reading of the Policy was reasonable and the disagreement on this issue "bolster[ed] the Court's conclusion that the COI language in the Policy is ambiguous." *Id.* at *6.

127. As to the Expense Charge provision, the court concluded the language was "at best, ambiguous," and agreed with other courts that policy owners could reasonably read the provision "as including all monthly expenses for the Policy" and was the "mostly likely" way a layperson would read the language. *Id.* at *7. The court also denied State Farm's motion as to the statute of limitations, concluding there was at least a dispute of fact as to whether the claims were discoverable pursuant to Arizona's discovery rule. *Id.* at *9.

128. On July 18, 2022, McClure filed a motion for partial summary judgment in favor of the Arizona class on State Farm's liability for breach of the Policy's COI Rates and Expense Charge provisions and on the statute of limitations. *McClure*, Doc. 108.

129. After full briefing, the motion was set for in person oral argument to be held on November 2, 2022. *Id.*, Doc. 115.

130. On September 9, 2022, relying on the recent summary judgment order in *Whitman*, State Farm filed a motion for reconsideration of the court's order denying State Farm's motion for summary judgment on policy interpretation. *Id.*, Doc. 116.

131. On September 26, 2022, McClure filed a response in opposition to State Farm's motion for reconsideration, arguing the *Whitman* court's adoption of an interpretation of the Policy the *McClure* court had already rejected did not provide a basis for reconsideration and explaining why the *Whitman* court's analysis was faulty and should be rejected. *Id.*, Doc. 123.

132. On September 29, 2022, upon the parties notifying the court of the Settlement, the court vacated a trial setting conference set for September 30, 2022, and the oral argument on summary judgment set for November 2, 2022. *Id.*, Doc. 125. The parties filed a motion to continue that stay pending approval of the settlement on November 21, 2022.

133. Mr. McClure died on October 2, 2022. The settlement is proceeding with his wife acting as personal representative of his estate and one of the several putative class representatives.

Singh v. State Farm Life Insurance Co.

134. On February 4, 2021, Plaintiff Chandra B. Singh, a Form 94030 policy owner whose Policy was issued by State Farm in Oregon, filed a class action complaint in the District of Oregon asserting the same claims on behalf of Oregon policy owners as the cases preceding it. *See Singh v. State Farm Life Ins. Co.*, No. 3:21-CV-00190-AR (D. Ore.).

135. On April 12, 2021, State Farm filed its Answer, denying liability on all claims and asserting thirty-three affirmative defenses, including statute of limitations, several equitable defenses, and the filed-rate doctrine. *Id.*, Doc. 10.

136. On June 4, 2021, the parties exchanged initial disclosures.

137. On July 26, 2021, State Farm served interrogatories and document requests on Plaintiff, to which Plaintiff responded on September 10, 2021, and produced documents on November 23, 2021.

138. On July 28, 2021, Plaintiff served document requests and interrogatories on State Farm. On July 30, 2021, State Farm produced over 200,000 pages of documents, and on September 13, 2021, State Farm provided written responses to Plaintiff's discovery requests.

139. On January 27, 2022, Plaintiff filed a motion to certify a class of Oregon Form 94030 policy owners supported by the expert declaration of Scott Witt, including a damages methodology and his calculation of class-wide damages. *Id.*, Doc. 30.

140. On February 17, 2022, State Farm deposed Mr. Witt, and on February 25, 2022, State Farm deposed Plaintiff.

141. On March 12, 2022, State Farm filed its opposition to Plaintiff's motion for class certification and a motion to exclude the class certification declaration and testimony of Mr. Witt, along with the declarations and reports of its insurance industry, consumer expectations, and damages experts, several declarations from sales agents and a State Farm underwriter, and the declaration of State Farm's Assistant Vice President and actuary Alan Hendren. *Id.*, Docs. 43, 44. These motions were fully briefed and pending when the parties notified the court that they had agreed to a term sheet to settle the matter. A motion to stay pending approval of this settlement was filed on November 22, 2022.

Toms v. State Farm Life Insurance Co.

142. On March 26, 2021, Plaintiff David Toms, a Form 94030 policy owner whose Policy was issued by State Farm in Florida, filed a class action complaint in the Middle District of Florida asserting the same claims on behalf of Florida policy owners as the cases preceding it. *See Toms v. State Farm Life Ins. Co.*, No. 8:21-CV-00736-KKM-JSS (M.D. Fla.).

143. On May 26, 2021, State Farm filed its Answer, denying liability on all claims and asserting forty-two affirmative defenses, including statute of limitations, various equitable defenses, and the filed-rate doctrine. *Id.*, Doc. 21.

144. On July 28, 2021, Plaintiff served documents requests and interrogatories on State Farm, to which State Farm responded on August 27, 2021, and September 16, 2021, and produced nearly 215,000 pages of documents in productions occurring on October 4, 2021, October 26, 2021, January 4, 2022, and February 21, 2022.

145. On July 30, 2021, State Farm served its initial disclosures, and on August 2, 2021, Plaintiff served his initial disclosures.

146. On September 15, 2021, State Farm served interrogatories and document requests on Plaintiff, to which Plaintiff responded on October 15, 2021, produced documents on November 2, 2021, and provided supplemental answers on February 18, 2022.

147. On October 28, 2021, State Farm filed a motion for judgment on the pleadings as to Plaintiff's conversion and declaratory judgment claims. *Id.*, Doc. 49.

148. On December 16, 2021, State Farm served requests for admission on Plaintiff to which Plaintiff responded on January 18, 2022.

149. On January 28, 2022, Plaintiff filed his motion to certify a class of Florida Form 94030 policy owners supported by the expert report of Scott Witt regarding his methodology and calculation of class-wide damages. *Toms*, Doc. 60.

150. On February 17, 2022, State Farm deposed Mr. Witt, and on February 18, 2022, State Farm deposed Plaintiff.

151. On April 15, 2022, State Farm filed its opposition to Plaintiff's motion for class certification and motion to exclude the expert testimony of Mr. Witt. *Toms*, Docs. 83, 84.

152. On July 14, 2022, the court granted State Farm's motion for judgment on the pleadings as to Plaintiff's conversion and declaratory judgment claims. *Id.*, Doc. 116.

153. On May 2, 2022, State Farm served a second set of requests for admissions on Plaintiff, to which Plaintiff responded on June 1, 2022.

154. On July 1, 2022, Plaintiff served the trial report of Mr. Witt.

155. On August 23, 2022, Plaintiff deposed State Farm's damages expert, Stiroh.

156. On September 8, 2022, Plaintiff served the rebuttal declaration of Mr. Witt.

157. On September 14, 2022, State Farm deposed Mr. Witt on his trial and rebuttal reports.

158. On September 20, 2022, Plaintiff deposed State Farm's Assistant Vice President and actuary, Alan Hendren.

159. On September 26, 2022, the court entered its order granting Plaintiff's motion for class certification and denying State Farm's motion to exclude the testimony of Mr. Witt. *Toms*, 2022 WL 5238841 (M.D. Fla. Sept. 26, 2022).

160. With dispositive motions due on October 7, 2022, and the case set for trial in April 2023, the court stayed the deadlines upon the parties' notification that they had signed a term sheet

to settle the litigation. *See Toms*, Doc. 132. A motion to continue the stay pending approval of this settlement was filed on November 22, 2022.

Bauer v. State Farm Life Insurance Co.

161. On January 29, 2021, proceeding through different counsel, Plaintiff Kathy Bauer, a Form 94030 policy owner whose Policy was issued by State Farm in Georgia, filed a class action complaint in the Northern District of Georgia asserting claims on behalf of Georgia policy owners for breach of contract for State Farm's use of unlisted factors to determine the COI Rates and for not reducing the COI Charges to reflect decreasing mortality rates, breach of the covenant of good faith and fair dealing, conversion, fraud, and declaratory relief. *See Bauer v. State Farm Life Ins. Co.*, No. 1:21-CV-00464-SDG (N.D. Ga.).

162. On April 2, 2021, State Farm filed a motion to dismiss Plaintiff's good faith and fair dealing, conversion, fraud, and declaratory relief claims for failure to state a claim. *Id.*, Doc. 25.

163. On May 28, 2021, now with Stueve Siegel and Miller Schirger as counsel, Plaintiff filed a First Amended Complaint asserting the same claims as the cases preceding Plaintiff Bauer's. *Id.*, Doc. 35.

164. On July 12, 2021, State Farm filed a motion to dismiss Plaintiff's conversion and declaratory relief claims and to strike Plaintiff's request for punitive damages. *Id.*, Doc. 39.

165. On April 22, 2022, Plaintiff served document requests and interrogatories on State Farm, to which State Farm responded on June 10, 2022, and produced over 200,000 pages of documents on August 9, 2022.

166. On June 1, 2022, the parties exchanged initial disclosures.

167. On June 9, 2022, State Farm served interrogatories, requests for production of documents, and requests for admission on Plaintiff, to which Plaintiff responded on July 18, 2022.

168. After full briefing, on March 28, 2022, the court granted State Farm's motion for partial dismissal. *Id.*, Doc. 53.

169. On April 11, 2022, State Farm filed its Answer, denying liability on the remaining claims and asserting 36 affirmative defenses, including the statute of limitations, several equitable defenses, and the filed-rate doctrine. *Id.*, Doc. 54.

170. Under the scheduling order, Plaintiff's motion for class certification was due December 16, 2022. *Id.*, Doc. 66. A motion to stay was filed in *Bauer* on November 21, 2022.

Botte v. State Farm Life and Accident Assurance Co.

171. On May 16, 2022, proceeding through different counsel, Plaintiff Kim Botte, a Form A94030 policy owner whose Policy was issued by State Farm in New York, filed a class action complaint in the Eastern District of New York asserting that State Farm Life Insurance Company breached the Policy's Expense Charge provision by including expenses in the COI Rates, a claim for declaratory and injunctive relief, and a claim under the New York Deceptive Trade Practices Act, New York Gen. Bus. Law § 349, *et seq.*, on behalf of New York policy owners. *See Botte v. State Farm Life Ins. Co.*, No. 2:22-cv-02842-JMA-JMW (E.D.N.Y.).

172. State Farm indicated it intended to move to dismiss the case against State Farm Life Insurance Company because a different State Farm entity, State Farm Life and Accident Assurance Company, issued Form A94030 in New York.

173. On August 15, 2022, now with Stueve Siegel and Miller Schirger as counsel, Plaintiff filed an Amended Complaint against State Farm Life and Accident Assurance Company

asserting the same claims as the cases preceding Plaintiff Botte's, in addition to a claim under the New York Deceptive Trade Practices Act. *Id.*, Doc. 39.

174. On August 15, 2022, the parties served initial disclosures. In its disclosures, State Farm identified the same State Farm employees and actuaries who were involved in pricing Form 94030 for its sale nationwide as those involved in the pricing of Form A94030 issued in New York, indicating that the same evidence supporting the claims of Plaintiffs in other states likewise applied to the case against State Farm Life and Accident Assurance Company. In fact, while sold through State Farm Life and Accident Assurance Company instead of State Farm Life, Form A94030 is the same insurance product as Form 94030.

175. On August 29, 2022, State Farm requested a pre-motion conference regarding an anticipated motion to dismiss asserting the statute of limitations largely barred Plaintiff's claims and that Plaintiff's claims for declaratory relief and conversion should be dismissed because they merely duplicated the contract claims. *Id.*, Doc. 40. On September 2, 2022, Plaintiff filed a response letter arguing that Plaintiff had plausibly alleged facts showing Plaintiff's claims were equitably tolled under New York law and that Plaintiff's other claims were properly pleaded. *Id.*, Doc. 41.

176. On September 15, 2022, both parties served interrogatories and document requests.

177. On October 25, 2022, the court denied State Farm's motion for a pre-motion conference and ordered Plaintiff to file an amended complaint by November 22, 2022.

178. On November 21, 2022, a letter motion seeking to stay the case pending approval of this settlement was filed.

Rogowski v. State Farm Life Ins. Co. & State Farm Life and Accident Assurance Co.

179. On March 25, 2022, Plaintiffs David Rogowski and Joyce Thomas filed a class action complaint in this Court on behalf of themselves and all Missouri Form 94030 policy owners who had continued to suffer alleged COI overcharges since the *Vogt* judgment, asserting claims for breach of contract, conversion, and declaratory and injunctive relief. *Rogowski v. State Farm Life Ins. Co.*, No. 4:22-CV-00203-RK (W.D. Mo.).

180. On May 31, 2022, State Farm filed its Answer denying liability on all claims and asserting 22 affirmative defenses, including various equitable defenses and res judicata. *Id.*, Doc. 8.

181. On June 7, 2022, Plaintiffs filed an amended complaint to assert their claims on behalf of all Form 94030 policy owners whose policies were issued in any state except those for which a case was already pending. *Id.*, Doc. 11.

182. On June 29, 2022, State Farm served initial disclosures, and on June 30, 2022, Plaintiffs served initial disclosures.

183. On July 6, 2022, Plaintiffs served 51 document requests and 16 interrogatories on State Farm, to which State Farm responded on August 5, 2022, and produced documents on August 23, 2022, and August 31, 2022.

184. On July 28, 2022, State Farm filed a motion to dismiss for lack of subject matter jurisdiction, failure to state a claim, or, alternatively, to strike Plaintiffs' allegations regarding the multi-state class. *Id.*, Doc. 28. State Farm argued that Plaintiffs did not have standing to assert claims on behalf of policy owners whose policies were issued in states other than Missouri, that Plaintiffs' allegations on behalf of policy owners whose policies were issued in other states were not sufficiently pled under Rule 12(b)(6), and that the Court lacked personal jurisdiction over State

Farm as to the claims of policy owners whose policies were issued in states other than Missouri. *Id.*, Doc. 29.

185. On August 24, 2022, the parties began a meet and confer process regarding a discovery dispute over the production of policy owner data for the putative multi-state class, with Plaintiffs serving their discovery dispute summary letter on State Farm on August 25, 2022, State Farm serving its response letter on September 1, 2022, and Plaintiffs serving their reply letter on September 5, 2022.

186. After full briefing, including an authorized surreply, the Court entered its order denying State Farm's motion to dismiss or strike. *Id.*, Doc. 40.

187. On September 28, 2022, State Farm filed its Answer to the Amended Complaint. *Id.*, Doc. 41.

188. Under the Scheduling Order, Plaintiffs' motion for class certification was due November 10, 2022, dispositive motions were due March 13, 2023, and trial was set for August 11, 2023. *Id.*, Doc. 33.

189. On November 21, 2022, for the purpose of effectuating the Settlement, Plaintiffs Rogowski, Bally, Bauer, Botte, Jaunich, Mylene McClure as personal representative of the Estate of Earl L. McClure, Page, Singh, Thomas, Toms, and Whitman filed a Second Amended Class Action Complaint against both State Farm entities on behalf of themselves and a nationwide class of policy owners of Forms 94030/A94030 and 94080/A94080, the latter of which is a materially identical insurance policy to Form 94030/A94030, with the only difference being the COI Rates for Form 94080/A94080 are not differentiated by the insured's sex.

Settlement Negotiations

190. The Parties participated in three separate full-day mediation sessions on June 21, 2022, August 10, 2022, and September 27, 2022, with the assistance of two highly-respected, experienced, neutral mediators. During the first two sessions, the Parties mediated with the Honorable Robert Bonner, retired U.S. District Judge. At the third session, the Parties mediated with the Honorable Layn Phillips, retired U.S. District Judge. During the October 27, 2022, session, the Parties were successful in reaching agreement on the material terms of the Settlement Agreement now submitted for approval. Prior to these mediation sessions, State Farm had never offered to settle the litigation, even in part, on a class-wide basis.

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

The Settlement Is Fair, Reasonable, and Adequate

192. The proposed Settlement Class includes the persons or entities who own or owned one or more of approximately 760,000 Policies issued and administered by State Farm or its

predecessors in interest on Form 94030/A94030 or Form 94080/A94080 as identified on the Class List.[1]

193. Based on my experience and knowledge of the litigation, as well as my experience in similar litigation against other life insurers, I can represent without equivocation that this Settlement is fair, reasonable and adequate. The Settlement requires State Farm to fund a cash Settlement Fund in the amount of $325,000,000, which will be used to pay (1) all payments to Settlement Class Members; (2) fees and expenses incurred in providing Class Notice and administering the Settlement including those fees and expenses incurred by the Settlement Administrator; (3) any Service Awards to the Plaintiffs awarded by the Court (up to $25,000 each); and (4) any attorneys' fees and expenses awarded by the Court (up to one-third of the Settlement Fund for fees and up to $1,500,000 for expenses).

194. As set forth in the extensive litigation history above, Plaintiffs engaged an actuary, Scott Witt, to develop a methodology to calculate the damages resulting from State Farm's use of profit and expense factors to determine COI Rates. Mr. Witt testified as to this methodology at trial in *Vogt*, and the jury accepted his calculations. Thereafter, in the cases against State Farm proceeding in other states, courts have repeatedly found Mr. Witt's methodology reliable and have found it fits Plaintiffs' theory of liability. In essence, that methodology compares the COI Rates State Farm actually used to assess COI Charges with rates State Farm determined using only the mortality factors listed in the Policies to identify

[1] The Settlement Class excludes State Farm; any entity in which State Farm has a controlling interest; any of the officers or board of directors of State Farm and their immediate family; the legal representatives, heirs, successors, and assigns of State Farm; anyone employed with Plaintiffs' counsel's firms; and any Judge to whom this case is assigned, and his or her immediate family.

overcharges to the policy owners. Applying these principles to the Settlement, Mr. Witt will determine the amount of Monthly Deductions for COI Charges and Expenses Charges actually paid by each Settlement Class Member to determine their proportional share of the Net Settlement Fund. Because the amount of alleged overcharges in Settlement Class Members' Monthly Deductions is substantially similar across the Settlement Class, the alleged damages for each Settlement Class Member are largely proportional to the amount of Monthly Deductions for COI Charges and Expense Charges they each paid.

195. Plaintiffs' distribution plan is designed to distribute to each Settlement Class Member their proportional share of the Net Settlement Fund, subject to a minimum payment of $10 with an equitable adjustment applied to current policy owners. In addition, for Settlement Class Members who were a part of the *Vogt* class who have already received a share of that judgment, their settlement share will be calculated using charges deducted after the cutoff date for the calculation of damages in the *Vogt* judgment. In my opinion, the proposed plan for allocating the Net Settlement Fund to the Settlement Class Members is fair and treats Settlement Class Members equitably relative to each other, supporting approval of the Settlement.

196. Furthermore, Settlement Class Members are not required to submit a claim or otherwise perform any steps to receive this relief. Settlement checks will be issued upon final approval of the Settlement. This simplified process for paying each Settlement Class Member and the fact that no funds will revert to State Farm supports approval of the Settlement.

197. Moreover, given the uncertainties that the litigation presents, including but not limited to: the potential for adverse liability rulings in one or more of the pending cases, including by the Ninth Circuit Court of Appeals and on the issue of the statute of limitations, and the chance a jury could reject Mr. Witt's damages methodology in whole or in part; the

avoidance of these risks in favor of settlement is, in my opinion, a significant and meaningful result for the Settlement Class, and supports a finding that it is fair, reasonable and adequate.

198. In addition, even if Plaintiffs were to overcome all of State Farm's defenses through trial, there would be lengthy appeals. For example, following the favorable jury verdict we obtained in June 2018 in favor of Missouri policy owners in the *Vogt* case, those policy owners did not receive their damages and interest awards until nearly four years later due to the delay of appeals and State Farm's petition for certiorari. Avoiding such delay by settling now is unquestionably in the best interests of the Settlement Class, and further supports a finding that the Settlement is fair, reasonable and adequate.

199. Plaintiffs David M. Rogowski, Elizabeth A. Bally, Kathy Bauer, Kim Botte, John E. Jaunich, Mylene McClure as the personal representative of the Estate of Earl L. McClure, Ronald K. Page, Chandra B. Singh, Joyce Thomas, David Toms, and William T. Whitman, as the class representatives, each likewise support the proposed Settlement and consider it to be in the best interests of the Settlement Class.

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

Executed this 22nd day of November, 2022.

Norman E. Siegel

EXHIBIT A

STUEVE SIEGEL HANSON

WHO WE ARE

Stueve Siegel Hanson was launched in 2001 on a foundational business model where our payment for legal services would depend on the results delivered and the value provided rather than the hours spent on a case. Since then, this model has been a hallmark of our success, which has included the recovery of billions of dollars in damages and relief for consumers, entrepreneurs, employees, small and large businesses, and a variety of economic underdogs. The cases we handle frequently arise in some of the most complex areas of the law, including antitrust, intellectual property, FLSA collective actions, consumer and securities class actions, data breach, franchise disputes and other complex business litigation.

Our team of lawyers includes some of the best trained and most experienced trial lawyers in the country. Stueve Siegel Hanson's founding partners were partners at some of the country's largest law firms. The firm has also been fortunate in its ability to attract, retain and promote lawyers educated at top law schools and groomed at nationally prominent law firms, many of whom also have had valuable experiences as judicial law clerks at both the trial court and appellate levels.

Stueve Siegel Hanson is a national litigation firm based in Kansas City, Missouri, with offices in the heart of The Country Club Plaza.

OUR MISSION

Stueve Siegel Hanson provides aggressive, cutting-edge representation in litigation. Our law firm serves companies in business disputes as well as individuals harmed by dangerous products, unjust employers or unfair business practices.

Because we work on a contingency model, our fees are based on the results we achieve. This means our trial lawyers have the same interests you do: Succeed for you and we succeed ourselves, fail you and we fail ourselves.

We believe the pursuit of justice should not be subject to the dysfunction of the billable hour, which rewards attorneys more for time than the results achieved. We take pride in winning efficiently and effectively as our clients' partner in the courtroom.

We invest in our firm, our profession and our community. We recruit the brightest attorneys from the nation's top law firms, and together we maintain a culture of camaraderie and respect. We apply new technology to further our efficiency, communication and creativity. We give our time and talents to pro bono projects, community service and bar organizations. While we take considerable pride in our awards and recognition, we are most fulfilled by results, referrals and repeat business.

RECENT RECOVERIES AS LEAD COUNSEL IN COMPLEX AND CONSUMER LITIGATION

- $2.25 billion in death benefits settlement, with a market value of approximately $171.8 million, on behalf of 77,000 policyholders against Lincoln National Life Insurance Company.
- $218 million jury trial verdict as lead trial counsel on behalf of class of Kansas farmers, followed by a $1.51 billion settlement on behalf of a nationwide class of corn growers, grain-handling facilities and ethanol plants against biotech giant Syngenta related to its marketing and launch of genetically modified corn seed.
- $1.5 billion settlement in a nationwide class action stemming from credit reporting firm Equifax's massive 2017 data breach.
- $500 million, plus additional benefits, for victims of the T-Mobile data breach.
- $220 million settlement for all Missouri residents who purchased the prescription pain reliever Vioxx before it was removed from the market.
- $190 million, plus additional benefits, for victims of the Capitol One data breach.
- $95 million, plus additional benefits, in settlements for U.S. dairy farmers regarding allegedly defective robotic milkers.
- $90 million settlement in a nationwide class action lawsuit against USAA Life Insurance Company over alleged life insurance policy overcharges.
- $75 million settlement in relief for purchasers of Hyundai vehicles for Hyundai's overstatement of horsepower in vehicles.
- $73 million settlement on behalf of a class of bank employees improperly classified under the Fair Labor Standards Act.
- $59.75 million settlement on behalf of life insurance policyholders against John Hancock Life Insurance Company (U.S.A.).
- $53.5 million in settlements between a class of direct purchasers of automotive lighting products and manufacturers accused of participating in a wide-ranging price fixing scheme.
- $44.5 million settlement to resolve a class action accusing U.S. Bank of facilitating the theft of customer funds at now-bankrupt futures merchant Peregrine Financial Group Inc.
- $44 million in restitution and $7.9 million in cash settlement for dentists against Align Technology, Inc. in a nationwide deceptive trade practices case.
- $39.5 million in settlements from three refiners on behalf of adjacent homeowners who were living above a large plume of gasoline leaked from the refineries and connecting pipelines.
- $35 million settlement for consumer fraud and antitrust claims brought on behalf of retail customers of pre-filled propane tanks.
- $34.3 million jury verdict on behalf of 24,000 State Farm Life Insurance Co. policyholders who were overcharged for life insurance policies.
- $33 million settlement for Mitsubishi and Chrysler owners related to defective wheel rims.

- $33 million settlement in nationwide class action alleging price fixing for certain polyurethanes in Urethanes antitrust case.
- $29 million in settlements against Experian, one of the “big three” credit reporting agencies, arising out of Experian’s reporting of delinquent loan accounts.
- $29.5 million in settlements for overdraft fees charged to customers from UMB Bank, Bank of Oklahoma and Intrust Bank.
- $25.4 million settlement for purchasers of H&R Block’s Express IRA product related to allegedly false representations made during the sales presentation.

CLASS AND COLLECTIVE ACTIONS

Since opening its doors in 2001, Stueve Siegel Hanson has obtained substantial results in a wide range of complex commercial, class, and collective actions while serving as lead or co-lead counsel.

Over the past decade, verdicts and settlements include:

Antitrust

- Obtaining $53 million in settlements between a class of direct purchasers of automotive lighting products and several manufacturers accused of participating in a wide-ranging price fixing scheme.
- Obtaining a $25 million settlement in a nationwide antitrust class action regarding price fixing of aftermarket automotive sheet metal parts.
- Obtaining a $7.25 billion settlement in a massive price-fixing case brought by a class of U.S. merchants against Visa, Mastercard and their member banks.
- Obtaining $33 million in nationwide class action alleging price fixing for certain polyurethanes in Urethanes antitrust case.
- Obtaining a $25 million settlement in a class action lawsuit that alleged Blue Rhino and certain competitors conspired to reduce the amount of propane gas in cylinders sold to customers. The firm obtained a $10 million settlement in a related suit against AmeriGas.

Catastrophic Injury

- Obtaining $39.5 million in settlements from three refiners on behalf of adjacent homeowners who were living above a large plume of gasoline leaked from the refineries and connecting pipelines.

Commercial Litigation

- Obtaining a $1.51 billion settlement – the largest agribusiness settlement in U.S. history – for U.S. corn growers, grain handling facilities and ethanol production plants that purchased corn seeds prematurely sold by Syngenta.
- Obtaining a $218 million jury verdict for a class of Kansas corn producers who purchased corn seeds prematurely sold by Syngenta.
- Obtaining a $55 million settlement for U.S. dairy farmers who purchased the Classic model of the voluntary milking system (VMS) manufactured and sold by DeLaval Inc.
- Obtaining a $56 million settlement on behalf of a class of government entities against Trinity Industries and its manufacturing arm, Trinity Highway Products, to remove and replace the companies' 4-inch ET Plus guardrail end terminals on Missouri roads.
- Obtaining more than $44 million in restitution and $7.9 million in cash for dentists against Align Technology, Inc. in a nationwide deceptive trade practices case.

Consumer Class Action

- Obtaining two settlements totaling $29 million to resolve consumer class action claims against Experian, one of the "big three" credit reporting agencies, arising out of the company's reporting of delinquent loan accounts.
- Obtaining up to $220 million in damages for all Missouri residents who purchased the prescription pain reliever Vioxx before it was removed from the market.
- Obtaining more than $75 million in relief for purchasers of Hyundai vehicles for Hyundai's overstatement of horsepower in vehicles.
- Obtaining $29.5 million in settlements for overdraft fees charged to customers from UMB Bank, Bank of Oklahoma and Intrust Bank.
- Obtaining $19.4 million for purchasers of H&R Block's Express IRA product related to allegedly false representations made during the sales presentation.

Cost of Insurance

- Obtaining a $2.25 billion death benefit settlement in a class action lawsuit against The Lincoln National Life Insurance Company over alleged life insurance policy overcharges.
- Obtaining a $90 million settlement in a class action against USAA Life Insurance Company over alleged life insurance policy overcharges.
- Obtaining a $59.75 million settlement in a nationwide class action lawsuit against John Hancock Life InsuranceCompany (U.S.A.) over alleged life insurance policy overcharges.
- Obtaining a $34 million jury verdict in a class action trial against State Farm Insurance regarding alleged life insurance policy overcharges.

Data Privacy

- Obtaining a historic $1.5 billion settlement in a nationwide class action stemming from credit reporting firm Equifax's massive 2017 data breach.
- Obtaining $500 million, plus additional benefits, for victims of the T-Mobile data breach.
- Obtaining a $115 million settlement (at the time, the largest data breach settlement in U.S. history) resulting from a 2015 data breach affecting Anthem, Inc., one of the nation's largest for-profit managed health care companies.
- Obtaining a $10 million settlement in a class action resulting from a data breach at Target Corp.
- Obtaining a $3.25 million settlement in a class action stemming from a data breach at the National Board of Examiners in Optometry.
- Obtaining a $2.3 million settlement in a class action stemming from a data breach at global technology company Citrix's internal network.
- Obtaining a $3.25 million settlement in data privacy litigation on behalf of more than 61,000 optometrists whose personal information was compromised by the national optometry board.

Wage and Hour

- Obtaining a $73 million settlement on behalf of current and former Bank of America retail banking and call center employees who alleged violations of the Fair Labor Standards Act.
- Obtaining a $27.5 million settlement for a class of loan originators who were misclassified as exempt and denied overtime.
- Obtaining a $25 million settlement for a class of mortgage consultants for unpaid overtime as lead counsel in multidistrict litigation.
- Obtaining a $24 million settlement to resolve a collective arbitration and more than 50 federal mass actions involving misclassified satellite technicians denied overtime and minimum wages.
- Obtaining a $14.5 million settlement for a class of inventory associates for unpaid overtime.
- Obtaining a $12.5 million settlement for multiple classes and collective of pizza delivery drivers alleging vehicle expenses reduced their wages below the minimum wage.
- Obtaining a $12.5 million settlement for classes of workers at two MGM casinos for tip credit violations.
- Obtaining a $10.5 million settlement for a class of bank employees for misclassification as being exempt from overtime.
- Obtaining a $9.8 million settlement for collectives of workers at three Rush Street Gaming casinos for tip credit and wage deduction violations.
- Obtaining a $8.5 million settlement for a collective of employees in the hospitality industry for unpaid minimum wages.
- Obtaining a $7.7 million settlement for a class of loan account servicers misclassified as exempt and denied overtime.
- Obtaining a $7.5 million settlement for class of loan processors in multidistrict litigation.
- Obtaining $6 million settlement for a class of workers at Wind Creek Casino for tip credit and wage deduction violations.
- Obtaining numerous settlements for $5 million or less for classes and collective seeking unpaid overtime and minimum wages.

CONSUMER CLASS ACTIONS

Stueve Siegel Hanson devotes a significant portion of its practice to representing consumers across the country in large class and collective actions.

Representative cases include:

- *Smith v. Experian Information Solutions*, Case No. 8:17-cv-00629, United States District Court for the Central District of California (class action lawsuit alleging violations of the Fair Credit Reporting Act; class settlement of $5 million approved in November 2020).
- *Reyes v. Experian Information Solutions*, Case No. 8:16-cv-563-AG-AFMx, United States District Court for the Central District of California (class action lawsuit alleging violations of the Fair Credit Reporting Act; class settlement of $24 million approved in July 2020).
- *Spegele v. USAA Life Insurance Co.*, Case No. 5:17-cv-967-OLG, United States District Court for the Western District of Texas (class action alleging life insurance policy overcharges, class settlement of $90 million approved in August 2021).
- *Vogt v. State Farm Life Insurance Co.*, Case No. 16:4170-CV-C-NKL, United States District Court for the Western District of Missouri (class action for life insurance policy overcharges; $34 million jury verdict affirmed by the Eighth Circuit Court of Appeals in June 2020).
- *Larson v. John Hancock Life Ins. Co.*, Case No. RG16813803, Superior Court for Alameda County, California (class action alleging life insurance policy overcharges; class settlement of $59.75 million approved in May 2018).
- *Bezich v. Lincoln National Life Insurance Co.,* Case No. 1:09-CV-200-JVB, United States District Court for the Northern District of Indiana (class action alleging life insurance policy overcharges; settlement terms include $2.25 billion in death benefits, with a market value of approximately$171.8 million; settlement approved in February 2016).
- *Plubell v. Merck & Co.*, Case No. 04-CV-235817, Circuit Court of Jackson County, Missouri at Independence (consumer fraud class action alleging unlawful and unfair business practices under the Missouri Merchandising Practices Act; up to $220 million settlement approved in March 2013).
- *In re: Underfilled Propane Tank Litigation*, Case No. 4:09-md-02086-GAF, United States District Court for the Western District of Missouri (MDL consumer protection case alleging Ferrellgas and AmeriGas conspired to reduce the fill levels of retail propane tanks; $35 million in settlements approved in 2012).
- *Molina et al. v. Intrust Bank, N.A.*, Case No. 10-CV-3686, in the Eighteenth Judicial District, District Court, Sedgwick County, Kansas (case based on Intrust Bank's alleged unfair and deceptive overdraft fee practices; $2.75 million settlement obtained in January 2012).
- *Eaton, et. al v. Bank of Oklahoma, N.A.*, Case No. CJ-2010-05209, in the District Court in and For Tulsa County State of Oklahoma (case based on Bank of Oklahoma's alleged unfair and deceptive overdraft fee practices; $19 million settlement obtained in November 2011).
- *Allen et al. v. UMB Bank, N.A.*, Case No. 1016-CV34791, in the Circuit Court of Jackson County, Missouri at Kansas City (case based on UMB's alleged unfair and deceptive overdraft fee practices; $7.8 million settlement in May 2011).
- *Hyundai Horsepower Litigation*, Case No. 02CC00303, Superior Court for Orange County, California (consumer claims alleging Hyundai overstated horsepower ratings in more than 1 million vehicles sold in the United States over a 10 year period; settlement approved in May 2010 valued at between $75 million and $125 million).

CONSUMER CLASS ACTIONS

- *In Re: H&R Block, Inc. Express IRA Marketing Litigation*, Case No. 4:06-md01786-RED, United States District Court for the Western District of Missouri (consumer protection case alleging H&R Block improperly marketed and sold its Express IRA product; $19.4 million class settlement approved May 2010).
- *Parkinson v. Hyundai Motor America*, Case No. 8:06-cv-345-AHS, United States District Court for the Central District of California (consumer protection case alleging Hyundai knowingly sold vehicles with defective flywheel systems; class settlement for reimbursement of repair expenses approved in April 2010).

UNIVERSAL LIFE INSURANCE OVERCHARGE LITIGATION

Stueve Siegel Hanson has been litigating cases involving universal life insurance for more than 10 years. These policies are often sold as a combination solution for death benefit protection and investment growth.

Some life insurance companies have been overcharging policy owners for the cost of insurance and expenses. As a result, money that should be building up for the policy owner's benefit is going instead to the insurance company's coffers. Worse, for many policy owners, overcharges or rate increases have made policies simply unaffordable — exactly when they are needed the most.

This puts policy owners in a tough spot:

- Do they continue to pay overcharges and premiums just to maintain their life insurance?
- Do they give up their policies after they've paid so much into them?
- Can they still get life insurance?

Stueve Siegel Hanson advocates for policy owners nationwide. We have recovered more than $2 billion in cash and death benefits for policy owners. Recent experience includes obtaining:

- A $90 million settlement with USAA Life on behalf of policy owners in a nationwide class action alleging that USAA Life overcharged policy owners by including undisclosed expenses and profits in its cost of insurance charge in violation of the insurance policies.
- A $34 million jury verdict against State Farm on behalf of Missouri policy owners alleging the insurer improperly included non-mortality factors in calculating the cost of insurance charge under the insurance contract.
- A $59 million settlement with John Hancock on behalf of policy owners in a nationwide class action alleging that John Hancock overcharged policy owners by including expenses in its cost of insurance charge in violation of the insurance contract.
- A settlement for $2.25 billion in potential death benefits with Lincoln National Life on behalf of policy owners who purchased a variable universal life insurance policy and alleged the insurer overcharged them for the cost of insurance in violation of the policy.

AWARDS AND RECOGNITION

We are proud to have been recognized by local, regional and national publications for our work and results.

Representative Rankings:

- Titans of the Plaintiffs Bar
- Food & Beverage: Practice Group of the Year | MVP of the Year
- Cybersecurity & Privacy: Practice Group of the Year | MVP of the Year | Rising Stars

- Ranked Band 1 in Missouri: Litigation - Mainly Plaintiffs | Department
- Ranked Band 2 in Missouri: Labor & Employment - Mainly Plaintiffs | Department
- Ranked Band 1 in Missouri: Litigation - Mainly Plaintiffs | Norman Siegel and Patrick Stueve

- Elite Trial Lawyers Finalist: Business Torts | Financial Products | Privacy/Data Breach
- Top 100 Jury Verdicts of 2017, No. 10 Verdict in the U.S.

- 2022 Lawyer of the Year:
  - George Hanson | Employment
  - Steve Six | Appellate
  - Patrick Stueve | Antitrust Litigation
- 2020 Lawyer of the Year:
  - Norman Siegel | Mass Tort & Class Actions

Regional Rankings: Kansas City-Mo.

- Tier 1 in Antitrust | Appellate | Bet-the-Company Litigation | Commercial Litigation | Employment Law- Individuals | Mass Tort & Class Actions-Plaintiffs
- Tier 2 in Litigation-Labor & Employment | Litigation-Securities | Personal Injury Litigation-Plaintiffs

National Ranking:

- Tier 3 in Mass Tort Litigation / Class Actions-Plaintiffs

JUDICIAL PRAISE

"I've always been impressed with the professionalism and the quality of work that has been done in this case by both the plaintiffs and the defendants. On more than one occasion, it has made it difficult for the Court because the work has been so good."

Hon. Nanette Laughrey
U.S. District Court for the Western District of Missouri
Nobles, et al., v. State Farm Mutual Automobile Insurance Co.

"The complex and difficult nature of this litigation, which spanned across multiple jurisdictions and which involved multiple types of plaintiffs and claims, required a great deal of skill from plaintiffs' counsel, including because they were opposed by excellent attorneys retained by Syngenta. That high standard was met in this case, as the Court finds that the most prominent and productive plaintiffs' counsel in this litigation were very experienced had very good reputations, were excellent attorneys, and performed excellent work. In appointing lead counsel, the various courts made sure that plaintiffs would have the very best representation…

In this Court's view, the work performed by plaintiffs' counsel was consistently excellent, as evidenced at least in part by plaintiffs' significant victories with respect to dispositive motion practice, class certification, and trial."

Hon. John Lungstrum
U.S. District Court for the District of Kansas
In Re: Syngenta AG MIR 162 Corn Litigation

"The most compelling evidence of the qualifications and dedication of proposed class counsel is their work in this case. Considering how far this action has come despite a grant of summary judgment in Defendant's favor and a reversal on appeal, proposed class counsel have made a strong showing of their commitment to helping the class vigorously prosecute this case."

Hon. Andrew J. Guilford
U.S. District Court for the Central District of California
Reyes v. Experian

"I believe this was an extremely difficult case. I also believe that it was an extremely hard fought case, but I don't mean hard fought in any negative sense. I think that counsel for both sides of the case did an excellent job…

I congratulate the plaintiffs and I also congratulate the defense lawyers on the very, very fine job that both sides did in a case that did indeed pose novel and difficult issues."

Hon. Audrey G. Fleissig
U.S. District Court for the Eastern District of Missouri
William Perrin, et al., v. Papa John's International, Inc.

"The experience, reputation and ability of class counsel is outstanding."

Hon. Michael Manners
Circuit Court of Jackson County, Missouri
Berry v. Volkswagen Grp. of Am., Inc.

NORMAN E. SIEGEL
PARTNER

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Norman E. Siegel litigates high-stakes cases for companies and individuals. He has earned a reputation locally and nationally for his ability to strategize, negotiate and deliver results. He has been named a "Lawyer of the Year" by *Best Lawyers* and a "Titan of the Plaintiff's Bar" by *Law360* for his work in class action litigation following big wins against some of the largest corporations in America.

Norm has successfully tried to verdict a wide range of cases, obtaining several multimillion-dollar jury verdicts, and has obtained billions in settlements for his clients.

He concentrates his practice in three principal areas:

Business Litigation. Norm successfully deploys the firm's contingency fee business litigation model in bet-the-company and "David vs. Goliath" matters involving intellectual property, breach of contract, fraud, misrepresentation and more. In one such matter, he prosecuted a groundbreaking antitrust case on behalf of Heartland Surgical Specialty Hospital, which claimed the region's dominant hospital systems conspired to prevent it from obtaining in-network provider contracts. After Norm secured a key admission from a defense witness, Heartland settled with all defendants.

Data Breach and Privacy. Named among *Law360* Cybersecurity and Privacy "MVPs of the Year," Norm has served as lead counsel in several of the largest data breach cases litigated to date, including the sprawling multidistrict litigation alleging Equifax compromised the personal information of more than 148 million Americans in a 2017 data breach.

He has prosecuted data breach claims against Capital One, Quest Diagnostics, Target Corp., The Home Depot Inc., Marriott, the Office of Personnel Management, and the National Board of Examiners in Optometry, and co-founded the American Association for Justice's data breach and privacy group.

Class Actions. Norm's recent work includes multimillion-dollar jury verdicts and settlements on behalf of consumers who were overcharged for life insurance policies. In *Vogt v. State Farm Insurance Co.*, Norm delivered the closing argument to the jury that returned a $34 million verdict for Missouri owners of State Farm life insurance.

Norm also served as lead counsel in *Larson v. John Hancock Life Insurance Co.*, a nationwide class action that ultimately settled for $59.75 million just before trial.

BRADLEY T. WILDERS

PARTNER

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Bradley Wilders represents clients in complex commercial litigation, including patent, copyright, antitrust and fraud cases.

Brad is not afraid to take a case to trial if that is what it takes to secure a fair resolution for his clients. In one recent engagement, Brad was a critical part of the team that achieved a $217.7 million judgment on behalf of Kansas farmers against an international corn seed manufacturer. After the trial, the case settled for all U.S. farmers for $1.51 billion, which is the largest agricultural settlement in U.S. history. The litigation stemmed from allegations that the seed manufacturer introduced genetically modified corn seed into the U.S. corn supply before it was approved for import into China; as a result, China stopped buying corn from U.S. farmers, causing lower corn prices and other economic losses. In approving the settlement, the federal district judge described the work undertaken by Brad and other lawyers on the team as “complex and difficult” and that the work they performed was “consistently excellent, as evidenced at least in part by plaintiffs’ significant victories with respect to dispositive motion practice, class certification, and trial.” Brad’s arguments raised critical issues about the biotech industry and its duty to act reasonably when launching new products, resulting in favorable orders that will protect U.S. farmers in the future.

Brad has been appointed by federal judges as co-lead and liaison counsel in complex multidistrict litigation, and has had an important role in the firm’s litigation over allegedly excessive cost of insurance charges by life insurance companies. He successfully argued two appeals to the U.S. Court of Appeals for the Eighth Circuit in support of a $34 million judgment entered on behalf of the firm’s clients, including securing appellate review that resulted in his clients’ receiving several million additional dollars of pre-judgment interest. In 2022, Brad argued three different federal appeals in 24 hours.

Brad especially enjoys representing small businesses and individuals; in his most personally rewarding case, he represented the long-time photographer for the Kansas City Chiefs whose work was used without permission at Arrowhead Stadium. Brad negotiated a satisfactory resolution to all parties.

Prior to joining Stueve Siegel Hanson, Brad clerked for Judge John R. Gibson of the U.S. Court of Appeals for the Eighth Circuit, where he was given the rare opportunity to work on cases in five of the 11 federal appellate courts. He draws upon this experience in his current practice, where he has handled multiple successful appellate cases. Brad then served as an associate at an Am Law 100 international firm in Chicago, where he defended one of the world’s largest computer companies against multiple accusations of patent infringement.

LINDSAY TODD PERKINS

PARTNER

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Lindsay Todd Perkins focuses her practice on legal writing and oral advocacy. Lindsay develops strategies and arguments for briefings to the court; argues key dispositive motions in court hearings; and drafts complaints, memoranda, and appellate briefs.

Lindsay served on the trial team in *Vogt v. State Farm Life Insurance Co.*, a class-action lawsuit in the U.S. District Court for the Western District of Missouri that alleged the insurance company overcharged its policyholders for 23 years. The case resulted in a $34 million verdict after just two hours of jury deliberations. Lindsay prepared the jury instructions and post-trial and appellate briefing.

In another matter, *Larson v. John Hancock Life Insurance Company*, Lindsay drafted the class certification briefing in a case alleging the defendant life insurance company improperly charged its policyholders excessive fees for the cost of insurance. The California state court ultimately certified a nationwide class. The lawsuit settled soon thereafter for $59,750,000.

Lindsay also took primary drafting responsibility for the appeal in a class action matter, *Bezich v. The Lincoln National Life Insurance Co*. She successfully defended the certification of the class of plaintiffs who alleged inappropriate fees and charges on their life insurance policies. The lawsuit was ultimately resolved with a settlement valued at approximately $171.8 million.

Lindsay also focuses a significant portion of her practice on data and privacy litigation, taking a lead role in preparing the pleadings and briefing in cases against Capitol One, Marriott, and the National Board of Examiners in Optometry, among others.

Lindsay honed her legal writing and analysis during two clerkships after law school; she served as a law clerk for Judge Duane Benton of the U.S. Court of Appeals for the Eighth Circuit and Judge Ortrie Smith of the U.S. District Court for the Western District of Missouri. She credits this experience with building her understanding of the inner workings of the court and the most persuasive arguments.

Prior to joining Stueve Siegel Hanson, she practiced commercial and employment litigation at Spencer Fane LLP.

ETHAN M. LANGE
PARTNER

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Ethan Lange represents individuals and businesses in a wide variety of high-stakes cases, including business disputes, nationwide class actions, multidistrict litigation, antitrust lawsuits, patent infringement matters, personal injury cases, civil rights cases and will contests. He has served clients from all walks of life, ranging from Fortune 500 companies to prisoners; regardless of the size of the case or the means of his clients, Ethan works tirelessly to secure the most favorable outcome possible.

Ethan's practice is concentrated in litigation, arbitration and other trial work that includes first-chair federal and state jury trial experience. In addition to his trial exposure, he has handled numerous hearings, depositions, mediations and motions.

In one recent matter, Ethan served on the trial team in Vogt v. State Farm Life Insurance Co., a class-action lawsuit in the U.S. District Court for the Western District of Missouri that alleged the insurance company overcharged its policyholders for 23 years. He picked the jury, cross-examined the key expert witness, and assisted with jury arguments.

The case resulted in a substantial verdict after just two hours of jury deliberations. The verdict has since been affirmed on appeal. In other recent matters, Ethan, along with his colleagues, successfully briefed class certification motions, resulting in the certification of two different classes with more than 80,000 policyholders in each.

Ethan earned his J.D., magna cum laude, from Baylor Law School graduating in the Top 5 in his class. He began his legal career in the Dallas office of a national trial boutique, Diamond McCarthy, where he was introduced to high-stakes complex litigation. He then served as a law clerk for Judge Ed Kinkeade of the U.S. District Court for the Northern District of Texas. During his clerkship, Ethan was involved in hundreds of different lawsuits, including civil and criminal trials.
Following his clerkship, Ethan practiced at Locke Lord, one of the largest law firms in the country, where he represented clients in jury and bench trials in federal and state courts, as well as arbitration and mediation proceedings. He joined Stueve Siegel Hanson in 2015.

Ethan is a founding board member for the National Board of Complex Litigation Lawyers, a division of the National Board of Trial Advocacy; and currently serves as the president of the Federal Bar Association Chapter for the Districts of Kansas and Western Missouri.

DAVID A. HICKEY
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An engineer by training, David Hickey advises individuals and companies in high-stakes litigation requiring in-depth technical and factual analysis. David leverages his knowledge of financial, scientific, and actuarial practices to develop winning legal strategies. He prides himself on learning every intricacy in each of his cases.

David has successfully litigated complex cases in both state and federal courts around the nation, advocating for clients in areas including:

Antitrust. David helps businesses that have suffered losses from price fixing, monopolization, conspiracy to restrain trade, and more. He represented one of the largest grocery wholesalers in an antitrust matter against the country's largest potato sellers, who were alleged to have fixed the price of fresh and processed potatoes nationwide; he previously represented the same client in an antitrust dispute surrounding a conspiracy to increase the price of eggs under the guise of animal welfare. Stueve Siegel Hanson achieved favorable settlements in both lawsuits.

Cost of Insurance. David works on behalf of consumers who are being improperly overcharged for life insurance policies; he is a part of the Stueve Siegel Hanson team that pursues class action litigation against life insurance companies for unauthorized hidden fees and rate increases. The team's recent accomplishments include a $59.75 million settlement in a class action lawsuit against John Hancock, a $34.3 million jury verdict in a class action lawsuit against State Farm, and a $90 million settlement in a class action lawsuit against USAA Life Insurance Company.

Before joining Stueve Siegel Hanson in 2010, David worked as a summer clerk for Judge David Waxse at the U.S. District Court for the District of Kansas and practiced at another Kansas City law firm.

He volunteers with Legal Aid of Western Missouri's Volunteer Attorney Project, where he represents low-income individuals in civil matters. David is an avid Kansas City sports fan and runs in a wide variety of local road races.

STUEVE SIEGEL HANSON

460 Nichols Road, Suite 200
Kansas City, Missouri 64112
stuevesiegel.com
816.714.7100

EXHIBIT 3

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

DAVID M. ROGOWSKI, ELIZABETH A. BALLY, KATHY BAUER, KIM BOTTE, JOHN E. JAUNICH, THE ESTATE OF EARL L. MCCLURE, RONALD K. PAGE, CHANDRA B. SINGH, JOYCE THOMAS, DAVID TOMS, and WILLIAM T. WHITMAN, Individually and On Behalf Of All Others Similarly Situated, Plaintiffs, vs. STATE FARM LIFE INSURANCE COMPANY and STATE FARM LIFE AND ACCIDENT ASSURANCE COMPANY, Defendant.	Case No. 4:22-cv-00203-RK

DECLARATION OF SCOTT J. WITT

1. My name is Scott J. Witt. I am an actuary and president of Witt Actuarial Services, LLC, a fee-only insurance advisory and actuarial firm. I have been engaged as an expert consultant by the Plaintiffs in the above captioned lawsuit to provide actuarial consulting services in relation to the settlement ("Settlement") entered between Defendants State Farm Life Insurance Company and State Farm Life and Accident Assurance Company (collectively, "State Farm"), and Plaintiffs and the proposed settlement class ("Settlement Class") of owners of State Farm's flexible premium adjustable whole life (or universal life) insurance policies issued on policy Forms 94030/A94030

and 94080/A94080 ("Policies"). I submit this declaration in support of approval of the proposed Settlement.[1]

2. I have reviewed documents, data, and other information, and provided consulting services to class counsel. I have also reviewed data and information relevant to calculating certain monthly charges incurred by the Settlement Class Members on their Policies relative to the development of a plan for the fair and equitable distribution of benefits of the Settlement to the Settlement Class. I have personal, first-hand knowledge of these matters and, if called to testify as a witness, could and would testify competently thereto.

3. I was previously retained as an expert witness on behalf of plaintiffs in several class action lawsuits filed against State Farm concerning its Form 94030 life insurance product, including:

- *Vogt v. State Farm Life Insurance Company*, No. 2:16–cv–04170–NKL, in the Western District of Missouri;
- *Bally v. State Farm Life Insurance Company*, No. 3:18-CV-04954-CRB, in the Northern District of California;
- *Whitman v. State Farm Life Insurance Company*, No. 3:19-CV-06025-BJR, in the Western District of Washington;
- *Jaunich v. State Farm Life Insurance Company*, No. 20-1567 (PAM/BRT), in the District of Minnesota;
- *Page v. State Farm Life Insurance Company*, No. SA-20-CV-617-FB, in the Western District of Texas;
- *McClure v. State Farm Life Insurance Company*, No. CV-20-01389-PHX-SMB, in the District of Arizona;
- *Toms v. State Farm Life Insurance Company*, No. 8:21-CV-00736-KKM-JSS, in the Middle District of Florida; and,
- *Singh v. State Farm Life Insurance Company*, No. 3:21-CV-00190-AC, in the District of Oregon.

Due to my involvement as an expert witness in these cases, I previously have extensively analyzed materials relevant to the Policies and the underlying claims in the above captioned lawsuit.

[1] All capitalized terms herein have the same meanings ascribed to them in the Agreement.

Experience and Qualifications

4. A complete recitation of my prior education and work history is attached hereto as Exhibit A.

5. I am a 1993 graduate of Montana Tech with a B.S. in both mathematics and computer science. I graduated from Oregon State University in 1995 with a M.S. in statistics.

3. Over the last 27 years I have worked extensively with life insurance products, both as an actuary for Northwestern Mutual Life and then as a fee-only insurance advisor. During my 27 years of experience as an actuary, I have obtained comprehensive experience, knowledge, and expertise in many aspects of actuarial science and life insurance, including but not limited to: universal life insurance products; pricing and valuation of life insurance products; pricing and analysis of underlying assumptions used in the development of life insurance products; and analysis of risks associated with life insurance products.

4. In the ten years I spent as an actuary at Northwestern Mutual, I was positioned in several areas directly responsible for development, analysis, and management of life insurance, including whole, universal, variable, and term life products. My time at Northwestern Mutual included work on experience studies, valuation, marketing (or competition), corporate modeling, and life insurance product pricing. Through my various roles I directly participated in: evaluation and analysis of mortality experience and risk; development of mortality rate scales or tables; evaluation and analysis of policy interest rates; evaluation and setting of reserves, and ensuring compliance with statutory regulations regarding reserves; modeling performance of life insurance under changing policy scenarios, assumptions, and features; illustration testing, including lapse-support and self-support testing; and pricing and repricing of life insurance and other products, including the review and analysis of pricing and repricing efforts.

5. I have significant additional experience with life insurance policies as a fee-only (non-commission) insurance advisor, where I am routinely required to offer unbiased, objective advice to clientele as they plan to purchase, or attempt to re-evaluate, permanent life insurance policies. In order to offer such advice, it is often necessary that I deconstruct or reverse-engineer life insurance policies, in particular the cash value components of permanent policies and their underlying rates and charges. Therefore, I have analyzed thousands of different life insurance policies, including universal life insurance policies.

6. I maintain actuarial designations as a Fellow of the Society of Actuaries and a Member of the American Academy of Actuaries. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinions contained herein. I am a Financial Services Affiliate member of the National Association of Personal Financial Advisors. I am licensed to engage in the business of insurance in the state of Wisconsin, and I have completed the Series 65 examination administered by the Financial Industry Regulatory Authority.

7. All of my opinions and conclusions are consistent with my training, experience, education, and judgment as an insurance actuary. All of my opinions and conclusions have been reached to a reasonable degree of certainty using available data and information.

Summary of Settlement Relief

10. I understand that the Plaintiffs' claims include allegations that owners of the Policies issued by State Farm were wrongfully subjected to overcharges in the Cost of Insurance ("COI") Charges that State Farm assessed against the "Account Value" of the Policies. Due to my analysis through several cases involving the Policies (see paragraph 3 above) and my review of materials related to the Settlement, I understand that the Policies are standard form contracts and State Farm performs uniformly under them as to all Settlement Class Members, particularly with

regard to its determination of COI Rates, including its use of profit and expense factors in the COI Rates. Plaintiffs allege State Farm's use of these profit and expense factors beyond those factors identified in the COI provisions of the Policies was unauthorized. Therefore, Plaintiffs alleged State Farm impermissibly caused its monthly charges to be higher than what the Policies permitted. I am aware that State Farm has offered a number of defenses to these claims, including that its conduct was not unlawful per the terms of the Policies.

11. I am aware that in lieu of continuing this lawsuit and several others filed in various jurisdictions concerning COI Charges for the Policies, the parties have agreed to settle, and that under the terms of the Settlement, State Farm will pay the amount of Three-Hundred Twenty-Five Million Dollars ($325,000,000.00) into a Settlement Fund. I understand that, after payment of Settlement Administration Expenses, Class Counsel's Fees and Expenses, and Plaintiffs' Service Awards from the Settlement Fund, the remaining Net Settlement Fund will be distributed to the Settlement Class.

Distribution of the Settlement Fund

12. I have aided and consulted in developing a distribution plan that will fairly and adequately allocate to each Settlement Class member an equitable share of the Net Settlement Fund.

13. Plaintiffs claim improperly inflated COI Charges and excess expense charges ("Expense Charges") deducted through each policy's "Monthly Deduction." It is my opinion, therefore, that a fair and adequate method for distributing the Net Settlement Fund to the Settlement Class is to allocate to each Settlement Class member a share that is proportionate to the Monthly Deductions for the COI Charges and Expense Charges that are the subject matter of Plaintiffs' claims and that were deducted from the Account Values of the Settlement Class

Members. Given my experience in several cases involving the Policies (and my review of policy-level data and numerous documents and testimony relating to the claims and defenses at issue), I understand that, in general, Plaintiffs allege overcharges to their Account Values caused by impermissibly high Monthly Deductions (including COI Charges that Plaintiffs allege are impermissibly inflated with expenses) taken from Account Values. Therefore, it is reasonable for a Settlement Class Member's share of the distribution of the Settlement to be proportionate to the Monthly Deductions for COI and Expense Charges paid by said Settlement Class Member relative to the overall amount of Monthly Deductions for COI and Expense Charges paid by all Settlement Class Members. Further, where Settlement Class Members whose policies remain in force may continue to pay charges going forward at the alleged excess rates, the distribution plan also reasonably provides that the allocation otherwise calculated for those Settlement Class Members will be increased by a factor of 5%.

14. The distribution plan attached hereto as Exhibit B refers to the calculation by which policy owner information and data provided by State Farm is used to determine the total Monthly Deductions for COI and Expense Charges paid per policy. The method, which is consistent with the exercise of actuarial judgment as allowed by Actuarial Standard of Practice #23, fairly and reasonably estimates each Settlement Class Member's proportionate share of the Net Settlement Fund to a reasonable degree of actuarial certainty.

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

Dated: November 21, 2022

Respectfully submitted,

Scott J. Witt

Scott J. Witt

EXHIBIT A

WITT Actuarial Services LLC

6010 Preston Lane | New Berlin, WI 53151 | www.wittactuarialservices.com
p 414.525.8212 | f 414.433.1864 | scottwitt@wittactuarialservices.com

Scott J. Witt, FSA, MAAA

Curriculum Vitae

- I have 27+ years of experience as an actuary in the insurance industry, including 10 working for Northwestern Mutual and 16+ years as a fee-only insurance advisor.
- I maintain the highest actuarial designations, FSA (Fellow of the Society of Actuaries) and MAAA (Member of the American Academy of Actuaries).
- I am a Financial Services Affiliate member of the National Association of Personal Financial Advisors (NAPFA).
- I have an M.S. in Statistics (Oregon State, 1994). I have a B.S. in Mathematics (Montana Tech, 1993) and a B.S. in Computer Science (Montana Tech, 1993).
- I am licensed to engage in the business of insurance in the state of Wisconsin, License Number 2510744.
- I have completed the Series 65 examination administered by FINRA (Financial Industry Regulatory Authority).
- I am a frequent speaker on the topic of life insurance.
- I am quoted frequently in local, regional, and national publications, including the *Wall Street Journal*, *Investment News*, *Investment Advisor*, *San Francisco Chronicle*, *InsWeb*, *Smart Money, Financial Advisor, Dow Jones, Chicago Tribune,* and *BizTimes*, among others.
- Here are the articles that I have had published in the last 10 years:
    - A Critical Review of Indexed Universal Life, *The Insurance Forum*, April 2020
- Here are the newsletters over the last 10 years that I have distributed:
    - Cash Value Policyholders: Are You Living in Lake Wobegon?, *At Witt's End*, June 2011
    - Are You Unintentionally Boosting Insurance Company Profits?, *At Witt's End*, September 2013

- When Does Fee-Only Insurance Advice Make Sense?, *At Witt's End*, April 2014

- Complexity and Confusion – Don't Let Them Knock You Out!, *At Witt's End*, May 2014

- Illustration Games: Unrealistic Mortality Rates, website commentary, September 2014

- Illustration Games: Immortality Rates, website commentary, September 2014

- Are Your Clients' Interests Aligned With Those of Their Insurance Company?, website commentary, September 2014

- A Review of Recent Literature on Shadow or Captive Reinsurance Arrangements, website commentary, September 2014

- The Myth of the Hot Shooting Hand Is No Myth After All!, website commentary, September 2015

- Say It Ain't So TIAA, website commentary, August 2019

- Pension Maximization to the Max!, At Witt's End, October 2019

- Additional Indexed Universal Life Commentary - $250 IUL Charity Challenge, website commentary, May 2020

- My website, www.wittactuarialservices.com, also contains numerous issue briefs and articles regarding various insurance-related topics.

- Cases with Expert Testimony:

  - Barbara Larson, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. John Hancock Life Insurance Company, Defendant, Case No. RG16813803, Superior Court for the State of California, County of Alameda. Plaintiff's expert. Case involved dispute over cost of insurance rates with respect to contractual language.

  - Kerin K. Peterson, Petitioner and Scott W. Peterson, Respondent, Case No. 14-FA-567, State of Wisconsin, Circuit Court, Dane County. Respondent's expert. Case involved determining appraisal value for divorce proceedings.

- Michael Vogt, Individually and On Behalf of All Others Similar Situated, Plaintiff, vs. State Farm Life Insurance Company, Defendant, Case No. 2:16-cv-04170-NKL, U.S. District Court, Western District of Missouri, Central Division. Plaintiff's expert. Case involved dispute over cost of insurance rates with respect to contractual language.

- John J. and Bonnie L. Bernadowski v. Ameriprise Financial, Inc., Ameriprise Financial Services, Inc., RiverSource Life Insurance Co., and Daniel S. Henderson, Case No. GD 01-008101, Court of Common Pleas, Allegheny County, Pennsylvania. Plaintiffs' expert. Case involved dispute over a variable annuity.

- Frederick D. Taylor, On Behalf of All Others Similar Situated, Plaintiff, vs. Midland National Life Insurance Company, Defendant, Case No. 4:16- cv-140-SMR-HCA, U.S. District Court, Southern District of Iowa, Central Division. Plaintiff's expert. Case involved dispute over risk rates with respect to contractual language.

- Roy C. Spegele, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. USAA Life Insurance Company, Defendant, Case No. 5:17-CV-967-OLG, U.S. District Court, Western District of Texas, San Antonio Division. Plaintiff's expert. Case involved dispute over cost of insurance rates with respect to contractual language.

- Elizabeth A. Bally, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. State Farm Life Insurance Company, Defendant, Case No. 3:18-cv-04954-CRB, U.S. District Court, Northern District of California, San Francisco Division. Plaintiff's expert. Case involved dispute over cost of insurance rates with respect to contractual language.

- William T. Whitman, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. State Farm Life Insurance Company, Defendant, Case No. 3:19-CV-06025-BJR, U.S. District Court, Western District of Washington, Tacoma Division. Plaintiff's expert. Case involved dispute over cost of insurance rates with respect to contractual language.

- John E. Jaunich, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. State Farm Life Insurance Company, Defendant, Case No. 0:20-CV_01567-PAM-JFD, U.S. District Court, District of Minnesota. Plaintiff's expert. Case involved dispute over cost of insurance rates with respect to contractual language.

- Ronald K. Page, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. State Farm Life Insurance Company, Defendant, Case No. 5:20-CV-00617-FB, U.S. District Court, Western District of Texas, San Antonio Division. Plaintiff's expert. Case involved dispute over cost of insurance rates with respect to contractual language.

- Earl L. McClure, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. State Farm Life Insurance Company, Defendant, Case No. 20-CV-01389-PHX-SMB, U.S. District Court, District of Arizona. Plaintiff's expert. Case involved dispute over cost of insurance rates with respect to contractual language.

- David Toms, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. State Farm Life Insurance Company, Defendant, Case No. 8:21-CV-00736-KKM-JSS, U.S. District Court, Middle District of Florida. Plaintiff's expert. Case involved dispute over cost of insurance rates with respect to contractual language.

- Chandra B. Singh, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. State Farm Life Insurance Company, Defendant, Case No. 3:21-CV-00190-AC, U.S. District Court, District of Oregon. Plaintiff's expert. Case involved dispute over cost of insurance rates with respect to contractual language.

- Christopher Y. Meek, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. Kansas City Life Insurance Company, Defendant, Case No. 4:19-CV-00472-JTM, U.S. District Court, Western District of Missouri, Western Division. Plaintiff's expert. Case involved dispute over cost of insurance rates with respect to contractual language.

- David B. Karr, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. Kansas City Life Insurance Company, Defendant, Case No. 19-CV-26645, In the Circuit Court of Jackson County, Missouri. Plaintiff's expert. Case involved dispute over cost of insurance rates with respect to contractual language.

- J. Gregory Sheldon, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. Kansas City Life Insurance Company, Defendant, Case No. 1916-CV-26689, In the Circuit Court of Jackson County, Missouri. Plaintiff's expert. Case involved dispute over cost of insurance rates with respect to contractual language.

- Compensation

  - Hourly fee of $500 except for sworn testimony (deposition or trial), which is $750 per hour

  - Reimbursement for travel expenses (plus travel time billed customarily at$250 per hour unless other arrangements made)

  - Outcome of case has no bearing on compensation

EXHIBIT B

DISTRIBUTION PLAN

The Distribution Plan is designed to distribute to each Settlement Class Member a share of the Net Settlement Fund proportional to the amount of "Monthly Deductions" for "Cost of Insurance" ("COI") and expense ("Expense") charges paid by each Settlement Class Member, subject to a minimum settlement payment for all Settlement Class Members and multiplication by certain factors as described below.

1. Each Settlement Class Member shall receive a check in an amount equal to:

    a. A minimum settlement relief payment; PLUS

    b. His/her proportionate share of the remaining Net Settlement Fund after deducting all minimum settlement relief payments (the "Remaining Net Settlement Fund").

2. The amount of Settlement Relief payable to each Settlement Class Member on each Policy shall be determined as follows:

    a. Minimum settlement relief payment of $10.00; PLUS,

    b. A proportionate share of the Remaining Net Settlement Fund (after application of the minimum $10.00 settlement relief per Policy) determined from the Monthly Deductions for COI and Expense charges paid on each Policy as identified in Defendant's "Policyholder-Master Record."

        i. In calculating the proportionate share of the Remaining Settlement Fund, the total Monthly Deductions for COI and Expense charges assessed on each Policy (as identified from Defendant's Policyholder-Master Record) shall be adjusted by a Policy Status Factor as follows:

            1. 1.00 for Terminated Policies; and

            2. 1.05 for In-Force Policies, to account for ongoing Monthly Deductions, including COI charges calculated using Defendant's tables of current COI rates;

        ii. The percentage of the aggregate accumulated Monthly Deductions for COI and Expense charges for all Policies attributable to each Settlement Class Member will be calculated by dividing each Settlement Class Member's total accumulated Monthly Deductions for COI and Expense charges (after application of the factors set out in 2.b.i above) by the total accumulated Monthly Deductions for COI and Expense charges for all Policies.

            1. For Policies issued in Missouri and included in the judgment in in *Vogt v. State Farm Life Ins. Co.*, 2:16-CV-04170 (W.D. Mo.), Monthly Deductions for COI and Expense charges occurring prior

to December 2017 are not included in the calculation as those were included in the *Vogt* judgment.

EXHIBIT 4

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

DAVID M. ROGOWSKI, ELIZABETH A. BALLY, KATHY BAUER, KIM BOTTE, JOHN E. JAUNICH, MYLENE MCCLURE *as personal representative of* THE ESTATE OF EARL L. MCCLURE, RONALD K. PAGE, CHANDRA B. SINGH, JOYCE THOMAS, DAVID TOMS, and WILLIAM T. WHITMAN, Individually and On Behalf Of All Others Similarly Situated, Plaintiffs, vs. STATE FARM LIFE INSURANCE COMPANY and STATE FARM LIFE AND ACCIDENT ASSURANCE COMPANY, Defendants.	Case No. 4:22-cv-00203-RK

DECLARATION OF JOHN J. SCHIRGER IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION PURSUANT TO RULE 23(E) FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, John J. Schirger, hereby declare as follows:

1. This declaration is based on my personal knowledge and submitted in support of Plaintiffs' Unopposed Motion Pursuant to Rule 23(e) For Preliminary Approval of Class Action Settlement (the "Motion").

2. I am a founding and named partner in the law firm Miller Schirger LLC, located at 4520 Main Street, Suite 1570, Kansas City, Missouri 64111 ("Miller Schirger"), a civil litigation firm with substantial nationwide experience in complex business and commercial litigation, and

multi-party actions, including class actions. A true and accurate copy of my firm's resume is attached hereto as Exhibit A.

3. Along with co-counsel I am counsel for the named Plaintiffs in the above-captioned case against Defendants State Farm Life Insurance Company and State Farm Life and Accident Assurance Company (collectively "State Farm") and have personally rendered legal services on their behalf. I have also served as co-counsel in nine other class action cases[1] involving alleged monthly "Cost of Insurance" ("COI") overcharges on State Farm's "Form 94030" universal life insurance policies.[2]

4. The services performed by counsel in this case and the Form 94030 cases filed in various jurisdictions against State Farm, including the services performed by Miller Schirger, and the procedural history of this case and the Form 94030 cases, are accurately described in the Motion, and Memorandum in Support, including the Declaration of Norman E. Siegel submitted in support thereof, all of which I have reviewed and incorporate as though fully set forth herein by reference in the interest of brevity.

5. The Miller Schirger attorneys rendering services in this case practice in the area of litigation on a full-time basis and have over 60 years of combined legal experience. We have substantial nationwide experience in complex business and commercial litigation, including multi-

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[1] *Vogt v. State Farm Life Ins. Co.*, No. 2:16-CV-04170-NKL (W.D. Mo.); *Bally v. State Farm Life Ins. Co.*, 3:18-CV-04954-CRB (N.D. Cal.); *Whitman v. State Farm Life Ins. Co.*, 19-CV-06025-BJR (W.D. Wash.); *Page v. State Farm Life Ins. Co.*, 5:20-CV-00945-FB (W.D. Tex.); *McClure v. State Farm Life Ins. Co.*, No. CV-20-01389-PHX-SMB (D. Ariz.); *Singh v. State Farm Life Ins. Co.*, No. 3:21-CV-00190-AR (D. Ore.); *Toms v. State Farm Life Ins. Co.*, No. 8:21-CV-00736-KKM-JSS (M.D. Fla.); *Bauer v. State Farm Life Ins. Co.*, No. 1:21-CV-00464-SDG (N.D. Ga.); *Botte v. State Farm Life Ins. Co.*, No. 2:22-cv-02842-JMA-JMW (E.D.N.Y.).

[2] "Form 94030" includes State Farm universal life insurance policy forms bearing the policy form numbers 94030 (or A94030) and 94080.

party and class action litigation involving a wide range of contract, tort, and consumer fraud violations, and are currently prosecuting numerous class action lawsuits across the country.

a. John J. Schirger

I obtained a B.A. from the University of Notre Dame in 1988, and a J.D. from Creighton University School of Law in 1992. I am currently admitted and licensed to practice in the states of Missouri and Nebraska (inactive), as well as before numerous federal district and appellate courts and the Supreme Court of the United States.

I began my legal career at McGrath, North, Mullin & Kratz, PC LLO, a large regional law firm located in Omaha, Nebraska, where I was elected partner after four years of practice. After 12 years of private practice, I spent approximately three years as in-house counsel in the insurance industry, including approximately two years as a senior legal officer for a Fortune 500 life and health insurance company. I returned to private practice in 2008, when I became a founding and named partner in Miller Schirger. I have been recognized by *Best Lawyers* – Commercial Litigation, named a "Top 100 Missouri & Kansas Super Lawyer" by Missouri and Kansas Super Lawyers, "Best of the Bar" by the Kansas City Business Journal, a member of the "Power 30 – Commercial and Consumer Litigation" by Missouri Lawyers Media, and have been "AV" rated by Martindale-Hubbell for 25 years.

Throughout my career, I have represented clients ranging from individuals to Fortune 500 companies in various complex business and commercial matters, including class actions and other multi-party actions, in state and federal courts across the United States. In addition, my 30 years of experience includes representing clients, both individuals and insurers, in a wide variety of litigation and regulatory matters within the

insurance area in both the life/health and property/casualty industries. My substantial insurance experience includes:

- Drafting and revising the following types of insurance policies: term life; whole life; universal life; variable universal life; disability; long-term-care; and Medicare supplement.
- Negotiating with state insurance regulators regarding issues related to, among others, policy approval, agency issues, and financial capital and reserve requirements.
- Representing and advising plaintiffs and defendants in a wide variety of litigation matters including class actions.
- Analyzing and advising clients on: cost of insurance charges; general policy charges; underwriting; policy guarantees; and policy pricing with respect to universal life and/or variable universal life policies.
- Analyzing and advising clients on various premium financing issues, and third-party owned life insurance arrangements.
- Representing plaintiffs in cost of insurance class actions brought in a number of state and federal courts throughout the United States.

b. Matthew W. Lytle

Matt obtained a B.A. from Creighton University in 1996, and a J.D. from Creighton University School of Law (magna cum laude) in 2004. He is currently admitted and licensed to practice in the states of Missouri and Nebraska (inactive), as well as before numerous federal district and appellate courts.

Matt began his legal career at McGrath, North, Mullin & Kratz, PC LLO, a large regional law firm located in Omaha, Nebraska. Matt then spent approximately three years practicing at Shughart Thomson & Kilroy and Bryan Cave LLP, large national and international law firms in Kansas City, Missouri. In 2009, Matt left Bryan Cave LLP to join Miller Schirger, and was named a partner in the firm in 2013.

Throughout his career, Matt has represented clients ranging from individuals to Fortune 500 companies in various complex business and commercial matters, including class actions and other multi-party actions, in state and federal courts across the United States. Matt has significant experience representing plaintiffs in class action lawsuits brought in a number of state and federal courts throughout the United States.

Matt has been named a "Super Lawyer" by Missouri and Kansas Super Lawyers and was also named to the 2012 BTI Client Service All- Stars, a select group of only 272 lawyers nationwide chosen solely on unprompted, unequivocal recommendations by corporate counsel for their understanding of business issues, innovative approaches to legal services, and commitment to client needs.

c. Joseph M. Feierabend

Joe obtained his B.B.A. from the University of Notre Dame in 2005, with a major in accounting, and his J.D. from the University of Missouri School of Law in 2008. He is currently admitted and licensed to practice in the State of Missouri, as well as before the United States District Courts for the Western District of Missouri, the District of Colorado, and the District of Kansas.

In 2010, Joe joined Miller Schirger as an associate and was named a partner in the firm in 2018. Joe focuses his practice in the areas of insurance, business, banking and securities litigation, and his experience includes complex business and commercial matters and disputes involving insurance coverage and bad faith claims. Joe has significant experience representing plaintiffs in cost of insurance class actions brought in state and federal courts throughout the United States. Joe has been selected as a "Rising Star" by Missouri and Kansas Super Lawyers.

6. Miller Schirger, and specifically the attorneys identified above, have significant experience handling class action cases directly involving insurance policies generally, and COI overcharge class actions in particular. In 2016, Miller Schirger, along with co-counsel Stueve Siegel Hanson LLP, secured a class action settlement on behalf of approximately 77,000 life insurance policy owners against The Lincoln National Life Insurance Company. The settlement provided additional death benefits to the class valued at approximately $2.25 billion, and a market value of approximately $171.8 million. *See Bezich v. The Lincoln Nat. Life Ins. Co.*, No. 02C01-0906-PL-73 (Allen Co, IN). The claims in *Bezich* focused on COI overcharges on variable universal life insurance policies, similar to the claims pled in this case. In 2018, Miller Schirger and Stueve Siegel Hanson, with other co-counsel, obtained certification of another nationwide class of life insurance policy owners asserting similar COI overcharge claims on life insurance policies, and, thereafter, secured a $59.75 million settlement on behalf of the class. *See Larson v. John Hancock Life Ins. Co.*, Case No. RG16813803 (Superior Court of California, County of Alameda).

7. In June 2018, the Miller Schirger attorneys responsible for rendering services in this case were on the team of attorneys that tried a class case on behalf of approximately 24,000

Missouri life insurance policy owners in the United States District Court for the Western District of Missouri, which resulted in a jury verdict of $34.3 million on behalf of the class. *See Vogt v. State Farm Life Insurance Co.*, No. 2:16-cv-04170-NKL (W.D. Mo.). The claims in *Vogt* focused on COI overcharges in universal life insurance policies, and the verdict was affirmed by the United States Court of Appeals for the Eighth Circuit. *See Vogt*, 963 F.3d 753 (8th Cir. 2020).

8. And, in September 2020, Miller Schirger and Stueve Siegel Hanson, with other co-counsel, obtained certification of a nationwide class of approximately 85,000 life insurance policy owners asserting claims for COI overcharges on their policies in *Spegele v. USAA Life Ins. Co.*, No. 5:17-CV-967-OLD (W.D. Tex. Sept. 23, 2020). Thereafter, Miller Schirger, along with co-counsel, secured a $90 million settlement on behalf of a settlement class. *Id.* at Doc. 116 (Aug. 26, 2021) (Order and Final Judgment Granting Final Approval of Class Action Settlement). Miller Schirger, along with co-counsel, was appointed class counsel in each of the cases identified above.

9. Miller Schirger (together with Stueve Siegel Hanson) is also simultaneously prosecuting similar life insurance COI overcharge cases against the following insurance companies: Connecticut General Life Insurance Company; Lincoln National Life Insurance Company; Kansas City Life Insurance Company; Symetra Life Insurance Company; and Genworth Life & Annuity Insurance Company.

10. As demonstrated above, and by the representative cases in Miller Schirger's firm resume (Exhibit A), I and my firm have a history of obtaining significant relief for class members.

Settlement Negotiations

11. The Parties participated in three separate, full-day mediation sessions on June 21, 2022, August 10, 2022, and September 27, 2022, with the assistance of two highly-respected, experienced, neutral mediators. During the first two sessions, the Parties mediated with the

Honorable Robert Bonner, retired U.S. District Judge. At the third session, the Parties mediated with the Honorable Layn Phillips, retired U.S. District Judge. During the October 27, 2022, session, the Parties were successful in reaching agreement on the material terms of the Settlement Agreement now submitted for approval. Prior to these mediation sessions, State Farm had never offered to settle the litigation, even in part, on a class-wide basis.

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

The Settlement Is Fair, Reasonable, and Adequate

13. The proposed Settlement Class includes the persons or entities who own or owned one or more of approximately 760,000 policies issued or administered by State Farm or its predecessors in interest on Form 94030 as identified on the Class List.[3]

14. Based on my experience and knowledge of the litigation, as well as my experience in similar litigation against other life insurers, I can represent without equivocation

[3] The Settlement Class excludes State Farm; any entity in which State Farm has a controlling interest; any of the officers or board of directors of State Farm and their immediate family; the legal representatives, heirs, successors, and assigns of State Farm; anyone employed with Plaintiffs' counsel's firms; and any Judge to whom this case is assigned, and his or her immediate family.

that this Settlement is fair, reasonable, and adequate. The Settlement requires State Farm to fund a cash Settlement Fund in the amount of $325,000,000, which will be used to pay (1) all payments to Settlement Class members; (2) fees and expenses incurred in providing Class Notice and administering the Settlement including those fees and expenses incurred by the Settlement Administrator; (3) any Service Awards to the Plaintiffs awarded by the Court (up to $25,000 each); and (4) any attorneys' fees and expenses awarded by the Court (up to one-third of the Settlement Fund for fees and up to $1,500,000 for expenses).

15. As set forth in the extensive litigation history above, Plaintiffs engaged an actuary, Scott Witt, to develop a methodology to calculate the damages resulting from State Farm's use of profit and expense factors to determine COI Rates. Mr. Witt testified as to this methodology at trial in *Vogt*, and the jury accepted his calculations. Thereafter, in the cases against State Farm proceeding in other states, courts have repeatedly found Mr. Witt's methodology reliable and have found it fits Plaintiffs' theory of liability. In essence, that methodology compares the COI Rates State Farm actually used to assess COI Charges with rates State Farm determined using only the mortality factors listed in the Policies to identify overcharges to the policy owners. Applying these principles to the Settlement, Mr. Witt will determine the amount of Monthly Deductions for COI Charges and Expenses Charges actually paid by each Settlement Class Member to determine their proportional share of the Net Settlement Fund. Because the alleged overcharges in Settlement Class members' Monthly Deductions are substantially similar across the Settlement Class, the alleged damages for each Settlement Class Member are largely proportional to the amount of Monthly Deductions for COI Charges and Expense Charges they each paid.

16. Plaintiffs' distribution plan is designed to distribute to each Settlement Class Member their proportional share of the Net Settlement Fund, subject to a minimum payment of $10. In addition, because Settlement Class members who were a part of the *Vogt* class have already received a share of that judgment, their settlement share will be calculated using charges deducted after the cutoff date for the calculation of damages in the *Vogt* judgment. In my opinion, the proposed plan for allocating the Net Settlement Fund to the Settlement Class members is fair and treats Settlement Class members equitably relative to each other, supporting approval of the Settlement.

17. Furthermore, Settlement Class members are not required to submit a claim or otherwise perform any steps to receive this relief. Settlement checks will be issued upon final approval of the Settlement. This simplified process for paying each Settlement Class Member and the fact that no funds will revert to State Farm supports approval of the Settlement.

18. Moreover, given the uncertainties that the litigation presents, including but not limited to: the potential for adverse liability rulings in one or more of the pending cases, including by the Ninth Circuit Court of Appeals and on the issue of the statute of limitations, and the chance a jury could reject Mr. Witt's damages methodology in whole or in part; the avoidance of these risks in favor of settlement is, in my opinion, a significant and meaningful result for the Settlement Class, and supports a finding that it is fair, reasonable and adequate.

19. In addition, even if Plaintiffs were to overcome all of State Farm's defenses through trial, there would be lengthy appeals. For example, following the favorable jury verdict we obtained in June 2018 in favor of Missouri policy owners in the *Vogt* case, those policy owners did not receive their damages and interest awards until nearly four years later due to the delay of appeals and State Farm's petition for certiorari. Avoiding such delay by settling now is

unquestionably in the best interests of the Settlement Class, and further supports a finding that the Settlement is fair, reasonable and adequate.

20. Plaintiffs David M. Rogowski, Elizabeth A. Bally, Kathy Bauer, Kim Botte, John E. Jaunich, Mylene McClure as the personal representative of the Estate of Earl L. McClure, Ronald K. Page, Chandra B. Singh, Joyce Thomas, David Toms, and William T. Whitman, as the class representatives, each likewise support the proposed Settlement and consider it to be in the best interests of the Settlement Class.

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

Executed this 22nd day of November, 2022.

/s/ John J. Schirger
John J. Schirger

EXHIBIT A

Miller | Schirger LLC

Nationwide representation of plaintiffs and defendants

in complex legal disputes.

4520 Main Street
Suite 1570
Kansas City, MO 64111
816.561.6500
www.millerschirger.com

FIRM OVERVIEW

Miller Schirger is a Kansas City, Missouri-based law firm focused on resolving complex disputes on behalf of businesses and individuals nationwide. Information regarding the firm, the scope of its practice, and its honors is available at www.millerschirger.com. Below is a partial listing of the firm's experience in plaintiff-side class actions. The firm has also obtained significant results in a wide range of lawsuits representing individual plaintiffs and defendants.

CLASS ACTIONS

- Appointed and currently serving as class counsel to a certified class of Arizona life insurance policy owners in a class action against State Farm asserting claims for, among other things, breach of contract resulting in alleged life insurance policy overcharges, including "cost of insurance" overcharges. *McClure v. State Farm Life Ins. Co.*, Case No. CV-20-01389, (USDC, Arizona).

- Appointed and currently serving as class counsel to a certified class of Minnesota life insurance policy owners in a class action against State Farm asserting claims for, among other things, breach of contract resulting in alleged life insurance policy overcharges, including "cost of insurance" overcharges. *Jaunich v. State Farm Life Ins. Co.*, Case No. 20-1567 (USDC, Minnesota).

- Appointed and currently serving as class counsel to a certified class of Missouri life insurance policy owners in a class action against Kansas City Life Insurance Company asserting claims for breach of contract resulting in alleged policy overcharges. *Sheldon v. Kansas City Life Ins. Co.*, Case No. 1916-CV26689 (16th Jud. Cir., Jackson Cty., Mo.).

- Appointed and currently serving as class counsel to a certified class of Kansas life insurance policy owners in a class action against Kansas City Life Insurance Company asserting claims for breach of contract resulting in alleged policy overcharges. *Meek v. Kansas City Life Ins. Co.*, Case No. 4:19-CV-472 (W.D. Mo.).

- Appointed and currently serving as class counsel to a certified class of Missouri life insurance policy owners in a class action against Kansas City Life Insurance Company asserting claims for breach of contract resulting in alleged policy overcharges. *Karr v. Kansas City Life Ins. Co.*, Case No. 1916-CV26645 (16th Jud. Cir., Jackson Cty., Mo.).

- Appointed and currently serving as class counsel to a certified class of California life insurance policy owners in a class action against State Farm asserting claims for, among other things, breach of contract resulting in alleged life insurance policy overcharges, including "cost of insurance" overcharges. *Bally v. State Farm Life Ins. Co.*, 335 F.R.D. 288 (N.D. Cal. 2020).

- Appointed and currently serving as class counsel to a certified class of Washington life insurance policy owners in a class action against State Farm asserting claims for, among other things, breach of contract resulting in alleged life insurance policy overcharges, including "cost of insurance" overcharges. *Whitman v. State Farm Life Ins. Co.*, 2021 WL4264271 (W.D. Wash. Sept. 20, 2021).

- After two hours of deliberations, on June 6, 2018, a federal jury in Missouri awarded $34.3 million to State Farm policyholders in a class action trial. The class action was brought on behalf of approximately 24,000 current and former owners of universal life insurance policies issued in Missouri. Universal life insurance is a type of life insurance that includes an interest-bearing savings account from which the insurer deducts money each month to cover the cost of the life insurance. The jury found that State Farm systematically overcharged its policyholders for 23 years. *Vogt v. State Farm Life Insurance Co.*, No. 2:16-cv-04170-NKL, (W.D. Mo.). The case was affirmed on appeal. *Vogt v. State Farm Life Insurance Co.*, 963 F.3d 753 (8th Cir. 2020), *cert. denied*, No. 20-1008, 2021 WL 1521013 (U.S. Apr. 19, 2021).

- Settled a nationwide class action lawsuit asserting policy overcharges and claims for breach of contract against USAA Life Insurance Co. for $90 million (less fees and expenses) in cash compensation to over 120,000 policyholders. The settlement was approved by a Texas federal court in August 2021. *Spegele v. USAA Life Insurance Co.*, No. 5:17-CV-00967-OLG (W.D. Tex.).

- Settled a nationwide class action lawsuit against John Hancock Life Insurance Company (U.S.A.) over alleged life insurance policy overcharges. The settlement was approved by the court in May 2018 and provided that John Hancock pay $59.75 million (less fees and expenses) in cash compensation to approximately 103,000 policyholders who own or owned a Flex V-II variable whole life insurance policy sold and administered by John Hancock over the last several decades. *Larson v. John Hancock Life Ins. Co.,* Case No. RG16 813803 (Superior Court of California, County of Alameda).

- Represented plaintiff class of policyholders in nationwide class action against The Lincoln National Life Insurance Company alleging life insurance policy overcharges including "cost of insurance" overcharges. Lincoln National agreed to settle the case by, among other things, issuing term life insurance certificates to a settlement class consisting of approximately 77,000 policy owners across 30 states. The term life insurance certificates have a total face amount of death benefits estimated at $2.25 billion, with a market value of approximately $171.8 million. *Bezich v. The Lincoln Nat. Life Ins. Co.,* No. 02C01-0906-PL-73 (Allen Co, IN).

- Represented plaintiff in alleged class action involving cost of insurance overcharges in life insurance policies. Case of first impression holding Class Action Fairness Act's (CAFA) securities exception allowed alleged class action involving variable life insurance policy to proceed forward in state court; case was not subject to removal to federal court. *Lincoln Nat'l. Life Ins. Co. v. Bezich*, 610 F.3d 448 (7th Cir. 2010).

- Represented plaintiff in alleged class action involving cost of insurance overcharges in life insurance policies. Securities Litigation Uniform Standards Act (SLUSA) did not preclude plaintiff's claim for breach of contract even though such claim was related to the purchase or sale of a covered security under SLUSA. *Freeman Investments, L.P. v. Pac. Life Ins. Co.*, 704 F.3d 1110 (9th Cir. 2013).

PLAINTIFF RESULTS

- $90 million nationwide settlement in life insurance class action
- $59.75 million nationwide settlement in life insurance class action
- $34.3 million verdict to Missouri life insurance policyholders
- $2.25 billion nationwide class action settlement
- $116 million verdict for general contractor in bad faith claim against surety
- Substantial recovery for institutional investor from mortgage-backed securities broker
- Groundbreaking class-action decision against Fortune 500 life insurance company
- $4.3 million settlement of highway construction case
- $4.9 million verdict in water utility case
- $11.4 million case involving development rights resolved in client's favor during trial
- $4 million professional malpractice claims settled in trustee's favor
- Antitrust claim settled on behalf of client
- Judgment for injunction relief and damages obtained in unfair competition and fraud case
- Wrongful death settlement in product liability case

DEFENSE RESULTS

- $1.2 billion whistleblower claim dismissed on summary judgment
- $100 million in claims successfully resolved for broker/dealer
- NY investment bank pays nothing in settlement of unfair competition claim
- Win for IBM in $8.5 million alleged fraud case
- Multi-billion dollar product liability exposure resolved to client's satisfaction
- $7 million claim against propane company defeated at trial
- Intellectual property claim resolved for manufacturer
- $12 million workout for commercial borrower

- $30 million environmental mass tort claims against Beatrice dismissed on summary judgment

TRIAL FIRM

EXPERIENCED

We have a proven track record of success representing plaintiffs and defendants in state and federal trial and appellate courts, before administrative and regulatory tribunals and in arbitration and other alternative dispute resolution proceedings nationwide.

PRACTICAL

From the beginning of an engagement, we seek to truly understand your business in order to provide strategic counsel and insightful guidance tailored to your objectives.

FOCUSED ON RESULTS

We measure success not by the hours billed, but by the results obtained for our clients. Although we are skilled trial lawyers who prepare each case as though it will go to trial, we never stop seeking the most efficient, cost-effective strategy for obtaining results.

Firm members who make up the trial team on plaintiff-side class actions are identified below.

John J. Schirger

For over 30 years John has represented businesses and individuals nationwide in disputes concerning breach of contract, fraud, business torts, consumer protection, insurance and reinsurance, securities and commodities, whistle-blower claims, and environmental matters. He also has significant experience in personal injury and wrongful death cases. John has successfully handled cases in federal or state courts in over 20 states, has argued before federal and state appellate courts, and has represented parties in AAA and Financial Industry Regulatory Authority (FINRA) arbitrations.

John began his career at a large regional law firm where he was elected partner after four years of practice. After only five years of practice, he obtained an "AV" rating from law publisher Martindale-Hubbell, the highest rating a lawyer can receive for competence and ethics. Among other honors and awards, John has been recognized by *The Best Lawyers in America* for Commercial Litigation, ranked a Top 100 Missouri & Kansas Super Lawyer, named Best of the Bar by the Kansas City Business Journal, and nominated to the Power 30 List for Commercial and Consumer Litigation by Missouri Lawyers Media.

John is currently representing clients in a wide variety of cases involving business and commercial disputes, securities litigation matters, and class actions. In these cases, his clients include business owners, individuals and family members, investors including community banks and hedge funds, and members of the Forbes 400. John is known for his disciplined and thorough approach in cases, but also for being practical and creative in resolving disputes. One client recently stated: “John has the ability to sort through complex information and decide what is most important. He’ll develop a litigation plan, and execute on it, but looks for opportunities to creatively resolve a case.”

AREAS OF PRACTICE

- Banking Litigation
- Commercial Litigation
- Class-Action Lawsuits
- Insurance Litigation
- Mass Torts Litigation
- Personal Injury & Wrongful Death Litigation
- Products Liability Litigation
- Real Estate Litigation
- Securities Litigation
- Antitrust, Unfair Competition and Deceptive Trade Practices Litigation

- Whistleblower Litigation

BAR ADMISSIONS

- Missouri
- Nebraska (inactive)
- U.S. District Court District of Nebraska
- U.S. District Court Northern District of Illinois
- U.S. District Court District of Colorado
- U.S. District Court District of Kansas
- U.S. District Court Western District of Missouri
- U.S. District Court Eastern District of Wisconsin
- U.S. Court of Appeals 1st Circuit
- U.S. Court of Appeals 3rd Circuit
- U.S. Court of Appeals 5th Circuit
- U.S. Court of Appeals 7th Circuit
- U.S. Court of Appeals 8th Circuit
- U.S. Court of Appeals 9th Circuit
- U.S. Court of Appeals 10th Circuit
- United States Supreme Court

EDUCATION

- **Creighton University School of Law**
  - Juris Doctor - 1992

- **University of Notre Dame**
  - Bachelor of Arts - 1988

HONORS & AWARDS

- *Best Lawyers* – Commercial Litigation, 2023
- *The National Law Journal's* Top 100 Verdicts 2018
- Missouri Lawyers Awards – Top 5 Verdict in 2018
- Multi-Million Dollar Advocates Forum – Top Trial Lawyers in America
- Best of the Bar – Kansas City Business Journal
- Rated "AV" by Martindale Hubbell since 1997 (highest rating)
- SuperLawyers – SuperLawyer Magazine, 2011-2022
- *The Power 30 List for Commercial and Consumer Litigation* – Missouri Lawyers Media
- America's Top 100 Bet-the-Company Litigators
- Fellow – American Bar Foundation

PROFESSIONAL ASSOCIATIONS & MEMBERSHIPS

- American Bar Association
  - Section on Tort Trial and Insurance Practice
  - Section on Litigation

- Missouri Bar Association
- Kansas City Metropolitan Bar Association
    - Civil Litigation Section
    - Business Litigation Committee (Former Chair)
- Missouri Association of Trial Attorneys
- Nebraska Bar Association
- American Association for Justice
    - Section on Business Torts
    - Section on Insurance Law
    - Section on Product Liability

REPRESENTATIVE CASES

Business Litigation – Represented plaintiff in action on a guaranty related to a securities purchase. Defeated defendant's attempt to force the case to arbitration; affirmed on appeal.

Business Litigation – Represented defendant in alleged internet fraud case where plaintiff claimed $2.5 million in damages; favorable settlement reached for client shortly before trial.

Business Litigation – Represented defendant majority owner in minority shareholder dispute where plaintiff claimed $1.5 million in damages; case dismissed in favor of defendant after full evidentiary hearing and plaintiff elected not to appeal.

Business Litigation – American Shizuki Corp. v. International Business Machines, Represented defendant IBM in alleged fraud case where plaintiff claimed $8.5 million in damages; summary judgment granted in favor of defendant on all counts and affirmed by the Eighth Circuit. (8th Cir. 2001)

Mass Torts (Environmental) Litigation – Truck Components, Inc., et al. v. Beatrice Company, Inc. et al., Represented defendant Beatrice Company in complex environmental case where plaintiff claimed $30 million in damages in connection with acquisition and divestiture of a foundry plant; summary judgment granted in favor of defendant on all counts and affirmed by Seventh Circuit. (7th Cir. 1998)

Construction Litigation – Represented defendant steel contractor in lawsuit involving the construction of a power plant; defeated 90% of plaintiff's claims and damages in week-long arbitration.

Construction Litigation – Represented plaintiff underground utility contractor in complex lien foreclosure lawsuit resulting in settlement the morning of trial where plaintiff received 100% of monies claimed.

Construction Litigation – Represented general contractor in dispute with surety concerning the construction of a food processing facility; favorable settlement reached for client without initiating lawsuit.

Cost of Insurance Class Action – Spegele v. USAA Life Insurance Company, Represented plaintiff class of policyholders in nationwide class action involving cost of insurance overcharges in life insurance policies. USAA agreed to settle the case for $90 million that will be distributed to approximately 120,000 policyholders. (Western District of Texas, San Antonio Division 2017)

Cost of Insurance Class Action – Vogt v. State Farm Life Insurance Company, Represented plaintiff Missouri class of policyholders in class action trial involving cost of insurance overcharges in life insurance policies. Jury awarded policyholder class $34.3 million and determined that State Farm had systematically overcharged policyholder class (Western District of Missouri, Central Division 2018); affirmed on appeal. (8th Cir. 2020)

Cost of Insurance Class Action – Larson v. John Hancock Life Insurance Company (U.S.A.), Represented plaintiff class of policyholders in nationwide class action involving cost of insurance overcharges in life insurance policies. John Hancock agreed to settle the case for $59.75 million that will be distributed to approximately 103,000 policyholders. (Superior Court of California, County of Alameda, Oakland, CA 2018)

Cost of Insurance Class Action — Bezich v. Lincoln Nat'l. Life Ins. Co., Represented plaintiff class of policyholders in nationwide class action against The Lincoln National Life Insurance Company alleging life insurance policy overcharges including "cost of insurance" overcharges. Lincoln National agreed to settle the case by, among other things, issuing term life insurance certificates to a settlement class consisting of approximately 77,000 policy owners across 30 states. The term life insurance certificates have a total face amount of death benefits estimated at $2.25 billion, with a market value of approximately $171.8 million. (Allen County Circuit Court, Fort Wayne, IN 2016)

Cost of Insurance Class Action - Bezich v. Lincoln Nat'l. Life Ins. Co., Represented plaintiff in alleged class action involving cost of insurance overcharges in life insurance policies. Case of first impression holding Class Action Fairness Act's (CAFA) securities exception allowed alleged class action involving variable life insurance policy to proceed forward in state court; case was not subject to removal to federal court. (7th Cir. 2010)

Cost of Insurance Class Action – Freeman Investments, L.P. v. Pac. Life Ins. Co., Represented plaintiff in alleged class action involving cost of insurance overcharges in life insurance policies. Securities Litigation Uniform Standards Act (SLUSA) did not preclude plaintiff's claim for breach of contract even though such claim was related to the purchase or sale of a covered security under SLUSA (9th Cir. 2013)

Employment Law and Litigation – Represented defendant manufacturer in dispute with former employee. Summary judgment entered in favor of defendant on all counts. Plaintiff elected not to proceed with an appeal.

Insurance Litigation – Represented plaintiff property-owner in direct action against property-casualty insurer involving risk of loss provision in purchase and sale agreement. Case settled through mediation shortly before trial where plaintiff recovered 125% of specified damages.

Mass Torts Litigation – Represented defendants nationwide in lead paint products liability cases; cases resolved through successful summary judgment practice or mediation.

Personal Injury and Wrongful Death Litigation – Represented widower and young children in personal injury and wrongful death case; obtained maximum recovery for clients under various insurance policies without initiating a lawsuit.

Products Liability Litigation – Represented plaintiff widow and family members in wrongful death case of husband/father involving a defective consumer product. Confidential settlement reached after minimal discovery.

Real Estate Litigation – Represented defendant owner/landlord in complex dispute with tenant; favorable settlement reached for client after successful trial.

Securities Litigation – Represented plaintiff Colorado Bank in dispute with its broker-dealer involving the marketing and sale of mortgage-backed securities. Confidential settlement reached for client resulting in substantial recovery. Within two weeks of finalizing the settlement, regulatory officials substantially upgraded the Bank's rating.

Securities Litigation – Represented plaintiff Texas bank in dispute with its broker-dealer involving the marketing and sale of mortgage-backed securities. Confidential settlement reached for client resulting in substantial recovery.

Securities Litigation – Represented individual investor in alleged ponzi scheme. Seven-figure settlement reached with broker/advisor; all invested funds were recovered for client.

Securities Litigation – Represented defendant broker/dealer in complex securities and commodities' ponzi scheme cases where plaintiffs claimed damages in excess of $100 million; after close of discovery, favorable settlements reached for client through mediation.

Unfair Competition and Deceptive Trade Practices Litigation – Represented defendant New York investment banking firm in commercial dispute involving alleged breach of nondisclosure agreement. Successful settlement reached for client after minimal discovery; client paid no money to Plaintiff.

Whistleblower Litigation - U.S. ex rel. Bahrani v. ConAgra, Inc., Represented defendant ConAgra Foods, Inc. in alleged civil false claims case where plaintiff claimed $1.2 billion in damages; summary judgment granted in favor of defendant on all counts. (D. Colorado 2004)

Miller | Schirger LLC

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Matthew W. Lytle

Throughout his practice, Matt has represented clients ranging from individuals to privately held and publicly traded corporations in various state and federal courts nationwide, and in arbitrations with the AAA and the Financial Industry Regulatory Authority (FINRA). Matt's experience covers all phases of the litigation process including case strategy, pre-trial briefing and motion practice, depositions and discovery, dispositive motion practice, trial preparation, trial, and appeals.

Matt's representative litigation experience includes representing both plaintiffs and defendants in disputes involving claims for fraud, breach of fiduciary duty, breach of trust, breach of contract, and civil RICO, as well as consumer class action and whistleblower claims.

In addition to litigation, Matt has experience in the area of white collar defense and investigations, and has represented clients in investigations by various federal agencies including the CFTC and the USDA.

Matt was named a "Rising Star" (2011, 2012) and a "Super Lawyer" (since 2013) by *Missouri & Kansas Super Lawyers*. Matt was also named to the 2012 BTI Client Service All-Stars, a select group of only 272 lawyers nationwide who are chosen solely on unprompted, unequivocal recommendations by corporate counsel for their understanding of business issues, innovative approaches to legal services, and commitment to client needs.

Matt began his legal career at a large regional law firm in Omaha, Nebraska. After moving to Kansas City, he practiced in large national and international law firms before joining Miller Schirger.

AREAS OF PRACTICE

- Banking Litigation
- Commercial Litigation
- Class-Action Lawsuits

- Fiduciary Litigation
- Insurance Litigation
- Personal Injury & Wrongful Death Litigation
- Products Liability Litigation
- Real Estate Litigation
- Securities Litigation
- Antitrust, Unfair Competition and Deceptive Trade Practices Litigation
- Whistleblower Litigation

BAR ADMISSIONS

- Missouri
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- U.S. District Court District of Kansas
- U.S. District Court District of Colorado
- U.S. District Court Eastern District of Wisconsin
- U.S. Court of Appeals 8th Circuit
- U.S. Court of Appeals 9th Circuit
- U.S. Court of Appeals 10th Circuit

EDUCATION

- **Creighton University School of Law**
  - Juris Doctor (*Magna Cum Laude*) - 2004

- **Creighton University**
  - Bachelor of Arts - 1996

HONORS & AWARDS

- *The National Law Journal's* Top 100 Verdicts 2018
- Missouri Lawyers Awards – Top 5 Verdict in 2018
- Rising Star, SuperLawyers, 2011-2012
- SuperLawyers – SuperLawyer Magazine 2013-present
- BTI Client Service All-Stars, 2012
- Fellow – American Bar Foundation

PROFESSIONAL ASSOCIATIONS & MEMBERSHIPS

- American Bar Association
- Missouri Bar Association
- Kansas City Metropolitan Bar Association
- Nebraska Bar Association

REPRESENTATIVE CASES

Business Litigation — Multivac, Inc. vs. Rotella's Italian Bakery, Inc., Represented defendant / counterclaimant in case involving claims for breach of contract, and counterclaims for repudiation of contract and breach of express and implied warranties, among others, related to the purchase of a vacuum-seal packaging machine. A four-day jury trial in the United States District Court for the Western District of Missouri, resulted in verdicts in client's favor on the plaintiff's claim for breach of contract, and the client's counterclaims for repudiation of contract and breach of express warranty.

Business Litigation – Represented plaintiff and counter-defendant propane company in protracted litigation involving claims for alleged overcharges related to vehicle refurbishing services and counterclaims against client seeking damages of $6.97 million for alleged breach of contract and business torts. A nine-day jury trial in the Circuit Court for Jackson County, Missouri, produced a favorable result for the client, including the client paying less than 10% of the counter-claim damages sought.

Cost of Insurance Class Action – Spegele v. USAA Life Insurance Company, Represented plaintiff class of policyholders in nationwide class action involving cost of insurance overcharges in life insurance policies. USAA agreed to settle the case for $90 million that will be distributed to approximately 120,000 policyholders. (Western District of Texas, San Antonio Division 2017)

Cost of Insurance Class Action – Vogt v. State Farm Life Insurance Company, Represented plaintiff Missouri class of policyholders in class action trial involving cost of insurance overcharges in life insurance policies. Jury awarded policyholder class $34.3 million and determined that State Farm had systematically overcharged policyholder class (Western District of Missouri, Central Division 2018); affirmed on appeal. (8th Cir. 2020)

Cost of Insurance Class Action – Larson v. John Hancock Life Insurance Company (U.S.A.), Represented plaintiff class of policyholders in nationwide class action involving cost of insurance overcharges in life insurance policies. John Hancock agreed to settle the case for $59.75 million that will be distributed to approximately 103,000 policyholders. (Superior Court of California, County of Alameda, Oakland, CA 2018)

Cost of Insurance Class Action — Bezich v. Lincoln Nat'l. Life Ins. Co., Represented plaintiff class of policyholders in nationwide class action against The Lincoln National Life Insurance Company alleging life insurance policy overcharges including "cost of insurance" overcharges. Lincoln National agreed to settle the case by, among other things, issuing term life insurance certificates to a settlement class consisting of approximately 77,000 policy owners across 30 states. The term life insurance certificates have a total face amount of death benefits estimated at $2.25 billion, with a market value of approximately $171.8 million. (Allen County Circuit Court, Fort Wayne, IN 2016)

Cost of Insurance Class Action - Bezich v. Lincoln Nat'l. Life Ins. Co. — Represented plaintiff in alleged class action involving cost of insurance overcharges in life insurance policies. Case of first impression holding Class Action Fairness Act's (CAFA) securities exception allowed alleged class action involving variable life insurance policy to proceed forward in state court; case was not subject to removal to federal court. (7th Cir. 2010)

Cost of Insurance Class Action - Freeman Investments, L.P. v. Pac. Life Ins. Co. — Represented plaintiff in alleged class action involving cost of insurance overcharges in life insurance policies. Securities Litigation Uniform Standards Act (SLUSA) did not preclude plaintiff's claim for breach of contract even though such claim was related to the purchase or sale of a covered security under SLUSA (9th Cir. 2013)

Securities Litigation — Represented plaintiff Colorado Bank in dispute with its broker-dealer involving the marketing and sale of mortgage-backed securities. Confidential settlement reached for client resulting in substantial recovery. Within two weeks of finalizing the settlement, regulatory officials substantially upgraded the Bank's rating.

Securities Litigation — Represented plaintiff Texas bank in dispute with its broker-dealer involving the marketing and sale of mortgage-backed securities. Confidential settlement reached for client resulting in substantial recovery.

Securities Litigation — Represented individual investor in alleged ponzi scheme. Seven-figure settlement reached with broker/advisor; all invested funds were recovered for client.

Joseph M. Feierabend

Joe focuses his practice primarily in the areas of complex business and commercial litigation. He represents businesses and individuals in state and federal courts and before arbitration panels nationwide in disputes involving breach of contract, business torts, and other commercial claims. His expertise extends to class actions, insurance coverage and bad faith claims, personal injury claims, claims asserting violations of constitutional rights, as well as counseling institutional investors in broker/dealer disputes involving complex, structured financial products and transactions. In addition, Joe has significant experience representing plaintiffs in cost-of-insurance class-action litigation in state and federal courts throughout the United States.

Joe obtained his B.B.A. degree from the University of Notre Dame where he majored in accounting and obtained his J.D. from the University of Missouri School of Law, where he focused his studies in the areas of finance and tax. Before beginning his legal career, Joe spent two years running the daily operations of a Kansas City company. His prior work experience and financial background provide a unique perspective in analyzing business disputes, and consistently prove to be a significant advantage in advising clients. Joe has also been selected as a "Rising Star" by Missouri and Kansas Super Lawyers (2019 – 2022).

AREAS OF PRACTICE

- Banking Litigation
- Commercial Litigation
- Class-Action Lawsuits
- Constitutional Law/Civil Rights Litigation
- Construction Law
- Construction Litigation
- Insurance Litigation
- Real Estate Litigation
- Securities Litigation
- Antitrust, Unfair Competition and Deceptive Trade Practices Litigation
- Whistleblower Litigation

BAR ADMISSIONS

- Missouri
- U.S. District Court District of Colorado
- U.S. District Court Western District of Missouri
- U.S. District Court District of Kansas
- U.S. Court of Appeals 8th Circuit

- U.S. Court of Appeals 9th Circuit
- U.S. Court of Appeals 10th Circuit

EDUCATION

- **University of Missouri School of Law**
  - Juris Doctor - 2008

- **University of Notre Dame**
  - Bachelor of Business Administration - 2005

HONORS & AWARDS

- Rising Star, Super Lawyers, 2019-present
- *The National Law Journal's* Top 100 Verdicts 2018
- Missouri Lawyers Awards – Top 5 Verdict in 2018

PROFESSIONAL ASSOCIATIONS & MEMBERSHIPS

- American Association for Justice
- American Bar Association
- Missouri Bar Association
- Kansas City Metropolitan Bar Association
- Missouri Association of Trial Attorneys

REPRESENTATIVE CASES

Business Litigation – Represented individual and brought action to recover on claims arising from breach of settlement agreement and non-compliance with judgment of a Missouri circuit court. A favorable settlement was reached soon after initiating enforcement proceedings with the court.

Business Litigation – Represented business in contract dispute with multinational insurance brokerage. Negotiated and obtained a settlement in client's favor, without filing a lawsuit.

Civil Rights – Represented plaintiff in a tort/civil rights action which alleged 12 claims against police, hospital and the doctors who treated plaintiff in the emergency room, the municipality emergency services personnel and the municipality which employed the individual defendants. The claims included Excessive Force, Unlawful Seizure, False Arrest, Unlawful Search, Interference With and Denial of Medical Care, Delay of Plaintiff's Release, Municipal Liability, Assault, Battery, Intentional Infliction of Emotional Distress, False Imprisonment, and Negligence, and sought relief for violation of civil rights secured by 42 § U.S.C. 1983. The defense settled with plaintiff for relief of $11.4 million. (W.D. Missouri – Kansas City, 2018)

Cost of Insurance Class Action – Spegele v. USAA Life Insurance Company, Represented plaintiff class of policyholders in nationwide class action involving cost of insurance overcharges in life insurance policies. USAA agreed to settle the case for $90 million that will be distributed to approximately 120,000 policyholders. (Western District of Texas, San Antonio Division 2017)

Cost of Insurance Class Action – Vogt v. State Farm Life Insurance Company, Represented Missouri class of policyholders in class action trial involving cost of insurance overcharges in life insurance policies. Jury determined that State Farm had systematically overcharged policyholder class and awarded $34.3 million (Western District of Missouri, Central Division 2018); affirmed on appeal. (8th Cir. 2020)

Cost of Insurance Class Action – Larson v. John Hancock Life Insurance Company (U.S.A.), Represented class of approximately 103,000 plaintiff policyholders in nationwide class action involving cost of insurance overcharges on life insurance policies. John Hancock agreed to settle the case for $59.75 million. (Superior Court of California, County of Alameda, Oakland, CA 2018).

Cost of Insurance Class Action — Bezich v. Lincoln Nat'l. Life Ins. Co., Represented class of policyholders in nationwide class action against The Lincoln National Life Insurance Company alleging life insurance policy overcharges including "cost of insurance" overcharges. Lincoln National agreed to settle the case by, among other things, issuing term life insurance certificates to a settlement class consisting of approximately 77,000 policy owners across 30 states. The term life insurance certificates had a total face amount of death benefits estimated at $2.25 billion, with a market value of approximately $171.8 million. (Allen County Circuit Court, Fort Wayne, IN 2016).

Insurance Litigation – Represented plaintiffs in various disputes regarding defendant insurance companies' failure to pay on property loss claims. Favorable outcomes have been reached for clients soon after initiating lawsuits.

Intellectual Property Litigation – Represented plaintiff in a trademark infringement case resulting in a positive outcome ensuring protection of client's intellectual property rights into the future.

Property Rights Litigation – Represented plaintiff in dispute involving rights to use of land and alleged adverse possession, among other claims; negotiated and obtained a favorable settlement for client.

Securities Litigation – Represented plaintiff bank in dispute with its broker-dealer. The dispute involved the marketing and sale of asset-backed securities. Confidential settlement was reached for client resulting in a substantial recovery.

EXHIBIT 5

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

DAVID ROGOWSKI, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 4:22-cv-00203-RK
	)	
STATE FARM LIFE INS. CO.,	)	
	)	
Defendant.	)	

DECLARATION OF CAMERON R. AZARI, ESQ. ON NOTICE PLAN

I, Cameron R. Azari, declare as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am a nationally recognized expert in the field of legal notice, and I have served as an expert in hundreds of federal and state cases involving class action notice plans.

3. I am the Senior Vice-President of Epiq Class Action and Claims Solutions, Inc. ("Epiq") and the Director of Legal Notice for Hilsoft Notifications, a firm that specializes in designing, developing, analyzing, and implementing large-scale, un-biased, legal notification plans. Hilsoft Notifications is a business unit of Epiq.[1]

4. Epiq was established in 1968 as a client services and data processing company. Epiq has administered bankruptcies since 1985 and settlements since 1993. Epiq has routinely developed and executed notice programs and administrations in a wide variety of mass and class

[1] References to Epiq in this declaration include Hilsoft Notifications.

action contexts including settlements of consumer, antitrust, products liability, and labor and employment class actions, settlements of mass tort litigation, Securities and Exchange Commission enforcement actions, Federal Trade Commission disgorgement actions, insurance disputes, bankruptcies, and other major litigation. Epiq has administered more than 4,500 settlements, including some of the largest and most complex cases ever settled. Epiq's class action case administration services include administering notice requirements, designing direct-mail notices, implementing notice fulfillment services, coordinating with the United States Postal Service ("USPS"), developing and maintaining notice websites and dedicated telephone numbers with recorded information and/or live operators, processing exclusion requests, objections, claim forms and correspondence, maintaining class member databases, adjudicating claims, managing settlement funds, and calculating claim payments and distributions. As an experienced neutral third-party administrator working with settling parties, courts, and mass action participants, Epiq has handled hundreds of millions of notices, disseminated hundreds of millions of emails, handled millions of phone calls, processed tens of millions of claims, and distributed hundreds of billions in payments.

5. Hilsoft has been involved with some of the most complex and significant notice programs in recent history, examples of which are discussed below. With experience in more than 550 cases, including more than 70 multi-district litigations, Hilsoft has prepared notices which have appeared in 53 languages and been distributed in almost every country, territory, and dependency in the world. Courts have recognized and approved numerous notice plans developed by Hilsoft, and those decisions have invariably withstood appellate and collateral review.

EXPERIENCE

6. I have served as a notice expert and have been recognized and appointed by courts to design and provide notice in many large and significant cases, including:

(a) *In Re: Zoom Video Communications, Inc. Privacy Litigation*, 3:20-cv-02155 (N.D. Cal.), involved an extensive notice plan for a $85 million privacy settlement. Notice

was sent to more than 158 million class members by email or mail (for a smaller subset). In addition, reminder notices were sent to stimulate claim filings. The individual notice efforts reached 91% of the class and were enhanced by supplemental media provided with regional newspaper notice, nationally distributed digital and social media notice efforts (with more than 280 million impressions), sponsored search, an informational release, and a settlement website.

(b) *In re Takata Airbag Products Liability Litigation*, Case No. 1:15-md-02599-FAM (S.D. Fla), involved $1.49 billion in settlements with BMW, Mazda, Subaru, Toyota, Honda, Nissan, and Ford regarding Takata airbags. The notice plans in those settlements included individual mailed notice to more than 59.6 million potential class members and extensive nationwide media via consumer publications, U.S. Territory newspapers, radio spots, internet banners, mobile banners, and specialized behaviorally targeted digital media. Combined, the notice plans reached more than 95% of adults aged 18 and over in the U.S. who owned or leased a subject vehicle, an average of 4.0 times each.

(c) *Hale v. State Farm Mutual Automobile Insurance Company, et al.*, 12-cv-00660 (S.D. Ill.), involved a $250 million settlement with approximately 4.7 million class members. The extensive notice program provided individual notice via postcard or email to approximately 1.43 million class members and implemented a robust publication program which, combined with individual notice, reached approximately 78.8% of all U.S. adults aged 35, approximately 2.4 times each.

(d) *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation (Bosch Settlement)*, MDL No. 2672 (N.D. Cal.), involved a comprehensive notice program that provided individual notice to more than 946,000 vehicle owners via first class mail and to more than 855,000 via email. A targeted internet campaign further enhanced the notice effort.

(e) *In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL No. 1720 (E.D.N.Y.), involved a $7.2 billion settlement with Visa and

MasterCard in which the intensive notice program included over 19.8 million direct mail notices and insertions in over 1,500 newspapers, consumer magazines, national business publications, trade and specialty publications, and language and ethnic targeted publications, as well as online banner notices, all of which generated more than 770 million adult impressions.

(f) *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, MDL No. 2179 (E.D. La.), involved dual landmark settlement notice programs to distinct "Economic and Property Damages" and "Medical Benefits" settlement classes after the BP oil spill. Notice efforts included more than 7,900 television spots, 5,200 radio spots, and 5,400 print insertions and reached over 95% of Gulf Coast residents.

(g) *In re: Checking Account Overdraft Litigation*, MDL No. 2036 (S.D. Fla.), for multiple bank settlements between 2010-2018, the notice programs involved direct mail and email to millions of class members, as well as publication in relevant local newspapers. Representative banks included Fifth Third Bank, National City Bank, Bank of Oklahoma, Webster Bank, Harris Bank, M & I Bank, PNC Bank, Compass Bank, Commerce Bank, Citizens Bank, Great Western Bank, TD Bank, BancorpSouth, Comerica Bank, Susquehanna Bank, Associated Bank, Capital One, M&T Bank, Iberiabank, and Synovus.

7. Courts have recognized our testimony as to which method of notification is appropriate for a given case, and I have provided testimony on numerous occasions on whether a certain method of notice represents the best notice practicable under the circumstances. For example:

a) *Maldonado et al. v. Apple Inc. et al.*, 3:16-cv-04067 (N.D. Cal.), Judge William H. Orrick stated on April 29, 2022:

> *[N]otice of the Class Settlement to the Certified Class was the best notice practicable under the circumstances. The notice satisfied due process and provided adequate information to the Certified Class of all matters relating to the Class Settlement, and fully satisfied the requirements of Federal Rules of Civil Procedure 23(c)(2) and (e)(1).*

b) *In re: Zoom Video Communications, Inc. Privacy Litigation,* 20-cv-02155 (N.D. Cal.), Judge Laurel Beeler stated on April 21, 2022:

> *Between November 19, 2021, and January 3, 2022, notice was sent to 158,203,160 class members by email (including reminder emails to those who did not submit a claim form) and 189,003 by mail. Of the emailed notices, 14,303,749 were undeliverable, and of that group, Epiq mailed notice to 296,592 class members for whom a physical address was available. Of the mailed notices, efforts were made to ensure address accuracy and currency, and as of March 10, 2022, 11,543 were undeliverable. In total, as of March 10, 2022, notice was accomplished for 144,242,901 class members, or 91% of the total. Additional notice efforts were made by newspaper ... social media, sponsored search, an informational release, and a Settlement Website. Epiq and Class Counsel also complied with the court's prior request that best practices related to the security of class member data be implemented.*
>
> *[T]he Settlement Administrator provided notice to the class in the form the court approved previously. The notice met all legal prerequisites: it was the best notice practicable, satisfied the requirements of Rule 23(c)(2), adequately advised class members of their rights under the settlement agreement, met the requirements of due process, and complied with the court's order regarding court notice. The forms of notice fairly, plainly, accurately, and reasonably provided class members with all required information ....*

c) *In re: Takata Airbag Products Liability Litigation (Volkswagen)*, MDL No. 2599 (S.D. Fla.), Judge Federico A. Moreno stated on March 28, 2022:

> *[T]he Court finds that the Class Notice has been given to the Class in the manner approved by the Court in its Preliminary Approval Order ... The Court finds that such Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), FED. R. CIV. P. 23 and any other applicable law as well as complying with the*

Federal Judicial Center's illustrative class action notices.

d) *Hale v. State Farm Mutual Automobile Insurance Company, et al.,* 3:12-cv-00660-DRH-SCW (S.D. Ill.), Judge Herndon on December 16, 2018:

> *The Class here is estimated to include approximately 4.7 million members. Approximately 1.43 million of them received individual postcard or email notice of the terms of the proposed Settlement, and the rest were notified via a robust publication program "estimated to reach 78.8% of all U.S. Adults Aged 35+ approximately 2.4 times." Doc. 966-2 ¶¶ 26, 41. The Court previously approved the notice plan (Doc. 947), and now, having carefully reviewed the declaration of the Notice Administrator (Doc. 966-2), concludes that it was fully and properly executed, and reflected "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." See Fed. R. Civ. P. 23(c)(2)(B). The Court further concludes that CAFA notice was properly effectuated to the attorneys general and insurance commissioners of all 50 states and District of Columbia.*

e) *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation* (Bosch Settlement), MDL No. 2672 (N.D. Cal.), Judge Charles R. Breyer on May 17, 2017:

> *The Court is satisfied that the Notice Program was reasonably calculated to notify Class Members of the proposed Settlement. The Notice "apprise[d] interested parties of the pendency of the action and afford[ed] them an opportunity to present their objections." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Indeed, the Notice Administrator reports that the notice delivery rate of 97.04% "exceed[ed] the expected range and is indicative of the extensive address updating and re-mailing protocols used." (Dkt. No. 3188-2 ¶ 24.)*

f) *In re: Lithium Ion Batteries Antitrust Litigation*, MDL No. 2420, 4:13-md-02420 (N.D. Cal.), Judge Yvonne Gonzalez Rogers stated on December 10, 2020:

> *The proposed notice plan was undertaken and carried out pursuant to this Court's preliminary approval order prior to remand, and a second notice campaign thereafter…. The class received direct and indirect notice through several methods – email notice, mailed notice upon request, an informative settlement website, a telephone support line, and a vigorous online campaign. Digital banner advertisements were targeted specifically to Settlement Class members, including on Google and Yahoo's ad networks, as well as Facebook and Instagram, with over 396 million impressions delivered. Sponsored search listings were employed on Google, Yahoo and Bing, resulting in 216,477 results, with 1,845 clicks*

through to the settlement website. An informational release was distributed to 495 media contacts in the consumer electronics industry. The case website has continued to be maintained as a channel for communications with class members. Between February 11, 2020, and April 23, 2020, there were 207,205 unique visitors to the website. In the same period, the toll-free telephone number available to class members received 515 calls.

g) *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, No. 1:05-cv-03800 (E.D.N.Y.), Judge John Gleeson stated on December 13, 2013:

> *The Class Administrator notified class members of the terms of the proposed settlement through a mailed notice and publication campaign that included more than 20 million mailings and publication in more than 400 publications. The notice here meets the requirements of due process and notice standards… The objectors' complaints provide no reason to conclude that the purposes and requirements of a notice to a class were not met here.*

h) *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010,* MDL No. 2179 (E.D. La.), Judge Carl J. Barbier stated on January 11, 2013:

> *The Court finds that the Class Notice and Class Notice Plan satisfied and continue to satisfy the applicable requirements of Federal Rule of Civil Procedure 23(c)(2)(b) and 23(e), the Class Action Fairness Act (28 U.S.C. § 1711 et seq.), and the Due Process Clause of the United States Constitution (U.S. Const., amend. V), constituting the best notice that is practicable under the circumstances of this litigation.*
> *The notice program surpassed the requirements of Due Process, Rule 23, and CAFA. Based on the factual elements of the Notice Program as detailed below, the Notice Program surpassed all of the requirements of Due Process, Rule 23, and CAFA.*
>
> *The media notice effort alone reached an estimated 95% of adults in the Gulf region an average of 10.3 times each, and an estimated 83% of all adults in the United States an average of 4 times each. These figures do not include notice efforts that cannot be measured, such as advertisements in trade publications and sponsored search engine listings. The Notice Program fairly and adequately covered and notified the class without excluding any demographic group or geographic area, and it exceeded the reach percentage achieved in most other court-approved notice programs.*

8. Numerous other court opinions and comments regarding my testimony, and the adequacy of our notice efforts, are included in Hilsoft's curriculum vitae included as **Attachment 1**. In forming expert opinions, my staff and I draw from our in-depth class action case experience,

as well as our educational and related work experiences. I am an active member of the Oregon State Bar, having received my Bachelor of Science from Willamette University and my Juris Doctor from Northwestern School of Law at Lewis and Clark College. I have served as the Director of Legal Notice for Hilsoft since 2008 and have overseen the detailed planning of virtually all of our court-approved notice programs during that time. Before assuming my current role with Hilsoft, I served in a similar role as Director of Epiq Legal Noticing (previously called Huntington Legal Advertising). Overall, I have more than 22 years of experience in the design and implementation of legal notification and claims administration programs, having been personally involved in hundreds of successful notice programs.

9. This declaration details the Settlement Notice Plan ("Notice Plan") proposed here for *Rogowski v. State Farm Life Insurance Company,* Case No. 4:22-cv-00203-RK, currently pending in the United States District Court for the Western District of Missouri. The facts in this declaration are based on my personal knowledge, as well as information provided to me by my colleagues in the ordinary course of my business at Hilsoft and Epiq.

NOTICE PLAN

10. The Notice Plan is designed to provide notice to the following Settlement Class:

> [T]he Owners of approximately 760,000 Policies as reflected on the Class List.
>
> The Settlement Class excludes: State Farm; any entity in which State Farm has a controlling interest; any of the officers or board of directors of State Farm; the legal representatives, heirs, successors, and assigns of State Farm; anyone employed with Plaintiffs' law firms; and any Judge to whom this Action or a Related Action is assigned, and his or her immediate family.

11. Rule 23 of the Federal Rules of Civil Procedure directs that the best notice practicable under the circumstances must include "individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means."[2] The proposed Notice Plan satisfies this requirement. The Notice Plan provides for individual notice via United State Postal Service

[2] FRCP 23(c)(2)(B).

("USPS") first class mail to all Settlement Class Members who are reasonably identifiable. It is my understanding that the Defendant will provide data for virtually all Settlement Class Members.

Individual Notice

12. For all Settlement Class Members identified through Defendant's records a Class Notice will be mailed via USPS first class mail. Prior to mailing, all mailing addresses will be checked against the National Change of Address ("NCOA") database maintained by the USPS.[3] In addition, the addresses will be certified via the Coding Accuracy Support System ("CASS") to ensure the quality of the zip code, and verified through Delivery Point Validation ("DPV") to verify the accuracy of the addresses. This address updating process is standard for the industry and for the majority of promotional mailings that occur today.

13. Class Notices returned as undeliverable will be re-mailed to any new address available through USPS information. For example, to the address provided by the USPS on returned pieces if the forwarding order had expired but is still within the time period in which the USPS returns the piece with a forwarding address indicated, or to better addresses that may be found using a third-party lookup service. In addition, the USPS will automatically forward Class Notices with an available forwarding address order that has not expired ("Postal Forwards").

Settlement Website, Toll-free Telephone Number, and Postal Mailing Address

14. A dedicated Settlement Website will be established for the Settlement with an easy-to-remember domain name. At the Settlement Website, Settlement Class Members will be able to obtain detailed information about the case and review key documents, including the operative Complaint, Class Notice, Settlement Agreement, Preliminary Approval Order, and other important documents. In addition, the Settlement Website will include relevant dates, answers to frequently asked questions ("FAQs"), instructions for how Settlement Class Members

[3] The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person's name and known address.

may opt-out (request exclusion) from or object to the Settlement, contact information for the Settlement Administrator, and other case-related information. The Settlement Website address will be displayed prominently on all Notice documents.

15. A toll-free telephone number will also be established to allow Settlement Class Members to call for additional information, listen to answers to FAQs, and request that a Notice be mailed to them. The automated phone system will be available 24 hours per day, 7 days per week. Service agents will also be available during normal business hours. The toll-free telephone number will be prominently displayed on the Notice documents.

16. A post office box for correspondence about the Settlement will also be established and maintained, allowing Settlement Class Members to contact the Settlement Administrator by mail with any specific requests or questions, including requests for exclusion.

PLAIN LANGUAGE NOTICE DESIGN

17. The proposed Class Notice contains all of the information necessary to allow Settlement Class Members to make informed decisions and includes all of the information required by Rule 23(c)(2)(B), describing the central elements of Plaintiffs' claims in plain, easily understood language. The proposed Class Notice states the Settlement Class definition, a brief overview of the case, the options for any Settlement Class Member to opt-out or object and the procedure to do so, a statement that a judgment would be binding on Settlement Class Members who do not opt-out, and the right of any Settlement Class Member who does not opt-out to appear in the case through their own lawyer. Also, should additional information be needed, the proposed Class Notice clearly designates and provides contact information for the Settlement Administrator and Class Counsel.

CONCLUSION

18. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, by federal rules and statutes, and by case law pertaining to the recognized notice standards under Rule 23. This framework directs

that the notice plan be optimized to reach the class and that the notice or notice plan itself not limit knowledge of the availability of options—nor the ability to exercise those options—to class members in any way. All of these requirements will be met in this case.

19. The Notice Plan includes individual, direct mail notice to all Settlement Class Members who can be identified with reasonable effort. Because of the availability of Settlement Class Member data for virtually the entire Class, individual notice is expected to reach in excess of 90% of the identified Settlement Class. The Settlement Website will expand the reach of the Notice further. In 2010, the Federal Judicial Center ("FJC") issued a Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide. This Guide states that, "the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%."[4] Here, we have developed a Notice Plan that will readily achieve a reach at the higher end of that standard.

20. The Notice Plan described above provides for the best notice practicable under the circumstances of this case, conforms to all aspects of Rule 23 and Constitutional Due Process, and comports with the guidance for effective notice set out in the Manual for Complex Litigation, Fourth.

21. The Notice Plan schedule affords sufficient time to provide full and proper notice to Settlement Class Members before the opt-out and objection deadlines.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 21, 2022, at Beaverton, Oregon.

Cameron R. Azari

[4] FED. JUDICIAL CTR, JUDGES' CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3 (2010), available at https://www.fjc.gov/content/judges-class-action-notice-and-claims-process-checklist-and-plain-language-guide-0.

Attachment 1

HILSOFT NOTIFICATIONS

Hilsoft Notifications ("Hilsoft") is a leading provider of legal notice services for large-scale class action and bankruptcy matters. We specialize in providing quality, expert, notice plan development. Our notice programs satisfy due process requirements and withstand judicial scrutiny. Hilsoft is a business unit of Epiq Class Action & Claims Solutions, Inc. ("Epiq"). Hilsoft has been retained by defendants or plaintiffs for more than 550 cases, including more than 70 MDL case settlements, with notices appearing in more than 53 languages and in almost every country, territory, and dependency in the world. For more than 25 years, Hilsoft's notice plans have been approved and upheld by courts. Case examples include:

- Hilsoft designed and implemented an extensive notice plan for a $85 million privacy settlement involving Zoom, the most popular videoconferencing platform. Notice was sent to more than 158 million class members by email or mail and millions of reminder notices were sent to stimulate claim filings. The individual notice efforts reached 91% of the class and were enhanced by supplemental media provided with regional newspaper notice, nationally distributed digital and social media notice efforts (delivering more than 280 million impressions), sponsored search, an informational release, and a settlement website. ***In Re: Zoom Video Communications, Inc. Privacy Litigation***, 3:20-cv-02155 (N.D. Cal.).

- For a $50 million settlement on behalf of certain purchasers of Schiff Move Free® Advanced glucosamine supplements, nearly 4 million email notices and 1.1 million postcard notices were sent. The individual notice efforts sent by Hilsoft were delivered to 98.5% of the identified class sent notice. A media campaign with banner notices and sponsored search combined with the individual notice efforts reached at least 80% of the class. ***Yamagata et al. v. Reckitt Benckiser LLC****,* 3:17-cv-03529 (N.D. Cal.).

- Hilsoft designed and implemented an extensive individual notice program for a $60 million settlement for Morgan Stanley Smith Barney's account holders in response to "Data Security Incidents." More than 13.8 million email or mailed notices were delivered, reaching approximately 90% of the identified potential settlement class members. The individual notice efforts were supplemented with nationwide newspaper notice and a settlement website. ***In re Morgan Stanley Data Security Litigation*****,** 1:20-cv-05914 (S.D.N.Y.).

- In response to largescale municipal water contamination in Flint, Michigan, Hilsoft's expertise was relied upon to design and implement a comprehensive notice program. Direct mail notice packages and reminder email notices were sent to identified class members with contact information. In addition, Hilsoft implemented an extensive media plan with local newspaper publications, online video and audio ads, local television and radio ads, sponsored search, an informational release, and a website. The media plan also included banner and social media notices geo-targeted to Flint, Michigan and the state of Michigan. Combined, the notice program individual notice and media efforts reached over 95% of the class. ***In re Flint Water Cases****,* 5:16-cv-10444, (E.D. Mich.).

- Hilsoft implemented an extensive notice program for several settlements alleging improper collection and sharing of personally identifiable information (PII) of drivers on certain toll roads in California. The settlements provided benefits of more than $175 million, including penalty forgiveness. Combined, more than 13.8 million email or postcard notices were sent, reaching 93% - 95% of class members across all settlements. Individual notice was supplemented with banner notices and publication notices in select newspapers all geo-targeted within California. Sponsored search and a settlement website extended the reach of the notice program. ***In re Toll Roads Litigation***, 8:16-cv-00262 (C.D. Cal.).

- Hilsoft developed an extensive media-based notice program for a settlement regarding Walmart weighted goods pricing. Notice consisted of highly visible national consumer print publications and targeted digital banner notices and social media. The banner notices generated more than 522 million impressions. Sponsored search, an informational release, and a settlement website expanded the reach. The notice program reached approximately 75% of the class an average of 3.5 times each. ***Kukorinis v. Walmart, Inc.****,* 1:19-cv-20592 (S.D. Fla.).

- Hilsoft provided notice for the $113 million lithium-ion batteries antitrust litigation settlements with individual notice via email to millions of class members, banner and social media ads, an informational release, and a settlement website. ***In re: Lithium Ion Batteries Antitrust Litigation***, 4:13-md-02420, MDL No. 2420 (N.D. Cal.).

- For a $26.5 million settlement, Hilsoft implemented an extensive notice program targeted to people aged 13+ in the U.S. who exchanged or purchased in-game virtual currency for use within *Fortnite* or *Rocket League*. More than 29 million email notices and 27 million reminder notices were sent to class members. In addition, a targeted media notice program was implemented with internet banner and social media notices, *Reddit* feed ads, and *YouTube* pre-roll ads, generating more than 350.4 million impressions. Combined, the notice efforts reached approximately 93.7% of the class. ***Zanca et al. v. Epic Games, Inc.***, 21-CVS-534 (Sup. Ct. Wake Cnty., N.C.).

- Hilsoft designed and implemented numerous monumental notice campaigns to notify current or former owners or lessees of certain BMW, Mazda, Subaru, Toyota, Honda, Nissan, Ford, and Volkswagen vehicles as part of $1.91 billion in settlements regarding Takata airbags. The Notice Plans included individual mailed notice to more than 61.8 million potential class members and notice via consumer publications, U.S. Territory newspapers, radio, internet banners, mobile banners, and other behaviorally targeted digital media. Combined, the Notice Plans reached more than 95% of adults aged 18+ in the U.S. who owned or leased a subject vehicle with a frequency of 4.0 times each. ***In re: Takata Airbag Products Liability Litigation* (OEMS – BMW, Mazda, Subaru, Toyota, Honda, Nissan, Ford, and Volkswagen)**, MDL No. 2599 (S.D. Fla.).

- For a landmark $6.05 billion settlement reached by Visa and MasterCard in 2012, Hilsoft implemented an intensive notice program with more than 19.8 million direct mail notices to class members together with insertions in mor than 1,500 newspapers, consumer magazines, national business publications, trade and specialty publications, and included notices in multiple languages. An extensive online notice campaign with banner notices generated more than 770 million adult impressions supported by a settlement website in eight languages, and acquisition of sponsored search listings to facilitate locating the website. For the subsequent, superseding $5.54 billion settlement reached by Visa and MasterCard in 2019, Hilsoft implemented an extensive notice program with more than 16.3 million direct mail notices to class members together with over 354 print publication insertions and banner notices, generating more than 689 million adult impressions. ***In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation,*** 1:05-md-01720, MDL No. 1720 (E.D.N.Y.).

- For a $250 million settlement with approximately 4.7 million class members, Hilsoft designed and implemented a notice program with individual notice via postcard or email to approximately 1.43 million class members and a robust publication program, combined reaching approximately 78.8% of all U.S. adults aged 35+ approximately 2.4 times each. ***Hale v. State Farm Mutual Automobile Insurance Company et al.,*** 3:12-cv-00660 (S.D. Ill.).

- Hilsoft designed and implemented an extensive individual notice program with 8.6 million double-postcard notices and 1.4 million email notices. The notices informed class members of a $32 million settlement for a security incident regarding class members' personal information stored in Premera's computer network. The individual notice efforts reached 93.3% of the settlement class. A settlement website, an informational release, and a geo-targeted publication notice further enhanced the notice efforts. ***In re: Premera Blue Cross Customer Data Security Breach Litigation***, 3:15-md-2633 (D. Ore.).

- For a $20 million Telephone Consumer Protection Act settlement, Hilsoft created a notice program with mail or email to more than 6.9 million class members and media noticing via newspaper and internet banner ads, combined reaching approximately 90.6% of the settlement class. ***Vergara et al., v. Uber Technologies, Inc.***, 1:15-cv-06972 (N.D. Ill.).

- An extensive notice effort for asbestos personal injury claims and rights as to Debtors' Joint Plan of Reorganization and Disclosure Statement was designed and implemented by Hilsoft. The notice program included nationwide consumer print publications, trade and union labor publications, internet banner ads, an informational release, and a website. ***In re: Kaiser Gypsum Company, Inc. et al.***, 16-cv-31602 (Bankr. W.D. N.C.).

- A comprehensive notice program within the *Volkswagen Emissions Litigation* provided individual notice to more than 946,000 vehicle owners via first class mail and to more than 855,000 vehicle owners via email. A targeted internet campaign further enhanced the notice effort. ***In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation (Bosch Settlement)***, MDL No. 2672 (N.D. Cal.).

- Hilsoft designed a notice program with extensive data acquisition and mailed notice to inform owners and lessees of specific models of Mercedes-Benz vehicles. The notice program reached approximately 96.5% of all class members. ***Callaway v. Mercedes-Benz USA, LLC***, 8:14-cv-02011 (C.D. Cal.).

- Hilsoft provided notice for both the class certification and the settlement phases of the case. The individual notice efforts included postcard notices to more than 2.3 million class members, reaching 96% of the class. A publication notice in a national newspaper, targeted internet banner ads, and a website further extended the reach of the notice plan. ***Waldrup v. Countrywide Financial Corporation et al.***, 2:13-cv-08833 (C.D. Cal.).

- Hilsoft designed and implemented an extensive settlement notice plan for a class period spanning more than 40 years for smokers of light cigarettes. The notice plan delivered a measured reach of approximately 87.8% of Arkansas adults 25+ with a frequency of 8.9 times and approximately 91.1% of Arkansas adults 55+ with a frequency of 10.8 times. Spanish language newspaper notice, an informational release, radio public service announcements ("PSAs"), sponsored search listings, and a case website further enhanced reach. ***Miner v. Philip Morris USA, Inc.***, 60CV03-4661 (Ark. Cir. Ct.).

- Hilsoft oversaw a large asbestos bankruptcy bar date notice effort with individual notice, national consumer publications, hundreds of local and national newspapers, Spanish language newspapers, union labor publications, and digital media to reach the target audience. ***In re: Energy Future Holdings Corp. et al.***, 14-10979 (Bankr. D. Del.).

- Overdraft fee class actions have been brought against nearly every major U.S. commercial bank. For related settlements from 2010-2020, Hilsoft developed programs integrating individual notice, and in some cases paid media efforts. Fifth Third Bank, National City Bank, Bank of Oklahoma, Webster Bank, Harris Bank, M& I Bank, PNC Bank, Compass Bank, Commerce Bank, Citizens Bank, Great Western Bank, TD Bank, BancorpSouth, Comerica Bank, Susquehanna Bank, Associated Bank, Capital One, M&T Bank, Iberiabank and Synovus are among the more than 20 banks that have retained Epiq (Hilsoft). ***In re: Checking Account Overdraft Litigation***, MDL No. 2036 (S.D. Fla.).

- For one of the largest and most complex class action cases in Canadian history, Hilsoft designed and implemented groundbreaking notice to disparate, remote Indigenous people in this multi-billion-dollar settlement. ***In re: Residential Schools Class Action Litigation***, 00-cv-192059 CPA (Ont. Super. Ct.).

- For BP's $7.8 billion settlement related to the Deepwater Horizon oil spill, possibly the most complex class action case in U.S. history, Hilsoft drafted and opined on all forms of notice. The dual notice program to "Economic and Property Damages" and "Medical Benefits" settlement classes as designed by Hilsoft reached at least 95% Gulf Coast region adults via more than 7,900 television spots, 5,200 radio spots, 5,400 print insertions in newspapers, consumer publications, and trade journals, digital media, and individual notice. Subsequently, Hilsoft designed one of the largest claim deadline notice campaigns ever implemented, resulting in a combined measurable paid print, television, radio, and internet effort, reaching in excess of 90% of adults aged 18+ in the 26 identified DMAs covering the Gulf Coast Areas an average of 5.5 times each. ***In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010***, MDL No. 2179 (E.D. La.).

- Extensive point of sale notice effort with 100 million notices distributed to Lowe's purchasers during a six-week period regarding a Chinese drywall settlement. ***Vereen v. Lowe's Home Centers***, SU10-cv-2267B (Ga. Super. Ct.).

Cameron Azari, Esq., Epiq Senior Vice President, Hilsoft Director of Legal Notice

Cameron Azari, Esq. has more than 22 years of experience in the design and implementation of legal notice and claims administration programs. He is a nationally recognized expert in the creation of class action notification campaigns in compliance with Fed R. Civ. P. 23(c)(2) (d)(2) and (e) and similar state class action statutes. Cameron has been responsible for hundreds of legal notice and advertising programs. During his career, he has been involved in an array of high profile class action matters, including *In Re: Zoom Video Communications, Inc. Privacy Litigation, In re: Takata Airbag Products Liability Litigation, In re Flint Water Cases, In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* (MasterCard & Visa), *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation* (Bosch Settlement), *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010, In re: Checking Account Overdraft Litigation,* and *In re: Residential Schools Class Action Litigation*. He is an active author and speaker on a broad range of legal notice and class action topics ranging from FRCP Rule 23, email noticing, response rates, and optimizing settlement effectiveness. Cameron is an active member of the Oregon State Bar. He received his B.S. from Willamette University and his J.D. from Northwestern School of Law at Lewis and Clark College. Cameron can be reached at caza@legalnotice.com.

Kyle Bingham, Director – Epiq Legal Noticing

Kyle Bingham has 15 years of experience in the advertising industry. At Hilsoft and Epiq, Kyle is responsible for overseeing the research, planning, and execution of advertising campaigns for legal notice programs including class action, bankruptcy and other legal cases. Kyle has been involved in the design and implementation of numerous legal notice campaigns, including *In re: Takata Airbag Products Liability Litigation, Zanca et al. v. Epic Games, Inc., Kukorinis v. Walmart, Inc., In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation (Bosch), In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation (MasterCard & Visa), In re: Energy Future Holdings Corp. et al. (Asbestos Claims Bar Notice), In re: Residential Schools Class Action Litigation, Hale v. State Farm Mutual Automobile Insurance Company,* and *In re: Checking Account Overdraft Litigation*. Prior to joining Epiq and Hilsoft, Kyle worked at Wieden+Kennedy for seven years, an industry-leading advertising agency where he planned and purchased print, digital and broadcast media, and presented strategy and media campaigns to clients for multi-million-dollar branding campaigns and regional direct response initiatives. He received his B.A. from Willamette University. Kyle can be reached at kbingham@epiqglobal.com.

Stephanie Fiereck, Esq., Director of Legal Noticing

Stephanie Fiereck has more than 20 years of class action, bankruptcy, and litigation experience. She has worked on all aspects of class action settlement administration, including pre-settlement class action legal noticing work with clients and complex claims administration. Stephanie is responsible for assisting clients with drafting detailed legal noticing documents, writing declarations, as well as managing several specialized notice processes, including CAFA noticing. During her career, she has written more than 1,000 declarations while working on an array of cases including: *In Re: Zoom Video Communications, Inc. Privacy Litigation, In re: Takata Airbag Products Liability Litigation, In re Flint Water Cases, In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* (MasterCard & Visa), *In re: Energy Future Holdings Corp. et al.* (Asbestos Claims Bar Notice), *Hale v. State Farm Mutual Automobile Insurance Company, In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010,* and *In re: Checking Account Overdraft Litigation*. Stephanie has handled more than 375 CAFA notice mailings. Prior to joining Hilsoft, she was a Vice President at Wells Fargo Bank for five years where she led the class action services business unit. She has authored numerous articles regarding legal notice and settlement administration. Stephanie is an active member of the Oregon State Bar. She received her B.A. from St. Cloud State University and her J.D. from the University of Oregon School of Law. Stephanie can be reached at sfie@epiqglobal.com.

Lauran Schultz, Epiq Managing Director

Lauran Schultz consults with Hilsoft clients on complex noticing issues. Lauran has more than 20 years of experience as a professional in the marketing and advertising field, specializing in legal notice and class action administration since 2005. High profile actions he has been involved in include working with companies such as BP, Bank of America, Fifth Third Bank, Symantec Corporation, Lowe's Home Centers, First Health, Apple, TJX, CNA and Carrier Corporation. Prior to joining Epiq in 2005, Lauran was a Senior Vice President of Marketing at National City Bank in Cleveland, Ohio. Lauran's education includes advanced study in political science at the University of Wisconsin-Madison along with a Ford Foundation fellowship from the Social Science Research Council and American Council of Learned Societies. Lauran can be reached at lschultz@hilsoft.com.

ARTICLES AND PRESENTATIONS

- **Cameron Azari** Chair, "Panel Discussion: Class Actions Case Management." Global Class Actions Symposium 2021, London, UK, Nov. 16, 2021.

- **Cameron Azari** Speaker, "Mass Torts Made Perfect Bi-Annual Conference." Class Actions Abroad, Las Vegas, NV, Oct. 13, 2021.

- **Cameron Azari** Speaker, "Virtual Global Class Actions Symposium 2020, Class Actions Case Management Panel." Nov. 18, 2020.

- **Cameron Azari** Speaker, "Consumers and Class Action Notices: An FTC Workshop." Federal Trade Commission, Washington, DC, Oct. 29, 2019.

- **Cameron Azari** Speaker, "The New Outlook for Automotive Class Action Litigation: Coattails, Recalls, and Loss of Value/Diminution Cases." ACI's Automotive Product Liability Litigation Conference." American Conference Institute, Chicago, IL, July 18, 2019.

- **Cameron Azari** Moderator, "Prepare for the Future of Automotive Class Actions." Bloomberg Next, Webinar-CLE, Nov. 6, 2018.

- **Cameron Azari** Speaker, "The Battleground for Class Certification: Plaintiff and Defense Burdens, Commonality Requirements and Ascertainability." 30th National Forum on Consumer Finance Class Actions and Government Enforcement, Chicago, IL, July 17, 2018.

- **Cameron Azari** Speaker, "Recent Developments in Class Action Notice and Claims Administration." PLI's Class Action Litigation 2018 Conference, New York, NY, June 21, 2018.

- **Cameron Azari** Speaker, "One Class Action or 50? Choice of Law Considerations as Potential Impediment to Nationwide Class Action Settlements." 5th Annual Western Regional CLE Program on Class Actions and Mass Torts. Clyde & Co LLP, San Francisco, CA, June 22, 2018.

- **Cameron Azari** and **Stephanie Fiereck** Co-Authors, *A Practical Guide to Chapter 11 Bankruptcy Publication Notice*. E-book, published, May 2017.

- **Cameron Azari** Featured Speaker, "Proposed Changes to Rule 23 Notice and Scrutiny of Claim Filing Rates," DC Consumer Class Action Lawyers Luncheon, Dec. 6, 2016.

- **Cameron Azari** Speaker, "Recent Developments in Consumer Class Action Notice and Claims Administration." Berman DeValerio Litigation Group, San Francisco, CA, June 8, 2016.

- **Cameron Azari** Speaker, "2016 Cybersecurity & Privacy Summit. Moving From 'Issue Spotting' To Implementing a Mature Risk Management Model." King & Spalding, Atlanta, GA, Apr. 25, 2016.

- **Stephanie Fiereck** Author, "Tips for Responding to a Mega-Sized Data Breach." *Law360,* May 2016.

- **Cameron Azari** Speaker, "Live Cyber Incident Simulation Exercise." Advisen's Cyber Risk Insights Conference, London, UK, Feb. 10, 2015.

- **Cameron Azari** Speaker, "Pitfalls of Class Action Notice and Claims Administration." PLI's Class Action Litigation 2014 Conference, New York, NY, July 9, 2014.

- **Cameron Azari** and **Stephanie Fiereck** Co-Authors, "What You Need to Know About Frequency Capping In Online Class Action Notice Programs." *Class Action Litigation Report*, June 2014.

- **Cameron Azari** Speaker, "Class Settlement Update – Legal Notice and Court Expectations." PLI's 19th Annual Consumer Financial Services Institute Conference, New York, NY, Apr. 7-8, 2014.

- **Cameron Azari** Speaker, "Class Settlement Update – Legal Notice and Court Expectations." PLI's 19th Annual Consumer Financial Services Institute Conference, Chicago, IL, Apr. 28-29, 2014.

- **Stephanie Fiereck** Author, "Planning For The Next Mega-Sized Class Action Settlement." *Law360,* Feb. 2014.

- **Cameron Azari** Speaker, "Legal Notice in Consumer Finance Settlements - Recent Developments." ACI's Consumer Finance Class Actions and Litigation, New York, NY, Jan. 29-30, 2014.

- **Cameron Azari** Speaker, "Legal Notice in Building Products Cases." HarrisMartin's Construction Product Litigation Conference, Miami, FL, Oct. 25, 2013.

- **Cameron Azari** and **Stephanie Fiereck** Co-Authors, "Class Action Legal Noticing: Plain Language Revisited." *Law360*, Apr. 2013.

- **Cameron Azari** Speaker, "Legal Notice in Consumer Finance Settlements Getting your Settlement Approved." ACI's Consumer Finance Class Actions and Litigation, New York, NY, Jan. 31-Feb. 1, 2013.

- **Cameron Azari** Speaker, "Perspectives from Class Action Claims Administrators: Email Notices and Response Rates." CLE International's 8th Annual Class Actions Conference, Los Angeles, CA, May 17-18, 2012.

- **Cameron Azari** Speaker, "Class Action Litigation Trends: A Look into New Cases, Theories of Liability & Updates on the Cases to Watch." ACI's Consumer Finance Class Actions and Litigation, New York, NY, Jan. 26-27, 2012.

- **Lauran Schultz** Speaker, "Legal Notice Best Practices: Building a Workable Settlement Structure." CLE International's 7th Annual Class Action Conference, San Francisco, CA, May 2011.

- **Cameron Azari** Speaker, "Data Breaches Involving Consumer Financial Information: Litigation Exposures and Settlement Considerations." ACI's Consumer Finance Class Actions and Litigation, New York, NY, Jan. 2011.

- **Cameron Azari** Speaker, "Notice in Consumer Class Actions: Adequacy, Efficiency and Best Practices." CLE International's 5th Annual Class Action Conference: Prosecuting and Defending Complex Litigation, San Francisco, CA, 2009.

- **Lauran Schultz** Speaker, "Efficiency and Adequacy Considerations in Class Action Media Notice Programs." Chicago Bar Association, Chicago, IL, 2009.

- **Cameron Azari** Author, "Clearing the Five Hurdles of Email - Delivery of Class Action Legal Notices." *Thomson Reuters Class Action Litigation Reporter*, June 2008.

- **Cameron Azari** Speaker, "Planning for a Smooth Settlement." ACI: Class Action Defense – Complex Settlement Administration for the Class Action Litigator, Phoenix, AZ, 2007.

- **Cameron Azari** Speaker, "Structuring a Litigation Settlement." CLE International's 3rd Annual Conference on Class Actions, Los Angeles, CA, 2007.

- **Cameron Azari** Speaker, "Noticing and Response Rates in Class Action Settlements" – Class Action Bar Gathering, Vancouver, British Columbia, 2007.

- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Skadden Arps Slate Meagher & Flom, LLP, New York, NY, 2006.

- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Bridgeport Continuing Legal Education, Class Action and the UCL, San Diego, CA, 2006.

- **Stephanie Fiereck** Author, "Consultant Service Companies Assisting Counsel in Class-Action Suits." *New Jersey Lawyer*, Vol. 14, No. 44, Oct. 2005.

- **Stephanie Fiereck** Author, "Expand Your Internet Research Toolbox." The American Bar Association, *The Young Lawyer*, Vol. 9, No. 10, July/Aug. 2005.

- **Stephanie Fiereck** Author, "Class Action Reform: Be Prepared to Address New Notification Requirements." BNA, Inc. The Bureau of National Affairs, Inc. *Class Action Litigation Report*, Vol. 6, No. 9, May 2005.

- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Stoel Rives Litigation Group, Portland, OR / Seattle, WA / Boise, ID / Salt Lake City, UT, 2005.

- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Stroock & Stroock & Lavan Litigation Group, Los Angeles, CA, 2005.

- **Stephanie Fiereck** Author, "Bankruptcy Strategies Can Avert Class Action Crisis." TMA - *The Journal of Corporate* Renewal, Sept. 2004.

- **Cameron Azari** Author, "FRCP 23 Amendments: Twice the Notice or No Settlement." Current Developments – Issue II, Aug. 2003.

- **Cameron Azari** Speaker, "A Scientific Approach to Legal Notice Communication" – Weil Gotshal Litigation Group, New York, NY, 2003.

JUDICIAL COMMENTS

Judge Paul A. Engelmayer, *In re Morgan Stanley Data Security Litigation* (Aug. 5, 2022) 1:20-cv-05914 (S.D.N.Y.):

> *The Court finds that the emailed and mailed notice, publication notice, website, and Class Notice plan implemented pursuant to the Settlement Agreement and Judge Analisa Torres' Preliminary Approval Order: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to appraise Settlement Class Members of the pendency of this Action, of the effect of the proposed Settlement (including the Releases to be provided thereunder), of their right to exclude themselves from or object to the proposed Settlement, of their right to appear at the Fairness Hearing, of the Claims Process, and of Class Counsel's application for an award of attorneys' fees, for reimbursement of expenses associated with the Action, and any Service Award; (d) provided a full and fair opportunity to all Settlement Class Members to be heard with respect to the foregoing matters; (e) constituted due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (f) met all applicable requirements of Rule 23 of the Federal Rule of Civil Procedure, the United States Constitution, including the Due Process Clause, and any other applicable rules of law.*

Judge Denise Page Hood, *Bleachtech L.L.C. v. United Parcel Service Co.* (July 20, 2022) 14-cv-12719 (E.D. Mich.):

> *The Settlement Class Notice Program, consisting of, among other things, the Publication Notice, Long Form Notice, website, and toll-free telephone number, was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Settlement Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.*

Judge Robert E. Payne, *Skochin et al. v. Genworth Life Insurance Company et al.* (June 29, 2022) 3:21-cv-00019 (E.D. Vir.):

> *The Court finds that the plan to disseminate the Class Notice and Publication Notice the Court previously approved has been implemented and satisfies the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process. The Class Notice, which the Court approved, clearly defined the Class and explained the rights and obligations of the Class Members. The Class Notice explained how to obtain benefits under the Settlement, and how to contact Class Counsel and the Settlement Administrator. The Court appointed Epiq Class Action & Claims Solutions, Inc. ("Epiq") to fulfill the Settlement Administrator duties and disseminate the Class Notice and Publication Notice. The Class Notice and Publication Notice permitted Class Members to access information and documents about the case to inform their decision about whether to opt out of or object to the Settlement.*

Judge Fernando M. Olguin, *Johnson v. Moss Bros. Auto Group, Inc. et al.* (June 24, 2022) 5:19-cv-02456 (C.D. Cal.):

> *Here, after undertaking the required examination, the court approved the form of the proposed class notice. (See Dkt. 125, PAO at 18-21). As discussed above, the notice program was implemented by Epiq. (Dkt. 137-3, Azari Decl. at ¶¶ 15-23 & Exhs. 3-4 (Class Notice)). Accordingly, based on the record and its prior findings, the court finds that the class notice and the notice process fairly and adequately informed the class members of the nature of the action, the terms of the proposed settlement, the effect of the action and release of claims, the class members' right to exclude themselves from the action, and their right to object to the proposed settlement….*

Judge Harvey E. Schlesinger, *Beiswinger v. West Shore Home, LLC* (May 25, 2022) 3:20-cv-01286 (M.D. Fla.):

> *The Notice and the Notice Plan implemented pursuant to the Agreement (1) constitute the best practicable notice under the circumstances; (2) constitute notice that is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Litigation, their right to object to or exclude themselves from the proposed Settlement, and to appear at the Final Approval Hearing; (3) are reasonable and constitute due, adequate, and sufficient notice to all Persons entitled to receive notice; and (4) meet all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court.*

Judge Scott Kording, *Jackson v. UKG Inc., f/k/a The Ultimate Software Group, Inc.* (May 20, 2022) 2020L0000031 (Cir. Ct. of McLean Cnty., Ill.):

> *The Court has determined that the Notice given to the Settlement Class Members, in accordance with the Preliminary Approval Order, fully and accurately informed Settlement Class Members of all material elements of the Settlement, constituted the best notice practicable under the circumstances, and fully satisfied the requirements of 735 ILCS 5/2-803, applicable law, and the Due Process Clauses of the U.S. Constitution and Illinois Constitution.*

Judge Denise J. Casper, *Breda v. Cellco Partnership d/b/a Verizon Wireless* (May 2, 2022) 1:16-cv-11512 (D. Mass.):

> *The Court hereby finds Notice of Settlement was disseminated to persons in the Settlement Class in accordance with the Court's preliminary approval order, was the best notice practicable under the circumstances, and that the Notice satisfied Rule 23 and due process.*

Judge William H. Orrick, *Maldonado et al. v. Apple Inc. et al.* (Apr. 29, 2022) 3:16-cv-04067 (N.D. Cal.):

> *[N]otice of the Class Settlement to the Certified Class was the best notice practicable under the circumstances. The notice satisfied due process and provided adequate information to the Certified Class of all matters relating to the Class Settlement, and fully satisfied the requirements of Federal Rules of Civil Procedure 23(c)(2) and (e)(1).*

Judge Laurel Beeler, *In re: Zoom Video Communications, Inc. Privacy Litigation* (Apr. 21, 2022) 20-cv-02155 (N.D. Cal.):

> *Between November 19, 2021, and January 3, 2022, notice was sent to 158,203,160 class members by email (including reminder emails to those who did not submit a claim form) and 189,003 by mail. Of the emailed notices, 14,303,749 were undeliverable, and of that group, Epiq mailed notice to 296,592 class members for whom a physical address was available. Of the mailed notices, efforts were made to ensure address accuracy and currency, and as of March 10, 2022, 11,543 were undeliverable. In total, as of March 10, 2022, notice was accomplished for 144,242,901 class members, or 91% of the total. Additional notice efforts were made by newspaper … social media, sponsored search, an informational release, and a Settlement Website. Epiq and Class Counsel also complied with the court's prior request that best practices related to the security of class member data be implemented.*
>
> *[T]he Settlement Administrator provided notice to the class in the form the court approved previously. The notice met all legal prerequisites: it was the best notice practicable, satisfied the requirements of Rule 23(c)(2), adequately advised class members of their rights under the settlement agreement, met the requirements of due process, and complied with the court's order regarding court notice. The forms of notice fairly, plainly, accurately, and reasonably provided class members with all required information ....*

Judge Federico A. Moreno, *In re: Takata Airbag Products Liability Litigation* (Volkswagen) (Mar. 28, 2022) MDL No. 2599 (S.D. Fla.):

> *[T]he Court finds that the Class Notice has been given to the Class in the manner approved by the Court in its Preliminary Approval Order … The Court finds that such Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), FED. R. CIV. P. 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.*

Judge James Donato, *Pennington et al. v. Tetra Tech, Inc. et al.* (Mar. 28, 2022) 3:18-cv-05330 (N.D. Cal.):

> *On the Rule 23(e)(1) notice requirement, the Court approved the parties' notice plan, which included postcard notice, email notice, and a settlement website. Dkt. No. 154. The individual notice efforts reached an impressive 100% of the identified settlement class. Dkt. No. 200-2 ¶ 23. The Court finds that notice was provided in the best practicable manner to class members who will be bound by the proposal. Fed. R. Civ. P. 23(e)(1).*

Judge Edward J. Davila, *Cochran et al. v. The Kroger Co. et al.* (Mar. 24, 2022) 5:21-cv-01887 (N.D. Cal.):

> *The Court finds that the dissemination of the Notices:*
>
> *(a) was implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that is appropriate, in a manner, content, and format reasonably calculated, under the circumstances, to apprise Settlement Class Members …; (d) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United (including the Due Process Clause), and all other applicable laws and rules.*

Judge Sunshine Sykes, *In re Renovate America Finance Cases* (Mar. 4, 2022) RICJCCP4940 (Sup. Ct. of Cal., Riverside Cnty.):

> *The Court finds that notice previously given to Class Members in the Action was the best notice practicable under the circumstances and satisfies the requirements of due process …The Court further finds that, because (a) adequate notice has been provided to all Class Members and (b) all Class Members have been given the opportunity to object to, and/or request exclusion from, the Settlement, the Court has jurisdiction over all Class Members.*

Judge David O. Carter, *Fernandez v. Rushmore Loan Management Services LLC* (Feb. 14, 2022) 8:21-cv-00621 (C. D. Cal.):

> *Notice was sent to potential Class Members pursuant to the Settlement Agreement and the method approved by the Court. The Class Notice adequately describes the litigation and the scope of the involved Class. Further, the Class Notice explained the amount of the Settlement Fund, the plan of allocation, that Plaintiff's counsel and Plaintiff will apply for attorneys' fees, costs, and a service award, and the Class Members' option to participate, opt out, or object to the Settlement. The Class Notice consisted of direct notice via USPS, as well as a Settlement Website where Class Members could view the Long Form Notice.*

Judge Otis D. Wright, II, *In re Toll Roads Litigation* (Feb. 11, 2022) 8:16-cv-00262 (C. D. Cal.):

> *The Class Administrator provided notice to members of the Settlement Classes in compliance with the Agreements, due process, and Rule 23. The notice: (i) fully and accurately informed class members about the lawsuit and settlements; (ii) provided sufficient information so that class members were able to decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the proposed settlements; (iii) provided procedures for class members to file written objections to the proposed settlements, to appear at the hearing, and to state objections to the proposed settlements; and (iv) provided the time, date, and place of the final fairness hearing. The Court finds that the Notice provided to the Classes pursuant to the Settlement*

Agreements and the Preliminary Approval Order and consisting of individual direct postcard and email notice, publication notice, settlement website, and CAFA notice has been successful and (i) constituted the best practicable notice under the circumstances; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, their right to object to the Settlements or exclude themselves from the Classes, and to appear at the Final Approval Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) otherwise met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court.

Judge Virginia M. Kendall, *In re Turkey Antitrust Litigations* (Commercial and Institutional Indirect Purchaser Plaintiffs' Action) *Sandee's Bakery d/b/a Sandee's Catering Bakery & Deli et al. v. Agri Stats, Inc.* (Feb. 10, 2022) 1:19-cv-08318 (N.D. Ill.):

The notice given to the Settlement Class, including individual notice all members of the Settlement Class who could be identified through reasonable efforts, was the most effective and practicable under the circumstances. This notice provided due and sufficient notice of proceedings and of the matters set forth therein, including the proposed Settlement, to all persons entitled to such notice, and this notice fully satisfied the requirements of Rules 23(c)(2) and 23(e)(1) of the Federal Rules of Civil Procedure and the requirements of due process.

Judge Beth Labson Freeman, *Ford et al. v. [24]7.ai, Inc.* (Jan. 28, 2022) 5:18-cv-02770 (N.D. Cal.):

The Court finds that the manner and form of notice (the "Notice Program") set forth in the Settlement Agreement was provided to Settlement Class Members. The Court finds that the Notice Program, as implemented, was the best practicable under the circumstances. The Notice Program was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, and their rights to opt-out of the Settlement Class and object to the Settlement, Class Counsel's fee request, and the request for Service Award for Plaintiffs. The Notice and notice program constituted sufficient notice to all persons entitled to notice. The Notice and notice program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the constitutional requirement of due process.

Judge Terrence W. Boyle, *Abramson et al. v. Safe Streets USA LLC et al.* (Jan. 12, 2022) 5:19-cv-00394 (E.D.N.C.):

Notice was provided to Settlement Class Members in compliance with Section 4 of the Settlement Agreement, due process, and Rule 23 of the Federal Rules of Civil Procedure. The notice: (a) fully and accurately informed Settlement Class Members about the Actions and Settlement Agreement; (b) provided sufficient information so that Settlement Class Members could decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the settlement; (c) provided procedures for Settlement Class Members to submit written objections to the proposed settlement, to appear at the hearing, and to state objections to the proposed settlement; and (d) provided the time, date, and place of the Final Approval Hearing.

Judge Joan B. Gottschall, *Mercado et al. v. Verde Energy USA, Inc.* (Dec. 17, 2021) 1:18-cv-02068 (N.D. Ill.):

In accordance with the Settlement Agreement, Epiq launched the Settlement Website and mailed out settlement notices in accordance with the preliminary approval order. (ECF No. 149). Pursuant to this Court's preliminary approval order, Epiq mailed and emailed notice to the Class on October 1, 2021. Therefore, direct notice was sent and delivered successfully to the vast majority of Class Members.
The Class Notice, together with all included and ancillary documents thereto, complied with all the requirements of Rule 23(c)(2)(B) and fairly, accurately, and reasonably informed members of the Class of: (a) appropriate information about the nature of this Litigation, including the class claims, issues, and defenses, and the essential terms of the Settlement Agreement; (b) the definition of the Class; (c) appropriate information about, and means for obtaining additional information regarding, the lawsuit and the Settlement Agreement; (d) appropriate information about, and means for obtaining and submitting, a claim; (e) appropriate information about the right of Class Members to appear through an attorney, as well as the time, manner, and effect of excluding themselves from the Settlement, objecting to the terms of the Settlement Agreement, or objecting to Lead and Class Counsel's request for an award of attorneys' fees and costs, and the procedures to do so; (f) appropriate information about the consequences of failing to submit a claim or failing to comply with the procedures and deadline for requesting exclusion from, or objecting to, the Settlement; and (g) the binding effect of a class judgment on Class Members under Rule 23(c)(3) of the Federal Rules of Civil Procedure.

The Court finds that Class Members have been provided the best notice practicable of the Settlement and that such notice fully satisfies all requirements of applicable laws and due process.

Judge Patricia M. Lucas, *Wallace v. Wells Fargo* (Nov. 24, 2021) 17CV317775 (Sup. Ct. Cal. Cnty. of Santa Clara):

> *On August 29, 2021, a dedicated website was established for the settlement at which class members can obtain detailed information about the case and review key documents, including the long form notice, postcard notice, settlement agreement, complaint, motion for preliminary approval … (Declaration of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Settlement Notice Program ["Azari Dec."]* ¶19*). As of October 18, 2021, there were 2,639 visitors to the website and 4,428 website pages presented.* (Ibid.).
>
> *On August 30, 2021, a toll-free telephone number was established to allow class members to call for additional information in English or Spanish, listen to answers to frequently asked questions, and request that a long form notice be mailed to them (Azari Dec.* ¶20*). As of October 18, 2021, the telephone number handled 345 calls, representing 1,207 minutes of use, and the settlement administrator mailed 30 long form notices as a result of requests made via the telephone number.*
>
> *Also, on August 30, 2021, individual postcard notices were mailed to 177,817 class members. (Azari Dec.* ¶14*) As of November 10, 2021, 169,404 of those class members successfully received notice. (Supplemental Declaration of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Settlement Notice Program ["Supp. Azari Dec."]* ¶10*.).*

Judge John R. Tunheim, *In Re Pork Antitrust Litigation (Commercial and Institutional Indirect Purchaser Plaintiff Action)* (JBS USA Food Company, JBS USA Food Company Holdings) (Nov. 18, 2021) 18-cv-01776 (D. Minn.):

> *The notice given to the Settlement Class, including individual notice to all members of the Settlement Class who could be identified through reasonable effort, was the most effective and practicable under the circumstances. This notice provided due and sufficient notice of the proceedings and of the matters set forth therein, including the proposed settlement, to all persons entitled to such notice, and this notice fully satisfied the requirements of Rules 23(c)(2) and 23(e)(1) of the Federal Rules of Civil Procedure and the requirements of due process.*

Judge H. Russel Holland, *Coleman v. Alaska USA Federal Credit Union* (Nov. 17, 2021) 3:19-cv-00229 (D. Alaska):

> *The Court approved Notice Program has been fully implemented. The Court finds that the Notices given to the Settlement Class fully and accurately informed Settlement Class Members of all material elements of the proposed Settlement and constituted valid, due, and sufficient Notice to Settlement Class Members consistent with all applicable requirements. The Court further finds that the Notice Program satisfies due process.*

Judge A. Graham Shirley, *Zanca et al. v. Epic Games, Inc.* (Nov. 16, 2021) 21-CVS-534 (Sup. Ct. Wake Cnty., N.C.):

> *Notice has been provided to all members of the Settlement Class pursuant to and in the manner directed by the Preliminary Approval Order. The Notice Plan was properly administered by a highly experienced third-party Settlement Administrator. Proof of the provision of that Notice has been filed with the Court and full opportunity to be heard has been offered to all Parties to the Action, the Settlement Class, and all persons in interest. The form and manner of the Notice is hereby determined to have been the best notice practicable under the circumstances and to have been given full compliance with each of the requirements of North Carolina Rule of Civil Procedure 23, due process, and applicable law.*

Judge Judith E. Levy, *In re Flint Water Cases* (Nov. 10, 2021) 5:16-cv-10444 (E.D. Mich.):

> *(1) a "Long Form Notice packet [was] mailed to each Settlement Class member … a list of over 57,000 addresses—[and] over 90% of [the mailings] resulted in successful delivery;" (2) notices were emailed "to addresses that could be determined for Settlement Class members;" and (3) the "Notice Administrator implemented a comprehensive media notice campaign." … The media campaign coupled with the mailing was intended to reach the relevant audience in several ways and at several times so that the class members would be fully informed about the settlement and the registration and objection process.*
>
> *The media campaign included publication in the local newspaper … local digital banners … television … and radio spots … banner notices and radio ads placed on Pandora and SoundCloud; and video ads placed on YouTube .... [T]his settlement has received widespread media attention from major news outlets nationwide.*
>
> *Plaintiffs submitted an affidavit signed by Azari that details the implementation of the Notice plan .... The affidavit is bolstered by several documents attached to it, such as the declaration of Epiq Class Action and Claims Solutions, Inc.'s Legal Notice Manager, Stephanie J. Fiereck. Azari declared that Epiq "delivered individual notice to approximately 91.5% of the identified Settlement Class" and that the media notice brought the overall notice effort to "in excess of*

95%." The Court finds that the notice plan was implemented in an appropriate manner.

In conclusion, the Court finds that the Notice Plan as implemented, and its content, satisfies due process.

Judge Vince Chhabria, *Yamagata et al. v. Reckitt Benckiser LLC* (Oct. 28, 2021) 3:17-cv-03529 (N.D. Cal.):

The Court directed that Class Notice be given to the Class Members pursuant to the notice program proposed by the Parties and approved by the Court. In accordance with the Court's Preliminary Approval Order and the Court-approved notice program, the Settlement Administrator caused the forms of Class Notice to be disseminated as ordered. The Long-form Class Notice advised Class Members of the terms of the Settlement Agreement; the Final Approval Hearing, and their right to appear at such hearing; their rights to remain in, or opt out of, the Settlement Class and to object to the Settlement Agreement; procedures for exercising such rights; and the binding effect of this Order and accompanying Final Judgment, whether favorable or unfavorable, to the Settlement Class.

The distribution of the Class Notice pursuant to the Class Notice Program constituted the best notice practicable under the circumstances, and fully satisfies the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. § 1715, and any other applicable law. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 173 (1974); Rodriguez v. West Publ'g Co., 563 F.3d 948, 962 (9th Cir. 2009).

Judge Otis D. Wright, II, *Silveira v. M&T Bank* (Oct. 12, 2021) 2:19-cv-06958 (C.D. Cal.):

Notice was sent to potential class members pursuant to the Settlement Agreement and the method approved by the Court. The Class Notice consisted of direct notice via USPS first class mail, as well as a Settlement Website where Class Members could view and request to be sent the Long Form Notice. The Class Notice adequately described the litigation and the scope of the involved class. Further, the Class Notice explained the amount of the Settlement Fund, the plan of allocation, that Plaintiff's counsel and Plaintiff will apply for attorneys' fees, costs, and a service award, and the class members' option to participate, opt out, or object to the settlement.

Judge Timothy J. Korrigan, *Smith v. Costa Del Mar, Inc.* (Sept. 21, 2021) 3:18-cv-01011 (M.D. Fla.):

Following preliminary approval, the settlement administrator carried out the notice program .... The settlement administrator sent a summary notice and long-form notice to all class members, sent CAFA notice to federal and state officials … and established a website with comprehensive information about the settlement .... Email notice was sent to class members with email addresses, and postcards were sent to class members with only physical addresses .... Multiple attempts were made to contact class members in some cases, and all notices directed recipients to a website where they could access settlement information .... A paid online media plan was implemented for class members for whom the settlement administrator did not have data .... When the notice program was complete, the settlement administrator submitted a declaration stating that the notice and paid media plan reached at least seventy percent of potential class members .... [N]otices had been delivered via postcards or email to 939,400 of the 939,479 class members to whom the settlement administrator sent notice—a ninety-nine and a half percent deliverable rate....

Notice was disseminated in accordance with the Preliminary Approval Order .... Federal Rule of Civil Procedure 23(c)(2)(B) requires that notice be "the best notice that is practicable under the circumstances." Upon review of the notice materials … and of Azari's Declaration … regarding the notice program, the Court is satisfied with the way in which the notice program was carried out. Class notice fully complied with Rule 23(c)(2)(B) and due process, constituted the best notice practicable under the circumstances, and was sufficient notice to all persons entitled to notice of the settlement of this lawsuit.

Judge Jose E. Martinez, *Kukorinis v. Walmart, Inc.* (Sept. 20, 2021) 1:19-cv-20592 (S.D. Fla.):

[T]he Court approved the appointment of Epiq Class Action and Claims Solutions, Inc. as the Claims Administrator with the responsibility of implementing the notice requirements approved in the Court's Order of Approval .... The media plan included various forms of notice, utilizing national consumer print publications, internet banner advertising, social media, sponsored search, and a national informational release .... According to the Azari Declaration, the Court-approved Notice reached approximately seventy-five percent (75%) of the Settlement Class on an average of 3.5 times per Class Member ....

Pertinently, the Claims Administrator implemented digital banner notices across certain social media platforms, including Facebook and Instagram, which linked directly to the Settlement Website … the digital banner notices generated approximately 522.6 million adult impressions online .... [T]he Court finds that notice was "reasonably

calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

Judge Steven L. Tiscione, *Fiore et al. v. Ingenious Designs, LLC* (Sept. 10, 2021) 1:18-cv-07124 (E.D.N.Y.):

Following the Court's Preliminary Approval of the Settlement, the Notice Plan was effectuated by the Parties and the appointed Claims Administrator, Epiq Systems. The Notice Plan included a direct mailing to Class members who could be specifically identified, as well as nationwide notice by publication, social media and retailer displays and posters. The Notice Plan also included the establishment of an informational website and toll-free telephone number. The Court finds the Parties completed all settlement notice obligations imposed in the Order Preliminarily Approving Settlement. In addition, Defendants through the Class Administrator, sent the requisite CAFA notices to 57 federal and state officials. The class notices constitute "the best notice practicable under the circumstances," as required by Rule 23(c)(2).

Judge John S. Meyer, *Lozano v. CodeMetro, Inc.* (Sept. 8, 2021) 37-2020-00022701 (Sup. Ct. Cal. Cnty. of San Diego):

The Court finds that Notice has been given to the Settlement Class in the manner directed by the Court in the Preliminary Approval Order. The Court finds that such Notice: (i) was reasonable and constituted the best practicable notice under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Litigation, the terms of the Settlement, their right to exclude themselves from the Settlement Class or object to all or any part of the Settlement, their right to appear at the Final Fairness Hearing (either on their own or through counsel hired at their own expense), and the binding effect of final approval of the Settlement on all persons who do not exclude themselves from the Settlement Class; (iii) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), and any other applicable law.

Judge Mae A. D'Agostino, *Thompson et al. v. Community Bank, N.A.* (Sept. 8, 2021) 8:19-cv-0919 (N.D.N.Y.):

Prior to distributing Notice to the Settlement Class members, the Settlement Administrator established a website, … as well as a toll-free line that Settlement Class members could access or call for any questions or additional information about the proposed Settlement, including the Long Form Notice. Once Settlement Class members were identified via Defendant's business records, the Notices attached to the Agreement and approved by the Court were sent to each Settlement Class member. For Current Account Holders who have elected to receive bank communications via email, Email Notice was delivered. To Past Defendant Account Holders, and Current Account Holders who have not elected to receive communications by email or for whom the Defendant does not have a valid email address, Postcard Notice was delivered by U.S. Mail. The Settlement Administrator mailed 36,012 Postcard Notices and sent 16,834 Email Notices to the Settlement Class, and as a result of the Notice Program, 95% of the Settlement Class received Notice of the Settlement.

Judge Graham C. Mullen, *In re: Kaiser Gypsum Company, Inc. et al.* (July 27, 2021) 16-cv-31602, (W.D.N.C.):

[T]the Declaration of Cameron R. Azari, Esq. on Implementation of Notice Regarding the Joint Plan of Reorganization of Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc. … (the "Notice Declaration") was filed with the Bankruptcy Court on July 1, 2020, attesting to publication notice of the Plan.

[T]he Court has reviewed the Plan, the Disclosure Statement, the Disclosure Statement Order, the Voting Agent Declaration, the Affidavits of Service, the Publication Declaration, the Notice Declaration, the Memoranda of Law, the Declarations, the Truck Affidavits and all other pleadings before the Court in connection with the Confirmation of the Plan, including the objections filed to the Plan. The Plan is hereby confirmed in its entirety ....

Judge Anne-Christine Massullo, *UFCW & Employers Benefit Trust v. Sutter Health et al.* (Aug. 27, 2021) CGC 14-538451 consolidated with CGC-18-565398 (Sup. Ct. of Cal., Cnty. of San Fran.):

The notice of the Settlement provided to the Class constitutes due, adequate and sufficient notice and the best notice practicable under the circumstances, and meets the requirements of due process, the laws of the State of California, and Rule 3.769(f) of the California Rules of Court.

Judge Anne-Christine Massullo, *Morris v. Provident Credit Union* (June 23, 2021) CGC-19-581616 (Sup. Ct. Cal. Cnty. of San Fran.):

The Notice approved by this Court was distributed to the Classes in substantial compliance with this Court's Order Certifying Classes for Settlement Purposes and Granting Preliminary Approval of Class Settlement ("Preliminary

Approval Order") and the Agreement. The Notice met the requirements of due process and California Rules of Court, rules 3.766 and 3.769(f). The notice to the Classes was adequate.

Judge Esther Salas, *Sager et al. v. Volkswagen Group of America, Inc. et al.* (June 22, 2021) 18-cv-13556 (D.N.J.):

The Court further finds and concludes that Class Notice was properly and timely disseminated to the Settlement Class in accordance with the Class Notice Plan set forth in the Settlement Agreement and the Preliminary Approval Order (Dkt. No. 69). The Class Notice Plan and its implementation in this case fully satisfy Rule 23, the requirements of due process and constitute the best notice practicable under the circumstances.

Judge Josephine L. Staton, *In re: Hyundai and Kia Engine Litigation and Flaherty v. Hyundai Motor Company, Inc. et al.* (June 10, 2021) 8:17-cv-00838 and 18-cv-02223 (C.D. Cal.):

The Class Notice was disseminated in accordance with the procedures required by the Court's Orders … in accordance with applicable law, and satisfied the requirements of Rule 23(e) and due process and constituted the best notice practicable for the reasons discussed in the Preliminary Approval Order and Final Approval Order.

Judge Harvey Schlesinger, *In re: Disposable Contact Lens Antitrust Litigation* (ABB Concise Optical Group, LLC) (May 31, 2021) 3:15-md-02626 (M.D. Fla.):

The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constitutes the best notice practicable under the circumstances; (c) constitutes notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class of (i) the pendency of the Action; (ii) the effect of the Settlement Agreement (including the Releases to be provided thereunder); (iii) Class Counsel's possible motion for an award of attorneys' fees and reimbursement of expenses; (iv) the right to object to any aspect of the Settlement Agreement, the Plan of Distribution, and/or Class Counsel's motion for attorneys' fees and reimbursement of expenses; (v) the right to opt out of the Settlement Class; (vi) the right to appear at the Fairness Hearing; and (vii) the fact that Plaintiffs may receive incentive awards; (d) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the Settlement Agreement; and (e) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and the United States Constitution (including the Due Process Clause).

Judge Haywood S. Gilliam, Jr. *Richards et al. v. Chime Financial, Inc.* (May 24, 2021) 4:19-cv-06864 (N.D. Cal.):

The Court finds that the notice and notice plan previously approved by the Court was implemented and complies with Rule 23(c)(2)(B) … The Court ordered that the third-party settlement administrator send class notice via email based on a class list Defendant provided … Epiq Class Action & Claims Solutions, Inc., the third-party settlement administrator, represents that class notice was provided as directed .... Epiq received a total of 527,505 records for potential Class Members, including their email addresses .... If the receiving email server could not deliver the message, a "bounce code" was returned to Epiq indicating that the message was undeliverable .... Epiq made two additional attempts to deliver the email notice .... As of Mach 1, 2021, a total of 495,006 email notices were delivered, and 32,499 remained undeliverable .... In light of these facts, the Court finds that the parties have sufficiently provided the best practicable notice to the Class Members.

Judge Henry Edward Autrey, *Pearlstone v. Wal-Mart Stores, Inc.* (Apr. 22, 2021) 4:17-cv-02856 (C.D. Cal.):

The Court finds that adequate notice was given to all Settlement Class Members pursuant to the terms of the Parties' Settlement Agreement and the Preliminary Approval Order. The Court has further determined that the Notice Plan fully and accurately informed Settlement Class Members of all material elements of the Settlement, constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule 23(c)(2) and 23(e)(1), applicable law, and the Due Process Clause of the United States Constitution.

Judge Lucy H. Koh, *Grace v. Apple, Inc.* (Mar. 31, 2021) 17-cv-00551 (N.D. Cal.):

Federal Rule of Civil Procedure 23(c)(2)(B) requires that the settling parties provide class members with "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." The

Court finds that the Notice Plan, which was direct notice sent to 99.8% of the Settlement Class via email and U.S. Mail, has been implemented in compliance with this Court's Order (ECF No. 426) and complies with Rule 23(c)(2)(B).

Judge Gary A. Fenner, *In re: Pre-Filled Propane Tank Antitrust Litigation* (Mar. 30, 2021) MDL No. 2567, 14-cv-02567 (W.D. Mo.):

Based upon the Declaration of Cameron Azari, on behalf of Epiq, the Administrator appointed by the Court, the Court finds that the Notice Program has been properly implemented. That Declaration shows that there have been no requests for exclusion from the Settlement, and no objections to the Settlement. Finally, the Declaration reflects that AmeriGas has given appropriate notice of this settlement to the Attorney General of the United States and the appropriate State officials under the Class Action Fairness Act, 28 U.S.C. § 1715, and no objections have been received from any of them.

Judge Richard Seeborg, *Bautista v. Valero Marketing and Supply Company* (Mar. 17, 2021) 3:15-cv-05557 (N.D. Cal.):

The Notice given to the Settlement Class in accordance with the Notice Order was the best notice practicable under the circumstances of these proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Settlement Agreement, to all Persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23 and due process.

Judge James D. Peterson, *Fox et al. v. Iowa Health System d.b.a. UnityPoint Health* (Mar. 4, 2021) 18-cv-00327 (W.D. Wis.):

The approved Notice plan provided for direct mail notice to all class members at their last known address according to UnityPoint's records, as updated by the administrator through the U.S. Postal Service. For postcards returned undeliverable, the administrator tried to find updated addresses for those class members. The administrator maintained the Settlement website and made Spanish versions of the Long Form Notice and Claim Form available upon request. The administrator also maintained a toll-free telephone line which provides class members detailed information about the settlement and allows individuals to request a claim form be mailed to them.

The Court finds that this Notice (i) constituted the best notice practicable under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise Settlement Class members of the Settlement, the effect of the Settlement (including the release therein), and their right to object to the terms of the settlement and appear at the Final Approval Hearing; (iii) constituted due and sufficient notice of the Settlement to all reasonably identifiable persons entitled to receive such notice; (iv) satisfied the requirements of due process, Federal Rule of Civil Procedure 23(e)(1) and the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and all applicable laws and rules.

Judge Larry A. Burns, *Trujillo et al. v. Ametek, Inc. et al.* (Mar. 3, 2021) 3:15-cv-01394 (S.D. Cal.):

The Class has received the best practicable notice under the circumstances of this case. The Parties' selection and retention of Epiq Class Action & Claims Solutions, Inc. ("Epiq") as the Claims Administrator was reasonable and appropriate. Based on the Declaration of Cameron Azari of Epiq, the Court finds that the Settlement Notices were published to the Class Members in the form and manner approved by the Court in its Preliminary Approval Order. See Dkt. 181-6. The Settlement Notices provided fair, effective, and the best practicable notice to the Class of the Settlement's terms. The Settlement Notices informed the Class of Plaintiffs' intent to seek attorneys' fees, costs, and incentive payments, set forth the date, time, and place of the Fairness Hearing, and explained Class Members' rights to object to the Settlement or Fee Motion and to appear at the Fairness Hearing .... The Settlement Notices fully satisfied all notice requirements under the law, including the Federal Rules of Civil Procedure, the requirements of the California Legal Remedies Act, Cal. Civ. Code § 1781, and all due process rights under the U.S. Constitution and California Constitutions.

Judge Sherri A. Lydon, *Fitzhenry v. Independent Home Products, LLC* (Mar. 2, 2021) 2:19-cv-02993 (D.S.C.):

Notice was provided to Class Members in compliance with Section VI of the Settlement Agreement, due process, and Rule 23 of the Federal Rules of Civil Procedure. The notice: (i) fully and accurately informed Settlement Class Members about the lawsuit and settlement; (ii) provided sufficient information so that Settlement Class Members could decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the settlement; (iii) provided procedures for Class Members to file written objections to the proposed settlement, to appear at the hearing, and to state objections to the proposed settlement; and (iv) provided the time, date, and place of the final fairness hearing.

Judge James V. Selna, *Alvarez v. Sirius XM Radio Inc.* (Feb. 9, 2021) 2:18-cv-08605 (C.D. Cal.):

> *The Court finds that the dissemination of the Notices attached as Exhibits to the Settlement Agreement: (a) was implemented in accordance with the Notice Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action; (ii) their right to submit a claim (where applicable) by submitting a Claim Form; (iii) their right to exclude themselves from the Settlement Class; (iv) the effect of the proposed Settlement (including the Releases to be provided thereunder); (v) Named Plaintiffs' application for the payment of Service Awards; (vi) Class Counsel's motion for an award an attorneys' fees and expenses; (vii) their right to object to any aspect of the Settlement, and/or Class Counsel's motion for attorneys' fees and expenses (including a Service Award to the Named Plaintiffs and Mr. Wright); and (viii) their right to appear at the Final Approval Hearing; (d) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States (including the Due Process Clause), and all other applicable laws and rules.*

Judge Jon S. Tigar, *Elder v. Hilton Worldwide Holdings, Inc.* (Feb. 4, 2021) 16-cv-00278 (N.D. Cal.):

> *"Epiq implemented the notice plan precisely as set out in the Settlement Agreement and as ordered by the Court." ECF No. 162 at 9-10. Epiq sent initial notice by email to 8,777 Class Members and by U.S. Mail to the remaining 1,244 Class members. Id. at 10. The Notice informed Class Members about all aspects of the Settlement, the date and time of the fairness hearing, and the process for objections. ECF No. 155 at 28-37. Epiq then mailed notice to the 2,696 Class Members whose emails were returned as undeliverable. Id. "Of the 10,021 Class Members identified from Defendants' records, Epiq was unable to deliver the notice to only 35 Class Members. Accordingly, the reach of the notice is 99.65%." Id. (citation omitted). Epiq also created and maintained a settlement website and a toll-free hotline that Class Members could call if they had questions about the settlement. Id.*
>
> *The Court finds that the parties have complied with the Court's preliminary approval order and, because the notice plan complied with Rule 23, have provided adequate notice to class members.*

Judge Michael W. Jones, *Wallace et al. v. Monier Lifetile LLC et al.* (Jan. 15, 2021) SCV-16410 (Sup. Ct. Cal.):

> *The Court also finds that the Class Notice and notice process were implemented in accordance with the Preliminary Approval Order, providing the best practicable notice under the circumstances.*

Judge Kristi K. DuBose, *Drazen v. GoDaddy.com, LLC* and *Bennett v. GoDaddy.com, LLC* (Dec. 23, 2020) 1:19-cv-00563 (S.D. Ala.):

> *The Court finds that the Notice and the claims procedures actually implemented satisfy due process, meet the requirements of Rule 23(e)(1), and the Notice constitutes the best notice practicable under the circumstances.*

Judge Haywood S. Gilliam, Jr., *Izor v. Abacus Data Systems, Inc.* (Dec. 21, 2020) 19-cv-01057 (N.D. Cal.):

> *The Court finds that the notice plan previously approved by the Court was implemented and that the notice thus satisfied Rule 23(c)(2)(B). [T]he Court finds that the parties have sufficiently provided the best practicable notice to the class members.*

Judge Christopher C. Conner, *Al's Discount Plumbing et al. v. Viega, LLC* (Dec. 18, 2020) 19-cv-00159 (M.D. Pa.):

> *The Court finds that the notice and notice plan previously approved by the Court was implemented and complies with Fed. R. Civ. P. 23(c)(2)(B) and due process. Specifically, the Court ordered that the third-party Settlement Administrator, Epiq, send class notice via email, U.S. mail, by publication in two recognized industry magazines, Plumber and PHC News, in both their print and online digital forms, and to implement a digital media campaign. (ECF 99). Epiq represents that class notice was provided as directed. See Declaration of Cameron R. Azari, ¶¶ 12-15 (ECF 104-13).*

Judge Naomi Reice Buchwald, *In re: Libor-Based Financial Instruments Antitrust Litigation* (Dec. 16, 2020) MDL No. 2262, 1:11-md-02262 (S.D.N.Y.):

> *Upon review of the record, the Court hereby finds that the forms and methods of notifying the members of the Settlement Classes and their terms and conditions have met the requirements of the United States Constitution (including the Due Process Clause), Rule 23 of the Federal Rules of Civil Procedure, and all other applicable law and rules; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all members of the Settlement Classes of these proceedings and the matters set forth herein, including the Settlements, the Plan of Allocation and the Fairness Hearing. Therefore, the Class Notice is finally approved.*

Judge Larry A. Burns, *Cox et al. Ametek, Inc. et al.* (Dec 15, 2020) 3:17-cv-00597 (S.D. Cal.):

> *The Class has received the best practicable notice under the circumstances of this case. The Parties' selection and retention of Epiq Class Action & Claims Solutions, Inc. ("Epiq") as the Claims Administrator was reasonable and appropriate. Based on the Declaration of Cameron Azari of Epiq, the Court finds that the Settlement Notices were published to the Class Members in the form and manner approved by the Court in its Preliminary Approval Order. See Dkt. 129-6. The Settlement Notices provided fair, effective, and the best practicable notice to the Class of the Settlement's terms . The Settlement Notices informed the Class of Plaintiffs' intent to seek attorneys' fees, costs, and incentive payments, set forth the date, time, and place of the Fairness Hearing, and explained Class Members' rights to object to the Settlement or Fee Motion and to appear at the Fairness Hearing … The Settlement Notices fully satisfied all notice requirements under the law, including the Federal Rules of Civil Procedure, the requirements of the California Legal Remedies Act, Cal. Civ. Code § 1781, and all due process rights under the U.S. Constitution and California Constitutions.*

Judge Timothy J. Sullivan*, Robinson v. Nationstar Mortgage LLC* (Dec. 11, 2020) 8:14-cv-03667 (D. Md.):

> *The Class Notice provided to the Settlement Class conforms with the requirements of Fed. Rule Civ. Proc. 23, the United States Constitution, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing individual notice to all Settlement Class Members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein to the other Settlement Class Members. The Class Notice fully satisfied the requirements of Due Process.*

Judge Yvonne Gonzalez Rogers, *In re: Lithium Ion Batteries Antitrust Litigation* (Dec. 10, 2020) MDL No. 2420, 4:13-md-02420 (N.D. Cal.):

> *The proposed notice plan was undertaken and carried out pursuant to this Court's preliminary approval order prior to remand, and a second notice campaign thereafter. (See Dkt. No. 2571.) The class received direct and indirect notice through several methods – email notice, mailed notice upon request, an informative settlement website, a telephone support line, and a vigorous online campaign. Digital banner advertisements were targeted specifically to settlement class members, including on Google and Yahoo's ad networks, as well as Facebook and Instagram, with over 396 million impressions delivered. Sponsored search listings were employed on Google, Yahoo and Bing, resulting in 216,477 results, with 1,845 clicks through to the settlement website. An informational release was distributed to 495 media contacts in the consumer electronics industry. The case website has continued to be maintained as a channel for communications with class members. Between February 11, 2020 and April 23, 2020, there were 207,205 unique visitors to the website. In the same period, the toll-free telephone number available to class members received 515 calls.*

Judge Katherine A. Bacal, *Garvin v. San Diego Unified Port District* (Nov. 20, 2020) 37-2020-00015064 (Sup. Ct. Cal.):

> *Notice was provided to Class Members in compliance with the Settlement Agreement, California Code of Civil Procedure §382 and California Rules of Court 3.766 and 3.769, the California and United States Constitutions, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing notice to all individual Class Members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein to the other Class Members. The Notice fully satisfied the requirements of due process.*

Judge Catherine D. Perry*, Pirozzi et al. v. Massage Envy Franchising, LLC* (Nov. 13, 2020) 4:19-cv-807 (E.D. Mo.):

> *The COURT hereby finds that the CLASS NOTICE given to the CLASS: (i) fairly and accurately described the ACTION and the proposed SETTLEMENT; (ii) provided sufficient information so that the CLASS MEMBERS were able to decide*

whether to accept the benefits offered by the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT; (iii) adequately described the time and manner by which CLASS MEMBERS could submit a CLAIM under the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT and/or appear at the FINAL APPROVAL HEARING; and (iv) provided the date, time, and place of the FINAL APPROVAL HEARING. The COURT hereby finds that the CLASS NOTICE was the best notice practicable under the circumstances, constituted a reasonable manner of notice to all class members who would be bound by the SETTLEMENT, and complied fully with Federal Rule of Civil Procedure Rule 23, due process, and all other applicable laws.

Judge Robert E. Payne, *Skochin et al. v. Genworth Life Insurance Company et al.* (Nov. 12, 2020) 3:19-cv-00049 (E.D. Vir.):

For the reasons set forth in the Court's Memorandum Opinion addressing objections to the Settlement Agreement, … the plan to disseminate the Class Notice and Publication Notice, which the Court previously approved, has been implemented and satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process.

Judge Jeff Carpenter*, Eastwood Construction LLC et al. v. City of Monroe* (Oct. 27, 2020) 18-cvs-2692 and ***The Estate of Donald Alan Plyler Sr. et al. v. City of Monroe*** (Oct. 27, 2020) 19-cvs-1825 (Sup. Ct. N.C.):

Therefore, the Court GRANTS the Final Approval Motion, CERTIFIES the class as defined below for settlement purposes only, APPROVES the Settlement, and GRANTS the Fee Motion ....

The Settlement Agreement and the Settlement Notice are found to be fair, reasonable, adequate, and in the best interests of the Settlement Class, and are hereby approved pursuant to North Carolina Rule of Civil Procedure 23. The Parties are hereby authorized and directed to comply with and to consummate the Settlement Agreement in accordance with the terms and provisions set forth in the Settlement Agreement, and the Clerk of the Court is directed to enter and docket this Order and Final Judgement in the Actions.

Judge M. James Lorenz, *Walters et al. v. Target Corp.* (Oct. 26, 2020) 3:16-cv-1678 (S.D. Cal.):

The Court has determined that the Class Notices given to Settlement Class members fully and accurately informed Settlement Class members of all material elements of the proposed Settlement and constituted valid, due, and sufficient notice to Settlement Class members consistent with all applicable requirements. The Court further finds that the Notice Program satisfies due process and has been fully implemented.

Judge Maren E. Nelson, *Harris et al. v. Farmers Insurance Exchange and Mid Century Insurance Company* (Oct. 26, 2020) BC 579498 (Sup. Ct. Cal.):

Distribution of Notice directed to the Settlement Class Members as set forth in the Settlement has been completed in conformity with the Preliminary Approval Order, including individual notice to all Settlement Class members who could be identified through reasonable effort, and the best notice practicable under the circumstances. The Notice, which reached 99.9% of all Settlement Class Members, provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed Settlement, to all persons entitled to Notice, and the Notice and its distribution fully satisfied the requirements of due process.

Judge Vera M. Scanlon, *Lashambae v. Capital One Bank, N.A.* (Oct. 21, 2020) 1:17-cv-06406 (E.D.N.Y.):

The Class Notice, as amended, contained all of the necessary elements, including the class definition, the identifies of the named Parties and their counsel, a summary of the terms of the proposed Settlement, information regarding the manner in which objections may be submitted, information regarding the opt-out procedures and deadlines, and the date and location of the Final Approval Hearing. Notice was successfully delivered to approximately 98.7% of the Settlement Class and only 78 individual Settlement Class Members did not receive notice by email or first class mail.

Having reviewed the content of the Class Notice, as amended, and the manner in which the Class Notice was disseminated, this Court finds that the Class Notice, as amended, satisfied the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and all other applicable law and rules. The Class Notice, as amended, provided to the Settlement Class in accordance with the Preliminary Approval Order was the best notice practicable under the circumstances and provided this Court with jurisdiction over the absent Settlement Class Members. See Fed. R. Civ. P. 23(c)(2)(B).

Chancellor Walter L. Evans, *K.B., by and through her natural parent, Jennifer Qassis, and Lillian Knox-Bender v. Methodist Healthcare - Memphis Hospitals* (Oct. 14, 2020) CH-13-04871-1 (30th Jud. Dist. Tenn.):

> *Based upon the filings and the record as a whole, the Court finds and determines that dissemination of the Class Notice as set forth herein complies with Tenn. R. Civ. P. 23.03(3) and 23.05 and (i) constitutes the best practicable notice under the circumstances, (ii) was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of Class Settlement, their rights to object to the proposed Settlement, (iii) was reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, (iv) meets all applicable requirements of Due Process; (v) and properly provides notice of the attorney's fees that Class Counsel shall seek in this action. As a result, the Court finds that Class Members were properly notified of their rights, received full Due Process ....*

Judge Sara L. Ellis, *Nelson v. Roadrunner Transportation Systems, Inc.* (Sept. 15, 2020) 1:18-cv-07400 (N.D. Ill.):

> *Notice of the Final Approval Hearing, the proposed motion for attorneys' fees, costs, and expenses, and the proposed Service Award payment to Plaintiff have been provided to Settlement Class Members as directed by this Court's Orders.*
>
> *The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B).*

Judge George H. Wu, *Lusnak v. Bank of America, N.A.* (Aug. 10, 2020) 14-cv-01855 (C.D. Cal.):

> *The Court finds that the Notice program for disseminating notice to the Settlement Class, provided for in the Settlement Agreement and previously approved and directed by the Court, has been implemented by the Settlement Administrator and the Parties. The Court finds that such Notice program, including the approved forms of notice: (a) constituted the best notice that is practicable under the circumstances; (b) included direct individual notice to all Settlement Class Members who could be identified through reasonable effort; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the nature of the Lawsuit, the definition of the Settlement Class certified, the class claims and issues, the opportunity to enter an appearance through an attorney if the member so desires; the opportunity, the time, and manner for requesting exclusion from the Settlement Class, and the binding effect of a class judgment; (d) constituted due, adequate and sufficient notice to all persons entitled to notice; and (e) met all applicable requirements of Federal Rule of Civil Procedure 23, due process under the U.S. Constitution, and any other applicable law.*

Judge James Lawrence King, *Dasher v. RBC Bank (USA) predecessor in interest to PNC Bank, N.A.* (Aug. 10, 2020) 1:10-cv-22190 (S.D. Fla.) as part of ***In re: Checking Account Overdraft Litigation*** MDL No. 2036 (S.D. Fla.):

> *The Court finds that the members of the Settlement Class were provided with the best practicable notice; the notice was "reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Shutts, 472 U.S. at 812 (quoting Mullane, 339 U.S. at 314-15). This Settlement was widely publicized, and any member of the Settlement Class who wished to express comments or objections had ample opportunity and means to do so.*

Judge Jeffrey S. Ross, *Lehman v. Transbay Joint Powers Authority et al.* (Aug. 7, 2020) CGC-16-553758 (Sup. Ct. Cal.):

> *The Notice approved by this Court was distributed to the Settlement Class Members in compliance with this Court's Order Granting Preliminary Approval of Class Action Settlement, dated May 8, 2020. The Notice provided to the Settlement Class Members met the requirements of due process and constituted the best notice practicable in the circumstances. Based on evidence and other material submitted in conjunction with the final approval hearing, notice to the class was adequate.*

Judge Jean Hoefer Toal, *Cook et al. v. South Carolina Public Service Authority et al.* (July 31, 2020) 2019-CP-23-6675 (Ct. of Com. Pleas. 13th Jud. Cir. S.C.):

> *Notice was sent to more than 1.65 million Class members, published in newspapers whose collective circulation covers the entirety of the State, and supplemented with internet banner ads totaling approximately 12.3 million impressions. The notices directed Class members to the settlement website and toll-free line for additional inquiries and further information. After this extensive notice campaign, only 78 individuals (0.0047%)*

have opted-out, and only nine (0.00054%) have objected. The Court finds this response to be overwhelmingly favorable.

Judge Peter J. Messitte, *Jackson et al. v. Viking Group, Inc. et al.* (July 28, 2020) 8:18-cv-02356 (D. Md.):

[T]he Court finds, that the Notice Plan has been implemented in the manner approved by the Court in its Preliminary Approval Order as amended. The Court finds that the Notice Plan: (i) constitutes the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of this Lawsuit and the terms of the Settlement, their right to exclude themselves from the Settlement, or to object to any part of the Settlement, their right to appear at the Final Approval Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the Final Approval Order and the Final Judgment, whether favorable or unfavorable, on all Persons who do not exclude themselves from the Settlement Class, (iii) due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) notice that fully satisfies the requirements of the United States Constitution (including the Due Process Clause), Fed. R. Civ. P. 23, and any other applicable law.

Judge Michael P. Shea, *Grayson et al. v. General Electric Company* (July 27, 2020) 3:13-cv-01799 (D. Conn.):

Pursuant to the Preliminary Approval Order, the Settlement Notice was mailed, emailed and disseminated by the other means described in the Settlement Agreement to the Class Members. This Court finds that this notice procedure was (i) the best practicable notice; (ii) reasonably calculated, under the circumstances, to apprise the Class Members of the pendency of the Civil Action and of their right to object to or exclude themselves from the proposed Settlement; and (iii) reasonable and constitutes due, adequate, and sufficient notice to all entities and persons entitled to receive notice.

Judge Gerald J. Pappert, *Rose v. The Travelers Home and Marine Insurance Company et al.* (July 20, 2020) 19-cv-00977 (E.D. Pa.):

The Class Notice … has been given to the Settlement Class in the manner approved by the Court in its Preliminary Approval Order. Such Class Notice (i) constituted the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency and nature of this Action, the definition of the Settlement Class, the terms of the Settlement Agreement, the rights of the Settlement Class to exclude themselves from the settlement or to object to any part of the settlement, the rights of the Settlement Class to appear at the Final Approval Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the Settlement Agreement on all persons who do not exclude themselves from the Settlement Class, (iii) provided due, adequate, and sufficient notice to the Settlement Class; and (iv) fully satisfied all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the due process requirements of the United States Constitution.

Judge Christina A. Snyder, *Waldrup v. Countrywide Financial Corporation et al.* (July 16, 2020) 2:13-cv-08833 (C.D. Cal.):

The Court finds that mailed and publication notice previously given to Class Members in the Action was the best notice practicable under the circumstances, and satisfies the requirements of due process and FED. R. CIV. P. 23. The Court further finds that, because (a) adequate notice has been provided to all Class Members and (b) all Class Members have been given the opportunity to object to, and/or request exclusion from, the Settlement, it has jurisdiction over all Class Members. The Court further finds that all requirements of statute (including but not limited to 28 U.S.C. § 1715), rule, and state and federal constitutions necessary to effectuate this Settlement have been met and satisfied.

Judge James Donato, *Coffeng et al. v. Volkswagen Group of America, Inc.* (June 10, 2020) 17-cv-01825 (N.D. Cal.):

The Court finds that, as demonstrated by the Declaration and Supplemental Declaration of Cameron Azari, and counsel's submissions, Notice to the Settlement Class was timely and properly effectuated in accordance with FED. R. CIV. P. 23(e) and the approved Notice Plan set forth in the Court's Preliminary Approval Order. The Court finds that said Notice constitutes the best notice practicable under the circumstances, and satisfies all requirements of Rule 23(e) and due process.

Judge Michael W. Fitzgerald*, Behfarin v. Pruco Life Insurance Company et al.* (June 3, 2020) 17-cv-05290 (C.D. Cal.):

> *The Court finds that the requirements of Rule 23 of the Federal Rule of Civil Procedure and other laws and rules applicable to final settlement approval of class actions have been satisfied ....*
>
> *This Court finds that the Claims Administrator caused notice to be disseminated to the Class in accordance with the plan to disseminate Notice outlined in the Settlement Agreement and the Preliminary Approval Order, and that Notice was given in an adequate and sufficient manner and complies with Due Process and Fed. R. Civ. P. 23.*

Judge Nancy J. Rosenstengel, *First Impressions Salon, Inc. et al. v. National Milk Producers Federation et al.* (Apr. 27, 2020) 3:13-cv-00454 (S.D. Ill.):

> *The Court finds that the Notice given to the Class Members was completed as approved by this Court and complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process. The settlement Notice Plan was modeled on and supplements the previous court-approved plan and, having been completed, constitutes the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice provided Class members due and adequate notice of the Settlement, the Settlement Agreement, the Plan of Distribution, these proceedings, and the rights of Class members to opt-out of the Class and/or object to Final Approval of the Settlement, as well as Plaintiffs' Motion requesting attorney fees, costs, and Class Representative service awards.*

Judge Harvey Schlesinger, *In re: Disposable Contact Lens Antitrust Litigation* (CooperVision, Inc.) (Mar. 4, 2020) 3:15-md-02626 (M.D. Fla.):

> *The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Orders; (b) constitutes the best notice practicable under the circumstances; (c) constitutes notice that was reasonably calculated, under the circumstances, to apprise the Settlement Classes of (i) the pendency of the Action; (ii) the effect of the Settlement Agreements (including the Releases to the provided thereunder); (iii) Class Counsel's possible motion for an award of attorneys' fees and reimbursement of expenses; (iv) the right to object to any aspect of the Settlement Agreements, the Plan of Distribution, and/or Class Counsel's motion for attorneys' fees and reimbursement of expenses; (v) the right to opt out of the Settlement Classes; (vi) the right to appear at the Fairness Hearing; and (vii) the fact that Plaintiffs may receive incentive awards; (d) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the Settlement Agreement and (e) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and the United States Constitution (including the Due Process Clause).*

Judge Amos L. Mazzant, *Stone et al. v. Porcelana Corona De Mexico, S.A. DE C.V f/k/a Sanitarios Lamosa S.A. DE C.V. a/k/a Vortens* (Mar. 3, 2020) 4:17-cv-00001 (E.D. Tex.):

> *The Court has reviewed the Notice Plan and its implementation and efficacy, and finds that it constituted the best notice practicable under the circumstances and was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to the proposed settlement in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e) of the Federal Rules of Civil Procedure.*
>
> *In addition, Class Notice clearly and concisely stated in plain, easily understood language: (i) the nature of the action; (ii) the definition of the certified Equitable Relief Settlement Class; (iii) the claims and issues of the Equitable Relief Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) the binding effect of a class judgment on members under Fed. R. Civ. P. 23(c)(3).*

Judge Michael H. Simon, *In re: Premera Blue Cross Customer Data Security Breach Litigation* (Mar. 2, 2020) 3:15-md-2633 (D. Ore.):

> *The Court confirms that the form and content of the Summary Notice, Long Form Notice, Publication Notice, and Claim Form, and the procedure set forth in the Settlement for providing notice of the Settlement to the Class, were in full compliance with the notice requirements of Federal Rules of Civil Procedure 23(c)(2)(B) and 23(e), fully, fairly, accurately, and adequately advised members of the Class of their rights under the Settlement, provided the best notice practicable under the circumstances, fully satisfied the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure, and afforded Class Members with adequate*

time and opportunity to file objections to the Settlement and attorney's fee motion, submit Requests for Exclusion, and submit Claim Forms to the Settlement Administrator.

Judge Maxine M. Chesney, *McKinney-Drobnis et al. v. Massage Envy Franchising* (Mar. 2, 2020) 3:16-cv-06450 (N.D. Cal.):

The COURT hereby finds that the individual direct CLASS NOTICE given to the CLASS via email or First Class U.S. Mail (i) fairly and accurately described the ACTION and the proposed SETTLEMENT; (ii) provided sufficient information so that the CLASS MEMBERS were able to decide whether to accept the benefits offered by the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT; (iii) adequately described the manner in which CLASS MEMBERS could submit a VOUCHER REQUEST under the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT and/or appear at the FINAL APPROVAL HEARING; and (iv) provided the date, time, and place of the FINAL APPROVAL HEARING. The COURT hereby finds that the CLASS NOTICE was the best notice practicable under the circumstances and complied fully with Federal Rule of Civil Procedure Rule 23, due process, and all other applicable laws.

Judge Harry D. Leinenweber, *Albrecht v. Oasis Power, LLC d/b/a Oasis Energy* (Feb. 6, 2020) 1:18-cv-01061 (N.D. Ill.):

The Court finds that the distribution of the Class Notice, as provided for in the Settlement Agreement, (i) constituted the best practicable notice under the circumstances to Settlement Class Members, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of, among other things, the pendency of the Action, the nature and terms of the proposed Settlement, their right to object or to exclude themselves from the proposed Settlement, and their right to appear at the Final Approval Hearing, (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and (iv) complied fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable law.

The Court finds that the Class Notice and methodology set forth in the Settlement Agreement, the Preliminary Approval Order, and this Final Approval Order (i) constitute the most effective and practicable notice of the Final Approval Order, the relief available to Settlement Class Members pursuant to the Final Approval Order, and applicable time periods; (ii) constitute due, adequate, and sufficient notice for all other purposes to all Settlement Class Members; and (iii) comply fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable laws.

Judge Robert Scola, Jr., *Wilson et al. v. Volkswagen Group of America, Inc. et al.* (Jan. 28, 2020) 17-cv-23033 (S.D. Fla.):

The Court finds that the Class Notice, in the form approved by the Court, was properly disseminated to the Settlement Class pursuant to the Notice Plan and constituted the best practicable notice under the circumstances. The forms and methods of the Notice Plan approved by the Court met all applicable requirements of the Federal Rules of Civil Procedure, the United States Code, the United States Constitution (including the Due Process Clause), and any other applicable law.

Judge Michael Davis, *Garcia v. Target Corporation* (Jan. 27, 2020) 16-cv-02574 (D. Minn.):

The Court finds that the Notice Plan set forth in Section 4 of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of this case, certification of the Settlement Class for settlement purposes only, the terms of the Settlement Agreement, and the Final Approval Hearing, and satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.

Judge Bruce Howe Hendricks, *In re: TD Bank, N.A. Debit Card Overdraft Fee Litigation* (Jan. 9, 2020) MDL No. 2613, 6:15-MN-02613 (D.S.C.):

The Classes have been notified of the settlement pursuant to the plan approved by the Court. After having reviewed the Declaration of Cameron R. Azari (ECF No. 220-1) and the Supplemental Declaration of Cameron R. Azari (ECF No. 225-1), the Court hereby finds that notice was accomplished in accordance with the Court's directives. The Court further finds that the notice program constituted the best practicable notice to the Settlement Classes under the circumstances and fully satisfies the requirements of due process and Federal Rule 23.

Judge Margo K. Brodie, ***In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*** (Dec. 13, 2019) MDL No. 1720, 05-md-01720 (E.D.N.Y.):

> *The notice and exclusion procedures provided to the Rule 23(b)(3) Settlement Class, including but not limited to the methods of identifying and notifying members of the Rule 23(b)(3) Settlement Class, were fair, adequate, and sufficient, constituted the best practicable notice under the circumstances, and were reasonably calculated to apprise members of the Rule 23(b)(3) Settlement Class of the Action, the terms of the Superseding Settlement Agreement, and their objection rights, and to apprise members of the Rule 23(b)(3) Settlement Class of their exclusion rights, and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, any other applicable laws or rules of the Court, and due process.*

Judge Steven Logan, ***Knapper v. Cox Communications, Inc.*** (Dec. 13, 2019) 2:17-cv-00913 (D. Ariz.):

> *The Court finds that the form and method for notifying the class members of the settlement and its terms and conditions was in conformity with this Court's Preliminary Approval Order (Doc. 120). The Court further finds that the notice satisfied due process principles and the requirements of Federal Rule of Civil Procedure 23(c), and the Plaintiff chose the best practicable notice under the circumstances. The Court further finds that the notice was clearly designed to advise the class members of their rights.*

Judge Manish Shah, ***Prather v. Wells Fargo Bank, N.A.*** (Dec. 10, 2019) 1:17-cv-00481 (N.D. Ill.):

> *The Court finds that the Notice Plan set forth in Section VIII of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of this case, certification of the Settlement Class for settlement purposes only, the terms of the Settlement Agreement, and the Final Approval Hearing, and satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.*

Judge Liam O'Grady, ***Liggio v. Apple Federal Credit Union*** (Dec. 6, 2019) 1:18-cv-01059 (E.D. Vir.):

> *The Court finds that the manner and form of notice (the "Notice Plan") as provided for in this Court's July 2, 2019 Order granting preliminary approval of class settlement, and as set forth in the Parties' Settlement Agreement was provided to Settlement Class Members by the Settlement Administrator .... The Notice Plan was reasonably calculated to give actual notice to Settlement Class Members of the right to receive benefits from the Settlement, and to be excluded from or object to the Settlement. The Notice Plan met the requirements of Rule 23(c)(2)(B) and due process and constituted the best notice practicable under the circumstances.*

Judge Brian McDonald, ***Armon et al. v. Washington State University*** (Nov. 8, 2019) 17-2-23244-1 (consolidated with 17-2-25052-0) (Sup. Ct. Wash.):

> *The Court finds that the Notice Program, as set forth in the Settlement and effectuated pursuant to the Preliminary Approval Order, satisfied CR 23(c)(2), was the best Notice practicable under the circumstances, was reasonably calculated to provide-and did provide-due and sufficient Notice to the Settlement Class of the pendency of the Litigation; certification of the Settlement Class for settlement purposes only; the existence and terms of the Settlement; the identity of Class Counsel and appropriate information about Class Counsel's then-forthcoming application for attorneys' fees and incentive awards to the Class Representatives; appropriate information about how to participate in the Settlement; Settlement Class Members' right to exclude themselves; their right to object to the Settlement and to appear at the Final Approval Hearing, through counsel if they desired; and appropriate instructions as to how to obtain additional information regarding this Litigation and the Settlement. In addition, pursuant to CR 23(c)(2)(B), the Notice properly informed Settlement Class Members that any Settlement Class Member who failed to opt-out would be prohibited from bringing a lawsuit against Defendant based on or related to any of the claims asserted by Plaintiffs, and it satisfied the other requirements of the Civil Rules.*

Judge Andrew J. Guilford, ***In re: Wells Fargo Collateral Protection Insurance Litigation*** (Nov. 4, 2019) 8:17-ml-02797 (C.D. Cal.):

> *Epiq Class Action & Claims Solutions, Inc. ("Epiq"), the parties' settlement administrator, was able to deliver the court-approved notice materials to all class members, including 2,254,411 notice packets and 1,019,408 summary notices.*

Judge Paul L. Maloney, *Burch v. Whirlpool Corporation* (Oct. 16, 2019) 1:17-cv-00018 (W.D. Mich.):

> *[T]he Court hereby finds and concludes that members of the Settlement Class have been provided the best notice practicable of the Settlement and that such notice satisfies all requirements of federal and applicable state laws and due process.*

Judge Gene E.K. Pratter, *Tashica Fulton-Green et al. v. Accolade, Inc.* (Sept. 24, 2019) 2:18-cv-00274 (E.D. Pa.):

> *The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B).*

Judge Edwin Torres, *Burrow et al. v. Forjas Taurus S.A. et al.* (Sept. 6, 2019) 1:16-cv-21606 (S.D. Fla.):

> *Because the Parties complied with the agreed-to notice provisions as preliminarily approved by this Court, and given that there are no developments or changes in the facts to alter the Court's previous conclusion, the Court finds that the notice provided in this case satisfied the requirements of due process and of Rule 23(c)(2)(B).*

Judge Amos L. Mazzant, *Fessler v. Porcelana Corona De Mexico, S.A. DE C.V f/k/a Sanitarios Lamosa S.A. DE C.V. a/k/a Vortens* (Aug. 30, 2019) 4:19-cv-00248 (E.D. Tex.):

> *The Court has reviewed the Notice Plan and its implementation and efficacy, and finds that it constituted the best notice practicable under the circumstances and was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to the proposed settlement or opt out of the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e) of the Federal Rules of Civil Procedure.*
>
> *In addition, Class Notice clearly and concisely stated in plain, easily understood language: (i) the nature of the action; (ii) the definition of the certified 2011 Settlement Class; (iii) the claims and issues of the 2011 Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) that the Court will exclude from the Settlement Class any member who requests exclusions; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Fed. R. Civ. P. 23(c)(3).*

Judge Karon Owen Bowdre, *In re: Community Health Systems, Inc. Customer Data Security Breach Litigation* (Aug. 22, 2019) MDL No. 2595, 2:15-cv-00222 (N.D. Ala.):

> *The court finds that the Notice Program: (1) satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process; (2) was the best practicable notice under the circumstances; (3) reasonably apprised Settlement Class members of the pendency of the Action and their right to object to the settlement or opt-out of the Settlement Class; and (4) was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice. Approximately 90% of the 6,081,189 individuals identified as Settlement Class members received the Initial Postcard Notice of this Settlement Action.*
>
> *The court further finds, pursuant to Fed. R. Civ. P. 23(c)(2)(B), that the Class Notice adequately informed Settlement Class members of their rights with respect to this action.*

Judge Christina A. Snyder, *Zaklit et al. v. Nationstar Mortgage LLC et al.* (Aug. 21, 2019) 5:15-cv-02190 (C.D. Cal.):

> *The Class Notice provided to the Settlement Class conforms with the requirements of Fed. Rule Civ. Proc. 23, the California and United States Constitutions, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing individual notice to all Settlement Class Members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein to the other Settlement Class Members. The notice fully satisfied the requirements of Due Process. No Settlement Class Members have objected to the terms of the Settlement.*

Judge Brian M. Cogan, *Luib v. Henkel Consumer Goods Inc.* (Aug. 19, 2019) 1:17-cv-03021 (E.D.N.Y.):

> *The Court finds that the Notice Plan, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably*

calculated to provide, and did provide, due and sufficient notice to the Settlement Class regarding the existence and nature of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and the rights of Settlement Class members to exclude themselves from the Settlement Agreement, to object and appear at the Final Approval Hearing, and to receive benefits under the Settlement Agreement; and (iii) satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

Judge Yvonne Gonzalez Rogers, *In re: Lithium Ion Batteries Antitrust Litigation* (Aug. 16, 2019) MDL No. 2420, 4:13-md-02420 (N.D. Cal.):

The proposed notice plan was undertaken and carried out pursuant to this Court's preliminary approval order. [T]he notice program reached approximately 87 percent of adults who purchased portable computers, power tools, camcorders, or replacement batteries, and these class members were notified an average of 3.5 times each. As a result of Plaintiffs' notice efforts, in total, 1,025,449 class members have submitted claims. That includes 51,961 new claims, and 973,488 claims filed under the prior settlements.

Judge Jon Tigar, *McKnight et al. v. Uber Technologies, Inc. et al.* (Aug. 13, 2019) 3:14-cv-05615 (N.D. Cal.):

The settlement administrator, Epiq Systems, Inc., carried out the notice procedures as outlined in the preliminary approval. ECF No. 162 at 17-18. Notices were mailed to over 22 million class members with a success rate of over 90%. Id. at 17. Epiq also created a website, banner ads, and a toll free number. Id. at 17-18. Epiq estimates that it reached through mail and other formats 94.3% of class members. ECF No. 164 ¶ 28. In light of these actions, and the Court's prior order granting preliminary approval, the Court finds that the parties have provided adequate notice to class members.

Judge Gary W.B. Chang, *Robinson v. First Hawaiian Bank* (Aug. 8, 2019) 17-1-0167-01 (Cir. Ct. of First Cir. Haw.):

This Court determines that the Notice Program satisfies all of the due process requirements for a class action settlement.

Judge Karin Crump, *Hyder et al. v. Consumers County Mutual Insurance Company* (July 30, 2019) D-1-GN-16-000596 (D. Ct. of Travis Cnty. Tex.):

Due and adequate Notice of the pendency of this Action and of this Settlement has been provided to members of the Settlement Class, and this Court hereby finds that the Notice Plan described in the Preliminary Approval Order and completed by Defendant complied fully with the requirements of due process, the Texas Rules of Civil Procedure, and the requirements of due process under the Texas and United States Constitutions, and any other applicable laws.

Judge Wendy Bettlestone, *Underwood v. Kohl's Department Stores, Inc. et al.* (July 24, 2019) 2:15-cv-00730 (E.D. Pa.):

The Notice, the contents of which were previously approved by the Court, was disseminated in accordance with the procedures required by the Court's Preliminary Approval Order in accordance with applicable law.

Judge Andrew G. Ceresia, J.S.C., *Denier et al. v. Taconic Biosciences, Inc.* (July 15, 2019) 00255851 (Sup Ct. N.Y.):

The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of the CPLR.

Judge Vince G. Chhabria, *Parsons v. Kimpton Hotel & Restaurant Group, LLC* (July 11, 2019) 3:16-cv-05387 (N.D. Cal.):

Pursuant to the Preliminary Approval Order, the notice documents were sent to Settlement Class Members by email or by first-class mail, and further notice was achieved via publication in People magazine, internet banner notices, and internet sponsored search listings. The Court finds that the manner and form of notice (the "Notice Program") set forth in the Settlement Agreement was provided to Settlement Class Members. The Court finds that the Notice Program, as implemented, was the best practicable under the circumstances. The Notice Program was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, and their rights to opt-out of the Settlement Class and object to the Settlement, Class Counsel's fee request, and the request for Service Award for Plaintiff. The Notice and Notice Program constituted sufficient notice to all persons entitled to notice. The Notice and Notice Program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the constitutional requirement of due process.

Judge Daniel J. Buckley, *Adlouni v. UCLA Health Systems Auxiliary et al.* (June 28, 2019) BC589243 (Sup. Ct. Cal.):

> *The Court finds that the notice to the Settlement Class pursuant to the Preliminary Approval Order was appropriate, adequate, and sufficient, and constituted the best notice practicable under the circumstances to all Persons within the definition of the Settlement Class to apprise interested parties of the pendency of the Action, the nature of the claims, the definition of the Settlement Class, and the opportunity to exclude themselves from the Settlement Class or present objections to the settlement. The notice fully complied with the requirements of due process and all applicable statutes and laws and with the California Rules of Court.*

Judge John C. Hayes III, *Lightsey et al. v. South Carolina Electric & Gas Company, a Wholly Owned Subsidiary of SCANA et al.* (June 11, 2019) 2017-CP-25-335 (Ct. of Com. Pleas., S.C.):

> *These multiple efforts at notification far exceed the due process requirement that the class representative provide the best practical notice. See Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 94 S.Ct. 2140 (1974); Hospitality Mgmt. Assoc., Inc. v. Shell Oil, Inc., 356 S.C. 644, 591 S.E.2d 611 (2004). Following this extensive notice campaign reaching over 1.6 million potential class member accounts, Class counsel have received just two objections to the settlement and only 24 opt outs.*

Judge Stephen K. Bushong, *Scharfstein v. BP West Coast Products, LLC* (June 4, 2019) 1112-17046 (Ore. Cir., Cnty. of Multnomah):

> *The Court finds that the Notice Plan … fully met the requirements of the Oregon Rules of Civil Procedure, due process, the United States Constitution, the Oregon Constitution, and any other applicable law.*

Judge Cynthia Bashant, *Lloyd et al. v. Navy Federal Credit Union* (May 28, 2019) 17-cv-1280 (S.D. Cal.):

> *This Court previously reviewed, and conditionally approved Plaintiffs' class notices subject to certain amendments. The Court affirms once more that notice was adequate.*

Judge Robert W. Gettleman, *Cowen v. Lenny & Larry's Inc.* (May 2, 2019) 1:17-cv-01530 (N.D. Ill.):

> *Notice to the Settlement Class and other potentially interested parties has been provided in accordance with the elements specified by the Court in the preliminary approval order. Adequate notice of the amended settlement and the final approval hearing has also been given. Such notice informed the Settlement Class members of all material elements of the proposed Settlement and of their opportunity to object or comment thereon or to exclude themselves from the Settlement; provided Settlement Class Members adequate instructions and a means to obtain additional information; was adequate notice under the circumstances; was valid, due, and sufficient notice to all Settlement Class [M]embers; and complied fully with the laws of the State of Illinois, Federal Rules of Civil Procedure, the United States Constitution, due process, and other applicable law.*

Judge Edward J. Davila, *In re: HP Printer Firmware Update Litigation* (Apr. 25, 2019) 5:16-cv-05820 (N.D. Cal.):

> *Due and adequate notice has been given of the Settlement as required by the Preliminary Approval Order. The Court finds that notice of this Settlement was given to Class Members in accordance with the Preliminary Approval Order and constituted the best notice practicable of the proceedings and matters set forth therein, including the Settlement, to all Persons entitled to such notice, and that this notice satisfied the requirements of Federal Rule of Civil Procedure 23 and of due process.*

Judge Claudia Wilken, *Naiman v. Total Merchant Services, Inc. et al.* (Apr. 16, 2019) 4:17-cv-03806 (N.D. Cal.):

> *The Court also finds that the notice program satisfied the requirements of Federal Rule of Civil Procedure 23 and due process. The notice approved by the Court and disseminated by Epiq constituted the best practicable method for informing the class about the Final Settlement Agreement and relevant aspects of the litigation.*

Judge Paul Gardephe, *37 Besen Parkway, LLC v. John Hancock Life Insurance Company (U.S.A.)* (Mar. 31, 2019) 15-cv-9924 (S.D.N.Y.):

> *The Notice given to Class Members complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process and provided due and adequate notice to the Class.*

Judge Alison J. Nathan, *Pantelyat et al. v. Bank of America, N.A. et al.* (Jan. 31, 2019) 16-cv-08964 (S.D.N.Y.):

> *The Class Notice provided to the Settlement Class in accordance with the Preliminary Approval Order was the best notice practicable under the circumstances, and constituted due and sufficient notice of the proceedings and matters set forth therein, to all persons entitled to notice. The notice fully satisfied the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and all other applicable law and rules.*

Judge Kenneth M. Hoyt, *Al's Pals Pet Card, LLC et al. v. Woodforest National Bank, N.A. et al.* (Jan. 30, 2019) 4:17-cv-3852 (S.D. Tex.):

> *[T]he Court finds that the class has been notified of the Settlement pursuant to the plan approved by the Court. The Court further finds that the notice program constituted the best practicable notice to the class under the circumstances and fully satisfies the requirements of due process, including Fed. R. Civ. P. 23(e)(1) and 28 U.S.C. § 1715.*

Judge Robert M. Dow, Jr., *In re: Dealer Management Systems Antitrust Litigation* (Jan. 23, 2019) MDL No. 2817, 18-cv-00864 (N.D. Ill.):

> *The Court finds that the Settlement Administrator fully complied with the Preliminary Approval Order and that the form and manner of providing notice to the Dealership Class of the proposed Settlement with Reynolds was the best notice practicable under the circumstances, including individual notice to all members of the Dealership Class who could be identified through the exercise of reasonable effort. The Court further finds that the notice program provided due and adequate notice of these proceedings and of the matters set forth therein, including the terms of the Agreement, to all parties entitled to such notice and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715(b), and constitutional due process.*

Judge Federico A. Moreno, *In re: Takata Airbag Products Liability Litigation* (Ford) (Dec. 20, 2018) MDL No. 2599 (S.D. Fla.):

> *The record shows and the Court finds that the Class Notice has been given to the Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice: .(i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), FED. R. Civ. P. 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.*

Judge Herndon, *Hale v. State Farm Mutual Automobile Insurance Company et al.* (Dec. 16, 2018) 3:12-cv-00660 (S.D. Ill.):

> *The Class here is estimated to include approximately 4.7 million members. Approximately 1.43 million of them received individual postcard or email notice of the terms of the proposed Settlement, and the rest were notified via a robust publication program "estimated to reach 78.8% of all U.S. Adults Aged 35+ approximately 2.4 times." Doc. 966-2 ¶¶ 26, 41. The Court previously approved the notice plan (Doc. 947), and now, having carefully reviewed the declaration of the Notice Administrator (Doc. 966-2), concludes that it was fully and properly executed, and reflected "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." See Fed. R. Civ. P. 23(c)(2)(B). The Court further concludes that CAFA notice was properly effectuated to the attorneys general and insurance commissioners of all 50 states and District of Columbia.*

Judge Jesse M. Furman, *Alaska Electrical Pension Fund et al. v. Bank of America, N.A. et al.* (Nov. 13, 2018) 14-cv-07126 (S.D.N.Y.):

> *The mailing and distribution of the Notice to all members of the Settlement Class who could be identified through reasonable effort, the publication of the Summary Notice, and the other Notice efforts described in the Motion for Final Approval, as provided for in the Court's June 26, 2018 Preliminary Approval Order, satisfy the*

requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all Persons entitled to notice.

Judge William L. Campbell, Jr., *Ajose et al. v. Interline Brands, Inc.* (Oct. 23, 2018) 3:14-cv-01707 (M.D. Tenn.):

The Court finds that the Notice Plan, as approved by the Preliminary Approval Order: (i) satisfied the requirements of Rule 23(c)(3) and due process; (ii) was reasonable and the best practicable notice under the circumstances; (iii) reasonably apprised the Settlement Class of the pendency of the action, the terms of the Agreement, their right to object to the proposed settlement or opt out of the Settlement Class, the right to appear at the Final Fairness Hearing, and the Claims Process; and (iv) was reasonable and constituted due, adequate, and sufficient notice to all those entitled to receive notice.

Judge Joseph C. Spero, *Abante Rooter and Plumbing v. Pivotal Payments Inc., d/b/a/ Capital Processing Network and CPN* (Oct. 15, 2018) 3:16-cv-05486 (N.D. Cal.):

[T]the Court finds that notice to the class of the settlement complied with Rule 23(c)(3) and (e) and due process. Rule 23(e)(1) states that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by" a proposed settlement, voluntary dismissal, or compromise. Class members are entitled to the "best notice that is practicable under the circumstances" of any proposed settlement before it is finally approved by the Court. Fed. R. Civ. P. 23(c)(2)(B) … The notice program included notice sent by first class mail to 1,750,564 class members and reached approximately 95.2% of the class.

Judge Marcia G. Cooke, *Dipuglia v. US Coachways, Inc.* (*Sept. 28, 2018)* 1:17-cv-23006 (S.D. Fla.):

The Settlement Class Notice Program was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

Judge Beth Labson Freeman, *Gergetz v. Telenav, Inc.* (Sept. 27, 2018) 5:16-cv-04261 (N.D. Cal.):

The Court finds that the Notice and Notice Plan implemented pursuant to the Settlement Agreement, which consists of individual notice sent via first-class U.S. Mail postcard, notice provided via email, and the posting of relevant Settlement documents on the Settlement Website, has been successfully implemented and was the best notice practicable under the circumstances and: (1) constituted notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing; (2) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (3) met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause, and the Rules of this Court.

Judge M. James Lorenz, *Farrell v. Bank of America, N.A.* (Aug. 31, 2018) 3:16-cv-00492 (S.D. Cal.):

The Court therefore finds that the Class Notices given to Settlement Class members adequately informed Settlement Class members of all material elements of the proposed Settlement and constituted valid, due, and sufficient notice to Settlement Class members. The Court further finds that the Notice Program satisfies due process and has been fully implemented.

Judge Dean D. Pregerson, *Falco et al. v. Nissan North America, Inc. et al.* (July 16, 2018) 2:13-cv-00686 (C.D. Cal.):

Notice to the Settlement Class as required by Rule 23(e) of the Federal Rules of Civil Procedure has been provided in accordance with the Court's Preliminary Approval Order, and such Notice by first-class mail was given in an adequate and sufficient manner, and constitutes the best notice practicable under the circumstances, and satisfies all requirements of Rule 23(e) and due process.

Judge Lynn Adelman, *In re: Windsor Wood Clad Window Product Liability Litigation* (July 16, 2018) MDL No. 2688, 16-md-02688 (E.D. Wis.):

The Court finds that the Notice Program was appropriately administered, and was the best practicable notice to the Class under the circumstances, satisfying the requirements of Rule 23 and due process. The Notice

Program, constitutes due, adequate, and sufficient notice to all persons, entities, and/or organizations entitled to receive notice; fully satisfied the requirements of the Constitution of the United States (including the Due Process Clause), Rule 23 of the Federal Rules of Civil Procedure, and any other applicable law; and is based on the Federal Judicial Center's illustrative class action notices.

Judge Stephen K. Bushong, *Surrett et al. v. Western Culinary Institute et al.* (June 18, 2018) 0803-03530 (Ore. Cir. Cnty. of Multnomah):

This Court finds that the distribution of the Notice of Settlement … fully met the requirements of the Oregon Rules of Civil Procedure, due process, the United States Constitution, the Oregon Constitution, and any other applicable law.

Judge Jesse M. Furman, *Alaska Electrical Pension Fund et al. v. Bank of America, N.A. et al.* (June 1, 2018) 14-cv-07126 (S.D.N.Y.):

The mailing of the Notice to all members of the Settlement Class who could be identified through reasonable effort, the publication of the Summary Notice, and the other Notice distribution efforts described in the Motion for Final Approval, as provided for in the Court's October 24, 2017 Order Providing for Notice to the Settlement Class and Preliminarily Approving the Plan of Distribution, satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all Persons entitled to notice.

Judge Brad Seligman, *Larson v. John Hancock Life Insurance Company (U.S.A.)* (May 8, 2018) RG16813803 (Sup. Ct. Cal.):

The Court finds that the Class Notice and dissemination of the Class Notice as carried out by the Settlement Administrator complied with the Court's order granting preliminary approval and all applicable requirements of law, including, but not limited to California Rules of Court, rule 3.769(f) and the Constitutional requirements of due process, and constituted the best notice practicable under the circumstances and sufficient notice to all persons entitled to notice of the Settlement.

[T]he dissemination of the Class Notice constituted the best notice practicable because it included mailing individual notice to all Settlement Class Members who are reasonably identifiable using the same method used to inform class members of certification of the class, following a National Change of Address search and run through the LexisNexis Deceased Database.

Judge Federico A. Moreno, *Masson v. Tallahassee Dodge Chrysler Jeep, LLC* (May 8, 2018) 17-cv-22967 (S.D. Fla.):

The Settlement Class Notice Program was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

Chancellor Russell T. Perkins, *Morton v. GreenBank* (Apr. 18, 2018) 11-135-IV (20th Jud. Dist. Tenn.):

The Notice Program as provided or in the Agreement and the Preliminary Amended Approval Order constituted the best notice practicable under the circumstances, including individual notice to all Settlement Class members who could be identified through reasonable effort. The Notice Plan fully satisfied the requirements of Tennessee Rule of Civil Procedure 23.03, due process and any other applicable law.

Judge James V. Selna, *Callaway v. Mercedes-Benz USA, LLC* (Mar. 8, 2018) 8:14-cv-02011 (C.D. Cal.):

The Court finds that the notice given to the Class was the best notice practicable under the circumstances of this case, and that the notice complied with the requirements of Federal Rule of Civil Procedure 23 and due process.

The notice given by the Class Administrator constituted due and sufficient notice to the Settlement Class, and adequately informed members of the Settlement Class of their right to exclude themselves from the Settlement Class so as not to be bound by the terms of the Settlement Agreement and how to object to the Settlement.

The Court has considered and rejected the objection … [regarding] the adequacy of the notice plan. The notice given provided ample information regarding the case. Class members also had the ability to seek additional information from the settlement website, from Class Counsel or from the Class Administrator.

Judge Thomas M. Durkin, *Vergara et al., v. Uber Technologies, Inc.* (Mar. 1, 2018) 1:15-cv-06972 (N.D. Ill.):

The Court finds that the Notice Plan set forth in Section IX of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Classes of the pendency of this case, certification of the Settlement Classes for settlement purposes only, the terms of the Settlement Agreement, and the Final Approval Hearing, and satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law. Further, the Court finds that Defendant has timely satisfied the notice requirements of 28 U.S.C. Section 1715.

Judge Federico A. Moreno, *In re: Takata Airbag Products Liability Litigation* (Honda & Nissan) (Feb. 28, 2018) MDL No. 2599 (S.D. Fla.):

The Court finds that the Class Notice has been given to the Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), FED R. CIV. R. 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.

Judge Susan O. Hickey, *Larey v. Allstate Property and Casualty Insurance Company* (Feb. 9, 2018) 4:14-cv-04008 (W.D. Kan.):

Based on the Court's review of the evidence submitted and argument of counsel, the Court finds and concludes that the Class Notice and Claim Form was mailed to potential Class Members in accordance with the provisions of the Preliminary Approval Order, and together with the Publication Notice, the automated toll-free telephone number, and the settlement website: (i) constituted, under the circumstances, the most effective and practicable notice of the pendency of the Lawsuit, this Stipulation, and the Final Approval Hearing to all Class Members who could be identified through reasonable effort; and (ii) met all requirements of the Federal Rules of Civil Procedure, the requirements of due process under the United States Constitution, and the requirements of any other applicable rules or law.

Judge Muriel D. Hughes, *Glaske v. Independent Bank Corporation* (Jan. 11, 2018) 13-009983 (Cir. Ct. Mich.):

The Court-approved Notice Plan satisfied due process requirements … The notice, among other things, was calculated to reach Settlement Class Members because it was sent to their last known email or mail address in the Bank's files.

Judge Naomi Reice Buchwald, *Orlander v. Staples, Inc.* (Dec. 13, 2017) 13-cv-00703 (S.D.N.Y.):

The Notice of Class Action Settlement ("Notice") was given to all Class Members who could be identified with reasonable effort in accordance with the terms of the Settlement Agreement and Preliminary Approval Order. The form and method of notifying the Class of the pendency of the Action as a class action and the terms and conditions of the proposed Settlement met the requirements of Federal Rule of Civil Procedure 23 and the Constitution of the United States (including the Due Process Clause); and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

Judge Lisa Godbey Wood, *T.A.N. v. PNI Digital Media, Inc.* (Dec. 1, 2017) 2:16-cv-132 (S.D. Ga.):

Notice to the Settlement Class Members required by Rule 23 has been provided as directed by this Court in the Preliminary Approval Order, and such notice constituted the best notice practicable, including, but not

limited to, the forms of notice and methods of identifying and providing notice to the Settlement Class Members, and satisfied the requirements of Rule 23 and due process, and all other applicable laws.

Judge Robin L. Rosenberg, *Gottlieb v. Citgo Petroleum Corporation* (Nov. 29, 2017) 9:16-cv-81911 (S.D. Fla):

The Settlement Class Notice Program was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Settlement Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

Judge Donald M. Middlebrooks, *Mahoney v. TT of Pine Ridge, Inc.* (Nov. 20, 2017) 9:17-cv-80029 (S.D. Fla.):

Based on the Settlement Agreement, Order Granting Preliminary Approval of Class Action Settlement Agreement, and upon the Declaration of Cameron Azari, Esq. (DE 61-1), the Court finds that Class Notice provided to the Settlement Class was the best notice practicable under the circumstances, and that it satisfied the requirements of due process and Federal Rule of Civil Procedure 23(e)(1).

Judge Gerald Austin McHugh, *Sobiech v. U.S. Gas & Electric, Inc., i/t/d/b/a Pennsylvania Gas & Electric et al.* (Nov. 8, 2017) 2:14-cv-04464 (E.D. Pa.):

Notice has been provided to the Settlement Class of the pendency of this Action, the conditional certification of the Settlement Class for purposes of this Settlement, and the preliminary approval of the Settlement Agreement and the Settlement contemplated thereby. The Court finds that the notice provided was the best notice practicable under the circumstances to all persons entitled to such notice and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.

Judge Federico A. Moreno, *In re: Takata Airbag Products Liability Litigation* (BMW, Mazda, Toyota, & Subaru) (Nov. 1, 2017) MDL No. 2599 (S.D. Fla.):

[T]he Court finds that the Class Notice has been given to the Class in the manner approved in the Preliminary Approval Order. The Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), Federal Rule of Civil Procedure 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.

Judge Charles R. Breyer, *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation* (May 17, 2017) MDL No. 2672 (N.D. Cal.):

The Court is satisfied that the Notice Program was reasonably calculated to notify Class Members of the proposed Settlement. The Notice "apprise[d] interested parties of the pendency of the action and afford[ed] them an opportunity to present their objections." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Indeed, the Notice Administrator reports that the notice delivery rate of 97.04% "exceed[ed] the expected range and is indicative of the extensive address updating and re-mailing protocols used." (Dkt. No. 3188-2 ¶ 24.)

Judge Rebecca Brett Nightingale, *Ratzlaff et al. v. BOKF, NA d/b/a Bank of Oklahoma et al.* (May 15, 2017) CJ-2015-00859 (Dist. Ct. Okla.):

The Court-approved Notice Plan satisfies Oklahoma law because it is "reasonable" (12 O.S. § 2023(E)(I)) and it satisfies due process requirements because it was "reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Shutts, 472 U.S. at 812 (quoting Mullane, 339 U.S. at 314-15).

Judge Joseph F. Bataillon, *Klug v. Watts Regulator Company* (Apr. 13, 2017) 8:15-cv-00061 (D. Neb.):

> *The court finds that the notice to the Settlement Class of the pendency of the Class Action and of this settlement, as provided by the Settlement Agreement and by the Preliminary Approval Order dated December 7, 2017, constituted the best notice practicable under the circumstances to all persons and entities within the definition of the Settlement Class, and fully complied with the requirements of Federal Rules of Civil Procedure Rule 23 and due process. Due and sufficient proof of the execution of the Notice Plan as outlined in the Preliminary Approval Order has been filed.*

Judge Yvonne Gonzalez Rogers, *Bias v. Wells Fargo & Company et al.* (Apr. 13, 2017) 4:12-cv-00664 (N.D. Cal.):

> *The form, content, and method of dissemination of Notice of Settlement given to the Settlement Class was adequate and reasonable and constituted the best notice practicable under the circumstances, including both individual notice to all Settlement Class Members who could be identified through reasonable effort and publication notice.*
>
> *Notice of Settlement, as given, complied with the requirements of Rule 23 of the Federal Rules of Civil Procedure, satisfied the requirements of due process, and constituted due and sufficient notice of the matters set forth herein.*
>
> *Notice of the Settlement was provided to the appropriate regulators pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(c)(1).*

Judge Carlos Murguia, *Whitton v. Deffenbaugh Industries, Inc. et al.* (Dec. 14, 2016) 2:12-cv-02247 and ***Gary, LLC v. Deffenbaugh Industries, Inc. et al.*** 2:13-cv-02634 (D. Kan.):

> *The Court determines that the Notice Plan as implemented was reasonably calculated to provide the best notice practicable under the circumstances and contained all required information for members of the proposed Settlement Class to act to protect their interests. The Court also finds that Class Members were provided an adequate period of time to receive Notice and respond accordingly.*

Judge Yvette Kane, *In re: Shop-Vac Marketing and Sales Practices Litigation* (Dec. 9, 2016) MDL No. 2380 (M.D. Pa.):

> *The Court hereby finds and concludes that members of the Settlement Class have been provided the best notice practicable of the Settlement and that such notice satisfies all requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and all other applicable laws.*

Judge Timothy D. Fox, *Miner v. Philip Morris USA, Inc.* (Nov. 21, 2016) 60CV03-4661 (Ark. Cir. Ct.):

> *The Court finds that the Settlement Notice provided to potential members of the Class constituted the best and most practicable notice under the circumstances, thereby complying fully with due process and Rule 23 of the Arkansas Rules of Civil Procedure.*

Judge Eileen Bransten, *In re: HSBC Bank USA, N.A.,* as part of *In re: Checking Account Overdraft Litigation* (Oct. 13, 2016) 650562/2011 (Sup. Ct. N.Y.):

> *This Court finds that the Notice Program and the Notice provided to Settlement Class members fully satisfied the requirements of constitutional due process, the N.Y. C.P.L.R., and any other applicable laws, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all persons entitled thereto.*

Judge Jerome B. Simandle, *In re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation* (Sept. 20, 2016) MDL No. 2540 (D.N.J.):

> *The Court hereby finds that the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances. Said Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the terms of the Settlement Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23, requirements of due process and any other applicable law.*

Judge Marcia G. Cooke, *Chimeno-Buzzi v. Hollister Co. and Abercrombie & Fitch Co.* (Apr. 11, 2016) 14-cv-23120 (S.D. Fla.):

> *Pursuant to the Court's Preliminary Approval Order, the Settlement Administrator, Epiq Systems, Inc. [Hilsoft Notifications], has complied with the approved notice process as confirmed in its Declaration filed with the Court on March 23, 2016. The Court finds that the notice process was designed to advise Class Members of their rights. The form and method for notifying Class Members of the settlement and its terms and conditions was in conformity with this Court's Preliminary Approval Order, constituted the best notice practicable under the circumstances, and satisfied the requirements of Federal Rule of Civil Procedure 23(c)(2)(B), the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, and due process under the United States Constitution and other applicable laws.*

Judge Yvonne Gonzalez Rogers, *In re: Lithium Ion Batteries Antitrust Litigation* (Mar. 22, 2016) MDL No. 2420, 4:13-md-02420 (N.D. Cal.):

> *From what I could tell, I liked your approach and the way you did it. I get a lot of these notices that I think are all legalese and no one can really understand them. Yours was not that way.*

Judge Christopher S. Sontchi, *In re: Energy Future Holdings Corp et al.* (July 30, 2015) 14-cv-10979 (Bankr. D. Del.):

> *Notice of the Asbestos Bar Date as set forth in this Asbestos Bar Date Order and in the manner set forth herein constitutes adequate and sufficient notice of the Asbestos Bar Date and satisfies the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.*

Judge David C. Norton, *In re: MI Windows and Doors Inc. Products Liability Litigation* (July 22, 2015) MDL No. 2333, 2:12-mn-00001 (D.S.C.):

> *The court finds that the Notice Plan, as described in the Settlement and related declarations, has been faithfully carried out and constituted the best practicable notice to Class Members under the circumstances of this Action, and was reasonable and constituted due, adequate, and sufficient notice to all Persons entitled to be provided with Notice.*
>
> *The court also finds that the Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of: (1) the pendency of this class action; (2) their right to exclude themselves from the Settlement Class and the proposed Settlement; (3) their right to object to any aspect of the proposed Settlement (including final certification of the Settlement Class, the fairness, reasonableness, or adequacy of the proposed Settlement, the adequacy of the Settlement Class's representation by Named Plaintiffs or Class Counsel, or the award of attorney's and representative fees); (4) their right to appear at the fairness hearing (either on their own or through counsel hired at their own expense); and (5) the binding and preclusive effect of the orders and Final Order and Judgment in this Action, whether favorable or unfavorable, on all Persons who do not request exclusion from the Settlement Class. As such, the court finds that the Notice fully satisfied the requirements of the Federal Rules of Civil Procedure, including Federal Rule of Civil Procedure 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the rules of this court, and any other applicable law, and provided sufficient notice to bind all Class Members, regardless of whether a particular Class Member received actual notice.*

Judge Robert W. Gettleman, *Adkins et al. v. Nestlé Purina PetCare Company et al.* (June 23, 2015) 1:12-cv-02871 (N.D. Ill.):

> *Notice to the Settlement Class and other potentially interested parties has been provided in accordance with the notice requirements specified by the Court in the Preliminary Approval Order. Such notice fully and accurately informed the Settlement Class members of all material elements of the proposed Settlement and of their opportunity to object or comment thereon or to exclude themselves from the Settlement; provided Settlement Class Members adequate instructions and a variety of means to obtain additional information; was the best notice practicable under the circumstances; was valid, due, and sufficient notice to all Settlement Class members; and complied fully with the laws of the State of Illinois, Federal Rules of Civil Procedure, the United States Constitution, due process, and other applicable law.*

Judge James Lawrence King, *Steen v. Capital One, N.A.* (May 22, 2015) 2:10-cv-01505 (E.D. La.) and 1:10-cv-22058 (S.D. Fla.) as part of ***In re: Checking Account Overdraft Litigation***, MDL No. 2036 (S.D. Fla.):

> *The Court finds that the Settlement Class Members were provided with the best practicable notice; the notice was reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Shutts, 472 U.S. at 812 (quoting Mullane, 339 U.S. at 314-15). This Settlement with Capital One was widely publicized, and any Settlement Class Member who wished to express comments or objections had ample opportunity and means to do so. Azari Decl. ¶¶ 30-39.*

Judge Rya W. Zobel, *Gulbankian et al. v. MW Manufacturers, Inc.* (Dec. 29, 2014) 1:10-cv-10392 (D. Mass.):

> *This Court finds that the Class Notice was provided to the Settlement Class consistent with the Preliminary Approval Order and that it was the best notice practicable and fully satisfied the requirements of the Federal Rules of Civil Procedure, due process, and applicable law. The Court finds that the Notice Plan that was implemented by the Claims Administrator satisfies the requirements of FED. R. CIV. P. 23, 28 U.S.C. § 1715, and Due Process, and is the best notice practicable under the circumstances. The Notice Plan constituted due and sufficient notice of the Settlement, the Final Approval Hearing, and the other matters referred to in the notices. Proof of the giving of such notices has been filed with the Court via the Azari Declaration and its exhibits.*

Judge Edward J. Davila, *Rose v. Bank of America Corporation et al.* (Aug. 29, 2014) 5:11-cv-02390 & 5:12-cv-00400 (N.D. Cal.):

> *The Court finds that the notice was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of this action, all material elements of the Settlement, the opportunity for Settlement Class Members to exclude themselves from, object to, or comment on the settlement and to appear at the final approval hearing. The notice was the best notice practicable under the circumstances, satisfying the requirements of Rule 23(c)(2)(B); provided notice in a reasonable manner to all class members, satisfying Rule 23(e)(1)(B); was adequate and sufficient notice to all Class Members; and, complied fully with the laws of the United States and of the Federal Rules of Civil Procedure, due process and any other applicable rules of court.*

Judge James A. Robertson, II, *Wong et al. v. Alacer Corp.* (June 27, 2014) CGC-12-519221 (Sup. Ct. Cal.):

> *Notice to the Settlement Class has been provided in accordance with the Preliminary Approval Order. Based on the Declaration of Cameron Azari dated March 7, 2014, such Class Notice has been provided in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances and satisfies the requirements of California Civil Code Section 1781, California Civil Code of Civil Procedure Section 382, Rules 3.766 of the California Rules of Court, and due process.*

Judge John Gleeson, *In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* (Dec. 13, 2013) MDL No. 1720, 05-md-01720 (E.D.N.Y.):

> *The Class Administrator notified class members of the terms of the proposed settlement through a mailed notice and publication campaign that included more than 20 million mailings and publication in more than 400 publications. The notice here meets the requirements of due process and notice standards … The objectors' complaints provide no reason to conclude that the purposes and requirements of a notice to a class were not met here.*

Judge Lance M. Africk, *Evans et al. v. TIN, Inc. et al.* (July 7, 2013) 2:11-cv-02067 (E.D. La.):

> *The Court finds that the dissemination of the Class Notice… as described in Notice Agent Lauran Schultz's Declaration: (a) constituted the best practicable notice to Class Members under the circumstances; (b) constituted notice that was reasonably calculated, under the circumstances…; (c) constituted notice that was reasonable, due, adequate, and sufficient; and (d) constituted notice that fully satisfied all applicable legal requirements, including Rules 23(c)(2)(B) and (e)(1) of the Federal Rules of Civil Procedure, the United States Constitution (including Due Process Clause), the Rules of this Court, and any other applicable law, as well as complied with the Federal Judicial Center's illustrative class action notices.*

Judge Edward M. Chen, *Marolda v. Symantec Corporation* (Apr. 5, 2013) 3:08-cv-05701 (N.D. Cal.):

> *Approximately 3.9 million notices were delivered by email to class members, but only a very small percentage objected or opted out … The Court … concludes that notice of settlement to the class was adequate and*

satisfied all requirements of Federal Rule of Civil Procedure 23(e) and due process. Class members received direct notice by email, and additional notice was given by publication in numerous widely circulated publications as well as in numerous targeted publications. These were the best practicable means of informing class members of their rights and of the settlement's terms.

Judge Ann D. Montgomery, *In re: Zurn Pex Plumbing Products Liability Litigation* (Feb. 27, 2013) MDL No. 1958, 08-md-01958 (D. Minn.):

The parties retained Hilsoft Notifications ("Hilsoft"), an experienced class-notice consultant, to design and carry out the notice plan. The form and content of the notices provided to the class were direct, understandable, and consistent with the "plain language" principles advanced by the Federal Judicial Center.

*The notice plan's multi-faceted approach to providing notice to settlement class members whose identity is not known to the settling parties constitutes "the best notice [*26] that is practicable under the circumstances" consistent with Rule 23(c)(2)(B).*

Magistrate Judge Stewart, *Gessele et al. v. Jack in the Box, Inc.* (Jan. 28, 2013) 3:10-cv-00960 (D. Ore.):

Moreover, plaintiffs have submitted [a] declaration from Cameron Azari (docket #129), a nationally recognized notice expert, who attests that fashioning an effective joint notice is not unworkable or unduly confusing. Azari also provides a detailed analysis of how he would approach fashioning an effective notice in this case.

Judge Carl J. Barbier, *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010* *(Medical Benefits Settlement)* (Jan. 11, 2013) MDL No. 2179 (E.D. La.):

Through August 9, 2012, 366,242 individual notices had been sent to potential [Medical Benefits] Settlement Class Members by postal mail and 56,136 individual notices had been e-mailed. Only 10,700 mailings—or 3.3%—were known to be undeliverable. (Azari Decl. ¶¶ 8, 9.) Notice was also provided through an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, highly-trafficked websites, and Sunday local newspapers (via newspaper supplements). Notice was also provided in non-measured trade, business and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The combined measurable paid print, television, radio, and Internet effort reached an estimated 95% of adults aged 18+ in the Gulf Coast region an average of 10.3 times each, and an estimated 83% of all adults in the United States aged 18+ an average of 4 times each. (Id. ¶¶ 8, 10.) All notice documents were designed to be clear, substantive, and informative. (Id. ¶ 5.)

The Court received no objections to the scope or content of the [Medical Benefits] Notice Program. (Azari Supp. Decl. ¶ 12.) The Court finds that the Notice and Notice Plan as implemented satisfied the best notice practicable standard of Rule 23(c) and, in accordance with Rule 23(e)(1), provided notice in a reasonable manner to Class Members who would be bound by the Settlement, including individual notice to all Class Members who could be identified through reasonable effort. Likewise, the Notice and Notice Plan satisfied the requirements of Due Process. The Court also finds the Notice and Notice Plan satisfied the requirements of CAFA.

Judge Carl J. Barbier, *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010* *(Economic and Property Damages Settlement)* (Dec. 21, 2012) MDL No. 2179 (E.D. La.):

The Court finds that the Class Notice and Class Notice Plan satisfied and continue to satisfy the applicable requirements of Federal Rule of Civil Procedure 23(c)(2)(b) and 23(e), the Class Action Fairness Act (28 U.S.C. § 1711 et seq.), and the Due Process Clause of the United States Constitution (U.S. Const., amend. V), constituting the best notice that is practicable under the circumstances of this litigation. The notice program surpassed the requirements of Due Process, Rule 23, and CAFA. Based on the factual elements of the Notice Program as detailed below, the Notice Program surpassed all of the requirements of Due Process, Rule 23, and CAFA.

The Notice Program, as duly implemented, surpasses other notice programs that Hilsoft Notifications has designed and executed with court approval. The Notice Program included notification to known or potential Class Members via postal mail and e-mail; an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, and Sunday local newspapers. Notice placements also appeared in non-measured trade, business, and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The Notice

Program met the objective of reaching the greatest possible number of class members and providing them with every reasonable opportunity to understand their legal rights. See Azari Decl. ¶¶ 8, 15, 68. The Notice Program was substantially completed on July 15, 2012, allowing class members adequate time to make decisions before the opt-out and objections deadlines.

The media notice effort alone reached an estimated 95% of adults in the Gulf region an average of 10.3 times each, and an estimated 83% of all adults in the United States an average of 4 times each. These figures do not include notice efforts that cannot be measured, such as advertisements in trade publications and sponsored search engine listings. The Notice Program fairly and adequately covered and notified the class without excluding any demographic group or geographic area, and it exceeded the reach percentage achieved in most other court-approved notice programs.

Judge Alonzo Harris, *Opelousas General Hospital Authority, A Public Trust, D/B/A Opelousas General Health System and Arklamiss Surgery Center, L.L.C. v. FairPay Solutions, Inc.* (Aug. 17, 2012) 12-C-1599 (27th Jud. D. Ct. La.):

Notice given to Class Members and all other interested parties pursuant to this Court's order of April 18, 2012, was reasonably calculated to apprise interested parties of the pendency of the action, the certification of the Class as Defined for settlement purposes only, the terms of the Settlement Agreement, Class Members rights to be represented by private counsel, at their own costs, and Class Members rights to appear in Court to have their objections heard, and to afford persons or entities within the Class Definition an opportunity to exclude themselves from the Class. Such notice complied with all requirements of the federal and state constitutions, including the Due Process Clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Class as Defined.

Judge James Lawrence King, *Sachar v. Iberiabank Corporation* (Apr. 26, 2012) as part of ***In re: Checking Account Overdraft*** MDL No. 2036 (S.D. Fla):

The Court finds that the Notice previously approved was fully and properly effectuated and was sufficient to satisfy the requirements of due process because it described "the substantive claims … [and] contained information reasonably necessary to [allow Settlement Class Members to] make a decision to remain a class member and be bound by the final judgment." In re: Nissan Motor Corp. Antitrust Litig., 552 F.2d 1088, 1104-05 (5th Cir. 1977). The Notice, among other things, defined the Settlement Class, described the release as well as the amount and method and manner of proposed distribution of the Settlement proceeds, and informed Settlement Class Members of their rights to opt-out or object, the procedures for doing so, and the time and place of the Final Approval Hearing. The Notice also informed Settlement Class Members that a class judgment would bind them unless they opted out, and told them where they could obtain more information, such as access to a full copy of the Agreement. Further, the Notice described in summary form the fact that Class Counsel would be seeking attorneys' fees of up to 30 percent of the Settlement. Settlement Class Members were provided with the best practicable notice "reasonably calculated, under [the] circumstances, to apprise them of the pendency of the action and afford them an opportunity to present their objections." Mullane, 339 U.S. at 314. The content of the Notice fully complied with the requirements of Rule 23.

Judge Bobby Peters, *Vereen v. Lowe's Home Centers* (Apr. 13, 2012) SU10-cv-2267B (Ga. Super. Ct.):

The Court finds that the Notice and the Notice Plan was fulfilled, in accordance with the terms of the Settlement Agreement, the Amendment, and this Court's Preliminary Approval Order and that this Notice and Notice Plan constituted the best practicable notice to Class Members under the circumstances of this action, constituted due and sufficient Notice of the proposed Settlement to all persons entitled to participate in the proposed Settlement, and was in full compliance with Ga. Code Ann § 9-11-23 and the constitutional requirements of due process. Extensive notice was provided to the class, including point of sale notification, publication notice and notice by first-class mail for certain potential Class Members.

The affidavit of the notice expert conclusively supports this Court's finding that the notice program was adequate, appropriate, and comported with Georgia Code Ann. § 9-11-23(b)(2), the Due Process Clause of the Constitution, and the guidance for effective notice articulate in the FJC's Manual for Complex Litigation, 4th.

Judge Lee Rosenthal, *In re: Heartland Payment Systems, Inc. Customer Data Security Breach Litigation* (Mar. 2, 2012) MDL No. 2046 (S.D. Tex.):

> *The notice that has been given clearly complies with Rule 23(e)(1)'s reasonableness requirement … Hilsoft Notifications analyzed the notice plan after its implementation and conservatively estimated that notice reached 81.4 percent of the class members. (Docket Entry No. 106, ¶ 32). Both the summary notice and the detailed notice provided the information reasonably necessary for the presumptive class members to determine whether to object to the proposed settlement. See Katrina Canal Breaches, 628 F.3d at 197. Both the summary notice and the detailed notice "were written in easy-to-understand plain English." In re: Black Farmers Discrimination Litig., — F. Supp. 2d —, 2011 WL 5117058, at *23 (D.D.C. 2011); accord AGGREGATE LITIGATION § 3.04(c).15 The notice provided "satisf[ies] the broad reasonableness standards imposed by due process" and Rule 23. Katrina Canal Breaches, 628 F.3d at 197.*

Judge John D. Bates, *Trombley v. National City Bank* (Dec. 1, 2011) 1:10-cv-00232 (D.D.C.) as part of ***In re: Checking Account Overdraft Litigation*** MDL No. 2036 (S.D. Fla.):

> *The form, content, and method of dissemination of Notice given to the Settlement Class were in full compliance with the Court's January 11, 2011 Order, the requirements of Fed. R. Civ. P. 23(e), and due process. The notice was adequate and reasonable, and constituted the best notice practicable under the circumstances. In addition, adequate notice of the proceedings and an opportunity to participate in the final fairness hearing were provided to the Settlement Class.*

Judge Robert M. Dow, Jr., *Schulte v. Fifth Third Bank* (July 29, 2011) 1:09-cv-06655 (N.D. Ill.):

> *The Court has reviewed the content of all of the various notices, as well as the manner in which Notice was disseminated, and concludes that the Notice given to the Class fully complied with Federal Rule of Civil Procedure 23, as it was the best notice practicable, satisfied all constitutional due process concerns, and provided the Court with jurisdiction over the absent Class Members.*

Judge Ellis J. Daigle, *Williams v. Hammerman & Gainer Inc.* (June 30, 2011) 11-C-3187-B (27th Jud. D. Ct. La.):

> *Notices given to Settlement Class members and all other interested parties throughout this proceeding with respect to the certification of the Settlement Class, the proposed settlement, and all related procedures and hearings—including, without limitation, the notice to putative Settlement Class members and others more fully described in this Court's order of 30th day of March 2011 were reasonably calculated under all the circumstances and have been sufficient, as to form, content, and manner of dissemination, to apprise interested parties and members of the Settlement Class of the pendency of the action, the certification of the Settlement Class, the Settlement Agreement and its contents, Settlement Class members' right to be represented by private counsel, at their own cost, and Settlement Class members' right to appear in Court to have their objections heard, and to afford Settlement Class members an opportunity to exclude themselves from the Settlement Class. Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedures, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Settlement Class.*

Judge Stefan R. Underhill, *Mathena v. Webster Bank, N.A.* (Mar. 24, 2011) 3:10-cv-01448 (D. Conn.) as part of ***In re: Checking Account Overdraft Litigation*** MDL No. 2036 (S.D. Fla.):

> *The form, content, and method of dissemination of Notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all persons entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.*

Judge Ted Stewart, *Miller v. Basic Research, LLC* (Sept. 2, 2010) 2:07-cv-00871 (D. Utah):

> *Plaintiffs state that they have hired a firm specializing in designing and implementing large scale, unbiased, legal notification plans. Plaintiffs represent to the Court that such notice will include: 1) individual notice by electronic mail and/or first-class mail sent to all reasonably identifiable Class members; 2) nationwide paid media notice through a combination of print publications, including newspapers, consumer magazines, newspaper supplements and the Internet; 3) a neutral, Court-approved, informational press release; 4) a*

neutral, Court-approved Internet website; and 5) a toll-free telephone number. Similar mixed media plans have been approved by other district courts post class certification. The Court finds this plan is sufficient to meet the notice requirement.

Judge Sara Loi, *Pavlov v. Continental Casualty Co.* (Oct. 7, 2009) 5:07-cv-02580 (N.D. Ohio):

As previously set forth in this Memorandum Opinion, the elaborate notice program contained in the Settlement Agreement provides for notice through a variety of means, including direct mail to each class member, notice to the United States Attorney General and each State, a toll free number, and a website designed to provide information about the settlement and instructions on submitting claims. With a 99.9% effective rate, the Court finds that the notice program constituted the "best notice that is practicable under the circumstances," Fed. R. Civ. P. 23(c)(2)(B), and clearly satisfies the requirements of Rule 23(c)(2)(B).

Judge James Robertson, *In re: Department of Veterans Affairs (VA) Data Theft Litigation* (Sept. 23, 2009) MDL No. 1796 (D.D.C.):

The Notice Plan, as implemented, satisfied the requirements of due process and was the best notice practicable under the circumstances. The Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the action, the terms of the Settlement, and their right to appear, object to or exclude themselves from the Settlement. Further, the notice was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice.

LEGAL NOTICE CASES

Hilsoft has served as a notice expert for planning, implementation and/or analysis in the following partial list of cases:

In re: In re: U.S. Office of Personnel Management Data Security Breach Litigation	D.D.C., No. MDL No. 2664, 15-cv-01394
In re: fairlife Milk Products Marketing and Sales Practices Litigation	N.D. Ill., No. MDL No. 2909, No. 1:19-cv-03924
In Re: Zoom Video Communications, Inc. Privacy Litigation	N.D. Cal., No. 3:20-cv-02155
Browning et al. v. Anheuser-Busch, LLC **(False Advertising)**	W.D. Mo., No. 20-cv-00889
Callen v. Daimler AG and Mercedes-Benz USA, LLC **(Interior Trim)**	N.D. Ga., No. 1:19-cv-01411
In re: Disposable Contact Lens Antitrust Litigation **(Alcon Laboratories, Inc. and Johnson & Johnson Vision Care, Inc.)**	M.D. Fla., No. 3:15-md-02626
Ford et al. v. [24]7.ai, Inc. **(Data Breach - Best Buy Data Incident)**	N.D. Cal., MDL No. 2863, No. 5:18-cv-02770
In re Takata Airbag Class Action Settlement **- Australia Settlement** ***Louise Haselhurst v. Toyota Motor Corporation Australia Limited*** ***Kimley Whisson v. Subaru (Aust) Pty Limited*** ***Akuratiya Kularathne v. Honda Australia Pty Limited*** ***Owen Brewster v. BMW Australia Ltd*** ***Jaydan Bond v. Nissan Motor Co (Australia) Pty Limited*** ***Camilla Coates v. Mazda Australia Pty Limited***	Australia; NSWSC, No. 2017/00340824 No. 2017/00353017 No. 2017/00378526 No. 2018/00009555 No. 2018/00009565 No. 2018/00042244
In Re Pork Antitrust Litigation (Commercial and Institutional Indirect Purchaser Actions - CIIPPs) **(Smithfield Foods, Inc.)**	D. Minn., No. 0:18-cv-01776
Jackson v. UKG Inc., f/k/a The Ultimate Software Group, Inc. **(Biometrics)**	Cir. Ct. of McLean Cnty., Ill., No. 2020L31
In re: Capital One Consumer Security Breach Litigation	E.D. Vir., MDL No. 2915, No. 1:19-md-02915
Dundon et al. v. Chipotle Mexican Grill, Inc. **(Food Ordering Fees)**	Cir. Ct. Cal. Alameda Cnty., No. RG21088118
In re Morgan Stanley Data Security Litigation	S.D.N.Y., No. 1:20-cv-05914

DiFlauro v. Bank of America Corporation, et al.	C.D. Cal., No. 2:20-cv-05692
In re: California Pizza Kitchen Data Breach Litigation	C.D. Cal., No. 8:21-cv-01928
Breda v. Cellco Partnership d/b/a Verizon Wireless **(TCPA)**	D. Mass., No. 1:16-cv-11512
Snyder et al. v. The Urology Center of Colorado, P.C. **(Data Breach)**	2nd Dist. Ct, Cnty. of Denver Col., No. 2021CV33707
Dearing v. Magellan Health Inc. et al. **(Data Breach)**	Sup. Ct. Cnty of Maricopa, Ariz., No. CV2020-013648
Toretto et al. v. Donnelley Financial Solutions, Inc. et al.	S.D.N.Y., No. 1:20-cv-02667
In Re: Takata Airbag Products Liability Litigation **(Volkswagen)**	S.D. Fla., MDL No. 2599, No. 1:15-md-02599
Beiswinger v. West Shore Home, LLC **(TCPA)**	M.D. Fla., No. 3:20-cv-01286
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Kostka et al. v. Dickey's Barbecue Restaurants, Inc. et al.	N.D. Tex., No. 3:20-cv-03424
Scherr v. Rodan & Fields, LLC; Gorzo et al. v. Rodan & Fields, LLC **(Lash Boost Mascara Product)**	Sup. Ct. of Cal., Cnty. San Bernadino, No. CJC-18-004981; Sup. Ct. of Cal., Cnty. of San Fran., Nos. CIVDS 1723435 and CGC-18-565628
Cochran et al. v. The Kroger Co. et al. **(Data Breach)**	N.D. Cal., No. 5:21-cv-01887
Fernandez v. Rushmore Loan Management Services LLC **(Mortgage Loan Fees)**	C.D. Cal., No. 8:21-cv-00621
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Stoll et al. v. Musculoskeletal Institute, Chartered **(Data Breach)**	M.D. Fla., No. 8:20-cv-01798
Keith Mayo v. Affinity Plus Federal Credit Union **(Overdraft)**	4th Jud. Dist. Ct. Minn., No. 27-cv-11786
Johnson v. Moss Bros. Auto Group, Inc. et al. **(TCPA)**	C.D. Cal., No. 5:19-cv-02456
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Haney v. Genworth Life Ins. Co. **(Long Term Care Insurance)**	E.D. Vir., No. 3:22-cv-00055
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Mercado et al. v. Verde Energy USA, Inc. **(Variable Rate Energy)**	N.D. Ill., No. 1:18-cv-02068
Fallis v. Gate City Bank **(Overdraft)**	East Cent. Dist. Ct. Cass Cnty. N.D., No. 09-2019-cv-04007
Sanchez et al. v. California Public Employees' Retirement System et al. **(Long Term Care Insurance)**	Sup. Ct. Cal. Cnty. of Los Angeles, No. BC 517444
Hameed-Bolden et al. v. Forever 21 Retail, Inc. et al. **(Data Breach for Payment Cards)**	C.D. Cal., No. 2:18-cv-03019
Wallace v. Wells Fargo **(Overdraft Fees on Uber and Lyft One-Time Transactions)**	Sup. Ct. Cal. Cnty. of Santa Clara, No. 17-cv-317775

In re Turkey Antitrust Litigations **(Commercial and Institutional Indirect Purchaser Plaintiffs' Action – CIIPPs)** ***Sandee's Bakery d/b/a Sandee's Catering Bakery & Deli et al. v. Agri Stats, Inc.***	N.D. Ill., No. 1:20-cv-02295
Coleman v. Alaska USA Federal Credit Union **(Retry Bank Fees)**	D. Alaska, No. 3:19-cv-00229
Fiore et al. v. Ingenious Designs, L.L.C. and HSN, Inc. **(My Little Steamer)**	E.D.N.Y., No. 1:18-cv-07124
In Re Pork Antitrust Litigation (Commercial and Institutional Indirect Purchaser Actions - CIIPPs) **(JBS USA Food Company, JBS USA Food Company Holdings)**	D. Minn., No. 0:18-cv-01776
Lozano v. CodeMetro Inc. **(Data Breach)**	Sup. Ct. Cal. Cnty. of San Diego, No. 37-2020-00022701
Yamagata et al. v. Reckitt Benckiser LLC **(Schiff Move Free® Advanced Glucosamine Supplements)**	N.D. Cal., No. 3:17-cv-03529
Cin-Q Automobiles, Inc. et al. v. Buccaneers Limited Partnership **(TCPA)**	M.D. Fla., No. 8:13-cv-01592
Thompson et al. v. Community Bank, N.A. **(Overdraft)**	N.D.N.Y., No. 8:19-cv-00919
Bleachtech L.L.C. v. United Parcel Service Co. **(Declared Value Shipping Fees)**	E.D. Mich., No. 2:14-cv-12719
Silveira v. M&T Bank **(Mortgage Fees)**	C.D. Cal., No. 2:19-cv-06958
In re Toll Roads Litigation; Borsuk et al. v. Foothill/Eastern Transportation Corridor Agency et al. **(OCTA Settlement - Collection & Sharing of Personally Identifiable Information)**	C.D. Cal., No. 8:16-cv-00262
In Re: Toll Roads Litigation **(3M/TCA Settlement - Collection & Sharing of Personally Identifiable Information)**	C.D. Cal., No. 8:16-cv-00262
Pearlstone v. Wal-Mart Stores, Inc. **(Sales Tax)**	C.D. Cal., No. 4:17-cv-02856
Zanca et al. v. Epic Games, Inc. **(Fortnite or Rocket League Video Games)**	Sup. Ct. Wake Cnty. N.C., No. 21-CVS-534
In re: Flint Water Cases	E.D. Mich., No. 5:16-cv-10444
Kukorinis v. Walmart, Inc. **(Weighted Goods Pricing)**	S.D. Fla., No. 1:19-cv-20592
Grace v. Apple, Inc.	N.D. Cal., No. 17-cv-00551
Alvarez v. Sirius XM Radio Inc.	C.D. Cal., No. 2:18-cv-08605
In re: Pre-Filled Propane Tank Antitrust Litigation	W.D. Mo., No. MDL No. 2567, No. 14-cv-02567
In re: Disposable Contact Lens Antitrust Litigation **(ABB Concise Optical Group, LLC)**	M.D. Fla., No. 3:15-md-02626
Morris v. Provident Credit Union **(Overdraft)**	Sup. Ct. Cal. Cnty. of San Fran., No. CGC-19-581616
Pennington v. Tetra Tech, Inc. et al. **(Property)**	N.D. Cal., No. 3:18-cv-05330
Maldonado et al. v. Apple Inc. et al. **(Apple Care iPhone)**	N.D. Cal., No. 3:16-cv-04067
UFCW & Employers Benefit Trust v. Sutter Health et al. **(Self-Funded Payors)**	Sup. Ct. of Cal., Cnty. of San Fran., No. CGC 14-538451 Consolidated with CGC-18-565398
Fitzhenry v. Independent Home Products, LLC **(TCPA)**	D.S.C., No. 2:19-cv-02993
In re: Hyundai and Kia Engine Litigation and Flaherty v. Hyundai Motor Company, Inc. et al.	C.D. Cal., Nos. 8:17-cv-00838 & 18-cv-02223

Sager et al. v. Volkswagen Group of America, Inc. et al.	D.N.J., No. 18-cv-13556
Bautista v. Valero Marketing and Supply Company	N.D. Cal., No. 3:15-cv-05557
Richards et al. v. Chime Financial, Inc.	N.D. Cal., No. 4:19-cv-06864
In re: Health Insurance Innovations Securities Litigation	M.D. Fla., No. 8:17-cv-02186
Fox et al. v. Iowa Health System d.b.a. UnityPoint Health **(Data Breach)**	W.D. Wis., No. 18-cv-00327
Smith v. Costa Del Mar, Inc. **(Sunglasses Warranty)**	M.D. Fla., No. 3:18-cv-01011
Al's Discount Plumbing et al. v. Viega, LLC **(Building Products)**	M.D. Pa., No. 19-cv-00159
Rose v. The Travelers Home and Marine Insurance Company et al.	E.D. Pa., No. 19-cv-00977
Eastwood Construction LLC et al. v. City of Monroe ***The Estate of Donald Alan Plyler Sr. et al. v. City of Monroe***	Sup. Ct. N.C., Nos. 18-CVS-2692 & 19-CVS-1825
Garvin v. San Diego Unified Port District	Sup. Ct. Cal., No. 37-2020-00015064
Consumer Financial Protection Bureau v. Siringoringo Law Firm	C.D. Cal., No. 8:14-cv-01155
Robinson v. Nationstar Mortgage LLC	D. Md., No. 8:14-cv-03667
Drazen v. GoDaddy.com, LLC **and** ***Bennett v. GoDaddy.com, LLC (TCPA)***	S.D. Ala., No. 1:19-cv-00563
In re: Libor-Based Financial Instruments Antitrust Litigation	S.D.N.Y., MDL No. 2262, No. 1:11-md-2262
Izor v. Abacus Data Systems, Inc. **(TCPA)**	N.D. Cal., No. 19-cv-01057
Cook et al. v. South Carolina Public Service Authority et al.	Ct. of Com. Pleas. 13th Jud. Cir. S.C., No. 2019-CP-23-6675
K.B., by and through her natural parent, Jennifer Qassis, and Lillian Knox-Bender v. Methodist Healthcare - Memphis Hospitals	30th Jud. Dist. Tenn., No. CH-13-04871-1
In re: Roman Catholic Diocese of Harrisburg	Bank. Ct. M.D. Pa., No. 1:20-bk-00599
Denier et al. v. Taconic Biosciences, Inc.	Sup Ct. N.Y., No. 00255851
Robinson v. First Hawaiian Bank **(Overdraft)**	Cir. Ct. of First Cir. Haw., No. 17-1-0167-01
Burch v. Whirlpool Corporation	W.D. Mich., No. 1:17-cv-00018
Armon et al. v. Washington State University **(Data Breach)**	Sup. Ct. Wash., No. 17-2-23244-1 consolidated with No. 17-2-25052-0
Wilson et al. v. Volkswagen Group of America, Inc. et al.	S.D. Fla., No. 17-cv-23033
Prather v. Wells Fargo Bank, N.A. **(TCPA)**	N.D. Ill., No. 1:17-cv-00481
In re: Wells Fargo Collateral Protection Insurance Litigation	C.D. Cal., No. 8:17-ml-02797
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***In re: Disposable Contact Lens Antitrust Litigation* (CooperVision, Inc.)**	M.D. Fla., No. 3:15-md-02626
Hyder et al. v. Consumers County Mutual Insurance Company	D. Ct. of Travis Cnty. Tex., No. D-1-GN-16-000596
Fessler v. Porcelana Corona De Mexico, S.A. DE C.V f/k/a Sanitarios Lamosa S.A. DE C.V. a/k/a Vortens	E.D. Tex., No. 4:19-cv-00248
In re: TD Bank, N.A. Debit Card Overdraft Fee Litigation	D.S.C., MDL No. 2613, No. 6:15-MN-02613
Liggio v. Apple Federal Credit Union	E.D. Vir., No. 1:18-cv-01059
***Garcia v. Target Corporation* (TCPA)**	D. Minn., No. 16-cv-02574
Albrecht v. Oasis Power, LLC d/b/a Oasis Energy	N.D. Ill., No. 1:18-cv-01061
McKinney-Drobnis et al. v. Massage Envy Franchising	N.D. Cal., No. 3:16-cv-06450
In re: Optical Disk Drive Products Antitrust Litigation	N.D. Cal., MDL No. 2143, No. 3:10-md-02143
Stone et al. v. Porcelana Corona De Mexico, S.A. DE C.V f/k/a Sanitarios Lamosa S.A. DE C.V. a/k/a Vortens	E.D. Tex., No. 4:17-cv-00001
***In re: Kaiser Gypsum Company, Inc. et al.* (Asbestos)**	Bankr. W.D. N.C., No. 16-31602
***Kuss v. American HomePatient, Inc. et al.* (Data Breach)**	M.D. Fla., No. 8:18-cv-02348
Lusnak v. Bank of America, N.A.	C.D. Cal., No. 14-cv-01855
In re: Premera Blue Cross Customer Data Security Breach Litigation	D. Ore., No. 3:15-md-02633
***Elder v. Hilton Worldwide Holdings, Inc.* (Hotel Stay Promotion)**	N.D. Cal., No. 16-cv-00278
***Grayson et al. v. General Electric Company* (Microwaves)**	D. Conn., No. 3:13-cv-01799
Harris et al. v. Farmers Insurance Exchange and Mid Century Insurance Company	Sup. Ct. Cal., No. BC 579498
***Lashambae v. Capital One Bank, N.A.* (Overdraft)**	E.D.N.Y., No. 1:17-cv-06406
***Trujillo et al. v. Ametek, Inc. et al.* (Toxic Leak)**	S.D. Cal., No.3:15-cv-01394
***Cox et al. v. Ametek, Inc. et al.* (Toxic Leak)**	S.D. Cal., No. 3:17-cv-00597
Pirozzi et al. v. Massage Envy Franchising, LLC	E.D. Mo., No. 4:19-cv-00807
***Lehman v. Transbay Joint Powers Authority et al.* (Millennium Tower)**	Sup. Ct. Cal., No. GCG-16-553758
In re: FCA US LLC Monostable Electronic Gearshift Litigation	E.D. Mich., MDL No. 2744 & No. 16-md-02744
Dasher v. RBC Bank (USA) predecessor in interest to PNC Bank, N.A.*, as part of *In re: Checking Account Overdraft	S.D. Fla., No. 1:10-cv-22190, as part of MDL No. 2036
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***In re: Renovate America Finance Cases* (Tax Assessment Financing)**	Sup. Ct., Cal., Cnty. of Riverside, No. RICJCCP4940
***Nelson v. Roadrunner Transportation Systems, Inc.* (Data Breach)**	N.D. Ill., No. 1:18-cv-07400

Skochin et al. v. Genworth Life Insurance Company et al.	E.D. Vir., No. 3:19-cv-00049
***Walters et al. v. Target Corp.* (Overdraft)**	S.D. Cal., No. 3:16-cv-01678
Jackson et al. v. Viking Group, Inc. et al.	D. Md., No. 8:18-cv-02356
Waldrup v. Countrywide Financial Corporation et al.	C.D. Cal., No. 2:13-cv-08833
Burrow et al. v. Forjas Taurus S.A. et al.	S.D. Fla., No. 1:16-cv-21606
Henrikson v. Samsung Electronics Canada Inc.	Ontario Super. Ct., No. 2762-16cp
In re: Comcast Corp. Set-Top Cable Television Box Antitrust Litigation	E.D. Pa., No. 2:09-md-02034
Lightsey et al. v. South Carolina Electric & Gas Company, a Wholly Owned Subsidiary of SCANA et al.	Ct. of Com. Pleas., S.C., No. 2017-CP-25-335
Rabin v. HP Canada Co. et al.	Quebec Ct., Dist. of Montreal, No. 500-06-000813-168
***Di Filippo v. The Bank of Nova Scotia et al.* (Gold Market Instrument)**	Ontario Sup. Ct., No. CV-15-543005-00CP & No. CV-16-551067-00CP
McIntosh v. Takata Corporation et al.; Vitoratos et al. v. Takata Corporation et al.; and Hall v. Takata Corporation et al.	Ontario Sup Ct., No. CV-16-543833-00CP; Quebec Sup. Ct. of Justice, No. 500-06-000723-144; & Court of Queen's Bench for Saskatchewan, No. QBG. 1284 or 2015
Adlouni v. UCLA Health Systems Auxiliary et al.	Sup. Ct. Cal., No. BC589243
Lloyd et al. v. Navy Federal Credit Union	S.D. Cal., No. 17-cv-01280
Luib v. Henkel Consumer Goods Inc.	E.D.N.Y., No. 1:17-cv-03021
***Zaklit et al. v. Nationstar Mortgage LLC et al.* (TCPA)**	C.D. Cal., No. 5:15-cv-02190
In re: HP Printer Firmware Update Litigation	N.D. Cal., No. 5:16-cv-05820
In re: Dealer Management Systems Antitrust Litigation	N.D. Ill., MDL No. 2817, No. 18-cv-00864
Mosser v. TD Bank, N.A. and Mazzadra et al. v. TD Bank, N.A.*, as part of *In re: Checking Account Overdraft	E.D. Pa., No. 2:10-cv-00731, S.D. Fla., No. 10-cv-21386 and S.D. Fla., No. 1:10-cv-21870, as part of S.D. Fla., MDL No. 2036
***Naiman v. Total Merchant Services, Inc. et al.* (TCPA)**	N.D. Cal., No. 4:17-cv-03806
In re: Valley Anesthesiology Consultants, Inc. Data Breach Litigation	Sup. Ct. of Maricopa Ariz., No. CV2016-013446
***Parsons v. Kimpton Hotel & Restaurant Group, LLC* (Data Breach)**	N.D. Cal., No. 3:16-cv-05387
Stahl v. Bank of the West	Sup. Ct. Cal., No. BC673397
37 Besen Parkway, LLC v. John Hancock Life Insurance Company (U.S.A.)	S.D.N.Y., No. 15-cv-09924
Tashica Fulton-Green et al. v. Accolade, Inc.	E.D. Pa., No. 2:18-cv-00274
In re: Community Health Systems, Inc. Customer Data Security Breach Litigation	N.D. Ala., MDL No. 2595, No. 2:15-cv-00222

Al's Pals Pet Card, LLC et al. v. Woodforest National Bank, N.A. et al.	S.D. Tex., No. 4:17-cv-03852
Cowen v. Lenny & Larry's Inc.	N.D. Ill., No. 1:17-cv-01530
Martin v. Trott **(MI - Foreclosure)**	E.D. Mich., No. 2:15-cv-12838
Knapper v. Cox Communications, Inc. **(TCPA)**	D. Ariz., No. 2:17-cv-00913
Dipuglia v. US Coachways, Inc. **(TCPA)**	S.D. Fla., No. 1:17-cv-23006
Abante Rooter and Plumbing v. Pivotal Payments Inc., d/b/a/ Capital Processing Network and CPN **(TCPA)**	N.D. Cal., No. 3:16-cv-05486
First Impressions Salon, Inc. et al. v. National Milk Producers Federation et al.	S.D. Ill., No. 3:13-cv-00454
Raffin v. Medicredit, Inc. et al.	C.D. Cal., No. 15-cv-04912
Gergetz v. Telenav, Inc. **(TCPA)**	N.D. Cal., No. 5:16-cv-04261
Ajose et al. v. Interline Brands Inc. **(Plumbing Fixtures)**	M.D. Tenn., No. 3:14-cv-01707
Underwood v. Kohl's Department Stores, Inc. et al.	E.D. Pa., No. 2:15-cv-00730
Surrett et al. v. Western Culinary Institute et al.	Ore. Cir., Cnty. of Multnomah, No. 0803-03530
Vergara et al., v. Uber Technologies, Inc. **(TCPA)**	N.D. Ill., No. 1:15-cv-06972
Watson v. Bank of America Corporation et al.; ***Bancroft-Snell et al. v. Visa Canada Corporation et al.;*** ***Bakopanos v. Visa Canada Corporation et al.;*** ***Macaronies Hair Club and Laser Center Inc. operating as Fuze Salon v. BofA Canada Bank et al.;*** ***Hello Baby Equipment Inc. v. BofA Canada Bank and others (Visa and Mastercard Canadian Interchange Fees)***	Sup. Ct. of B.C., No. VLC-S-S-112003; Ontario Sup. Ct., No. CV-11-426591; Sup. Ct. of Quebec, No. 500-06-00549-101; Ct. of QB of Alberta, No. 1203-18531; Ct. of QB of Saskatchewan, No. 133 of 2013
In re: Takata Airbag Products Liability Litigation **(OEMs – BMW, Mazda, Subaru, and Toyota)**	S.D. Fla., MDL No. 2599
In re: Takata Airbag Products Liability Litigation **(OEMs – Honda and Nissan)**	S.D. Fla., MDL No. 2599
In re: Takata Airbag Products Liability Litigation **(OEM – Ford)**	S.D. Fla., MDL No. 2599
Poseidon Concepts Corp. et al. **(Canadian Securities Litigation)**	Ct. of QB of Alberta, No. 1301-04364
Callaway v. Mercedes-Benz USA, LLC **(Seat Heaters)**	C.D. Cal., No. 8:14-cv-02011
Hale v. State Farm Mutual Automobile Insurance Company et al.	S.D. Ill., No. 3:12-cv-00660
Farrell v. Bank of America, N.A. **(Overdraft)**	S.D. Cal., No. 3:16-cv-00492
In re: Windsor Wood Clad Window Products Liability Litigation	E.D. Wis., MDL No. 2688, No. 16-md-02688
Wallace et al. v. Monier Lifetile LLC et al.	Sup. Ct. Cal., No. SCV-16410
In re: Parking Heaters Antitrust Litigation	E.D.N.Y., No. 15-MC-00940
Pantelyat et al. v. Bank of America, N.A. et al. **(Overdraft / Uber)**	S.D.N.Y., No. 16-cv-08964

***Falco et al. v. Nissan North America, Inc. et al.* (Engine – CA & WA)**	C.D. Cal., No. 2:13-cv-00686
***Alaska Electrical Pension Fund et al. v. Bank of America N.A. et al.* (ISDAfix Instruments)**	S.D.N.Y., No. 14-cv-07126
Larson v. John Hancock Life Insurance Company (U.S.A.)	Sup. Ct. Cal., No. RG16813803
Larey v. Allstate Property and Casualty Insurance Company	W.D. Kan., No. 4:14-cv-04008
Orlander v. Staples, Inc.	S.D.N.Y., No. 13-cv-00703
Masson v. Tallahassee Dodge Chrysler Jeep, LLC (TCPA)	S.D. Fla., No. 1:17-cv-22967
Gordon et al. v. Amadeus IT Group, S.A. et al.	S.D.N.Y., No. 1:15-cv-05457
Alexander M. Rattner v. Tribe App., Inc., and Kenneth Horsley v. Tribe App., Inc.	S.D. Fla., Nos. 1:17-cv-21344 & 1:14-cv-02311
Sobiech v. U.S. Gas & Electric, Inc., i/t/d/b/a Pennsylvania Gas & Electric et al.	E.D. Pa., No. 2:14-cv-04464
Mahoney v. TT of Pine Ridge, Inc.	S.D. Fla., No. 9:17-cv-80029
***Ma et al. v. Harmless Harvest Inc.* (Coconut Water)**	E.D.N.Y., No. 2:16-cv-07102
Reilly v. Chipotle Mexican Grill, Inc.	S.D. Fla., No. 1:15-cv-23425
***The Financial Oversight and Management Board for Puerto Rico as representative of Puerto Rico Electric Power Authority ("PREPA")* (Bankruptcy)**	D. Puerto Rico, No. 17-cv-04780
In re: Syngenta Litigation	4th Jud. Dist. Minn., No. 27-cv-15-3785
T.A.N. v. PNI Digital Media, Inc.	S.D. Ga., No. 2:16-cv-00132
Lewis v. Flue-Cured Tobacco Cooperative Stabilization Corporation (n/k/a United States Tobacco Cooperative, Inc.)	N.C. Gen. Ct. of Justice, Sup. Ct. Div., No. 05 CVS 188, No. 05 CVS 1938
McKnight et al. v. Uber Technologies, Inc. et al.	N.D. Cal., No. 14-cv-05615
***Gottlieb v. Citgo Petroleum Corporation* (TCPA)**	S.D. Fla., No. 9:16-cv-81911
***Farnham v. Caribou Coffee Company, Inc.* (TCPA)**	W.D. Wis., No. 16-cv-00295
***Jacobs et al. v. Huntington Bancshares Inc. et al.* (FirstMerit Overdraft Fees)**	Ohio C.P., No. 11CV000090
***Morton v. Greenbank* (Overdraft Fees)**	20th Jud. Dist. Tenn., No. 11-135-IV
***Ratzlaff et al. v. BOKF, NA d/b/a Bank of Oklahoma et al.* (Overdraft Fees)**	Dist. Ct. Okla., No. CJ-2015-00859
***Klug v. Watts Regulator Company* (Product Liability)**	D. Neb., No. 8:15-cv-00061
***Bias v. Wells Fargo & Company et al.* (Broker's Price Opinions)**	N.D. Cal., No. 4:12-cv-00664
***Greater Chautauqua Federal Credit Union v. Kmart Corp. et al.* (Data Breach)**	N.D. Ill., No. 1:15-cv-02228
***Hawkins v. First Tennessee Bank, N.A. et al.* (Overdraft Fees)**	13th Jud. Cir. Tenn., No. CT-004085-11

***In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation* (Bosch Settlement)**	N.D. Cal., MDL No. 2672
In re: HSBC Bank USA, N.A.	Sup. Ct. N.Y., No. 650562/11
***Glaske v. Independent Bank Corporation* (Overdraft Fees)**	Cir. Ct. Mich., No. 13-009983
MSPA Claims 1, LLC v. IDS Property Casualty Insurance Company	11th Jud. Cir. Fla, No. 15-27940-CA-21
In re: Lithium Ion Batteries Antitrust Litigation	N.D. Cal., MDL No. 2420, No. 4:13-md-02420
Chimeno-Buzzi v. Hollister Co. and Abercrombie & Fitch Co.	S.D. Fla., No. 14-cv-23120
Small v. BOKF, N.A.	D. Colo., No. 13-cv-01125
***Forgione v. Webster Bank N.A.* (Overdraft Fees)**	Sup. Ct. Conn., No. X10-UWY-cv-12-6015956-S
Swift v. BancorpSouth Bank*, as part of *In re: Checking Account Overdraft	N.D. Fla., No. 1:10-cv-00090, as part of S.D. Fla, MDL No. 2036
Whitton v. Deffenbaugh Industries, Inc. et al. ***Gary, LLC v. Deffenbaugh Industries, Inc. et al.***	D. Kan., No. 2:12-cv-02247 D. Kan., No. 2:13-cv-02634
In re: Citrus Canker Litigation	11th Jud. Cir., Fla., No. 03-8255 CA 13
In re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation	D.N.J., MDL No. 2540
In re: Shop-Vac Marketing and Sales Practices Litigation	M.D. Pa., MDL No. 2380
Opelousas General Hospital Authority, A Public Trust, D/B/A Opelousas General Health System and Arklamiss Surgery Center, L.L.C. v. FairPay Solutions, Inc.	27th Jud. D. Ct. La., No. 12-C-1599
Opelousas General Hospital Authority v. PPO Plus, L.L.C. et al.	27th Jud. D. Ct. La., No. 13-C-5380
Russell Minoru Ono v. Head Racquet Sports USA	C.D. Cal., No. 2:13-cv-04222
Kerry T. Thibodeaux, M.D. (A Professional Medical Corporation) v. American Lifecare, Inc.	27th Jud. D. Ct. La., No. 13-C-3212
Gattinella v. Michael Kors (USA), Inc. et al.	S.D.N.Y., No. 14-cv-05731
***In re: Energy Future Holdings Corp. et al.* (Asbestos Claims Bar Notice)**	Bankr. D. Del., No. 14-10979
Dorothy Williams d/b/a Dot's Restaurant v. Waste Away Group, Inc.	Cir. Ct., Lawrence Cnty., Ala., No. 42-cv-2012- 900001.00
Kota of Sarasota, Inc. v. Waste Management Inc. of Florida	12th Jud. Cir. Ct., Sarasota Cnty., Fla., No. 2011-CA-008020NC
Steen v. Capital One, N.A.*, as part of *In re: Checking Account Overdraft	E.D. La., No. 2:10-cv-01505 and 1:10-cv-22058, as part of S.D. Fla., MDL No. 2036
Childs et al. v. Synovus Bank et al.*, as part of *In re: Checking Account Overdraft	S.D. Fla., MDL No. 2036
***In re: MI Windows and Doors Inc. Products Liability Litigation* (Building Products)**	D.S.C., MDL No. 2333
Given v. Manufacturers and Traders Trust Company a/k/a M&T	S.D. Fla., MDL No. 2036

Bank*, as part of *In re: Checking Account Overdraft	
Scharfstein v. BP West Coast Products, LLC	Ore. Cir., Cnty. of Multnomah, No. 1112-17046
Adkins et al. v. Nestlé Purina PetCare Company et al.	N.D. Ill., No. 1:12-cv-02871
Smith v. City of New Orleans	Civil D. Ct., Parish of Orleans, La., No. 2005-05453
***Hawthorne v. Umpqua Bank* (Overdraft Fees)**	N.D. Cal., No. 11-cv-06700
Gulbankian et al. v. MW Manufacturers, Inc.	D. Mass., No. 1:10-cv-10392
***Costello v. NBT Bank* (Overdraft Fees)**	Sup. Ct. Del Cnty., N.Y., No. 2011-1037
In re American Express Anti-Steering Rules Antitrust Litigation (II) (Italian Colors Restaurant)	E.D.N.Y., MDL No. 2221, No. 11-md-2221
***Wong et al. v. Alacer Corp.* (Emergen-C)**	Sup. Ct. Cal., No. CGC-12-519221
Mello et al. v. Susquehanna Bank*, as part of *In re: Checking Account Overdraft	S.D. Fla., MDL No. 2036
In re: Plasma-Derivative Protein Therapies Antitrust Litigation	N.D. Ill., No. 09-cv-07666
***Simpson v. Citizens Bank* (Overdraft Fees)**	E.D. Mich., No. 2:12-cv-10267
George Raymond Williams, M.D., Orthopedic Surgery, a Professional Medical, LLC et al. v. Bestcomp, Inc. et al.	27th Jud. D. Ct. La., No. 09-C-5242-B
Simmons v. Comerica Bank, N.A.*, as part of *In re: Checking Account Overdraft	S.D. Fla., MDL No. 2036
***McGann et al., v. Schnuck Markets, Inc.* (Data Breach)**	Mo. Cir. Ct., No. 1322-CC00800
***Rose v. Bank of America Corporation et al.* (TCPA)**	N.D. Cal., Nos. 5:11-cv-02390 & 5:12-cv-00400
***Johnson v. Community Bank, N.A. et al.* (Overdraft Fees)**	M.D. Pa., No. 3:12-cv-01405
National Trucking Financial Reclamation Services, LLC et al. v. Pilot Corporation et al.	E.D. Ark., No. 4:13-cv-00250
Price v. BP Products North America	N.D. Ill., No. 12-cv-06799
Yarger v. ING Bank	D. Del., No. 11-154-LPS
***Glube et al. v. Pella Corporation et al.* (Building Products)**	Ont. Super. Ct., No. CV-11-4322294-00CP
***Fontaine v. Attorney General of Canada* (Mistassini Hostels Residential Schools)**	Qué. Super. Ct., No. 500-06-000293-056 & No. 550-06-000021-056
***Miner v. Philip Morris Companies, Inc. et al.* (Light Cigarettes)**	Ark. Cir. Ct., No. 60CV03-4661
Williams v. SIF Consultants of Louisiana, Inc. et al.	27th Jud. D. Ct. La., No. 09-C-5244-C
Opelousas General Hospital Authority v. Qmedtrix Systems, Inc.	27th Jud. D. Ct. La., No. 12-C-1599-C
***Evans et al. v. TIN, Inc. et al.* (Environmental)**	E.D. La., No. 2:11-cv-02067
Casayuran v. PNC Bank*, as part of *In re: Checking Account Overdraft	S.D. Fla., MDL No. 2036

Anderson v. Compass Bank*, as part of *In re: Checking Account Overdraft	S.D. Fla., MDL No. 2036
Eno v. M & I Marshall & Ilsley Bank* as part of *In re: Checking Account Overdraft	S.D. Fla., MDL No. 2036
Blahut v. Harris, N.A.*, as part of *In re: Checking Account Overdraft	S.D. Fla., MDL No. 2036
In re: Zurn Pex Plumbing Products Liability Litigation	D. Minn., MDL No. 1958, No. 08-md-1958
***Saltzman v. Pella Corporation* (Building Products)**	N.D. Ill., No. 06-cv-04481
***In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* (Mastercard & Visa)**	E.D.N.Y., MDL No. 1720, No. 05-md-01720
RBS v. Citizens Financial Group, Inc.*, as part of *In re: Checking Account Overdraft	S.D. Fla., MDL No. 2036
Gessele et al. v. Jack in the Box, Inc.	D. Ore., No. 3:10-cv-00960
***Vodanovich v. Boh Brothers Construction* (Hurricane Katrina Levee Breaches)**	E.D. La., No. 05-cv-04191
***Marolda v. Symantec Corporation* (Software Upgrades)**	N.D. Cal., No. 3:08-cv-05701
***In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010* (Medical Benefits Settlement)**	E.D. La., MDL No. 2179
***In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010* (Economic & Property Damages Settlement)**	E.D. La., MDL No. 2179
Opelousas General Hospital Authority v. FairPay Solutions	27th Jud. D. Ct. La., No. 12-C-1599-C
***Fontaine v. Attorney General of Canada* (Stirland Lake and Cristal Lake Residential Schools)**	Ont. Super. Ct., No. 00-cv-192059 CP
***Nelson v. Rabobank, N.A.* (Overdraft Fees)**	Sup. Ct. Cal., No. RIC 1101391
Case v. Bank of Oklahoma*, as part of *In re: Checking Account Overdraft	S.D. Fla., MDL No. 2036
Harris v. Associated Bank*, as part of *In re: Checking Account Overdraft	S.D. Fla., MDL No. 2036
Wolfgeher v. Commerce Bank*, as part of *In re: Checking Account Overdraft	S.D. Fla., MDL No. 2036
McKinley v. Great Western Bank*, as part of *In re: Checking Account Overdraft	S.D. Fla., MDL No. 2036
***Lawson v. BancorpSouth* (Overdraft Fees)**	W.D. Ark., No. 1:12-cv-01016
***LaCour v. Whitney Bank* (Overdraft Fees)**	M.D. Fla., No. 8:11-cv-01896
Sachar v. Iberiabank Corporation*, as part of *In re: Checking Account Overdraft	S.D. Fla., MDL No. 2036
***Williams v. S.I.F. Consultants* (CorVel Corporation)**	27th Jud. D. Ct. La., No. 09-C-5244-C
***Gwiazdowski v. County of Chester* (Prisoner Strip Search)**	E.D. Pa., No. 2:08-cv-04463
***Williams v. Hammerman & Gainer, Inc.* (SIF Consultants)**	27th Jud. D. Ct. La., No. 11-C-3187-B

Williams v. Hammerman & Gainer, Inc. **(Risk Management)**	27th Jud. D. Ct. La., No. 11-C-3187-B
Williams v. Hammerman & Gainer, Inc. **(Hammerman)**	27th Jud. D. Ct. La., No. 11-C-3187-B
Gunderson v. F.A. Richard & Assocs., Inc. **(First Health)**	14th Jud. D. Ct. La., No. 2004-002417
Delandro v. County of Allegheny **(Prisoner Strip Search)**	W.D. Pa., No. 2:06-cv-00927
Mathena v. Webster Bank, N.A.**, as part of *In re: Checking Account Overdraft***	D. Conn, No. 3:10-cv-01448, as part of S.D. Fla., MDL No. 2036
Vereen v. Lowe's Home Centers **(Defective Drywall)**	Ga. Super. Ct., No. SU10-cv-2267B
Trombley v. National City Bank**, as part of *In re: Checking Account Overdraft***	D.D.C., No. 1:10-cv-00232, as part of S.D. Fla., MDL No. 2036
Schulte v. Fifth Third Bank **(Overdraft Fees)**	N.D. Ill., No. 1:09-cv-06655
Satterfield v. Simon & Schuster, Inc. **(Text Messaging)**	N.D. Cal., No. 06-cv-02893
Coyle v. Hornell Brewing Co. **(Arizona Iced Tea)**	D.N.J., No. 08-cv-02797
Holk v. Snapple Beverage Corporation	D.N.J., No. 3:07-cv-03018
In re: Heartland Data Payment System Inc. Customer Data Security Breach Litigation	S.D. Tex., MDL No. 2046
Weiner v. Snapple Beverage Corporation	S.D.N.Y., No. 07-cv-08742
Gunderson v. F.A. Richard & Assocs., Inc. **(Cambridge)**	14th Jud. D. Ct. La., No. 2004-002417
Miller v. Basic Research, LLC **(Weight-loss Supplement)**	D. Utah, No. 2:07-cv-00871
In re: Countrywide Customer Data Breach Litigation	W.D. Ky., MDL No. 1998
Boone v. City of Philadelphia **(Prisoner Strip Search)**	E.D. Pa., No. 05-cv-01851
Little v. Kia Motors America, Inc. **(Braking Systems)**	N.J. Super. Ct., No. UNN-L-0800-01
Opelousas Trust Authority v. Summit Consulting	27th Jud. D. Ct. La., No. 07-C-3737-B
Steele v. Pergo **(Flooring Products)**	D. Ore., No. 07-cv-01493
Pavlov v. Continental Casualty Co. **(Long Term Care Insurance)**	N.D. Ohio, No. 5:07-cv-02580
Dolen v. ABN AMRO Bank N.V. **(Callable CD's)**	Ill. Cir. Ct., Nos. 01-L-454 & 01-L-493
In re: Department of Veterans Affairs (VA) Data Theft Litigation	D.D.C., MDL No. 1796
In re: Katrina Canal Breaches Consolidated Litigation	E.D. La., No. 05-cv-04182

Hilsoft-cv-147

EXHIBIT 6

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

DAVID M. ROGOWSKI, ELIZABETH A. BALLY, KATHY BAUER, KIM BOTTE, JOHN E. JAUNICH, MYLENE MCCLURE *as personal representative of* THE ESTATE OF EARL L. MCCLURE, RONALD K. PAGE, CHANDRA B. SINGH, JOYCE THOMAS, DAVID TOMS, and WILLIAM T. WHITMAN, Individually and On Behalf Of All Others Similarly Situated,

Plaintiffs,

vs.

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

Defendants.

Case No. 4:22-cv-00203-RK

I, Mylene McClure, do hereby declare as follows:

1. I make this declaration of my own personal knowledge. If called to testify, I could and would competently testify to the following:

2. My late husband, Earl L. McClure, Plaintiff in the above-captioned action, passed away on October 2, 2022.

3. I was legally married to Earl L. McClure at the time this lawsuit was initiated and until his death.

4. I have been nominated as the executor and personal representative of Earl L. McClure's estate and anticipate to be formally appointed on November 28, 2022.

5. I have been interested in and kept apprised of this litigation since its inception, including the tentative settlement that was reached on October 27, 2022 and executed on November 18, 2022. I support this settlement and believe it is a fair and adequate resolution of the claims of my husband's estate and the class of policy owners in this case.

6. I wish to proceed with my husband's claims as the class representative and will assume all roles and responsibilities of said duties.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 21st day of November 2022 in Phoenix, Arizona.

/s/ Mylene McClure
Mylene McClure