UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

PHT HOLDING I LLC, and ALICE CURTIS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

RELIASTAR LIFE INSURANCE COMPANY,

Defendant.

Civ. No.: 18-cv-2863 DWF/TNL

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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I. INTRODUCTION

After nearly five years of hard-fought litigation, Plaintiffs negotiated a **$39 million** settlement, which is approximately **57 percent** of all alleged overcharges collected by ReliaStar Life Insurance Company ("ReliaStar" or "RLIC") from the members of the Class through May 31, 2023 under Plaintiffs' maximum damage model, and **more than 100%** of all overcharges under Plaintiffs' alternative "HMI" damages model. Under either measure, the Settlement is outstanding. It exceeds the 42% of cost of insurance ("COI") overcharges recovered in a case against John Hancock Life Insurance Company, an amount that Judge Gardephe called "quite extraordinary," *see 37 Besen Parkway, LLC v. John Hancock Life Ins. Co.*, No. 15-cv-0024 (PGG), Dkt. 164 at 20:10 (S.D.N.Y. Mar. 18, 2019) ("*Hancock COI*"), and which vastly exceeds the median settlement-to-damages ratio obtained in other class action settlements approved within the Eighth Circuit, *see Beaver Cty. Employees' Retirement Fund v. Tile Shop Holdings, Inc.*, No. 0:14-cv-00786-ADM-TNL, 2017 WL 2574005, at *2 (D. Minn. June 14, 2017) (holding that a "recovery of approximately 6.8% to 9.5% of Class Representatives' damages expert's estimate of the Class' maximum provable damages . . . exceeds the median recovery of estimated damages in similar securities class actions settled in 2016, as well as the median settlement as a percentage of estimated damages in the Eighth Circuit"). The checks will automatically be sent to class members, using addresses in RLIC's files, without any need for class members to fill out claim forms. No money will revert to RLIC. Plaintiffs obtained this exceptional recovery with the help of a highly respected mediator, former Judge Sidney I. Schenkier of JAMS. Sklaver Decl. ¶ 9.

The non-monetary benefits are also substantial. First, RLIC is agreeing to a **complete freeze** on any new COI rate schedule increase for the next **seven years**. Second, RLIC is giving up its right to challenge the validity of Class Policies for being alleged STOLI policies, and for misrepresentations in the policy application. A highly qualified expert with extensive insurance experience has opined that the non-monetary relief is worth an additional $8,757,089 to the Class. *See* McNally Decl. ¶ 11 & Ex. I ¶¶ 1, 76.

Such an extraordinary result was by no means preordained. Plaintiffs were able to achieve these extraordinary results by litigating efficiently and effectively for nearly five years. Along the way, Plaintiffs defeated a motion for summary judgment; won a motion to certify the Class; and defeated a Rule 23(f) petition to the Eighth Circuit. *See* Dkt. 105; Dkt. 211; *ReliaStar Life Ins. Co. v. Advance Trust & Life Escrow Serv., et al.*, Case No. 22-08006 (8th Cir. May 31, 2022).

Plaintiffs faced challenges on the merits, both pre-suit and at the time of settlement, including an argument by RLIC that the Class's damages were substantially less due to a release of claims in prior class action litigation. *See* Dkt. 165 at 8–10, 18–23. RLIC, moreover, maintained that its COI rates for the COI Class Policies were in fact based on its expectations of future mortality experience ("EFME"), in which case there would be no breach. *See id.* at 7 ("ReliaStar actuary Tony Brantzeg confirmed that the rates currently being charged reflect ReliaStar's current expected mortality experience."). Even if Plaintiffs succeeded on liability at trial, they still faced the risk of zero recovery or recovery of far less than what Plaintiffs seek at trial, which is exactly what happened to policyowners in a recent COI class action trial within the Eighth Circuit. *See, e.g.,* Sklaver Decl., ¶ 23 &

Exs. 3 & 4 (verdict in recent COI class action trial, *Meek v. Kansas City Life Ins. Co.*, 19-cv-472, Dkt. 311, 330 (W.D. Mo. May 25 & June 20, 2023), where the class sought $18 million but recovered less than $1 million). The checks will be mailed directly to members of the Class, using the addresses in RLIC's files, and with no possibility of reversion to RLIC. Sklaver Decl. ¶ 28.

Plaintiffs were able to obtain this extraordinary result for the Class only by virtue of tireless, creative, high-quality work over five years. Through extensive discovery efforts over a three-year period—during which Plaintiffs obtained and reviewed tens of thousands of documents that consisted of nearly 100,000 pages—Plaintiffs uncovered documents key to establishing RLIC's liability. This includes internal documents RLIC referred to as "Business Summary Review Memorandums," which officially document RLIC's "best estimate" mortality assumptions for the upcoming year (assumptions that were inconsistent with its COI rates), *see* Dkt. 193 at 14–15, 35, and documents that led Plaintiffs to discover an additional breach in the form of rider rates that were allegedly 15% higher than the rates fixed in the policies, *see* Dkt. 107.

The rider-claim discovery came after many discussions and negotiations with RLIC's counsel related to the production of documents and information from a third party that administers many of the Class Policies for RLIC, Gibraltar Life Services, Ltd. *See* Dkt. 107. In addition to discovery of the rider claim, this Gibraltar information allowed Plaintiffs' experts to apply "but-for" COI rates, meaning COI rates that actually conformed to what Plaintiffs contended were RLIC's EFME. *See* Dkt. 151-28 (Rouse Rept.), Dkt. 151-29 (Mills Rept.).

On preliminary approval, the question is whether 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). The proposed Settlement easily passes both tests.

II. BACKGROUND

A. Plaintiffs Challenged Alleged COI Overcharges

Two class representatives ("Plaintiffs") have prosecuted this case: (i) PHT Holding I LLC ("PHT"), and its predecessor-in-interest Advance Trust & Life Escrow Services, LTA ("ATLES"), and; (ii) Alice Curtis. PHT is the owner of universal policy number CBS0143318, originally issued by a predecessor-in-interest to ReliaStar, Security Connecticut Life Insurance Company ("SCLIC"), on February 1, 1988. Curtis was the owner of universal life insurance policy number 996560W, which was originally issued by SCLIC on October 15, 1991. Both policies contain language stating that the COI rates used to calculate the COI charges under the policy "will be based on our expected future mortality experience," or similar language. *See* Dkt. 132 ¶ 19. Over the past several decades, mortality expectations, including ReliaStar's mortality expectations, have improved significantly nationwide. *See id.* ¶ 3. Still, ReliaStar never reduced its COI rates. *See id.* ¶ 7; *see also* Dkt. 193 at 34.

On October 5, 2018, Plaintiff ATLES filed this lawsuit challenging RLIC's failure to lower its COI rates. Dkt. 1. On February 24, 2020, ATLES amended its complaint to add Curtis as a plaintiff and putative class representative. Dkt. 84. On May 21, 2020, Plaintiffs moved for leave to amend their complaint to add an additional breach of contract claim

regarding RLIC's failure to use the contractually required rider rates for some of the class policies, a claim that Plaintiffs uncovered during discovery in the case. Dkt. 105, 107. The Court granted the motion over ReliaStar's opposition. Dkt. 131. Plaintiffs filed their Second Amended Class Action Complaint on September 3, 2020. Dkt. 132. On March 29, 2022, the Court certified the COI Class and Rider Class (together, the "Class"), appointed ATLES and Curtis as class representatives, and appointed Susman Godfrey as class counsel. Dkt. 211. Susman Godfrey is highly experienced in representing classes of policyowners seeking recovery of overcharges against insurers. Sklaver Decl. ¶ 3 & Ex. 1. By stipulation of the parties and order of the Court, after ATLES transferred its RLIC policy at issue to PHT, PHT was substituted in for ATLES as a plaintiff and class representative on January 24, 2023. Dkt. 254.

B. Plaintiffs Engaged in Nearly Five Years of Litigation

Plaintiffs have vigorously prosecuted this case for nearly five years, through fact and expert discovery, a motion for leave to amend, a Rule 23(f) petition, class certification, and summary judgment.

This case was filed on October 5, 2018, and fact discovery lasted until September 3, 2021. *See* Dkt. 145. Plaintiffs and their experts analyzed over 40,000 documents spanning more than 100,000 pages, which included extensive actuarial tables, policy-level data reflecting the historical credits and deductions to the account value of all Class Members' policies, and thousands of complex spreadsheets. Plaintiffs engaged in myriad rounds of meet and confers with respect to discovery, including extended negotiations over search terms, custodians, and other issues. Sklaver Decl. ¶¶ 11–13. Plaintiffs also issued

numerous subpoenas to relevant third parties, including RLIC's third-party administrator, actuarial consultants, and financial auditor. Plaintiffs obtained thousands of pages of valuable documents from these subpoenas, much of which had not already been produced by RLIC. *Id.* ¶ 13. And Plaintiffs took and defended seven fact depositions and one expert deposition, through which Plaintiffs obtained key admissions that they deployed to overcome summary judgment and that RLIC must have known created significant risk for itself at trial. *Id.* ¶ 14. RLIC did not turn over many of the key documents in the case without persistent and detailed requests from Plaintiffs, some of which are detailed in Plaintiffs' memorandum of law in support of its motion for leave to amend its complaint in May 2020. *See* Dkt. 107.

Expert discovery in this highly technical case was also a herculean task. Plaintiffs retained three testifying experts: liability experts James Rouse and Linley Baker, and damages expert Robert Mills. Plaintiffs produced opening expert reports from Rouse and Mills on October 14, 2022. In response, RLIC designated actuarial expert Timothy Pfeifer. RLIC produced a rebuttal report from Pfeifer on November 10, 2022. In rebuttal, on December 16, 2022, Plaintiffs produced reports from Rouse, Baker, and Mills. Pfeifer was deposed. Collectively, including reports related to class certification, the parties produced 10 expert reports that totaled 658 pages, not including voluminous tables and appendices.

Throughout the long life of this case, Plaintiffs have prevailed in litigating critical motions. In March 2022, after nearly 200 pages of briefing and a three-hour hearing, the Court granted Plaintiffs' motion for class certification and denied RLIC's motion for summary judgment in a 32-page order. Dkt. 211; *see* Dkt. 206. On April 12, 2022, RLIC

filed a 23(f) petition to the Eighth Circuit for review of the Court's class-certification decision. *ReliaStar Life Ins. Co. v. Advance Trust & Life Escrow Serv., et al.*, Case No. 22-08006 (8th Cir. April 12, 2022). Plaintiffs opposed the petition on April 29, 2022. The Eighth Circuit denied the petition the following month.

C. The Class and Notice and Opt-Out Period

As noted above, on March 29, 2022, the Court certified the COI Class and Rider Class. Dkt. 211. The Class is defined as follows:

> COI Class: All current and former owners of UL (including variable UL) policies insured by ReliaStar written on policy forms listed in Exhibit A, Dkt. 149-1, who were assessed COI charges during the Class Period, excluding policies issued in Alaska, Arkansas, New Mexico, New York, Virginia, Washington, and Wyoming, policies listed in Exhibit B, Dkt. 149-2, and ReliaStar, its officers and directors, members of their immediate families, and their heirs, successors or assigns. Dkt. 211 at 31.
>
> Rider Class: All current and former owners of universal life policies insured by ReliaStar written on policy forms 10830 and 10910, excluding policies issued in Alaska, Arkansas, New Mexico, New York, Virginia, Washington, and Wyoming, who were assessed Waiver Rider charges during the Class Period. Dkt. 211 at 32.

After certifying the Class, the Court appointed JND as notice administrator and approved the form and manner of notice consisting of direct mail to all members of the Class, using the contact information for registered owners in RLIC's records. *See* Dkt. 226 at 2–4. The Court also held that members of the Class "will be legally bound by all Court orders and judgments made in this class action and will not be able to maintain a separate lawsuit against RLIC for the same legal claims that are the subject of this lawsuit," and gave members of the Class forty-five days after the notice date to submit opt-out notices. *Id.* at 4.

Pursuant to the Court's order, JND mailed the approved short-form notice to members of the Class and established the notice website on June 24, 2022. Dkt. 229. The short- and long-form notices explain the procedure for opting out of the Class. The deadline to opt out was August 8, 2022. Sklaver Decl. ¶ 19. Of the 36,487 policies in the Class, JND received only six opt-out requests. *Id.* ¶ 20.

D. Settlement Negotiations

The parties held two separate mediation sessions, which were in addition to informal settlement discussions that took place over the course of more than three years. The parties' first settlement discussions took place in March 2020, pursuant to an order from the Court requiring the parties to "exchange at least one round of a demand from the plaintiff and a specific offer from the defendant" in advance of a settlement conference. Dkt. 72 at 2. Those discussions were unsuccessful. Two years later, settlement discussions resumed, again pursuant to a Court order. *See* Dkt. 214. The parties exchanged emails and conferred over the phone but were not able to reach agreement.

The first mediation took place on September 8, 2022, with mediator H. Jeffrey Peterson in Minneapolis, Minnesota. The second mediation took place on May 31, 2023 with Judge Sidney I. Schenkier (Ret.) of JAMS. Before the mediations, the parties submitted lengthy mediation statements and updated damages estimates. Sklaver Decl. ¶¶ 8–9. For the first mediation, the parties also provided supplemental statements detailing the opinions of the experts in the case. *Id.* ¶ 8. And for the second mediation, Plaintiffs provided a supplemental mediation statement. *Id.* ¶ 9. The parties were unable to reach an agreement at the first mediation but reached an agreement at the second. A long-form

settlement agreement was negotiated and agreed to thereafter. Sklaver Decl. ¶ 9 & Ex. 2 ("Settlement Agreement").

The Settlement negotiations were conducted at arm's length by highly qualified and experienced counsel. Sklaver Decl. ¶¶ 5–9. Negotiations were hard-fought, non-collusive, and were fruitful only after the parties had extensively litigated key issues in the case—after the Class was certified, after Plaintiffs defeated RLIC's motion for summary judgment, after the Eighth Circuit denied ReliaStar's 23(f) petition, and after the Court set the case for trial in December 2023. *Id.* ¶ 17. Class Counsel analyzed all of the contested legal and factual issues to thoroughly evaluate RLIC's contentions, generated updated overcharge calculations and persistently advocated in the settlement negotiation process for a fair and reasonable settlement that serves the best interests of the Class. *Id.* ¶¶ 5–9.

E. The Settlement Agreement

1. Consideration and Settlement Class

The Settlement awards three main benefits for the Class, *id.* ¶ 24, namely:

1. **CASH:** A cash Settlement Fund of $39,000,000, which is equal to approximately 57% of all alleged overcharges collected by RLIC from the Class Policies through May 31, 2023.

2. **COI RATE SCHEDULE INCREASE FREEZE:** A freeze on any new COI rate scale increase for a period of seven years following the earlier of either the date of final approval or January 1, 2024. Thus, even if RLIC experiences a future change in expectations that would otherwise permit a COI rate increase, RLIC will not increase COI rate schedules for seven years. Policyholders now have the ability to predict, with certainty, what their COI obligations will be for close to a decade.

3. **VALIDITY STIPULATION AND STOLI WAIVER:** An agreement that RLIC will not challenge the validity and enforceability of any eligible policies owned by participating members of the Class

> on the grounds of lack of an insurable interest, stranger originated life insurance ("STOLI") or misrepresentations in the application for such policies.

2. Payments and Release

Upon final approval, the Settlement Administrator will distribute to Final Class Members their Policy Settlement Amounts, according to the Plan of Allocation discussed below. The checks will be sent automatically to Final Class Members using RLIC's database of their addresses, without requiring any Final Class Member to submit claim forms. *Id.* ¶ 28; Ex. 2 § 2.7. This is not a claims-made settlement; none of the settlement funds will revert to RLIC. *Id.*

Plaintiffs and Final Class Members will release any and all claims that were or could have been asserted in this Action, but have expressly excluded "(a) any claims that relate to any policies other than the policies owned by members of the Class, (b) any claims that could not have been asserted against RLIC in the Action because they arise from a future COI rate scale increase implemented after May 31, 2023, (c) any claims to complete the Settlement, (d) any claims to enforce a death benefit, and (e) any claims to otherwise enforce the terms of a Class Policy." *Id.* § 1.16.

3. Award, Costs, and Fees

The Settlement Agreement provides that, subject to Court approval, a portion of the Final Settlement Fund may be used for expenses incurred in administering class notices and Settlement, and that Plaintiffs will move for attorneys' fees not to exceed 33 1/3% of the value of all benefits provided by the Settlement, and for reimbursement of all expenses incurred or to be incurred. *Id.* § 5.2. The Settlement also provides that Plaintiffs may

request Service Awards for up to $50,000 for each Class Representative, to be paid from the Final Settlement Fund, for their services on behalf of the Class. *Id.* § 5.1. Members of the Class will be given an opportunity to object to that application, which will be filed prior to the objection deadline.

4. Notice and Plan of Allocation

The proposed notice plan and plan of allocation distributes proceeds equitably on a *pro rata* basis. *See* Keough Decl. ¶¶ 16–21, 32–40 (notice plan); Sklaver Decl. ¶ 28 & Ex. 6 (plan of allocation). Members of the Class will not need to fill out claim forms. As stated above, money will be sent automatically in the mail, using the addresses that RLIC and its third-party administrator maintains on file.

The plan distributes settlement proceeds on a *pro rata* basis using each Final Class Member's share of overcharges, as applicable for each policy, with each Class Member receiving a minimum distribution of $100. The COI overcharges represent the difference between the COI charges RLIC actually assessed on the policy and the amount it would have assessed under the "but-for" COI rates as calculated by Plaintiffs' experts. The rider overcharges represent the difference between the rider charges RLIC actually assessed on the policy and the amount RLIC would have accessed had it used what Plaintiffs contend are the contractually required rider rates. All members of the Class who are current owners will also benefit from the guarantee of policy validity and the seven-year COI freeze. Members of the Class will receive notice of the settlement and will have forty-five days to file objections, if any. Ex. 2 § 4.6.

Plaintiffs request that the Court appoint JND, which this Court previously appointed as Notice Administrator, as Settlement Administrator. Within five days of this Court's order granting the motion for preliminary approval, Class Counsel will provide JND with a Notice List containing individuals or entities, along with their addresses, who own or owned the Class policies, and including address information available from RLIC's files. *Id.* § 4.2; Keough Decl. ¶ 32. Within twenty-one days of the Court's order, JND will mail the short-form notice attached as Exhibit B to the Keough Declaration to all addresses on the Notice List. Keough Decl. ¶ 32. JND will also post a copy of the long-form notice and special notice attached as Exhibits C and B, respectively, to the Keough Declaration to the class website, and will establish and maintain an automated toll-free number that members of the Class may call to obtain information about the litigation. *Id*. ¶¶ 35–38.

Within thirty days after the Final Settlement Date, the Settlement Administrator will send for delivery to each Final Settlement Class Member, via first-class postage prepaid, a settlement check in the amount of the share of the Net Settlement Fund to which the Final Settlement Class Member is entitled. Ex. 2 § 5.5; Ex. 5. Within one year plus thirty days after the date the Settlement Administrator mails settlement checks, the Settlement Administrator will mail additional checks to distribute any funds remaining in the Settlement Fund on a *pro rata* basis to those that cashed their checks in the first distribution, subject to the economic and administrative feasibility of mailing such additional checks. Ex. 5. If there are any remaining funds, a motion will be filed to the Court to address the final disposition of those funds.

III. ARGUMENT

A class action settlement is subject to approval under Rule 23(e). Approval "of a class action settlement is within the sound discretion of the district court." *Phillips v. Caliber Home Loans, Inc.*, No. 19-cv-2711 (WMW/LIB), 2021 WL 3030648, at *5 (D. Minn. July 19, 2021). "The policy in federal court of favoring the voluntary resolution of litigation through settlement is particularly strong in the class action context." *Beaver Cty.*, 2017 WL 2574005, at *2 (quoting *White v. Nat'l Football League*, 822 F. Supp. 1389, 1416 (D. Minn. 1993)).

There are two steps to approval: preliminary and final approval. *See* Fed. R. Civ. P. 23(e). Preliminary approval is a provisional step and requires at most a determination that "the proposed settlement falls within the range of possible judicial approval." *Cleveland v. Whirlpool Corp.*, No. 20-cv-1906 (WMW/KMM), 2021 WL 5937403, at *6 (D. Minn. Dec. 16, 2021). At this stage, the Court must direct notice of the settlement "if giving notice 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).

Rule 23(e)(2) has four factors, which are "not intended to displace the various factors that courts have developed in assessing the fairness of a settlement." *Swinton v. SquareTrade, Inc.*, No. 4:18-cv-00144-SMR-SBJ, 2019 WL 617791, at *5 (S.D. Iowa Feb. 14, 2019). Instead, they "focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." *Id.* (quoting Rule 23, 2018 Advisory Note, Subdivision (e)(2)). A proposed settlement of a class action

should therefore be preliminarily approved where it "is within the range of possible approval due to an absence of any glaring substantive or procedural deficiencies." *In re Centurylink Sales Practices & Secs. Litig.*, No. 18-296 (MJD/KMM), 2021 WL 3080960, at *5 (D. Minn. July 21, 2021) (quoting *Schoenbaum v. E.I. Dupont De Nemours & Co.*, No. 4:05-CV-01108 ERW, 2009 WL 4782082, at *2 (E.D. Mo. Dec. 8, 2009)).

A. The Proposed Settlement Satisfies Rule 23(e)(2).

1. The Settlement is Procedurally Fair

The Court must first consider whether "the class representatives and class counsel have adequately represented the class" and whether "the proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(A)–(B). Adequacy involves two questions: whether "(1) the representative and its attorneys are able and willing to prosecute the action competently and vigorously; and (2) the representative's interests are sufficiently similar to those of the class that it is unlikely that their goals and viewpoints will diverge." *City of Farmington Hills Emps. Ret. Sys. v. Wells Fargo Bank N.A.*, 281 F.R.D. 347, 353 (D. Minn. 2012) (Frank, J.). Where a settlement "is negotiated at arm's length by well informed counsel," there "is a presumption of fairness." *Beaver Cty.*, 2017 WL 2574005, at *2 (quoting *In re Charter Commc'ns, Inc. Sec. Litig.*, No. 02-1186, 2005 WL 4045741, at *5 (E.D. Mo. June 30, 2005)); *see also In re Zurn Pex Plumbing Prods. Liab. Litig.*, No. 08-MDL-1958 ADM/AJB, 2012 WL 5055810, at *6 (D. Minn. Oct. 18, 2012) (presuming fairness "when a proposed settlement, which was negotiated at arm's length by counsel for the class, is presented for approval"). Here, the presumption of fairness applies.

Plaintiffs' interests are aligned with the Class: each suffered the same injury (improper overcharges) and have the same interest in maximizing recovery from RLIC. *See In re Workers' Comp.*, 130 F.R.D. 99, 107–08 (D. Minn. 1990) (finding that plaintiffs' interests aligned with the class when the plaintiffs were class members, suffered the same injury, and did not have interests antagonistic to the class); *Murphy v. Harpstead*, No. 16-2623 (DWF/LIB), 2023 WL 4034515, at *5 (D. Minn. June 15, 2023) (Frank, J.) (same where the class representatives "assert the same injuries" and "share [a] common goal").

Class Counsel is highly qualified. *See* Dkt. 211 at 26 n.13 (finding that Class Counsel has "extensive experience in prosecuting class actions and COI cases and will vigorously represent the Plaintiffs here"). They have represented classes in numerous other COI cases, including cases against Phoenix Life Insurance Company, John Hancock, Voya, Security Life of Denver Life Insurance Company, AXA, Genworth, and North American Company for Life & Health Insurance; are highly experienced in the prosecution of contract and insurance litigation; and are also of the view that the Settlement is an excellent result. Sklaver Decl. ¶ 3 & Ex. 1. Class Counsel's view as to the fairness of the Settlement is well informed: this case has been pending for nearly five years, fact and expert discovery is closed, the parties have produced tens of thousands of documents, and Plaintiffs defeated RLIC's Rule 23(f) petition to the Eighth Circuit and motion for summary judgment. All that is left is trial and, after that, appeal. Sklaver Decl. ¶ 19. Further, as discussed below, the result here—measured by percent of damages recovered via settlement—meets or exceeds the results obtained in other similar COI cases, and far exceeds the typical settlement obtained in other types of class actions.

The agreement was also reached at arm's length. The Settlement is the culmination of negotiation and mediation efforts that spanned three years, including two mediation sessions under the supervision of highly experienced, respected, and neutral mediators, one of whom is a retired United States Magistrate Judge. *See id.* ¶¶ 8–9; *see also 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").

2. The Relief Provided to the Class Is More than Adequate.

Next, the Court must assess substantive fairness. Rule 23(e)(2)(C) enumerates four factors to be considered: (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)." To assess the adequacy of relief under Rule 23(e)(2)(C)(i), "courts may need to forecast the likely range of possible classwide recoveries and the likelihood of success in obtaining such results." Rule 23, 2018 Advisory Note, ¶¶ (C) & (D).

Courts in this Circuit consider these factors "along with" 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). *Harpstead*, 2023 WL 4034515, at *4; *Swinton v. SquareTrade, Inc.*, No. 4:18-CV-00144-SMR-SBJ, 2020 WL 1862470, at *5 (S.D. Iowa Apr. 14, 2020); *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 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. 840 F.2d at 607. No one factor is determinative, but "[t]he single 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." *Cleveland v. Whirlpool Corp.*, No. 20-CV-1906 (WMW/JFD), 2022 WL 2256353, at *5 (D. Minn. June 23, 2022) (quoting *Marshall v. Nat'l Football League*, 787 F.3d 502, 508 (8th Cir. 2015)).

a. Costs, Risks, and Delay of Trial and Appeal

Rule 23(e)(2)(C)(i) requires courts to consider "the costs, risks, and delay of trial and appeal." This inquiry overlaps with *Van Horn* factors one ("the merits of the plaintiffs' case weighed against the terms of the settlement") and three ("the complexity and expense of further litigation."). 840 F.2d at 607.

In general, "[t]he complexity and expense of class action litigation is well-recognized." *In re Zurn Pex Plumbing Products Liab. Litig.*, No. 08-MDL-1958 ADM/AJB, 2013 WL 716088, at *7 (D. Minn. Feb. 27, 2013). This litigation was highly complex. Plaintiffs alleged breaches of insurance contracts, and establishing those breaches required interpreting technical terms and concepts from the Actuarial Standards of Practice ("ASOPs"). Resolving those claims would require the jury to weigh, among other things, conflicting testimony by experts as to actuarial standards and practices, the proper EFME to use, and the proper methodology for determining COI rates—essentially reducing the case to a highly uncertain "battle of experts." *See Fleisher v. Phoenix Life Ins. Co.*, Nos. 11-CV-8405 (CM), 14-CV-8714 (CM) 2015 WL 10847814, at *9 (S.D.N.Y. Sept. 9, 2015) ("*Phoenix COI*") (noting, in light of competing expert opinions concerning actuarial concepts in COI case, it was "unclear how a jury would decide these disputed issues at trial"); *In re Bear Stearns*, 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012) ("When the success of a party's case turns on winning a so-called 'battle of experts,' victory is by no means assured."); *In re Zurn*, 2013 WL 716088, at *7 (holding 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").

Furthermore, there would have been no guarantee of any recovery at trial, let alone a recovery of $39 million. RLIC, represented by experienced and reputable counsel, would no doubt raise a vigorous defense. *See, e.g.*, *Kelly*, 277 F.R.D. at 570 (considering that the

defendant had "capable counsel at its disposal" who "intended to challenge nearly every aspect of Settlement Class Members' case" as a factor that supported approving the settlement). Indeed, RLIC's release defense remained, which, if successful, would have eliminated roughly half of the COI Class's damages. *See* Dkt. 165 at 2, 8–10, 18–23. Although the Court denied summary judgment on this defense, it did so only because, on summary judgment, "the record [was] not clear as to the scope of the claims asserted and released in the *Alten* case," Dkt. 211 at 12, and RLIC could have attempted to remedy this at trial, *see* *Marshall*, 787 F.3d at 515 ("We have repeatedly rejected arguments that compromise was unnecessary because the party would have prevailed at trial."). The Court also left it up to the jury to decide (a) which factors ReliaStar could consider in setting COI rates, and (b) whether ReliaStar had a duty to update COI rates at all. Dkt. 211 at 11–12.

Even if Plaintiffs prevailed on liability, Plaintiffs faced further uncertainty on damages. This risk of a lower-than-expected recovery is real. In a recent COI class trial in *Meek v. Kansas City Life Insurance Co.*, No. 19-CV-472 (W.D. Mo.), the class sought $18 million in damages but the jury only awarded approximately $5 million, an amount that was then reduced even further by the Court to less than $1 million. *See* Sklaver Decl. Ex. 3 Ex. (*Meek* verdict form); Ex. 4 (final judgment). ReliaStar's testifying expert in this case was also the carrier's testifying expert in the *Meek* trial. Sklaver Decl. ¶ 23. And even if Plaintiffs fully prevailed on both liability and damages at trial, ReliaStar would inevitably appeal the class certification order, the summary judgment order, and the jury's verdict, which, even if Plaintiffs prevailed, would likely delay any distributions to Class Members for years. *See* *Phoenix COI*, 2015 WL 10847814, at *6 ("Even if the Class could recover a

judgment at trial and survive any decertification challenges, post-verdict and appellate litigation would likely have lasted for years."); *see also Harpstead*, 2023 WL 4034515, at *6 (finding that the "cost, risks, and delay of trial and appeal are enormously high" where an appeal was likely and, in "the meantime, the class would receive nothing"); *Phillips v. Caliber Home Loans, Inc.*, No. 19-CV-2711 (WMW/LIB), 2022 WL 832085, at *3 (D. Minn. Mar. 21, 2022) (same where "continued litigation would likely take several years to resolve and involve expensive discovery" and "the defendant vigorously denies the Plaintiffs' allegations").

Given these risks, the recovery here is an exceptional result. Under Plaintiffs' maximum damage model, the estimated total COI overcharges paid through May 2023 was $68,684,478.[1] Sklaver Decl. ¶ 20. Under Plaintiffs' alternative, more conservative "HMI" model, the estimated total overcharges were roughly half of that. *Id.* ¶ 21. And the total estimated rider overcharges paid by the Rider Class through September 2020 were $51,774. *Id.* ¶ 22.

The Settlement Fund accounts for **57%** of the $68 million in historical COI and rider overcharges under Plaintiffs' highest damages model, and ***more than 100%*** of historical damages under Plaintiffs' alternative "HMI" model. *Id.* ¶ 25. Even under the higher "final approval standard," courts routinely approve settlements with substantially lower-percentage awards. *See Keil v. Lopez*, 862 F.3d 685, 698 (8th Cir. 2017) ("As courts

[1] ReliaStar provided certain refreshed damages data in May 2022. The total COI overcharges, under Plaintiffs' primary damage model, were $62,416,112 at that time. Sklaver Decl. ¶ 20. In connection with the final mediation, Plaintiffs' expert used this data to calculate overcharges through May 2023, totaling $68,684,478, using ReliaStar's own mortality and lapse assumptions. *Id.*

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))); *see also* *Beaver Cty.*, 2017 WL 2574005, at *2 (holding that a "recovery of approximately 6.8% to 9.5% of Class Representatives' damages expert's estimate of the Class' maximum provable damages . . . exceeds the median recovery of estimated damages in similar securities class actions settled in 2016, as well as the median settlement as a percentage of estimated damages in the Eighth Circuit"); *Hancock COI*, No. 15-cv-0024 (PGG), Dkt. 164 at 20:10 (S.D.N.Y. Mar. 18, 2019) (cash fund amount equal to 42% of COI overcharges was "quite extraordinary."). And, importantly, the Settlement, if approved without objection on the timeline proposed, allows Class Members to be paid ***this year***. *In re Zurn*, 2013 WL 716088, at *7 (recognizing "[t]he 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").

The Settlement is even more exceptional in light of the significant value added by the two measures of nonmonetary relief, neither of which would have been achievable even had the Class prevailed at trial.

First, RLIC has agreed to freeze COI rate scales for seven years. A decision by RLIC to increase COI rates is more than just a theoretical possibility. As explained, RLIC's COI rates for the COI Class policies must be based on its EFME. And RLIC has suggested

in this case that its EFME has deteriorated in recent years due to the COVID-19 pandemic.[2] *See* Dkt. 163 at 21 (discussing "recent declines in life expectancies as a result of opioid use, obesity, suicides, and COVID-19"). Absent the COI freeze, therefore, RLIC contends that it can raise COI rates in the next seven years because of what it contends are changes to its EFME due to the pandemic and/or other factors. The Settlement protects the Class from that risk.

Second, the Settlement Agreement's validity clause provides significant value; it helps ensure that policyowners will get the policy benefits at maturity so long as they continue to pay sufficient premiums, and prevents ReliaStar from undermining the value of the Settlement by challenging the validity of Class Policies.

These results are excellent for the Class, especially in light of the many risks and uncertainties Plaintiffs faced. A highly qualified expert with extensive insurance experience has opined that the non-monetary relief is worth an additional $8,757,089 to the Class. *See* McNally Decl. ¶ 11. And Class Counsel's certification of the reasonableness of the Settlement, *see* Sklaver Decl. ¶ 31, is given considerable weight because of its experience in this type of litigation. *See DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995) (stating that class counsel's "experience in this type of litigation" supports providing deference to their views as to the fairness of the settlement). This factor thus weighs sharply in favor of preliminary approval. *See, e.g.*, *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 933 (8th Cir. 2005) ("Weighing the uncertainty of

[2] RLIC's expert has also made this argument in other cases. *See, e.g.*, *Meek v. Kansas City Life Ins. Co.*,19-cv-472 (W.D. Mo.), Expert Declaration of Timothy C. Pfeifer, Dkt. 90-2 ¶ 54 (Oct. 21, 2021).

relief against the immediate benefit provided in the settlement, we conclude that the district court acted within its discretion when considering the strength of the claims and the amount of the settlement.").

b. Effectiveness of Any Proposed Method of Distributing Relief

Next, Rule 23(e)(2)(C)(ii) requires that the "proposed method of distributing relief" be "effective." A proposed settlement satisfies this subfactor where it "includes detailed procedures for processing Settlement Class Members' claims and distributing the proceeds of the Settlement to eligible claims." *In re Resideo Techs., Inc., Secs. Litig.*, No. 19-cv-2863 (WMW/BRT), , at *3 (D. Minn. Mar. 24, 2022).

Here, Class Counsel, which has extensive class action experience, prepared the distribution plan with the assistance of their damages expert, Robert Mills, who also has significant life insurance class action experience. Sklaver Decl. ¶ 15. Under the detailed and specific plan of allocation, members of the Class will be distributed the Net Settlement Fund in proportion to their share of the overall damages with each Class Member receiving a minimum distribution of $100. *Id.* ¶ 28 Ex. 5 (Plan of Allocation). As noted elsewhere, courts routinely approve of a pro-rata distribution as "straightforward and equitable." *Phoenix COI*, 2015 WL 10847814, at *12 (collecting cases); *see also Rogowski v. State Farm Life Ins. Co.*, No. 4:22-cv-00203-RK, 2022 WL 19263357, at *1 (W.D. Mo. Dec. 16, 2022) (granting preliminary approval over settlement in a COI case where "settlement checks [will] be mailed directly to the Settlement Class Members without the need to submit a claim"); *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"). This factor favors approval.

c. The Terms of Any Proposed Award of Attorney's Fees

The Court also considers "the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). Under the Settlement, Class Counsel will apply for an award of attorneys' fees not to exceed 33 1/3% of the value of all benefits provided by the Settlement. Ex. 2 § 5.2. Class Counsel will not receive any funds until the Court has granted its fee request. *Id*. The Settlement is not conditioned on the Court's approval of Class Counsel's Fees and Expenses request. *Id.* § 5.4.

Awards of this amount have been deemed reasonable and typical in comparable class actions and accords with fee awards approved by this Court and the Eighth Circuit.[3] *See, e.g.*, *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) ("Indeed, courts have frequently awarded attorneys' fees ranging up to 36% in class actions."); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (36% fee award reasonable); *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 865–66 (8th Cir. 2017) (affirming one-third fee award); *see also* *Vogt v. State Farm Life Ins. Co.*, No. 2:16-CV-04170-NKL, 2021 WL 247958, at *3 (W.D. Mo. Jan. 25, 2021), *aff'd*, 19 F.4th 1071 (8th Cir. 2021) (awarding attorneys' fee

[3] *See, e.g.*, Final Order and Judgment at 7, *City of Farmington Hills v. Wells Fargo Bank* (D. Minn. Aug. 18, 2014), No. 0:10-cv-04372-DWF-HB (awarding attorneys' fees of $20,833,333, which was equal to 33 1/3% of the Gross Settlement Fund); Order Approving the Parties' Joint Motion for Final Approval of the Parties' Collective and Class Action Settlement and Class Counsels' Requests for Attorney Fees, Costs and Expenses at 2–3, *Saunders v. Ace Mortg. Funding, Inc.* (D. Minn. May 20, 2008), No. 05-cv-01437-DWF-SRN (awarding attorneys' fees of $1,320,000, "which represents 33% of the Gross Settlement Amount"); Order for Final Judgment at 5, *Rodney v. KPMG Peat Marwick* (D. Minn. June 16, 2000), No. 4:95-cv-00800-DWF-RLE (awarding attorneys' fees of "33 1/3% of the remainder of the Settlement Fund").

of one-third in a COI case); *Karg v. Transamerica Corp.*, No. 18-CV-134-CJW-KEM, 2021 WL 9440635, at *1–2 (N.D. Iowa Nov. 22, 2021) (awarding attorneys' fee of 33 1/3% of the total monetary and non-monetary benefit to the class, or 36.1% of the monetary benefit); *Tussey v. ABB, Inc.*, No. 06-CV-04305-NKL, 2019 WL 3859763, at *2 (W.D. Mo. Aug. 16, 2019) (awarding attorneys' fees in class action "based on the monetary and the non-monetary value of the settlement"). Class Counsel's fee request will be briefed more fulsomely at final approval.

d. Any Agreement Required to Be Identified Under Rule 23(e)(3)

Rules 23(e)(2)(C)(iv) and 23(e)(3) require that any agreement "made in connection with the proposal" be identified. There are no such agreements here beyond the Settlement Agreement. This factor therefore "favors approval." *Harpstead*, 2023 WL 4034515, at *6.

3. The Plan of Allocation Treats Members of the Class Equitably

The final Rule 23(e)(2) factor requires the Court to assess whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). As noted, the proposed plan of allocation equitably treats members of the Class by distributing damages on a *pro rata* basis using each Class Member's share of the total damages with each Class Member receiving a minimum distribution of $100. Courts have repeatedly approved of *pro rata* allocation plans. *See, e.g.*, *Phillips*, 2022 WL 832085, at *4–5 (finding that a class action settlement that provides for payments "on a pro rata basis" treats class members "fairly as to one another because they are compensated according to the amount" of overcharges they sustained); *Garcia v. Target Corp.*, No. 16-CV-02574-MJD-BRT, 2020 WL 416402, at *2 (D. Minn. Jan. 27, 2020) (finding that a class action settlement that

"provides an equal pro rata distribution of the Settlement funds . . . treats all Class Members equitable to one another"); *Phoenix COI*, 2015 WL 10847814, at *12 ("This type of distribution, where funds are distributed on a *pro rata* basis, has frequently been determined to be fair, adequate, and reasonable."); *see also Rogowski*, 2022 WL 19263357, at *2 (granting preliminary approval to settlement that "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"). The releases are also narrowly tailored and equitable, as they treat all members of the Class equally and do not affect apportionment of damages.

4. The Proposed Settlement Satisfies Other *Van Horn* Factors

The remaining *Van Horn* factors—the defendant's financial condition and the amount of opposition to the settlement—are neutral. RLIC is "in good financial standing, which would permit it to adequately pay for its settlement obligations or continue with a spirited defense in the litigation." *Marshall*, 787 F.3d at 512 (finding this factor neutral); *see also Keil*, 862 F.3d at 697–98 (affirming that this 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); *Phillips*, 2022 WL 832085, at *4 (granting preliminary approval where it was undisputed that the defendant was solvent, "and nothing in the record suggests that [defendant] will be unable to pay or will suffer undue harm because of the settlement"). And while the members of the Class 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 also supports issuing notice of the Settlement to the Class.

In sum, the majority of the relevant factors under Rule 23(e)(2) and *Van Horn* strongly support approval, and the remaining factors are neutral. This Court should find that it is likely to approve the Settlement.

B. The Proposed Settlement Satisfies Other Relevant Factors

Rule 23(e)(1)(B)(ii) conditions preliminary approval and the direction of notice on a showing that the Court will likely be able to "certify the class for purposes of judgment on the proposal." "If the court has already certified a class, the only information ordinarily necessary is whether the proposed settlement calls for any change in the class certified, or of the claims, defenses, or issues regarding which certification was granted." Fed. R. Civ. P. 23, Advisory Note 2018, Subdivision (e)(1); *accord* 4 Newberg on Class Actions § 13:18 ("If the court has certified a class prior to settlement, it does not need to re-certify it for settlement purposes."). Here, there is no change to the composition of the Class as a result of the Settlement. *See* Ex. 2 §§ 1.4, 1.8.

C. The Proposed Form and Manner of Notice Is Appropriate

Rule 23(e)(1)(B) requires that notice be directed "in a reasonable manner to all class members who would be bound by the proposal." Plaintiffs request that (i) the Court approve the notice to the Class, *see* Exhibits B–C to the Keough Declaration, (ii) appoint JND as Settlement Administrator, (iii) approve of distribution of the notices via First Class Mail, and (iv) approve of the proposed forty-five-day objection period.

The Court already approved the same manner of notice, and the appointment of JND as Notice Administrator, at class certification, *see* Dkt. No. 226 at 2–3 (approving "the form and contents of the short-form and long-form notices" and "the retention of JND Legal Administration LLC ('JND') as the Notice Administrator"), but Plaintiffs address them here again. To satisfy Rule 23, the notice must satisfy two requirements. First, the notice must "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)). Second, the manner of sending notice to the class must be "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 617 (1997).

First, the form of notice here satisfies due process because it informs members of the Class of the terms of the Settlement and their options in plain language. *See Caribou Coffee*, 2020 WL 13558808, at *3 (holding that notices "constitute[d] due, adequate, and sufficient notice" where they were written in plain language, use simple terminology, and are designed to be readily understandable by Class Members"). The notices, which are attached as Exhibits B–C to the Keough Declaration, communicate in plain language the essential elements of the Settlement and the options available to members of the Class in connection with the Settlement, including specific information regarding the date, time, and place of final approval. *Id.* The notices are consistent with those previously approved by the Court. *See* Dkt. 226.

Second, the manner of sending notice, which relies on direct mailing to individual Settlement Class Members using RLIC's address database, is the best notice practicable here. Direct notice will be sent by first-class mail to all Settlement Class Members using their last known address. Keough Decl. ¶¶ 18, 20, 32–34. Sending notice via first class mail is appropriate, and has previously been approved in this case. Dkt. 226 at 3; *see also In re Wholesale Grocery Products Antitrust Litig.*, No. 09-MD-2090 ADM/TNL, 2017 WL 826917, at *3 (D. Minn. Mar. 1, 2017) ("When a class member's name and address is known or easily ascertainable, individualized notice by mail is the "best notice practicable." (quoting *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175 (1974))); *see also* Manual for Complex Litigation (Fourth) § 21.311 (2016) at 287 ("When the names and addresses of most class members are known, notice by mail is usually preferred.") (footnote omitted). This is a particularly effective method because in-force policyholders are expected to maintain their current addresses with RLIC, and RLIC maintains the last-known addresses for terminated policyholders. The Settlement Administrator will also research and attempt re-delivery of any Notices returned as undeliverable. Keough Decl. ¶ 33 & n.2.

Third, this Court should appoint JND as Settlement Administrator. JND, who has vast experience in this space, has already been serving as notice administrator in this action for over a year. *See, e.g.*, *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig.*, No. 14-md-2542 (VSB), 2020 WL 7389330, at *5 (S.D.N.Y. Dec. 16, 2020) (appointing JND as claims administrator and noting that its principals "have more than 75 years-worth

of combined class action legal administration experience" and have "handled some of the largest recent settlement administration issues").

Fourth, the forty-five day objection period for all members of the Class is reasonable. Indeed, the only substantive difference from the previous Court-approved plan is that this one does not propose a second opt-out period. None is required. Cases in which courts order a second opt-out period are "rare," and nothing here warrants an exception from that general practice. *See* Principles of the Law of Aggregate Litigation § 3.11, Reporters' Notes, *cmt. A*; *see also, e.g.*, *Low v. Trump Univ.*, 246 F. Supp. 3d 1295, 1310–1311 (S.D. Cal. 2017) (approving settlement without second opt-out opportunity, rejecting argument that second opt-out period was required), *aff'd*, 881 F.3d 1111 (9th Cir. 2018); *Hainey v. Parrott*, 617 F. Supp. 2d 668, 679 (S.D. Ohio 2007) (rejecting second opt-out period, which "would result in additional administrative costs, which in turn reduces the amount available for distribution").

The Court should therefore approve the proposed form and manner of notice as described in paragraphs 16–20 and 32–40 and Exhibits B–C of the Keough Declaration.

D. Proposed Schedule

Plaintiffs propose the following schedule:

EVENT	DAYS FROM PRELIMINARY APPROVAL
Deadline to send notice to Members of the Class	21 days
Deadline to file motion for award of attorneys' fees, expenses and service awards	52 days
Objection Deadline	66 days
Deadline to file Final Approval motion	80 days

Deadline to file any reply brief in support of any motion	101 days
Final Approval Hearing	108 days

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (i) preliminarily approve the proposed Settlement; (ii) approve the proposed form and manner of notice to the Class; and (iii) schedule a date and time for a hearing to consider final approval of the Settlement and related matters.

Dated: July 20, 2023

/s/ Steven G. Sklaver

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CERTIFICATE OF SERVICE

I hereby certify this 20th day of July, 2023, I caused a true and correct copy of the foregoing to be electronically filed with the Clerk of the court using the CM/ECF system which will send notification to the attorneys of record, and is available for viewing and downloading.

/s/ Steven G. Sklaver

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

PHT HOLDING I LLC, and ALICE CURTIS, on behalf of themselves and all others similarly situated, Plaintiffs, v. RELIASTAR LIFE INSURANCE COMPANY, Defendant.	Civ. No.: 0:18-cv-2863-DWF/TNL

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

Steven G. Sklaver, attorney for Plaintiffs PHT Holding I LLC ("PHT"), and Alice Curtis (together "Plaintiffs") certifies that the "Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement" complies with the length limitation and type size limitation of Local Rule 7.1. The Memorandum of Law is created in Microsoft Word software and pursuant to the word count function of this software, there are 8,701 words in the document, inclusive of all footnotes, and that said document is 41 pages in length.

Dated: July 20, 2023

Respectfully submitted,

By: /s/ *Steven G. Sklaver*

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