

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

ADVANCE TRUST & LIFE ESCROW
SERVICES, LTA, as securities
intermediary for LIFE PARTNERS
POSITION HOLDER TRUST, 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-BRT

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF UNOPPOSED
MOTION FOR APPROVAL OF FORM AND MANNER OF CLASS NOTICE**

On March 29, 2022, the Court granted the motion for class certification filed by Plaintiffs Advance Trust & Life Escrow Services, LTA and Alice Curtis. ECF No. 211.

Pursuant to the March 29, 2022 Order and Federal Rule of Civil Procedure 23(c), Class Counsel requests that the Court approve (a) the Class Notices attached as Exhibit 2 (short-form notice) and Exhibit 3 (long-form notice) to the declaration of Jennifer Keough, and (b) the manner of notice as described below and in the accompanying Keough declaration. Class Counsel's proposed form and manner of notice are appropriate because they are reasonably calculated to provide the best notice practicable to the members of the Class. Plaintiffs have conferred with Defendant ReliaStar Life Insurance Company ("RLIC") pursuant to the March 29, 2022 Order and Local Rule 7.1, and RLIC has

informed Plaintiffs that it does not oppose the form and manner of class notice proposed in this unopposed motion.

I. BACKGROUND

Plaintiffs filed this class action lawsuit against RLIC, asserting a breach of contract claim on behalf of a class of policyholders of certain RLIC universal life products. ECF No. 1. Plaintiffs later amended their complaint to add a second breach of contract claim on behalf of a class of policyholders written on policy forms 10830 and 10910 who were allegedly charged excessive “Waiver Rider” charges. ECF No. 84. In the March 29, 2022 Order, the Court granted Plaintiffs’ motion for class certification. ECF No. 211. The COI Class is defined as:

All current and former owners of UL (including variable UL) policies insured by ReliaStar written on policy forms listed in Exhibit A 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, and ReliaStar, its officers and directors, members of their immediate families, and their heirs, successors or assigns.

Id. at 31; *see* ECF No. 149-1 (Exhibit A); ECF No. 149-2 (Exhibit B).

The Rider Class is defined as:

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.

ECF No. 211 at 32. The Court also appointed Plaintiffs as class representatives; found that Susman Godfrey will fairly and adequately represent the class; and appointed Susman Godfrey as class counsel. *Id.*

II. THE PROPOSED FORM AND MANNER OF CLASS NOTICE SHOULD BE APPROVED.

a. Legal Standard

Class Members of a Rule 23(b)(3) class must be given “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). The “best notice that is practicable” standard applies to both the form and manner of notice. *See* William R. Rubenstein, 3 Newberg on Class Actions § 8:5 (5th ed.).

b. The Proposed Notices Provide All Information Required by Rule 23(c)(2)(B).

Class Counsel proposes two forms of notice—a short-form notice that will be mailed to Class members, which is attached as Exhibit 2 to the Keough Declaration, and a long-form notice, which will be posted on a website maintained by the Class Administrator, which is attached as Exhibit 3 to the Keough Declaration.

These proposed notices are appropriate because they present all the information required by Federal Rule of Civil Procedure 23(c)(2)(B) “clearly and concisely . . . in plain, easily understood language.” The following sections of the proposed long-form notice (“LFN”) satisfy each requirement of Rule 23(c)(2)(B):

Statutory Requirement	Notice Section
“(i) the nature of the action;”	<i>See</i> LFN, §§ 1–5
“(ii) the definition of the class certified;”	<i>See</i> LFN, §§ 6–7
“(iii) the class claims, issues, or defenses;”	<i>See</i> LFN, § 2

“(iv) that a class member may enter an appearance through an attorney if the member so desires;”	<i>See</i> LFN, § 14
“(v) that the court will exclude from the class any member who requests exclusion;”	<i>See</i> LFN, §§ 10–11
“(vi) the time and manner for requesting exclusion;”	<i>See</i> LFN § 11
“and (vii) the binding effect of a class judgment on members under Rule 23(c)(3);”	<i>See</i> LFN, §§ 2, 4, 8, 10

See Fed. R. Civ. P. 23(c)(2)(B). Thus, the notices are “reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 120 (8th Cir. 1975) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

c. The Proposed Manner of Notice is the Best Notice Practicable

Here.

The proposed manner of notice will operate as follows. On April 25, 2022, counsel for RLIC informed Class Counsel that RLIC would provide Class Counsel with a list of class members and their last known addresses by May 25, 2022. *See* Declaration of Ryan T. Weiss (“Weiss Decl.”) ¶ 4. Within fourteen (14) days of receiving the list of Class members from RLIC (the “Notice Date”), the Notice Administrator, JND Legal Administration LLC (“JND”), shall cause the Short-Form Notice attached as Exhibit 2 to the Keough Declaration to be mailed, by first-class mail, postage prepaid, to all Class Members included on the list of Class members from RLIC. *See* Keough Decl. ¶ 13. Prior

to mailing, the Class Administrator, JND, will update the addresses using the National Change of Address database, and will re-mail any Notices returned by United States Postal Service with a forwarding address. *See id.*¹ The Class Administrator will also host and maintain a website with the longform notice and will provide an automated toll-free number that Class Members may call to obtain information about the litigation. *See id.* ¶¶ 14–15. Class members will have forty-five days to opt out. *See id.* ¶ 16.

This proposed plan is the best practicable method and should be approved. Notice delivery by first-class mail is specifically authorized by Rule 23 and has been approved for use in this district. *See Fed. R. Civ. P. 23(c)(2)(B)* (“The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means.”); *see also Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1153 (8th Cir. 1999) (approving a notice method where the administrator “mailed notice” to class members and where the mail notice directed class members to a telephone number that class members could call for additional information). This form and manner of notice has also been approved in other cost of insurance class actions. *See, e.g., Advance Trust & Life Escrow Servs. v. Security Life of Denver Ins. Co.*, Case No. 18-cv-01897-DDD-NYW (D. Colo. Jan. 29, 2021), ECF No. 148.

Further, the notice plan gives Class members forty-five days to opt-out, which is particularly appropriate given that notice will be sent directly to Class members using known addresses. Courts regularly approve opt-out periods of similar length. *See, e.g., In*

¹ JND is an experienced and competent Class Administrator. *See Keough Decl.* ¶¶ 1–8.

re Zurn Pex Plumbing Prods. Liab. Litig., No. 08-MDL-1958 ADM/AJB, 2012 WL 5055810, at *10 (D. Minn. Oct. 18, 2012) (affording class members forty-five days from the date of notice to opt out if desired).

III. CONCLUSION

The proposed form and manner of notice are consistent with Federal Rule of Civil Procedure 23 and case law, and therefore constitute “the best notice that is practicable under the circumstances.” Class Counsel therefore request that that Court approve the form and manner of notice.

Dated: April 28, 2022

Respectfully submitted,

/s/ Ryan T. Weiss

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