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' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

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TABLE OF DEFINED TERMS

Term	Definition
ATLES	Advance Trust & Life Escrow Services, LTA
Ard Decl.	Declaration of Seth Ard, Dkt. 270
Class Members or Class	Owners of the Class Policies
Class Policies	Policies that fall within the COI Class and the Rider Class, together
COI	Cost of insurance
COI Class	The nationwide breach-of-contract class related to COI charges, as defined in Dkt. 211 at page 31
EFME	Expectations of future mortality experience
EY	Ernst & Young
Gibraltar	Gibraltar Life Services, Ltd.
McNally Decl.	Declaration of Keith McNally, Dkt. 261
Mills Decl.	Declaration of Robert Mills, Dkt. 272
Ness Decl.	Declaration of Kimberly K. Ness, filed contemporaneously with this motion
PHT	Class Representative PHT Holding I LLC
Plaintiffs or Class Representatives	Class Representatives PHT and Alice Curtis, together
Rider Class	The nationwide breach-of-contract class related to rider charges, as defined in Dkt. 211 at page 32
RLIC or ReliaStar	Defendant ReliaStar Life Insurance Company
SCLIC	Security Connecticut Life Insurance Company
Settlement	Joint Stipulation and Settlement Agreement, Dkt. 259-2
SG or Class Counsel	Susman Godfrey L.L.P.
Sklaver Decl.	Declaration of Steven Sklaver, Dkt. 259
STOLI	Stranger-owned life insurance

INTRODUCTION

After nearly five years of hard-fought litigation, the Settlement provides an outstanding result for the owners of the 36,480 Class Policies. The total value of the Settlement is $47.7 million. The $39 million cash fund considered alone accounts for ***57%*** of all COI and rider overcharges collected by RLIC through May 31, 2023 under Plaintiffs' maximum damages model, and ***106%*** of the overcharges under Plaintiffs' alternative Historical Mortality Improvement ("HMI") damages model. Mills Decl. ¶ 12. The non-monetary benefits—RLIC's promise not to increase COI rates on the Class Policies for a period of seven years, even after a worldwide pandemic, and a STOLI waiver—deliver another $8.75 million in value to the Class.

The Settlement is a superb result under any metric. The cash fund alone exceeds the 42% of COI overcharges recovered in a case against John Hancock Life Insurance Company, which the court called "quite extraordinary." *37 Besen Parkway, LLC v. John Hancock Life Ins. Co.*, No. 15-cv-0024 (PGG), Dkt. 164 at 20:10 (S.D.N.Y. Apr. 18, 2019) ("*Hancock COI*"). It also vastly exceeds the median settlement-to-damages ratio obtained in other class action settlements approved in the Eighth Circuit. *See Beaver Cnty. Emps.' Ret. Fund v. Tile Shop Holdings, Inc.*, 2017 WL 2574005, at *3 (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's 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"). Payment here will be sent directly to Class Members, using addresses in RLIC's files, without any need for Class Members to fill out claim forms and with no reversion to RLIC.

The substantial non-monetary benefits to the Class make this Settlement all the more extraordinary, especially considering that these benefits would not have been achievable even had the Class prevailed at trial. First, RLIC is agreeing to a ***complete freeze*** on any new COI rate schedule increase for the next ***seven years***, notwithstanding the COVID-19 pandemic that some insurance companies claim caused their costs to skyrocket and may lead to COI increases.[1] Second, the Settlement prohibits RLIC from trying to invalidate any Class Policies, or avoid paying death benefits, by claiming fraud, misrepresentation, or a lack of insurable interest. In *Fleisher v. Phoenix Life Insurance Co.*, 2015 WL 10847814 (S.D.N.Y. Sept. 9, 2015) ("*Phoenix COI*"), the Court adopted an expert analysis valuing similar types of non-monetary relief. 2015 WL 10847814, at *15 ("In calculating the overall settlement value for purposes of the 'percentage of the recovery' approach, Courts include the value of both the monetary and non-monetary benefits conferred on the

[1] For instance, RLIC's expert, Timothy Pfeifer, has argued here and elsewhere that COVID-19 has led to deterioration in mortality expectations. *See e.g.*, Pfeifer Decl. ¶ 54; *Meek v. Kan. City Life Ins. Co.*, No. 19-cv-472 (W.D. Mo.).

Class."). Here, an expert with experience in the insurance industry and with longevity-based products specifically, using RLIC's own data, has opined that this non-monetary relief is worth $8,757,089 to the Class, with the vast majority of that amount resulting from the benefits created by the seven-year COI freeze ($7,178,941). *See* McNally Decl. ¶ 11 & Ex. I.

There have been no objections to the Settlement. After a highly effective notice program—under which 91% of Class Members were directly reached by mail—***none*** of the owners of the 36,480 Class Policies objected to the Settlement or Class Counsel's fee request. Ness Decl. ¶ 9. This uniformly positive reaction from the Class Members confirms the value of this Settlement.

After the Court granted preliminary approval, the Court-appointed Settlement Administrator mailed the Settlement Notice to the Class Members, using the addresses that RLIC keeps in its files used for correspondence about the policies.[2] *Id.* ¶¶ 6–7. The Settlement Notice, among other things, described the monetary and non-monetary relief and releases; disclosed that Class Counsel may seek up to 33⅓ percent of the gross benefits provided to the Class; specified that the amount of fees requested would not exceed $15,919,029.67; explained that Class Members have the right to object to the Settlement by October 5, 2023; and directed Class Members to

[2] The Settlement Administrator mailed a Postcard Settlement Notice ("Settlement Notice") and also posted the Long Form Settlement Notice on the website the Settlement Administrator created for this Action. Ness Decl. ¶¶ 6–10.

the toll-free number and class action website for answers to any additional questions and for updates. *See id.* ¶ 15. The deadline to object to the Settlement passed on October 5, 2023, Dkt. 266 ¶ 11, two weeks after Class Counsel filed its Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards, Dkt. 267. No objections were filed.

Such a uniformly positive reaction by the Class is rare, and it is powerful evidence that the Settlement, plan of distribution, and fee, expense, and service award requests should be granted and approved as fair, adequate, and reasonable. *See, e.g.*, *Keil v. Lopez*, 862 F.3d 685, 698 (8th Cir. 2017) (affirming approval of settlement where 14 objections out of a class of approximately 3.5 million members were "small in number, which speaks well of class reaction to the Settlement"); *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995) (affirming approval of settlement where 5 out of 300,000 class members objected and holding that this "handful" of objections weighed in the settlement's favor); *Carlson v. C.H. Robinson Worldwide, Inc.*, 2006 WL 2671105, at *4 (D. Minn. Sept. 18, 2006) ("The lack of objections, the relatively small number of opt-outs and the number of claimants show strong support for the settlement from class members.").[3]

[3] Here, the opt-out period took place before the parties reached a settlement. *See* Dkt. 226 ¶ 10. Only six policyholders opted out.

The Settlement is particularly outstanding in light of the substantial risks that the Class faced at trial. With this Settlement, the Class gets paid now and avoids the significant risks inherent with trial. Establishing liability and damages in this case was far from certain. The trial scheduled for later this year would have largely turned on a battle of the experts, which is always uncertain. *See In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986) ("In this 'battle of experts,' it is virtually impossible to predict with any certainty which testimony would be credited."). And the risks did not end there. At trial, RLIC's actuaries were prepared to testify that the COI rates for the Class Policies were based on its current EFME, an argument that, if accepted by the jury, would have defeated Plaintiffs' claim for breach. *See* Dkt. 165 at 7 (RLIC noting its actuary "confirmed that the rates currently being charged reflect ReliaStar's current expected mortality experience"). The risk of losing on liability in these types of cases is substantial. Policyowners have lost other COI cases on the pleadings, *see, e.g.*, *Slam Dunk I, LLC v. Conn. Gen. Life Ins. Co.*, 853 F. App'x 451 (11th Cir. 2021); at class certification, *see, e.g.*, *Taylor v. Midland Nat'l Life Ins.*, 2019 WL 7500238 (S.D. Iowa May 3, 2019); and on summary judgment, *see, e.g.*, *Norem v. Lincoln Ben. Life. Co.*, 737 F. 3d 1145 (7th Cir. 2013).

Even if Plaintiffs prevailed on liability, they still faced significant risks on damages. RLIC intended to argue at trial that more than half of the damages that

Plaintiffs were to seek at trial were barred by a release from a prior class action settlement, an argument that RLIC pressed on summary judgment. *See* Dkt. 165 at 7–10, 18–23. The risk of the Class recovering far less than the overcharges sought was very real. In a recent COI class action trial within the Eighth Circuit, for example, the jury found for the plaintiffs on liability but the plaintiffs ended up with ***just 5%*** of the damages that they sought. *See* Sklaver Decl. ¶ 23, Ex. 3 (Dkt. 259-3), & Ex. 4 (Dkt. 259-4) (showing $5 million jury verdict where the plaintiffs sought $18 million and a final judgment awarding only around $900,000 after post-trial proceedings).

And trial would not have been the end of the road. Had Plaintiffs succeeded at trial, this case would likely be tied up in years of post-trial briefing and appeals, in which Plaintiffs similarly would have had no guarantee of success. The Settlement obviates these substantial risks and delays, and recovers for the Class more than half of the alleged overcharges with payments likely distributed before the end of the year, ***plus*** non-cash benefits that the Class could not have obtained even if it prevailed at trial.

Plaintiffs were able to achieve this extraordinary result only through Class Counsel's tenacious, high-quality work over half a decade. Over the course of this case, Plaintiffs obtained, reviewed, and pushed for tens of thousands of documents that consisted of more than 100,000 pages; took and defended eight depositions; and

served six subpoenas. This persistence paid off and led to the discovery of documents that were critical to establishing RLIC's liability, including RLIC's "Business Summary Review Memorandums" documenting RLIC's "best estimate" mortality assumptions for each upcoming year during the relevant period (assumptions that Plaintiffs alleged were inconsistent with its COI rates), *see* Dkt. 193 at 14–15, 35, as well as the massive tranche of policy-level data from third party Gibraltar that led to the discovery that RLIC was overcharging certain policies with Waiver Riders by 15%, *see* Dkt. 107 at 12.

Plaintiffs also achieved this result through continued success on motions where failure would have meant the end of the case: Plaintiffs defeated a motion for summary judgment, obtained class certification, and overcame a Rule 23(f) petition to the Eighth Circuit. *See* Dkt. 211; *ReliaStar Life Ins. Co. v. Advance Tr. & Life Escrow Servs.*, No. 22-08006 (8th Cir. 2022). With trial set for this year, the risk of no recovery was a distinct possibility. *See Phoenix COI*, 2015 WL 10847814, at *21 ("The risk of no recovery in complex cases of this type is real, and is heightened when Class Counsel opt to fight up to the eve of trial, in order to achieve the very best result for the class, rather than reaching a less attractive settlement early in the litigation.").

In parallel with these litigation efforts, and demonstrating that Plaintiffs were at all times seeking to maximize recovery for the Class, Plaintiffs engaged in

settlement negotiations over the course of three years, which included two formal mediation sessions under the supervision of two highly experienced mediators, Judge Sidney I. Schenkier (Ret.) of JAMS and H. Jeffrey Peterson. *See* Sklaver Decl. ¶¶ 6, 8–9. The second of those two mediation sessions, held as trial was quickly approaching, resulted in this outstanding result for the Class. For all these reasons, Plaintiffs respectfully request that the Court grant final approval of the Settlement.

BACKGROUND

I. Plaintiffs and the Overcharges

Two Class Representatives have prosecuted this case: (i) PHT, and its predecessor-in-interest ATLES, and (ii) Alice Curtis. PHT is the owner of universal policy number CBS0143318, originally issued by RLIC's predecessor-in-interest, SCLIC, on February 1, 1988. Dkt. 132 ¶ 10. Ms. Curtis was the owner of universal life insurance policy number 996560W, which was originally issued by SCLIC on October 15, 1991. *Id.* ¶ 11. 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. *Id.* ¶ 4. Over the past several decades, mortality expectations, including RLIC's mortality expectations, have improved significantly nationwide. *Id.* ¶ 6. Still, RLIC never reduced its COI rates. *Id.* ¶ 7; 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 Ms. 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 Plaintiffs uncovered during discovery in this case. *See* Dkts. 105, 107. The Court granted the motion over RLIC's vigorous opposition. Dkt. 131. Plaintiffs filed their Second Amended Class Action Complaint on September 3, 2020. Dkt. 132. By stipulation of the parties and order of the Court, after ATLES transferred ownership of the policy at issue to PHT, PHT was substituted in for ATLES as a Plaintiff and Class Representative on January 24, 2023. Dkt. 254.

II. The Class Action Litigation

Plaintiffs and Class Counsel have prosecuted this case for half a decade, through a motion for summary judgment, class certification, and a Rule 23(f) petition.

Fact discovery alone lasted nearly three years. *See* Dkt. 145 (closing on September 3, 2021). During the discovery period, Plaintiffs and their experts reviewed and analyzed over 40,000 documents spanning more than 100,000 pages. These documents included extensive actuarial tables, complex spreadsheets, and

policy-level data reflecting the historical credits and deductions to the account value of all Class Members' policies. Sklaver Decl. ¶ 11. To gain access to this data, particularly the critical policy-level data for all Class Policies for all relevant time periods, Class Counsel exchanged dozens of emails with RLIC's counsel and engaged in myriad rounds of meet and confers. *Id.* ¶¶ 11–13. Accessing the policy-level data proved particularly difficult because a third party, Gibraltar, administers many of the Class Policies for RLIC on a proprietary system. *Id.* Obtaining Gibraltar's records took many months and the extension of several production deadlines. *See, e.g.*, Dkts. 78, 80.

Making sense of Gibraltar's records was a very challenging endeavor. Starting with an interrogatory served in January 2019, Plaintiffs had to go to great lengths just to identify the COI rate scales RLIC used for the Class Policies, including those administered by Gibraltar. Over more than a year that followed, Plaintiffs worked with their experts to compare the rates that RLIC claimed were its COI rates and the voluminous policy-level charge and credit data that RLIC produced. As Plaintiffs identified discrepancies, RLIC's interrogatory responses on this question underwent several rounds of revisions and still, the numbers did not add up.

In March 2020, after a year of back-and-forth about the rate scales used for the Class Policies, RLIC produced a spreadsheet that allowed Plaintiffs, with the help of their expert, to finally identify the COI rate scales used to calculate charges

for the Class Policies. Plaintiffs also discovered something else: that, for nearly three decades, RLIC had been assessing rider charges that were 15% higher than those guaranteed in the riders themselves. *See* Sklaver Decl. ¶ 12. This discovery prompted more rounds of back-and-forth with RLIC. When it became clear that there was no explanation for these overcharges, Plaintiffs moved for leave to amend the complaint in May 2020, which RLIC opposed. *Id.* This months-long exchange is detailed in Plaintiffs' memorandum of law in support of its motion for leave to amend the complaint. *See* Dkt. 107 at 4–10. After full briefing and an oral hearing, in a 27-page opinion, the Court granted Plaintiffs leave to amend the complaint to add the new breach-of-contract claim. Dkt. 131. Plaintiffs filed a Second Amended Complaint on September 3, 2020. Dkt. 132.

The Gibraltar subpoena—and the resulting discovery of the rider overcharges—is but one example of the great lengths Plaintiffs went to achieve the best result for the Class. Over several years of discovery, Plaintiffs also took and defended seven highly technical fact depositions and one expert deposition. Sklaver Decl. ¶ 14. The testimony that resulted from many of these depositions ended up being cited by the Court in its order granting class certification and denying summary judgment, such as an admission by RLIC's expert that an annual COI rate

determination is not unusual. *See* Dkt. 211 at 5 (citing Dkt. 195-15).[4] Plaintiffs also issued six subpoenas—not just to Gibraltar, but also to RLIC's actuarial consultants and financial auditors—subpoenas that uncovered valuable evidence, much of which had not been produced by RLIC. Sklaver Decl. ¶ 13.

One such subpoena was to RLIC's financial auditor, Ernst & Young ("EY"). *See* Ard Decl. ¶ 6. After serving the subpoena and responding to EY's litany of objections, Plaintiffs reached an agreement with EY for the production of documents and set up recurring calls with EY's counsel to discuss the status of their production and any relevant issues. *Id.* ¶ 7. These calls continued for months, until EY's production was complete. *Id.* The productions resulted in dozens of critical documents that showed that RLIC monitored and documented its EFME, some of which were cited in the Court's eventual order granting class certification and denying summary judgment. *See, e.g.*, Dkt. 211 at 19 (citing Dkt. 151-4 at EY-RELI-000052). Plaintiffs also deposed a corporate representative for EY in October 2021, and the witness confirmed that RLIC tracks its EFME. Ard Decl. ¶ 7.

The superb result in this case was also driven by a tremendous amount of expert work. Collectively, including reports related to class certification, the parties produced 10 expert reports that totaled 658 pages, not including voluminous tables

[4] *See also* Dkt. 211 at 5, 12 (citing Dkt. 181-1 (RLIC corporate representative testimony)); Dkt. 211 at 29 (citing Dkt. 151-18 (RLIC corporate representative testimony)).

and appendices. *Id.* Plaintiffs designated three experts: liability experts James Rouse and Linley Baker, and damages expert Robert Mills. Sklaver Decl. ¶ 15. Plaintiffs produced opening expert reports from Rouse and Mills on October 14, 2022. *Id.* In response, RLIC designated actuarial expert Timothy Pfeifer and produced his report on November 10, 2022. *Id.* In rebuttal, on December 16, 2022, Plaintiffs produced three reports: one from Rouse, one from Baker, and one from Mills. *Id.*

This excellent result would not have been possible without Plaintiffs' repeated successes on critical motions, in addition to the hotly-contested motion for leave to amend. On May 28, 2021, Plaintiffs moved for class certification, supported by a 32-page memorandum of law, Dkt. 148, and 37 exhibits, Dkts. 150, 151. RLIC filed a 34-page response. Dkt. 161. Less than a month later, RLIC moved for summary judgment. Dkt. 164. Its supporting memorandum of law was 34 pages. Dkt. 161. On September 24, 2021, Plaintiffs filed a 14-page reply brief in support of their motion for class certification. Dkt. 180. On December 8, 2021, Plaintiffs responded to RLIC's motion for summary judgment with a 42-page memorandum of law, supported by 24 exhibits. Dkts. 193, 195, 196.

The Court conducted a three-hour hearing on both motions on January 28, 2022. Dkt. 206. The Court later granted Plaintiffs' motion for class certification and denied RLIC's motion for summary judgment in a 32-page order. Dkt. 211. In the order, the Court certified the COI Class and Rider Class, appointed SG as Class

Counsel, and appointed the Class Representatives. *Id.* RLIC filed a 23-page Rule 23(f) petition to the Eighth Circuit challenging the Court's class-certification decision. *See ReliaStar Life Ins. Co. v. Advance Tr. & Life Escrow Servs.*, et al., No. 22-08006 (8th Cir. 2022). Plaintiffs filed a 22-page response opposing the petition. *Id.* The Eighth Circuit denied the petition. *Id.*

III. The Class, Notice, and Opt-Out Period After Class Certification

The Court certified two classes on March 29, 2022. Dkt. 211. The classes—which are collectively referred to as the "Class" in the Settlement (Dkt. 259-2) and this motion—are defined as follows:

> COI Class: All current and former owners of UL (including variable UL) policies insured by RLIC 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 RLIC, its officers and directors, members of their immediate families, and their heirs, successors or assigns.
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> Rider Class: All current and former owners of universal life policies insured by RLIC 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.

Id. at 31–32. After certifying the Class, the Court appointed JND as notice administrator and approved the form and manner of notice consisting of direct mail to Class Members, 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 45 days after the notice date to submit opt-out notices. *Id.* at 9–10.

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. JND successfully mailed the short-form notice to 91% of the Class. Ness Decl. ¶ 9. The short- and long-form notices explained 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 from the owners of seven policies—resulting in an opt-out rate of only 0.019%. *Id*.

IV. Settlement Negotiations and the Settlement Agreement

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. Sklaver Decl. ¶ 6. The parties' first settlement discussion took place in March 2020, pursuant to a Court order 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; *see also* Sklaver Decl. ¶ 7. Those discussions were unsuccessful. Sklaver Decl. ¶ 7. Two years later, settlement discussions

resumed, again pursuant to a Court order, but the parties were unable to reach an agreement. *See* Dkt. 214; Sklaver Decl. ¶ 7.

The first mediation took place on September 8, 2022, with mediator H. Jeffrey Peterson in Minneapolis, Minnesota. Sklaver Decl. ¶ 8. The second mediation took place on May 31, 2023 with Judge Sidney I. Schenkier (Ret.) of JAMS. *Id.* ¶ 9. Before the mediations, the parties submitted lengthy mediation statements and updated damages estimates. *Id.* ¶¶ 8–9. For the first mediation, the parties also provided supplemental statements detailing the opinions of their experts. *Id.* And for the second mediation, Plaintiffs provided a supplemental mediation statement. *Id.* The parties were unable to reach an agreement at the first mediation but reached an agreement at the second one. *Id.* A long-form settlement agreement was negotiated and agreed to thereafter. *See id.* ¶ 9 & Ex. 2 (Dkt. 259-2).

A. Monetary and Non-Monetary Relief for Class Members

For the Class, the Settlement awards relief worth **$47.7 million** to the Class, with three main benefits:

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 under Plaintiffs' maximum damages model, or 106% of all alleged overcharges under Plaintiffs' alternative HMI model.

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 may 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. **POLICY 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, STOLI, or misrepresentations in the application for such policies.

See id. ¶ 24 & Ex. 2 (Dkt. 259-2).[5]

An eminently qualified expert, with experience in the insurance industry and with longevity-based products specifically, using RLIC's own data, has opined that this non-monetary relief is worth $8,757,089 to the Class, with the vast majority of that amount resulting from the COI freeze ($7,178,941). *See* McNally Decl. ¶ 11 & Ex. I. The COI freeze is particularly valuable because insurance companies have claimed that a huge spike in mortality due to the COVID-19 pandemic could justify new COI increases. *See, e.g.*, Henry Montag, "Life Insurance During the Pandemic," available at https://www.wealth management.com/insurance/life-insurance-during-pandemic ("[COVID-19] will result in many insurers using this pandemic as a valid reason to increase their [COI], which will result in some insurers charging a higher premium than another, for a similar condition.").

[5] Because the Class is the class the Court already certified, *see* Dkt. 211, the Court does not need to recertify a class. *See Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1146 (8th Cir. 1999) (affirming final approval of class settlement where the class was certified pre-settlement and the class definition "was the same as the definition of the class originally certified under Fed. R. Civ. P. 23(b)(3)").

B. Release

Once the Settlement becomes final, the Releasing Parties will release "all Claims asserted in the Action or arising out of the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act that were alleged or could have been alleged in the Action." Dkt. 259-2 (Settlement) §§ 1.34, 6.1. The Class will not, however, release "(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.

C. Preliminary Approval and Class Notice

After a hearing, the Court preliminarily approved the Settlement on July 31, 2023, concluding that "it will likely be able to approve the Settlement under Rule 23(e)(2)." Dkt. 266 ¶ 2. The appointed Settlement Administrator, JND, sent Settlement Notices to the Class Members on August 21, 2023, and additional notices to updated addresses for certain Class Members on September 15, 2023. Ness Decl. ¶¶ 6–7. Notice was sent to the addresses on file in RLIC's records. 91% of Class Members were successfully reached by mail. *Id.* ¶ 9. JND also posted the Long Form Settlement Notice on the public website it created for this Action during the class

notice period and operated a toll-free number for information by phone. *Id.* ¶¶ 10–14. The deadline to file objections to the Settlement was October 5, 2023. *Id.* ¶ 15. No objections were lodged by the deadline (or through today). *Id.* ¶ 16.

D. Awards, Costs, and Fees

The Settlement Notice informed Class Members that Class Counsel would seek an attorneys' fee award of up to 33⅓ percent of the gross benefits provided to the Class, which amount would not exceed $15,919,029.67, plus reimbursement of litigation expenses, and service awards, not to exceed $50,000 for each of the two Plaintiffs. *See* Dkt. 260-3 at 8. It further stated that Class Members could object to any part of this request. *Id.*

Consistent with the Settlement Notice, Class Counsel filed its Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards on September 21, 2023. *See* Dkts. 267–75. Class Counsel sought 33⅓ percent of the total value of the Settlement, the amount of incurred litigation expenses, and a $50,000 service award for each of PHT and Ms. Curtis. To date, no Class Member has objected to the motion. Ness Decl. ¶ 16.

V. Distribution Plan

The proposed plan of distribution, as set forth in the notice papers and which is described in the Sklaver Declaration (Dkt. 259) that is available on the public website established for this Action, distributes proceeds directly to Class Members

on a *pro rata* basis without the need for a claim form. *See* Sklaver Decl. ¶ 28 & Ex. 5 (Plan of Allocation) (Dkt. 259-5). Under this methodology, each Class Member's *pro rata* share is calculated by dividing the sum total of damages for that Class Member by the sum total of damages for the Class, as calculated under expert Robert Mills's methodology, through March 31, 2023. *Id.* The resulting percentage will be used to calculate each Class Member's respective share of the Net Settlement Fund. *See* Dkt. 259-2 § 1.25.

Within thirty days after the Final Settlement Date, the Settlement Administrator will send for delivery to each Class Member, via first-class postage prepaid, a settlement check in the amount of the share of the Net Settlement Fund to which the Class Member is entitled. *See* Dkt. 259-2 § 1.22. Proceeds will be mailed directly to Class Members, using the addresses RLIC and Gibraltar maintain on file. *Id.* Within one year plus 30 days after the date the Settlement Administrator mails the checks, to the extent feasible and practical, any funds remaining in the Settlement Fund shall be re-distributed on a *pro rata* basis to Class Members who previously cashed their checks. *See* Sklaver Decl. ¶ 28 & Ex. 5. If there are any remaining funds, Class Counsel will file a motion with the Court to address the final disposition of those funds. As with the rest of the Settlement, no Class Member has objected to any aspect of this plan.

ARGUMENT

I. Legal Standard

Federal courts strongly favor and encourage settlements, particularly in class actions. *See* *Beaver Cnty.*, 2017 WL 2574005, at *2 ("The policy in federal court of favoring the voluntary resolution of litigation through settlement is particularly strong in the class action context." (quoting *White v. Nat'l Football League*, 822 F. Supp. 1389, 1416 (D. Minn. 1993))). The approval of class action settlements is governed by Federal Rule of Civil Procedure 23(e)(2), which was revised in 2018. Rule 23(e)(2) provides:

> If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering 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.

Before the 2018 Amendments, courts in this Circuit evaluated the fairness and reasonableness of class action settlements using the four factors set forth in *Van Horn v. Trickey*, 840 F.2d 604 (8th Cir. 1988). The 2018 revision was "not intended to displace the various factors that courts have developed in assessing the fairness of a settlement," 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." *Swinton v. SquareTrade, Inc.*, 2019 WL 617791, at *5 (S.D. Iowa Feb. 14, 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."). Thus, the *Van Horn* factors remain relevant to the evaluation of a class action settlement.

The four *Van Horn* factors are: (1) the merits of the plaintiff's case weighed against the terms of the settlement; (2) the defendant's financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement. 840 F.2d at 607; *see also Murphy v. Harpstead*, 2023 WL 4034515, at *4 (D. Minn. June 15, 2023) (Frank, J.). No one factor is determinative; however, "[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.*, 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)).

In granting preliminary approval on July 31, 2023, the Court already held that "it will likely be able to approve the Settlement under Rule 23(e)(2) . . . as being fair, reasonable and adequate to the Class under the relevant factors under Rule 23(e)(2) and *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988)." Dkt. 266 ¶ 2.

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

A. Rule 23(e)(2)(A): Adequacy of Plaintiffs and Class Counsel

Rule 23(e)(2)(A) supports final approval. 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.). The Court has already recognized that Plaintiffs and Class Counsel adequately represent the Class Members. *See* Dkt. 211 at 26 ("The Court finds that the adequacy requirement has been met, both as to the class representatives and class counsel."); *see also* Dkt. 254 (order granting substitution of PHT for ATLES).

Because Plaintiffs share the same injury (improper overcharges) and an overriding common interest with all other Class Members in maximizing their recovery, Plaintiffs' interests are aligned with the Class. *See In re Workers' Comp.*, 130 F.R.D. 99, 107–08 (D. Minn. 1990) (finding 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); *see also Murphy*, 2023 WL 4034515, at *5 (same where the class representatives "assert the same injuries" and "share [a] common goal"). Moreover, Plaintiffs and Class Counsel have vigorously and competently litigated this case. *See* Sklaver Decl. ¶¶ 11–23; *see also* 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"). As a result, Rule 23(e)(2)(A) is satisfied.

B. Rule 23(e)(2)(B): Arm's-Length Negotiation

Rule 23(e)(2)(B) considers whether "the proposal was negotiated at arm's length." "In cases where all parties are represented by counsel during the litigation and during the settlement discussion, Courts have almost unilaterally found that the settlement was the product of arm's length negotiations." *Murphy*, 2023 WL 4034515, at *5 (quoting *Netzel v. W. Shore Grp., Inc.*, 2017 WL 1906955, at *6 (D. Minn. May 8, 2017), *report and recommendation adopted*, Dkt. 36 (D. Minn. May 26, 2017)).

Here, as the Court already found, the Settlement "was entered into at arm's length by highly experienced counsel." Dkt. 266 ¶ 3. The Settlement is the product of a hard-fought negotiation process 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* Sklaver Decl. ¶¶ 8–9; *see also* *Vill. Bank v. Caribou Coffee Co., Inc.*, 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"); 4 Newberg & Rubenstein on Class Actions § 13:50 ("[T]here appears to be no better evidence of [an arm's-length] process than the presence of a neutral third party mediator."). Rule 23(e)(2)(B) therefore supports final approval of the Settlement.

C. Rule 23(e)(2)(C): Adequacy of Relief Provided to the Class

Rule 23(e)(2)(C) requires that "the relief provided for the class is adequate, taking into account" four subfactors: "(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" so as to "provide a benchmark for comparison with the settlement figure." Rule 23, 2018 Advisory Note, ¶¶ (C) & (D).

As set forth below, each of the four Rule 23(e)(2)(C) subfactors—and the related *Van Horn* factors—weigh heavily in favor of approving the Settlement.

i. Rule 23(e)(2)(C)(i) Subfactor: Costs, Risks, and Delay

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 plaintiff's case, weighed against the terms of the settlement") and three ("the complexity and expense of further litigation"). 840 F.2d at 607.

First, the costs, risks, and delay of trial and appeal that were avoided by the Settlement were significant. There would have been no guarantee of any recovery at trial, let alone a recovery of $47.7 million in total value to the Class. The *Meek* case in the Western District of Missouri—where the class sought $18 million in damages but the jury only awarded $5 million, an amount that the court reduced to less than $1 million—is case in point. *See* Dkt. 259-3 (*Meek* verdict form), Dkt. 259-4 (*Meek* final judgment). The *Meek* outcome would have loomed especially large here, as

RLIC used the same testifying actuarial expert here as the carrier in the *Meek* trial. Sklaver Decl. ¶ 23.

RLIC, represented by experienced and reputable counsel, would no doubt have raised a vigorous defense at trial. *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 defense that over 45% of the Class Policies were subject to a release that applied to the claims asserted here remained, which, if successful, would have eliminated more than 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, at that time, "the record [was] not clear as to the scope of the claims asserted and released in the *Alten* case." Dkt. 211 at 12. 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.'" (quoting *Prof'l Firefighters Ass'n of Omaha, Local 385 v. Zalewski*, 678 F.3d 640, 649 (8th Cir. 2012))). The Court also left it up to the jury to decide (a) which factors RLIC could consider in setting COI rates, and (b) whether RLIC had a duty to update COI rates at all. *See* Dkt. 211 at 11–12.

Even if Plaintiffs fully prevailed on both liability and damages at trial, they would still be tied up in lengthy appeals. RLIC would appeal the class certification order, the summary judgment order, and the jury's verdict, which would likely delay any distributions to Class Members for years—or, if RLIC were successful, eliminate them altogether. *See* *In re Zurn Pex Plumbing Prods. Liab. Litig* , 2013 WL 716088, at *7 (D. Minn. Feb. 27, 2013) (considering in approving a class settlement "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'" (quoting *Snell v. Allianz Life Ins. Co. of N. Am.*, 2000 WL 1336640, at *16 (D. Minn. Sept. 8, 2000))); *see also* *Murphy*, 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, "[i]n the meantime, the class would receive nothing"); *Phillips v. Caliber Home Loans, Inc.*, 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").

Second, the recovery here is an exceptional result. Under Plaintiffs' maximum damages model, the estimated total COI overcharges paid through May 2023 was $68,684,478. Sklaver Decl. ¶ 20. Under Plaintiffs' alternative, more conservative HMI model, the estimated total COI 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 the alternative HMI model. *Id.* ¶ 25. Courts routinely approve settlements with substantially lower percentage awards. *See* *Beaver Cnty.*, 2017 WL 2574005, at *4; *Hancock COI*, Dkt. 164 at 20:10 (cash fund amount equal to 42% of COI overcharges was "quite extraordinary").

The Settlement is even more exceptional in light of the significant non-monetary relief, neither of which would have been available even had Plaintiffs prevailed at trial. First, RLIC has agreed to freeze COI rate scales for seven years, which protects Class Members from a COI *increase* during this period. This is significant, because the risk of future COI increases in the wake of the COVID-19 pandemic is a real possibility. Other life insurers have claimed that the increased mortality as a result of the pandemic may warrant future rate increases, and RLIC itself has claimed "recent declines in life expectancies as a result of . . . COVID-19." *See* Dkt. 163 at 21. With the COI freeze, Class Members are assured that their COI rate scale will not change for at least seven years. Second, the Settlement's validity clause also 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 it prevents RLIC from undermining the value of the Settlement by challenging the

validity of Class Policies on certain grounds. Together, according to Plaintiffs' highly qualified expert, this non-monetary relief is worth an additional $8,757,089 for the Class. *See* McNally Decl. ¶ 11.

The Settlement is an excellent result when viewed against the many risks and uncertainties discussed above. And Class Counsel's certification of its reasonableness, *see* Sklaver Decl. ¶ 31, is given considerable weight because of its experience in other complex class actions, including COI rate class actions, *see* *DeBoer.*, 64 F.3d at 1178 (stating that class counsel's "experience[] in this type of litigation" supports giving deference to their views as to the settlement's fairness). The first *Van Horn* factor thus weighs sharply in favor of approval. *See* *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 933 (8th Cir. 2005) ("Weighing the uncertainty of 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.").

Third, "[t]he complexity and expense of class action litigation is well-recognized." *In re* *Zurn*, 2013 WL 716088, at *7 (citing *Schmidt v. Fuller Brush Co.*, 527 F.2d 532, 535 (8th Cir. 1975)); *see also* *Keil*, 862 F.3d at 698 ("'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." (citation omitted) (quoting *Marshall*, 787 F.3d at 512)). This nationwide class action case was no exception.

In *Phoenix COI*, another COI overcharge case, the court held that the dispute was "indisputably complex." 2015 WL 10847814, at *6. Its reasoning is instructive here:

> The complaint alleged the breach of an insurance contract, the resolution of which would require conflicting testimony by experts as to actuarial standards, [and] the original and revised pricing assumptions used [for the] products at issue . . . . These complex claims were bitterly fought, as Defendants developed defenses to liability, damages, and class certification, and offered their own expert opinions on actuarial issues for the key questions. The court has issued opinions of great length of complexity in connection with motions to dismiss and for summary judgment.

Id. As in *Phoenix COI*, this Court issued detailed, complex opinions in response to the parties' motions, including Plaintiffs' motions for leave to amend and class certification and RLIC's motion for summary judgment. Similarly, trial would have featured dueling actuarial experts testifying about actuarial standards, insurance principles, and technical actuarial assumptions, documents, and data. *See* Dkts. 131, 211. And even a successful outcome at trial would be no guarantee of recovery for the Class, as the case would still be tied up in years of post-trial briefing and appellate practice resolving numerous legal issues. *See Phoenix COI*, 2015 WL 10847814, *6 ("[P]ost-verdict and appellate litigation would likely have lasted for years."); *see also In re Zurn*, 2013 WL 716088, at *7 (considering in approving a class settlement

"the certainty that resolution under [a] settlement will foreclose any subsequent appeals, [which] 'could well extend into the distant future'" (quoting *Snell*, 2000 WL 1336640, at *16)).

This case is indisputably complex and has already involved over 7,000 hours in attorney time and $1.2 million in expenses. *See* Ard Decl. ¶¶ 4, 8–9. That time and expense would have increased dramatically in the event of a trial. The third *Van Horn* factor supports approval.

ii. Rule 23(e)(2)(C)(ii) Subfactor: Effectiveness of Any Proposed Method of Distributing Relief to the Class

The second Rule 23(e)(2)(C) subfactor looks to "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." Courts in this District have held that a Settlement satisfies this subfactor where it "includes detailed procedures for processing Settlement Class Members' claims and distributing the proceeds of the Settlement to eligible claimants." *In re Resideo Techs., Inc., Secs. Litig.*, 2022 WL 872909, 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. *See* Sklaver Decl. ¶ 15. Under the detailed and specific plan of allocation, Class Members 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 and without the need for any action on their part. *Id.* ¶ 28 Ex. 5 (Plan of Allocation). "This type of distribution, where funds are distributed on a *pro rata* basis, has frequently been determined to be fair, adequate, and reasonable." *Phoenix COI*, 2015 WL 10847814, at *12 (collecting cases); *see also Rogowski v. State Farm Life Ins. Co.*, 2023 WL 5125113, at *1 (W.D. Mo. Apr. 18, 2023) (granting final approval of COI settlement); *Rogowski v. State Farm Life Ins. Co.*, 2022 WL 19263357, at *1 (W.D. Mo. Dec. 16, 2022) (explaining that "settlement checks [would] be mailed directly to the Settlement Class Members without the need to submit a claim"). In line with this authority, the Court preliminary approved the plan, which plan supports final approval. Dkt. 266.

iii. Rule 23(e)(2)(C)(iii) Subfactor: Proposed Award of Attorneys' Fees

The third Rule 23(e)(2)(C) subfactor requires the Court to consider "the terms of any proposed award of attorney's fees." Here, Class Counsel seeks an award of 33⅓ percent of the total benefits of the Settlement after an over-five-year litigation campaign. Dkts. 267–75; Sklaver Decl. ¶¶ 11–23. Class Counsel explained the reasonableness of this request in detail in its Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards, which was filed on September 21, 2023, Dkts. 267–75, and posted to the class website the next day, Ness Decl. ¶ 11.

No Class Member objected to the requested fee award, either when the Settlement Notice was sent or after Class Counsel's motion was filed two weeks before the objection deadline. "The lack of objections is strong evidence that the requested amount of fees and expenses is reasonable." *Beaver Cnty. Emps.' Ret. Fund v. Tile Shop Holdings, Inc.*, 2017 WL 2588950, at *3 (D. Minn. June 14, 2017); *see also* *9–M Corp., Inc. v. Sprint Commc'ns Co. L.P.*, 2012 WL 5495905, at *3 (D. Minn. Nov. 12, 2012) ("The absence of objections or disapproval by class members to Settlement Class Counsel's fee-and-expense request further supports finding it reasonable."). The reasonableness of the requested fees supports approval of the Settlement (and fee award).

iv. Rule 23(e)(2)(C)(iv) Subfactor: Agreements Required to be Identified Under Rule 23(e)(3)

The final subfactor, Rule 23(e)(2)(C)(iv), considers "any agreement required to be identified under Rule 23(e)(3)." There are no such agreements here beyond the Settlement. This factor therefore "favors approval." *Murphy*, 2023 WL 4034515, at *6.

D. Rule 23(e)(2)(D): The Proposal Treats All Class Members Equitably

The final Rule 23(e)(2) factor requires the Court to assess whether "the proposal treats class members equitably relative to each other." As noted, the proposed plan of allocation treats Class Members equitably 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. Sklaver Decl. Ex. 5 (Plan of Allocation). Courts have repeatedly approved *pro rata* allocation plans. *See, e.g.*, *Phillips*, 2022 WL 832085, at *4–5 (finding 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.*, 2020 WL 416402, at *2 (D. Minn. Jan. 27, 2020) (finding 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*, 2023 WL 5125113, at *3 (approving settlement where the "proceeds [would] be distributed among Settlement Class Members equitably and relative to one another, primarily in proportion to the Monthly Deductions paid by each Settlement Class Member"). The releases are also narrowly tailored and equitable, as they treat Class Members equally.[6]

[6] In addition, courts in this District recognize that service awards to class representatives, like those sought here, do not impact whether the proposal treats all class members equitably. *See, e.g.*, *In re Pork Antitrust Litig.*, 2022 WL 4238416, at *2 (D. Minn. Sept. 14, 2022) ("Other than some possible service awards to the Class Representatives which the Court will consider on a case-by-basis to ensure their fairness to the class, the settlement and distribution method treats all class members equitably by providing monetary relief on

E. The Remaining *Van Horn* Factors Support Final Approval

The two remaining *Van Horn* factors, which do not directly overlap with the Rule 23(e)(2) factors, are: (1) the defendant's financial condition, and (2) the amount of opposition to the settlement. The first is neutral; and the second strongly favors approval.

Because 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," the "defendant's financial condition" factor is "neutral." *Marshall*, 787 F.3d at 512; *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).

The "amount of opposition" factor, however, strongly supports approval because, here, there was no opposition. JND mailed 124,710 notices to the addresses maintained in RLIC's records on August 21, 2023, and an additional 1,087 notices because of address updates on September 15, 2023. Ness Decl. ¶¶ 6–7. JND also

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a pro rata basis based on the qualifying purchases made."); *Browne v. P.A.M. Transp., Inc.*, 2020 WL 4430991, at *3 (W.D. Ark. July 31, 2020) (noting that "Rule 23(e)(2)(D) requires that a settlement agreement treat class members 'equitably relative to each other'" and that "[i]t is common practice to bestow service awards on individual plaintiffs in recognition of particular contributions to the case"); *In re Pre-Filled Propane Tank Antitrust Litig.*, 2019 WL 7160380, at *2 (W.D. Mo. Nov. 18, 2019) ("[T]he proposed Plan of Allocation treats Settlement Class Members equitably relative to each other and is fair and adequate because it distributes the settlement funds according to each Settlement Class Member's injury and *pro rata* share of total purchases . . . , and any award of service fees to named Plaintiffs will be subject to further review and approval of this Court.").

established a public website (https://www.reliastarcoilitigation.com), which hosts important case documents (including the Settlement Notice and Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards), answers frequently asked questions, and provides important information about Settlement deadlines and options. *Id.* ¶ 10. JND further provided Class Members with a toll-free hotline with live support. *Id.* ¶ 13.

As stated in the Settlement Notice and on the website, the deadline to object to the Settlement was October 5, 2023. Dkt. 266 ¶ 11*; see also* Ness Decl. ¶ 15. Not a single Class Member objected by that date, nor have any Class Members objected as of the filing of this Motion. Ness Decl. ¶ 16. "Without any class objection, this factor strongly supports settlement approval." *Zilhaver v. UnitedHealth Group, Inc.*, 646 F. Supp. 2d 1075, 1080 (D. Minn. 2009) (noting that "after notice to over 23,000 class members, there has not been a single objection"); *see also Carlson*, 2006 WL 2671105, at *4 (holding that a "lack of objections" showed "strong support for the settlement from class members").

CONCLUSION

Because the Rule 23(e) and *Van Horn* factors support finding that the Settlement is fair, reasonable, and adequate, the Court should grant final approval of the Settlement; approve the notice program as complying with Rule 23 and due process; and approve the plan of distribution as fair, reasonable, and adequate.

Dated: October 19, 2023

/s/ Steven G. Sklaver

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