

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES iii

II. INTRODUCTION 1

III. FACTUAL BACKGROUND..... 2

 A. Summary of the Litigation 2

 B. Summary of the Settlement 3

 C. The Settlement Class 4

 D. The Court’s Preliminary Approval Order 5

 E. The Class Notice Program..... 5

 F. The Settlement Class’s Positive Reaction to the Settlement..... 7

IV. THE SETTLEMENT SHOULD BE FINALLY APPROVED. 7

 A. Standard for Final Approval..... 7

 B. The Proposed Settlement Is Fair, Reasonable, and Adequate Pursuant to the Factors Identified in Rule 23(e) and *Van Horn*. 9

 1. The Class Representatives and Class Counsel Have Provided Excellent Representation to the Class. 9

 2. The Settlement Is the Product of Arm’s Length Negotiations..... 12

 3. The Relief Provided by the Settlement Is Excellent. 13

 4. The Settlement Treats Class Members Equitably Relative to Each Other, Supporting Approval of the Settlement. 19

 5. State Farm’s Financial Condition. 20

 6. The Amount of Support for the Settlement Supports Approval. 21

V. CERTIFICATION OF A SETTLEMENT CLASS REMAINS APPROPRIATE. 22

VI. THE COURT SHOULD GRANT PLAINTIFFS’ MOTION FOR ATTORNEY’S FEES, COSTS, EXPENSES, AND SERVICE AWARDS. 23

CONCLUSION..... 30
CERTIFICATE OF SERVICE 31

TABLE OF AUTHORITIES

Cases

Advance Trust & Life Escrow Servs., LTA v. Protective Life Ins. Co.,
--- F.4th ---, 2024 WL 878017 (11th Cir. Mar. 1, 2024) 15

Allapattah Sers., Inc. v. Exxon Corp.,
454 F. Supp. 2d 1185 (S.D. Fla.) 24

Bally v. State Farm Life Ins. Co.,
335 F.R.D. 288 (N.D. Cal. 2020)..... 10

Bally v. State Farm Life Ins. Co.,
536 F. Supp. 3d 495 (N.D. Cal. 2021) 14

Bell Atl. Corp. v. Bolger,
2 F.3d 1304 (3d. Cir. 1993)..... 22

Carlson v. C.H. Robinson Worldwide, Inc.,
No. CIV 02-3780 JNE/JJG, 2006 WL 2671105 (D. Minn. Sept. 18, 2006)..... 22

City of Detroit v. Grinnell Corp.,
495 F.2d 448 (2d Cir. 1974)..... 22

Claxton v. Kum & Go, L.C.,
No. 6:14-CV-03385-MDH, 2015 WL 3648776 (W.D. Mo. June 11, 2015) 21

DeBoer v. Mellon Mortg. Co.,
64 F.3d 1171 (8th Cir. 1995) 12, 21

Holt v. Community America Credit Union,
No. 4:19-CV-00629-FJG, 2020 WL 12604383 (W.D. Mo. Sept. 4, 2020) 8

In re Checking Acct. Overdraft Litig.,
830 F. Supp. 2d 1330 (S.D. Fla. 2011) 18

In re Ins. Brokerage Antitrust Litig.,
282 F.R.D. 92 (D.N.J. 2012)..... 23

In re Life Time Fitness, Inc., Tel. Consumer Prot. Act (TCPA) Litig.,
847 F.3d 619 (8th Cir. 2017) 23

In re Syngenta AG MIR 162 Corn Litig.,
61 F.4th 1126 (10th Cir. 2023) 26

In re U.S. Bancorp Litig.,
291 F.3d 1035 (8th Cir. 2002) 29

<i>In re Wireless Tel. Fed. Cost Recovery Fees Litig.</i> , 396 F.3d 922 (8th Cir. 2005)	18
<i>In re Zurn Pex Plumbing Products Liab. Litig.</i> , No. 08-MDL-1958 ADM/AJB, 2013 WL 716088 (D. Minn. Feb. 27, 2013)	16
<i>Jaunich v. State Farm Life Ins. Co.</i> , 569 F. Supp. 3d 912 (D. Minn. 2021)	10
<i>Johnston v. Comerica Mortg. Corp.</i> , 83 F.3d 241 (8th Cir. 1996)	26
<i>Keil v. Lopez</i> , 862 F.3d 685 (8th Cir. 2017)	passim
<i>Kelly v. Phiten USA, Inc.</i> , 277 F.R.D. 564 (S.D. Iowa 2011)	12, 17
<i>Marshall v. Nat’l Football League</i> , 787 F.3d 502 (8th Cir. 2015)	18, 20
<i>McClanahan v. State Farm Life Ins. Co.</i> , 660 F. Supp. 3d 728 (W.D. Tenn. Mar. 9, 2023)	16
<i>McClure v. State Farm Life Ins. Co.</i> , 341 F.R.D. 242 (D. Ariz. Apr. 29, 2022)	10
<i>McClure v. State Farm Life Ins. Co.</i> , 608 F. Supp. 3d 813 (D. Ariz. 2022)	13
<i>Millwood v. State Farm Life Ins. Co.</i> , No. 7:19-CV-01445-DCC, 2022 WL 4396199 (D.S.C. Sept. 23, 2022)	9, 11
<i>Norem v. Lincoln Benefit Life Co.</i> , 737 F.3d 1145 (7th Cir. 2013)	15
<i>Page v. State Farm Life Ins. Co.</i> , 584 F. Supp. 3d 200 (W.D. Tex. 2022)	10
<i>Petrovic v. Amoco Oil Co.</i> , 200 F.3d 1140 (8th Cir. 1999)	22
<i>Rawa v. Monsanto Co.</i> , 934 F.3d 862 (8th Cir. 2019)	25
<i>Rogowski v. State Farm Life Ins. Co.</i> , No. 4:22-CV-00203-RK, 2023 WL 5125113 (W.D. Mo. Apr. 18, 2023)	passim

<i>Slam Dunk I, LLC v. Connecticut General Life Insurance Co.</i> , 853 F. App'x 451 (11th Cir. 2021)	15
<i>Soderstrom v. MSP Crossroads Apartments LLC</i> , No. CV 16-233 ADM/KMM, 2018 WL 692912 (D. Minn. Feb. 2, 2018).....	23
<i>Spegele v. USAA Life Ins. Co.</i> , No. 5:17-CV-967-OLG, 2021 WL 4935978 (W.D. Tex. Aug. 26, 2021)	10
<i>Toms v. State Farm Life Ins. Co.</i> , No. 8:21-CV-0736-KKM-JSS, 2022 WL 5238841 (M.D. Fla. Sept. 26, 2022).....	10
<i>Trombley v. Nat'l City Bank</i> , 826 F. Supp. 2d 179 (D.D.C. 2011)	23
<i>True v. Am. Honda Motor Co.</i> , 749 F. Supp. 2d 1052 (C.D. Cal. 2010)	25
<i>Tussey v. ABB, Inc.</i> , No. 06-04305-CV-C-NKL, 2012 WL 5386033 (W.D. Mo. Nov. 2, 2012).....	29
<i>Tussey v. ABB, Inc.</i> , No. 06-04305-CV-C-NKL, 2019 WL 3859763 (W.D. Mo. Aug. 16, 2019).....	24
<i>Van Horn v. Trickey</i> , 840 F.2d 604 (8th Cir. 1988)	passim
<i>Vill. Bank v. Caribou Coffee Co., Inc.</i> , No. 19-CV-1640 (JNE/HB), 2020 WL 13558808 (D. Minn. July 24, 2020).....	12
<i>Vogt v. State Farm Life Ins. Co.</i> , No. 2:16-CV-04170-NKL, 2018 WL 1747336 (W.D. Mo. Apr. 10, 2018)	13, 14
<i>Vogt v. State Farm Life Ins. Co.</i> , No. 2:16-CV-04170-NKL, 2018 WL 1955425 (W.D. Mo. Apr. 24, 2018)	10
<i>Vogt v. State Farm Life Ins. Co.</i> , 963 F.3d 753 (8th Cir. 2020)	10, 13
<i>Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.</i> , 396 F.3d 96 (2d Cir. 2005).....	26, 27
<i>Whitman v. State Farm Ins. Co.</i> , No. 3:19-CV-06025-BJR, 2022 WL 4081916 (W.D. Wash. Sept. 6, 2022)	14
<i>Whitman v. State Farm Life Ins. Co.</i> , No. 3:19-cv-6025-BJR, 2021 WL 4264271 (W.D. Wash. Sept. 20, 2021).....	10

Yarrington v. Solvay Pharms., Inc.,
697 F. Supp. 2d 1057 (D. Minn. 2010)..... 23

Statutes

28 U.S.C. § 1715(b) 5

Rules

Fed. R. Civ. P. 23 passim

Other Authorities

4 Newberg and Rubenstein on Class Actions § 13:53 (6th ed.) 18

I. INTRODUCTION

The \$65 million class action settlement (“Settlement”) before the Court between Plaintiffs Lorin Niewinski, John Baker McClanahan as personal representative of the Estate of Melissa Buchanan, Robert A. Bozaich, Ronnie Jackson, and Sherif B. Botros (“Representative Plaintiffs”), on behalf of the nationwide Settlement Class, and Defendants State Farm Life Insurance Company and State Farm Life and Accident Assurance Company (collectively, “State Farm”), is an extraordinary result for the Settlement Class Members, providing them direct cash compensation for the allegedly excessive cost of insurance charges State Farm deducted from their accounts, without the need for a claim form.² By any measure, the Settlement is excellent, and represents a material portion of the alleged overcharges that Settlement Class Members reasonably could have recovered at trial.

The Settlement was reached following more than four years of intensive and contentious litigation. At the preliminary approval stage, the Court concluded that the Settlement appeared to be fair, reasonable, and adequate, and that the standards for certification of a settlement class were satisfied. Having now been notified of the Settlement, the reaction of Settlement Class Members demonstrates their overwhelming support for the Settlement. Indeed, from a Settlement Class of owners of more than 450,000 policies, *no* objection to the Settlement itself has been submitted, and only a single objection, by a State Farm agent, was made as to Class Counsel’s fee request, while another single objection, was made to the proposed Service Awards.³ Representative

² All defined terms herein have the same meanings ascribed to them in the Settlement Agreement.

³ The purported objection to the service awards fails to comply with this Court’s requirements and the Federal Rules of Civil Procedure and thus is invalid. Nevertheless, Representative Plaintiffs respond to the arguments raised by the objection below.

Plaintiffs therefore move the Court for an order finally approving the Settlement and entering final judgment thereon.

II. FACTUAL BACKGROUND

A. Summary of the Litigation

A detailed history of this litigation was set forth in Plaintiffs' Motion for Preliminary Approval (Doc. 3) and the Declaration of Norman E. Siegel in support of that motion (Doc. 3-4) ("Siegel Decl."), which is incorporated by reference here. To summarize, Plaintiffs challenge how State Farm determined the cost of insurance ("COI") Rates for its universal life insurance policies issued on Forms 86040/A86040 and 86075/A86075 (the "Policies"). Plaintiffs allege the Policies do not authorize State Farm to include non-mortality profits or expenses in the COI Rates and that State Farm's use of such factors breaches its contracts with policyholders. Additionally, Plaintiffs asserted that State Farm failed to reduce COI Rates when its mortality expectations improved and, when it reduced COI Rates, State Farm failed to consider only its mortality expectations or reduce COI Rates to the full extent of its mortality improvements.

Before Plaintiffs' claims were consolidated before this Court, Plaintiffs litigated their claims in two different jurisdictions. At the time of the Settlement, one case was dismissed on statute of limitations grounds and pending appeal. In the other case, the court certified a class of policyholders, denied Plaintiff's motions for summary judgment and to exclude State Farm's experts, and took under advisement State Farm's motion for summary judgment and motion to exclude Plaintiff's expert.⁴

⁴ Plaintiffs' Unopposed Motion Pursuant to Rule 23(e) for Preliminary Approval of Class Action Settlement (Doc. 3) accurately describes the procedural history of *Millwood*, however, Plaintiffs' Motion for Attorney's Fees, Costs, Expenses, and Service Awards (Doc. 29) erroneously states the parties' cross-motions for summary judgment and to exclude each other's

The negotiations that culminated in the Settlement were conducted at arm's length, by highly qualified and experienced counsel on both sides, and with the assistance of a highly respected and experienced mediator, the Hon. Layn Phillips (Ret.). Due to the four years of litigation and Class Counsel's experience in litigating cases of this type, including their experience litigating cases involving State Farm's successor Form 94030 policy, Class Counsel were well informed of the material facts and legal risks and well-positioned to evaluate State Farm's defenses and the risks facing the Settlement Class Members. The risk of continued litigation to Plaintiffs and the similarly situated policy owners, and to State Farm, had crystallized at the time of Settlement. The negotiations were hard-fought and non-collusive. Class Counsel advocated for a fair and reasonable settlement that serves the best interests of the Settlement Class, and the resulting \$65 million Settlement should be finally approved.

B. Summary of the Settlement

The Settlement Agreement represents a compromise regarding the claims in the Class Action Complaint. *See* Doc. 1; *see also* Doc. 3-1 ("Agreement"). Pursuant to the Agreement, State Farm funded the Settlement Fund in the amount of \$65 million shortly after the Court entered its Preliminary Approval Order. *Id.* ¶¶ 1.39, 2.1. The Settlement Fund is non-reversionary (meaning no money will be returned to State Farm), *id.*, and there is no "claims process." Each Settlement Class Member will receive their share of the Net Settlement Fund pursuant to the Distribution Plan developed by Class Counsel with the assistance of the same, qualified actuary, Scott Witt, who developed the Distribution Plan for the related cases involving the Form 94030 policies. *Id.* ¶¶ 2.2-2.3.

experts were denied, even though State Farm's motions were still pending at the time of settlement.

Pursuant to the Agreement, Class Counsel have moved for an attorneys' fee award to be paid from the Settlement Fund in the amount of one-third of the Settlement Fund and reimbursement of costs and expenses in the amount of \$824,678.54. Doc. 29; *see* Agreement, ¶ 8.1. Class Counsel have also moved for \$25,000 Service Awards for each of the Plaintiffs to be paid from the Settlement Fund. Doc. 29; *see* Agreement, ¶ 8.3. The Settlement Fund will also be used to pay for the fees and expenses of the Settlement Administrator. Agreement, ¶¶ 1.19, 1.35, 1.39.

The Agreement allocates the value of the Settlement Fund across the Settlement Class pursuant to an objective Distribution Plan that is designed to provide each Settlement Class Member a minimum payment of \$10 plus a *pro rata* portion of the Net Settlement Fund according to the amount of Monthly Deductions (comprised of the COI and Expense Charges) paid by each Settlement Class Member, with equitable adjustments for Settlement Class Members who still have active Policies. *See* Docs. 3-10 & 3-12 (Witt Decl. & Ex. B thereto). In exchange, Plaintiffs and the Settlement Class Members will release all claims arising out of the facts asserted in this case. Agreement, ¶¶ 3.1-3.7.

C. The Settlement Class

The Settlement Class includes the persons or entities who own or owned one or more of approximately 450,000 Policies issued or administered by State Farm or its predecessors in interest on Forms 86040, A86040, 86075, or A86075. The Settlement Class is made up of the Owners of the Policies. *Id.* ¶¶ 1.6, 1.27.⁵

⁵ The Class List can be provided to the Court upon request. The class definition, along with the identification in the Final Judgment of the policy owners who have excluded themselves from the Settlement Class, satisfies Rule 23(c)(3)(B). The Settlement Class excludes State Farm; any entity in which State Farm has a controlling interest; any of the officers or members of the board

D. The Court's Preliminary Approval Order

On October 18, 2023, the Court entered its order preliminarily approving the Settlement and ordering that notice of the Settlement should issue to the Settlement Class. Doc. 21. As discussed in more detail below, the Court concluded it would likely approve the Settlement as fair, reasonable, and adequate and certify the Settlement Class for purposes of entering judgment on the Settlement. *Id.* at 2-3.⁶ The Court also appointed the undersigned Plaintiffs' counsel as Class Counsel pursuant to Rule 23(g)(3) and appointed Epiq Class Action and Claims Solutions, Inc. ("Epiq") as the Settlement Administrator. *Id.* at 4-5. The Court also approved the Class Notice and found that it and the proposed method for its delivery by first-class mail constituted the best practicable notice to the Settlement Class. *Id.* at 5-6. The Court thus directed the Settlement Administrator and the Parties to carry out the Class Notice program. *Id.* The Court set a deadline of February 9, 2024, for Settlement Class Members to submit objections to the Settlement or to opt-out of the Settlement Class and scheduled a Fairness Hearing for March 28, 2024. *Id.* at 8.

E. The Class Notice Program

On September 1, 2023, on behalf of State Farm, Epiq served notice of the proposed Settlement on appropriate officials in accordance with the requirements under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715(b). Ex. 1, Declaration of Cameron R. Azari, Esq. on Implementation and Adequacy of Notice Plan (Azari Decl.), ¶ 6. From December 1, 2023, through

of directors of State Farm; the legal representatives, heirs, successors, and assigns of State Farm; anyone employed with Plaintiffs' counsel's firms; any Judge to whom this case, or the *Millwood* or *McClanahan* actions, has been assigned, and his or her immediate family; and the 62 policy owners who timely and properly excluded themselves from the Settlement Class. Agreement, ¶¶ 1.37, 5.3.

⁶ Docket citations to page numbers are to the CM/ECF page numbers.

December 4, 2023, Epiq mailed the Court-approved Class Notice to members of the Settlement Class. *See id.*, ¶ 12. Prior to mailing, all addresses were updated using the National Change of Address database maintained by the United States Postal Service (“USPS”), certified via the Coding Accuracy Support System and verified through Delivery Point Validation. *Id.* USPS automatically forwards Class Notices with an available forwarding address order that has not expired. *Id.*, ¶ 13. Epiq re-mailed Class Notices that were returned as undeliverable where new addresses were available through USPS information (for example, to the address provided by the USPS on returned pieces for which the automatic forwarding order has expired, but which is still during the period in which the USPS returns the piece with the address indicated; or to better addresses that may be found using a third-party lookup service).⁷ *Id.* Epiq’s individual notice efforts resulted in the Class Notice being delivered to over 98% of the identified Settlement Class Members. *Id.*, ¶¶ 9 & 16.

On December 1, 2023, Epiq also established a dedicated Settlement Website where Settlement Class Members have been able to obtain detailed information about the case and review key documents, including the operative Complaint, Answer, Class Notice, Settlement Agreement, Preliminary Approval Order, and Plaintiffs’ Motion for Attorney’s Fees, Costs, Expenses, and Service Awards. *Id.*, ¶ 17. Epiq also established a toll-free telephone number on December 1, 2023, where Settlement Class Members can call for additional information, listen to answers to FAQs, and request that a Class Notice be mailed to them. *Id.*, ¶ 18. Additionally, Epiq created an email address, so Settlement Class Members can correspond by email. *Id.*, ¶ 19.

⁷ Epiq sent 445,828 Class Notices, of which 8,661 Class Notices for unique Settlement Class Members remain undeliverable. *See Azari Decl.*, ¶¶ 12, 13.

On January 11, 2024, Plaintiffs informed the Court of a typographical error in the Class Notice regarding expense reimbursement and that the same provision did not contain a specific reference to the Settlement Website. Doc. 27 at 1. Even though the Class Notice was replete with references to the Settlement Website, out of an abundance of caution, Plaintiffs proposed sending an update to the Class Notice in the form of a supplemental postcard regarding this provision to all Settlement Class Members who received the original Class Notice and did not opt out. *Id.* at 2 & Attachment 3. The Court authorized Epiq to mail the supplemental postcard notice. Ex. 28. On January 16, 2024, Epiq mailed the supplemental postcard notice to members of the Settlement Class who did not opt out. Azari Decl., ¶ 15.

F. The Settlement Class’s Positive Reaction to the Settlement

Only 62 policy owners (.014%) submitted valid requests to opt-out of the Settlement Class, and no objections to the Settlement were submitted. As discussed below, only one objection (by a State Farm agent) was made to Class Counsel’s attorney’s fee request, and another purported objection was made to the proposed Service Awards. *Id.*, ¶ 20; Doc. 23.

III. THE SETTLEMENT SHOULD BE FINALLY APPROVED.

A. Standard for Final Approval

Class action settlements must be approved by the Court. Fed. R. Civ. P. 23(e). The Settlement should be approved because it is fair, reasonable, and adequate under the factors set forth in Rule 23(e)(2) and those identified by the Eighth Circuit in *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988). *See* Doc. 3 at 18-20 (identifying standard).

The factors identified in Federal Rule of Civil Procedure 23(e)(2) are whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

The four *Van Horn* factors are: (1) the merits of the plaintiffs' case weighed against the terms of the settlement; (2) the defendants' financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement. *Van Horn*, 840 F.2d at 607. "No one factor is determinative, but the 'most important factor in determining whether a settlement is fair, reasonable, and adequate is a balancing of the strength of the plaintiff's case against the terms of the settlement.'" *Holt v. Community America Credit Union*, No. 4:19-CV-00629-FJG, 2020 WL 12604383, at *2 (W.D. Mo. Sept. 4, 2020) (quoting *Van Horn*, 840 F.2d at 607).

In granting preliminary approval of the Settlement, the Court concluded that it would likely be able to (i) approve the Settlement as fair, reasonable, and adequate under the above factors; and (ii) certify the Settlement Class for purposes of entering judgment on the Settlement. Fed. R. Civ. P. 23(e)(1)-(2); Doc. 3. There has been no change in circumstances that would warrant the Court reaching any other conclusion now. Indeed, the Settlement Class Members, now having been apprised of the Settlement, have shown their overwhelming support for it as judged by the very small number of policy owners who have chosen to exclude themselves from the Settlement Class

and the lack of objections to the Settlement from Settlement Class Members. For completeness, Plaintiffs analyze the relevant factors again below.

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

As demonstrated below, the proposed Settlement is fair, reasonable, and adequate under the factors identified in Rule 23(e) and by the Eighth Circuit in *Van Horn* such that the Court should finally approve the Settlement.

1. The Class Representatives and Class Counsel Have Provided Excellent Representation to the Class.⁸

The adequacy of representation factor supports a finding that the Settlement is fair, reasonable, and adequate. The Court concluded so in entering preliminary approval. Doc. 21 at 3 (“[T]he Court finds that: the Representative Plaintiffs and Class Counsel have provided adequate representation to the Settlement Class.”). First, the Representative Plaintiffs have shown their dedication to representing the Settlement Class, each helping to develop and review the factual allegations in the Complaint and remaining committed to the case through Settlement. *See* Siegel Decl., ¶ 35; Doc. 29-1, ¶ 36. Each Plaintiff has worked with counsel to advance the litigation on behalf of themselves and all members of the proposed Settlement Class, and each supports the Settlement and advocates for its approval. *See* Siegel Decl., ¶ 35; Doc. 29-1, ¶ 36.

Second, Class Counsel are competent, experienced, and qualified, with expertise in class actions and cost of insurance cases on this and other life insurance policies, and have vigorously prosecuted the claims asserted in this case. Class Counsel have been appointed as class counsel in dozens of class actions throughout the country, including several cases against State Farm,⁹ and

⁸ *See* Fed. R. Civ. P. 23(e)(2)(A).

⁹ *See Millwood v. State Farm Life Ins. Co.*, No. 7:19-CV-01445-DCC, 2022 WL 4396199

have significant experience handling complex disputes, including lawsuits involving life insurance contracts. *See* Doc. 3-4 (Siegel Decl.), ¶¶ 9-12 & Exs. A-E. The firms also have experience taking similar cases to trial. For instance, in June 2018, attorneys of record at Stueve Siegel and Schirger Feierabend¹⁰ secured a jury verdict of \$34,333,495.81 for Missouri policy owners in *Vogt v. State Farm Life Insurance Co.*, which was affirmed on appeal. *See* No. 2:16-cv-04170-NKL, Docs. 358 & 360 (W.D. Mo. June 6, 2018), *aff'd*, 963 F.3d 753 (8th Cir. 2020), *cert. denied*, 141 S. Ct. 2551 (Apr. 19, 2021). In December 2022, they also tried to jury verdict similar cases against Kansas City Life Insurance Company, resulting in jury verdicts of \$28,362,830.96 for Missouri universal life policy owners, \$908,075.00 for Kansas universal life policy owners, and \$4,095,897.75 for Missouri variable universal life policy owners. *Karr v. Kansas City Life Ins. Co.*, No. 1916-CV26645 (Mo. Cir. Ct. May 10, 2023); *Meek v. Kansas City Life Ins. Co.*, No. 19-00472-CV-W-BP, Doc. 353 (W.D. Mo. Sept. 27, 2023); *Sheldon v. Kansas City Life Ins. Co.*, No. 1916-CV26689 (Mo. Cir. Ct. Nov. 2, 2023).

In 2021, attorneys from Stueve Siegel and Schirger Feierabend settled a similar case against USAA Life Insurance Company, obtaining \$90 million for a class of universal life insurance policy owners. *Spegele v. USAA Life Ins. Co.*, No. 5:17-CV-967-OLG, 2021 WL

(D.S.C. Sept. 23, 2022); *Vogt v. State Farm Life Ins. Co.*, No. 2:16-CV-04170-NKL, 2018 WL 1955425 (W.D. Mo. Apr. 24, 2018), *aff'd*, 963 F.3d 753 (8th Cir. 2020); *Bally v. State Farm Life Ins. Co.*, 335 F.R.D. 288 (N.D. Cal. 2020); *Whitman v. State Farm Life Ins. Co.*, No. 3:19-cv-6025-BJR, 2021 WL 4264271 (W.D. Wash. Sept. 20, 2021); *Jaunich v. State Farm Life Ins. Co.*, 569 F. Supp. 3d 912 (D. Minn. 2021); *Page v. State Farm Life Ins. Co.*, 584 F. Supp. 3d 200 (W.D. Tex. 2022); *McClure v. State Farm Life Ins. Co.*, 341 F.R.D. 242 (D. Ariz. Apr. 29, 2022); *Toms v. State Farm Life Ins. Co.*, No. 8:21-CV-0736-KKM-JSS, 2022 WL 5238841 (M.D. Fla. Sept. 26, 2022).

¹⁰ Class Counsel John Schirger and Joseph Feierabend previously practiced under the firm name Miller Schirger, LLC, and now practice as Schirger Feierabend LLC.

4935978 (W.D. Tex. Aug. 26, 2021). And in 2018, attorneys from Stueve Siegel and Schirger Feierabend settled a similar case against John Hancock Life Insurance Company, obtaining \$59.75 million for a class of life insurance policy owners. *See Larson v. John Hancock Life Ins. Co.*, No. RG16813803 (Alameda Cty., Cal. May 8, 2018). In 2016, attorneys from Stueve Siegel and Schirger Feierabend settled another similar case against Lincoln National Life Insurance Company, obtaining \$2.25 billion of guaranteed term life insurance with a market value of approximately \$171.8 million for a class of policy owners. *See Lincoln Nat'l Life Ins. Co. v. Bezich*, No. 02C01-0906-PL-73 (Allen Cty., Ind. Feb. 4, 2016).

As to Hausfeld, Van Winkle, and Kaliel Gold, in *Millwood*, the court appointed these firms as class counsel finding the firms “qualified” due to their “extensive experience prosecuting class actions and cost of insurance cases.” *See Millwood*, 2022 WL 4396199, at *7. For instance, in *In re Blue Cross Blue Shield Antitrust Litigation* (M.D. Ala.), Hausfeld and its co-counsel, including Van Winkle, reached a settlement providing for \$2.67 billion in monetary relief, as well as substantial, injunctive relief for the class they represented. Doc. 3-7 at 3. And in *Hale v. State Farm Mutual Automobile Insurance Co.* (S.D. Ill.), Hausfeld and its co-counsel reached a \$250 million settlement with State Farm shortly before opening statements at trial. *Id.* Kaliel Gold and Van Winkle have similarly extensive experience, having been appointed as lead counsel or co-lead counsel in numerous consumer class actions in state and federal courts across the United States. Doc. 3-8 at 1; Doc. 3-9 at 1.

Class Counsel’s depth of knowledge and experience gained through the litigation here and cases challenging cost of insurance provisions in other similar life insurance policies allowed them to accurately evaluate and weigh the risks of continued litigation to reach a fair settlement of the claims asserted in this litigation, which Class Counsel believe to be in the best interests of Plaintiffs

and the Settlement Class. Doc. 3-4 (Siegel Decl.), ¶ 34. This factor thus supports finding that the Settlement is fair, reasonable, and adequate, and therefore, its final approval. *See DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995) (stating class counsel’s “experience[] in this type of litigation” supports providing deference to their views as to the fairness of the settlement).

2. The Settlement Is the Product of Arm’s Length Negotiations.¹¹

The extent and scope of this litigation confirms the Court’s finding that the Settlement is the product of arm’s length negotiations. Doc. 21 at 3. The Settlement is the result of significant negotiation by experienced counsel on both sides with the assistance of an experienced, well-respected neutral mediator, culminating in the execution of the Agreement. *See* Doc. 3-4 (Siegel Decl.), ¶¶ 25-26. The arm’s length nature of the negotiations amongst experienced counsel supports a finding that the Settlement is fair, reasonable, and adequate. *See* Comment to December 2018 Amendment to Fed. R. Civ. P. 23(e) (“[T]he involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests.”); *Vill. Bank v. Caribou Coffee Co., Inc.*, No. 19-CV-1640 (JNE/HB), 2020 WL 13558808, at *2 (D. Minn. July 24, 2020) (finding that “[t]he assistance of a retired United States Magistrate Judge as a mediator in the settlement process supports the conclusion that the Settlement was non-collusive and fairly negotiated at arm’s length”); *Kelly v. Phiten USA, Inc.*, 277 F.R.D. 564, 570 (S.D. Iowa 2011) (finding settlement’s fairness was supported by the fact that it was reached “after significant investigation and extensive arm’s-length negotiations”). This factor supports the Court’s final approval of the Settlement.

¹¹ *See* Fed. R. Civ. P. 23(e)(2)(B).

3. The Relief Provided by the Settlement Is Excellent.¹²

a. The duration, costs, risks, and delay of trial and appeal support approval of the Settlement.¹³

The \$65 million Settlement Fund represents a material recovery for members of the Settlement Class, especially given the risk that, had the case proceeded through trial and all appeals, Plaintiffs and the Class could have recovered little to no damages. Doc. 3-4 at ¶ 32. The Court previously concluded that the Settlement “is an excellent result for the Settlement Class when compared to the very substantial litigation risks facing the Settlement Class Members going forward, considering (1) the only liability ruling with respect to these policies was negative and (2) the ensuing appellate risk.” Doc. 21 at 2.

The Court further found that “the length of time and the expense that would be necessary to continue to litigate Plaintiffs’ cases through trials and appeals would be considerable.” *Id.* In the absence of the Settlement, the Settlement Class Members face significant risks, costs, and delay in reaching a litigated judgment in their favor. The only court reaching the merits dismissed the lawsuit on statute of limitations grounds and none have reached a final judgment regarding the relevant policy language. As for the latter, in litigation involving State Farm’s successor policy with similar language—Form 94030—courts reached various readings of the relevant policy language. Some courts issued policy interpretation rulings supportive of the policyholders. *See, e.g., Vogt v. State Farm Life Ins. Co.*, No. 2:16-CV-04170-NKL, 2018 WL 1747336, at *4 (W.D. Mo. Apr. 10, 2018), *aff’d*, 963 F.3d 753 (8th Cir. 2020); *McClure v. State Farm Life Ins. Co.*, 608

¹² Fed. R. Civ. P. 23(e)(C).

¹³ Fed. R. Civ. P. 23(e)(2)(C)(i). Plaintiffs also address herein *Van Horn* factors 1 and 3: “the merits of the plaintiffs’ case weighed against the terms of the settlement,” and “the complexity and expense of further litigation.” *Van Horn*, 840 F.2d at 607.

F. Supp. 3d 813, 826 (D. Ariz. 2022). But other courts disagreed, finding in favor of State Farm. *See, e.g., Bally v. State Farm Life Ins. Co.*, 536 F. Supp. 3d 495, 508 (N.D. Cal. 2021); *Whitman v. State Farm Ins. Co.*, No. 3:19-CV-06025-BJR, 2022 WL 4081916, at *6 (W.D. Wash. Sept. 6, 2022). These disparate rulings regarding similar policy language underscore the risk of an adverse policy interpretation ruling.

In *Bally*, the court agreed with the district court’s interpretation in *Vogt* and denied State Farm’s first summary judgment motion. After the Eighth Circuit ruling in *Vogt*, however, it paradoxically adopted State Farm’s argument that the phrase “applicable rate class” was broad enough to permit State Farm to include non-mortality factors like profits and expenses in setting its COI Rates and granted State Farm summary judgment on the COI Charge claim (although the court denied State Farm’s motion as to the Expense Charge claim).¹⁴ Importantly, the *Bally* court did not view its ruling as inconsistent with the *Vogt* interpretation, concluding that “[n]either the district court nor the Eighth Circuit in *Vogt* meaningfully considered the meaning of the phrase” applicable rate class, which left in play the risk that subsequent courts could broadly adopt the *Bally* interpretation. *Bally*, 536 F. Supp. 3d at 504 n.6. The *Whitman* court agreed with *Bally* and adopted the same adverse interpretation. *See Whitman*, 2022 WL 4081916, at *4, *7 (agreeing with *Bally* and going further to grant State Farm summary judgment on the Expense Charge and all other claims).¹⁵

¹⁴ The court also granted summary judgment in favor of State Farm on Bally’s conversion claim.

¹⁵ The *Whitman* court also held that “even if the Policy requires the COI to be limited to age, sex, and applicable rate class [as *Vogt* held] the rate classes themselves are based on non-mortality factors,” permitting State Farm’s deductions. *Whitman*, 2022 WL 4081916, at *4 n.5.

Furthermore, while the Eighth Circuit’s interpretation in *Vogt* of similar policy language was favorable to the policyholders, State Farm urged the application of the Seventh Circuit’s interpretation in *Norem v. Lincoln Benefit Life Co.*, 737 F.3d 1145 (7th Cir. 2013) and the Eleventh Circuit’s interpretation in *Slam Dunk I, LLC v. Connecticut General Life Insurance Co.*, 853 F. App’x 451 (11th Cir. 2021) to construe those policies as authorizing State Farm to use unlisted, non-mortality factors to determine the COI Rates.¹⁶ Although *Vogt* is the most analogous appellate decision, at least two district courts (*Bally* and *Whitman*) did not follow the Eighth Circuit’s interpretation. Thus, there remains a significant risk policy owners could recover nothing through further litigation depending on how courts interpret the policy language.

Further, State Farm has consistently and forcefully argued that Plaintiffs’ expert’s damages calculations are unreliable and cannot be used to prove damages class-wide. The Courts in *Millwood* and *McClanahan* had not ruled on State Farm’s challenges to the admissibility of Plaintiffs’ expert’s opinions, nor have they been tested at trial. If Plaintiffs’ expert’s opinions were excluded by the court or not credited by the jury, Plaintiffs could face a substantially reduced award of damages, or a finding of no damages even if they were to prevail on liability. In addition, State Farm has disclosed four experts in these cases, including putative experts on consumer behavior, actuarial science and pricing, and insurance regulation. None of these experts have been tested at trial; and, to date, none of the courts presiding over these cases have excluded the testimony of any State Farm experts. *See* Doc. 3-4 (Siegel Decl.), ¶ 32. If these opinions were

¹⁶ Recently, the Eleventh Circuit confirmed its interpretation of the phrase “based on” as stated in *Slam Dunk* and disagreed with the Eighth Circuit’s interpretation from *Vogt*. *See Advance Trust & Life Escrow Servs., LTA v. Protective Life Ins. Co.*, --- F.4th ----, 2024 WL 878017 (11th Cir. Mar. 1, 2024).

ultimately credited by the jury, the result could have been either a substantial reduction in the damages calculated by Plaintiffs' expert or a finding of no damages. *Id.* Thus, even if Plaintiffs had prevailed on liability, they faced significant risk at trial of a zero-dollar or damages award by a jury of a significantly reduced amount. *Id.*

For these reasons, even if Plaintiffs were to prevail on their interpretation of the policy language, thereby establishing State Farm's liability for breach, there is significant uncertainty as to the damages that would be recovered at trial, particularly where State Farm has challenged Plaintiffs' claims as barred or substantially limited by the statute of limitations, requiring Plaintiffs to prevail on establishing that the statute of limitations was tolled to recover. Indeed, the only court to rule on State Farm's statute of limitations defense on its Form 86040 policies, found in favor of State Farm and dismissed the lawsuit. *See McClanahan v. State Farm Life Ins. Co.*, 660 F. Supp. 3d 728, 744 (W.D. Tenn. Mar. 9, 2023), *reconsideration denied*, No. 1:22-cv-1031-STA-JAY, 2023 WL 3587556 (W.D. Tenn. May 22, 2023). Proving the Plaintiffs' claims through trial would thus be a lengthy, costly, and uncertain process. *Keil v. Lopez*, 862 F.3d 685, 698 (8th Cir. 2017) ("Class actions, in general, place an enormous burden of costs and expense upon parties. Here, the application of numerous states' laws made this a particularly complex case.") (quotations omitted); *In re Zurn Pex Plumbing Products Liab. Litig.*, No. 08-MDL-1958 ADM/AJB, 2013 WL 716088, at *7 (D. Minn. Feb. 27, 2013) (recognizing that "[t]he complexity and expense of class action litigation is well-recognized" and that "various procedural and substantive defenses . . . , the expense of proving class members' claims, the certainty that resolution under [a] settlement will foreclose any subsequent appeals, and the fear that, unsettled, the ultimate resolution of the action . . . could well extend into the distant future, all weigh in favor of the settlement's approval.")

(citation omitted). In contrast, the Settlement, which provides a material portion of the reasonably recoverable damages, is an excellent result.

Finally, State Farm—which has retained several lawyers from large, well-respected, and well-resourced law firms—has demonstrated it will challenge Plaintiffs’ claims vigorously. Thus, even if ultimately successful at trial, policyholders would have to wait years while State Farm undoubtedly exhausted every appellate right. For example, in *Vogt*, the policyholders prevailed at trial, but State Farm appealed to the Eighth Circuit, sought rehearing by the Eighth Circuit panel and *en banc* review, moved to recall that Court’s mandate, petitioned for *certiorari* to the United States Supreme Court, and fully litigated a second, collateral appeal on prejudgment interest, before ultimately paying the judgment. As it litigated its various challenges to the maximum extent possible, the class members in *Vogt*, who prevailed at trial in June 2018, were not paid until 2022. *See* Doc. 3-4 (Siegel Decl.), ¶ 33. Thus, even if Plaintiffs were to prevail on all issues in their respective cases, they would likely not obtain their due recovery for years. This delay further supports a finding that the Settlement, which provides certain recovery in the near-term and more than they could have recovered if State Farm prevailed on any one of its challenges or defenses, is a fair, reasonable, and adequate result, and should therefore be approved. *See, e.g., Kelly*, 277 F.R.D. at 570 (finding the “significant risks” the settlement class members faced in adjudicating their claims; the uncertain “possibility of a large monetary recovery through future litigation” which “would occur only after considerable additional delay;” the “long and costly” litigation ahead where the defendant “has capable counsel at its disposal and intended to challenge nearly every aspect of Settlement Class Members’ case;” and because even if the settlement class members were “to receive a favorable trial verdict, they still would have faced costly and lengthy appeals, delaying the receipt of benefits,” all supported approving the settlement); *Keil*, 862 F.3d

at 696 (“As courts routinely recognize, a settlement is a product of compromise and the fact that a settlement provides only a portion of the potential recovery does not make such settlement unfair, unreasonable or inadequate.”) (quotations omitted); *Marshall v. Nat’l Football League*, 787 F.3d 502, 515 (8th Cir. 2015) (“We have repeatedly rejected arguments that compromise was unnecessary because the party would have prevailed at trial.”) (quotations omitted). Therefore, “[w]eighing the uncertainty of relief against the immediate benefit provided in the settlement” supports approval here, *see In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 933 (8th Cir. 2005), and “[t]he single most important factor” in evaluating the Settlement—“the merits of the plaintiffs’ case weighed against the terms of the settlement,” *Van Horn*, 840 F.2d at 607, as well as the “the complexity and expense of further litigation,” *id.*, and “the duration, costs, risks, and delay of trial and appeal,” Fed. R. Civ. P. 23(e)(2)(C)(i), support final approval of the Settlement.

b. The effectiveness of the proposed method of distributing relief to the Settlement Class supports approval of the Settlement.¹⁷

Under the Agreement, the Net Settlement Fund will be distributed pursuant to a proposed Distribution Plan with settlement checks being delivered directly to each Settlement Class Member without the submission of a claim. Agreement, ¶ 2.3. This simple process for distributing settlement relief supports final approval of the Settlement. *See, e.g., In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d 1330, 1351 (S.D. Fla. 2011) (“The absence of a claims-made process further supports the conclusion that the Settlement is reasonable.”); 4 Newberg and Rubenstein on Class Actions § 13:53 (6th ed.) (stating a class settlement distribution method should be “in as simple and expedient a manner as possible”); *Rogowski v. State Farm Life Ins. Co.*, No. 4:22-CV-00203-

¹⁷ Fed. R. Civ. P. 23(e)(2)(C)(ii).

RK, 2023 WL 5125113, at *3 (W.D. Mo. Apr. 18, 2023) (approving settlement where distribution of settlement “proceeds will occur automatically and without the need for a claims process”).

c. The terms for the award of attorneys’ fees, including the timing of payment, support approval of the Settlement.¹⁸

Class Counsel have sought their fee in the amount of one-third of the Settlement Fund created for the Settlement Class, providing a thorough analysis of the reasonableness of their request in their fee motion. Agreement, ¶ 8.1; Doc. 29. Because the fee request is reasonable, and in any event the Settlement is not conditioned upon the Court’s approval of the fee award, Agreement, ¶ 8.5, the Court should approve the Settlement.¹⁹

d. There is no agreement required to be identified under Rule 23(e)(3).²⁰

Under Rule 23(e)(3), “[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal.” There is no agreement between the Parties here, except those set forth or explicitly referenced in the Settlement Agreement. Accordingly, this factor is not relevant to whether the Settlement should be finally approved.

4. The Settlement Treats Class Members Equitably Relative to Each Other, Supporting Approval of the Settlement.²¹

The Settlement’s proposed distribution formula determines each Settlement Class Member’s recovery under the Settlement according to the actual Monthly Deductions each paid

¹⁸ Fed. R. Civ. P. 23(e)(2)(C)(iii).

¹⁹ Similarly, Class Counsel have requested a Service Award of \$25,000 for each Plaintiff and explained why this amount is reasonable. Agreement, ¶ 8.3; Doc. 29 at 42-43. Like the attorneys’ fees, the Parties’ Agreement is not conditioned on the Court’s approval of this request. Agreement, ¶ 8.5.

²⁰ Fed. R. Civ. P. 23(e)(2)(C)(iv).

²¹ See Fed. R. Civ. P. 23(e)(2)(D).

under their Policy for COI and Expense Charges. There is an upward adjustment proposed for current policy owners to reflect that they are still paying allegedly inflated COI Charges. The Court has concluded that “the Settlement treats the Settlement Class Members equitably relative to each other by awarding them a proportion of the Cost of Insurance and Monthly Expense Charge charges they each actually paid, in addition to providing equitable adjustments for Settlement Class Members whose policies remain in effect.” Doc. 21 at 3. Thus, this factor supports final approval of the Settlement. *See Rogowski*, 2023 WL 5125113, at *3 (approving settlement with nearly identical distribution plan).

5. State Farm’s Financial Condition.²²

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

²² *Van Horn*, 840 F.2d at 607 (factor 2).

6. The Amount of Support for the Settlement Supports Approval.²³

As explained above, Plaintiffs and Class Counsel believe the Settlement is an excellent result for the Settlement Class, especially given the risks and delay of continued litigation, as detailed above. *See* Doc. 3-4 (Siegel Decl.), ¶¶ 32-33; *see also Claxton v. Kum & Go, L.C.*, No. 6:14-CV-03385-MDH, 2015 WL 3648776, at *6 (W.D. Mo. June 11, 2015) (recognizing that when evaluating a settlement, the court should accord “deference to the attorneys in assessing their clients’ claims/defenses”); *DeBoer*, 64 F.3d at 1178 (stating class counsel’s “experience in this type of litigation” supports providing deference to their views as to the fairness of the settlement). Here, Class Counsel’s experience litigating the cases and similar ones has provided them a thorough understanding of the risks and potential ranges of recovery in this case, which has allowed Class Counsel to fairly consider the merits of the claims here and the value of the Settlement to the Settlement Class. Plaintiffs also support and approve the Settlement, believing it to be in the best interests of the Settlement Class. Doc. 3-4 (Siegel Decl.), ¶¶ 34-35.

Further, the very small number of opt-outs and the complete absence of substantive objections to the Settlement reflects the fact that Settlement Class Members—like Class Counsel and Plaintiffs—overwhelmingly support the Settlement.²⁴ This favorable reception by the Settlement Class constitutes strong evidence of the fairness of the Settlement and supports its final approval. *Keil*, 862 F.3d at 698 (affirming approval of Settlement where the objections were “small in number, which speaks well of class reaction to the Settlement”); *DeBoer*, 64 F.3d at 1178 (holding that “[t]he fact that only a handful of class members objected to the settlement similarly

²³ *Van Horn*, 840 F.2d at 607 (factor 4).

²⁴ Class Counsel have also received anecdotal “thank yous” from members of the Settlement Class for taking on State Farm and achieving this Settlement.

weighs in its favor” where five class members objected out of a class of 300,000); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1152 (8th Cir. 1999) (approving settlement where objectors represented fewer than 4% of class); *Carlson v. C.H. Robinson Worldwide, Inc.*, No. CIV 02-3780 JNE/JJG, 2006 WL 2671105, at *4 (D. Minn. Sept. 18, 2006) (concluding “[t]he lack of objections” and “the relatively small number of opt-outs . . . show strong support for the settlement from class members”); *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1313-14 & n.15 (3d Cir. 1993) (recognizing class silence can be considered consent to settlement); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 462 (2d Cir. 1974) (noting silence of majority of class may be attributed to agreement to proposed settlement); *see also Rogowski*, 2023 WL 5125113, at *3 (approving settlement and observing there were no objections to the settlement and only a very small percentage of class members opted out from the settlement).

Here, the fact that no Settlement Class Members raised any concerns about the Settlement in such a large Settlement Class strongly bolsters the conclusion that the Settlement is fair, reasonable, and adequate.

* * *

Accordingly, the Rule 23(e) and Eighth Circuit *Van Horn* factors support finding that the Settlement is fair, reasonable, and adequate, and therefore, it should be finally approved.

IV. CERTIFICATION OF A SETTLEMENT CLASS REMAINS APPROPRIATE.

In its Preliminary Approval Order, the Court concluded the Settlement Class satisfied the requirements for certification under Rule 23(a) and (b)(3) for purposes of settlement. Doc. 21 at 3-4. Nothing has changed since the Court’s ruling to call the Court’s conclusions regarding certification of a settlement class into question. Accordingly, for the reasons set forth in their

preliminary approval motion, Plaintiffs ask that the Court certify the Settlement Class for purposes of entry of judgment on the Settlement.

V. THE COURT SHOULD GRANT PLAINTIFFS' MOTION FOR ATTORNEY'S FEES, COSTS, EXPENSES, AND SERVICE AWARDS.

On January 19, 2024, Plaintiffs filed their Motion and Suggestions in Support for Attorney's Fees, Costs, Expenses, and Service Awards ("Fee Motion") seeking one-third of the Settlement Fund, reimbursement of \$824,678.54 in litigation costs and expenses, and service awards for the Class Representatives. *See* Doc. 29. The Fee Motion was posted to the Settlement Website. Ex. 1 (Azari Decl.), ¶ 17. As set forth in that motion and the supporting declarations of Class Counsel, a fee of one-third of the Settlement Fund is well supported by established law in this Circuit, and application of the *Johnson* factors. Doc. 29. Only one objection, by a State Farm agent, was lodged as to the requested attorney's fees (*see* Doc. 23 ("Agent Objection")); none were filed as to Class Counsel's request for reimbursement of litigation expenses.

"The absence of substantial objections by Settlement Class members to the fees requested by Class Counsel strongly supports approval." *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 121 (D.N.J. 2012).²⁵ Here, only one Settlement Class Member objected out of 445,000, which is "minuscule when compared with other settlements[.]" *Keil*, 862 F.3d at 698 (characterizing 14

²⁵ *See also Trombley v. Nat'l City Bank*, 826 F. Supp. 2d 179, 206 (D.D.C. 2011) ("Tellingly, only one objection was received, which counsels in favor of granting class counsel's requested fee award."); *Soderstrom v. MSP Crossroads Apartments LLC*, No. CV 16-233 ADM/KMM, 2018 WL 692912, at *9 (D. Minn. Feb. 2, 2018) (finding requested fee reasonable, in part, based on the fact that "out of a Class of hundreds of Class Members, only one objection was filed"); *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1064 (D. Minn. 2010) (concluding that the class "strongly supports" the fee request of 33% of the fund "based on the fact that only one untimely objection was made"); *accord In re Life Time Fitness, Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, 847 F.3d 619, 623 (8th Cir. 2017) (affirming district court's fee award where district court, in part, relied on the fact that "there was only one objection" to the fee request).

objections out of 3.5 million class members as “miniscule,” which is a *larger* percentage of the class than one out of 445,000). Moreover, on the substance, the Agent Objection does not undermine the reasonableness of the fee requested. If anything, it supports the request.

Although not disclosed in his objection, the Agent Objection was submitted by a State Farm agent.²⁶ Despite his involvement and history with State Farm, he is a Settlement Class Member because he purchased a Policy. This background is relevant given that his Agent Objection exhibits clear animosity toward plaintiffs’ attorneys generally. He opposes the requested attorney’s fees because he believes “each consumer gets \$10 of ‘relief’ and the law firms get . . . millions of dollars.”²⁷ *Id.* His generalized complaints about attorneys are not, however, a legal basis for reducing the fee award.

First, the Objector’s stated justification for awarding a smaller fee is at odds with the governing legal standard. He appears to posit that a smaller fee will *discourage* lawyers from representing similar clients on a contingent basis. But the Court should award a fee that will create an “incentive [for lawyers] to consider pursuing a case such as this.” *Tussey v. ABB, Inc.*, No. 06-04305-CV-C-NKL, 2019 WL 3859763, at *3 (W.D. Mo. Aug. 16, 2019).²⁸ Doing so ensures that

²⁶ See <https://www.statefarm.com/agent/us/fl/ocala/scott-cameron-jd74w1ys000> (biography for State Farm agent) (last visited Mar. 7, 2024); see also Doc. 23-1 (envelope from the Objector embossed with State Farm’s logo).

²⁷ To the extent the Agent Objection’s reference to “each consumer gets \$10 of ‘relief’” refers to the \$10 minimum payment under the Settlements Distribution Plan, it inaccurately describes the Distribution Plan. Under the Distribution Plan each Settlement Class Member is provided a *minimum* payment of \$10 plus a *pro rata* portion of the Net Settlement Fund according to the amount of Monthly Deductions (comprised of the COI and Expense Charges) paid by the Settlement Class Member, with equitable adjustments for Settlement Class Members who still have active Policies. See Docs. 3-10 & 3-12 (Witt Decl. & Ex. B thereto).

²⁸ See also *Allapattah Sers., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1217 (S.D. Fla.) (“Class Counsel has risked millions of dollars in un-reimbursed attorneys’ time and additional millions in out-of-pocket costs. Unless that risk is compensated with a commensurate reward, few

future consumers harmed by corporate malfeasance receive adequate representation against well-funded defendants so their claims can be decided on the merits. The Objector’s philosophical disagreement with class actions (but acceptance of monetary benefit from this one) should not preclude *other* consumers (like the rest of the Settlement Class here) from the opportunity to have their claims heard in court.

None of the *Johnson* factors suggest the Court should attempt to ascertain the subjective merit of the underlying lawsuit or propriety of class actions generally in awarding the fee. *Cf. True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1079 (C.D. Cal. 2010) (“The Court does not give any weight to arguments about the propriety of class action litigation. . .”). The requested fee is justified by the fact that Class Counsel obtained an exceptional result for the benefit of the Class, through significant legal risk and personal financial risk on a contingent basis, regardless of any Settlement Class Member’s subjective belief about State Farm’s liability or the propriety of class actions.

In addition, the Objector implores the Court to require Class Counsel to “provide evidence under affidavit” of “their billable hours.” Doc. 23. Although there is no requirement to submit the number of hours expended in this Circuit, Class Counsel have done so.²⁹ *See* Doc. 29-1 ¶¶ 29-30. Nonetheless, the Eighth Circuit has acknowledged, “overly emphasiz[ing] the amount of hours

firms, no matter how large or well financed, will have any incentive to represent the small stake holders in class actions against corporate America, no matter how worthy the cause or wrongful the defendant’s conduct.”).

²⁹ The Objector suggests the Court award Class Counsel “a fee no higher than the fees charged to [State Farm] . . . on an hourly basis.” Doc. 23. State Farm has engaged at least three national law firms and litigated the actions for more than four years—its counsel’s hours may very well exceed that of Class Counsel’s, which would only underscore the reasonableness of Class Counsel’s request here.

spent on a contingency fee case” would “distort the value of the attorneys’ services.” *Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019).³⁰ Rather, the amount recovered—the Settlement Fund—is the more accurate measure of the attorney’s services than the number of hours worked in a contingency class action. *In re Syngenta AG MIR 162 Corn Litig.*, 61 F.4th 1126, 1192 (10th Cir. 2023) (“In a common fund case, the fund, itself, is the measure of an attorney’s success.”).

Indeed, the Objector appears to implicitly suggest that Class Counsel be limited to an award of their “billable hours” as opposed to a percentage of the fund. But as numerous courts have recognized, the lodestar method is inherently flawed insofar as it fails to align the interests of the attorneys and class members by incentivizing counsel to maximize the class’s recovery. *See Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 245 (8th Cir. 1996). Undue focus on hours or hourly rates “creates an unanticipated disincentive to early settlements, tempts lawyers to run up their hours, and compels district courts to engage in a gimlet-eyed review of line-item fee audits.” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (cleaned up).

³⁰ While a lodestar crosscheck is “not required” in the Eighth Circuit, *Keil*, 862 F.3d at 701, Class Counsel submitted a lodestar crosscheck analysis, showing hours spent in these actions through mid-January 2024 with significant additional time anticipated on settlement administration tasks if the Settlement is finally approved, resulting in a lodestar multiplier of 2.73. Doc. 29-1, ¶¶ 29-30. As explained in Plaintiffs’ Fee Motion, a multiplier in this range, and even one larger, is eminently reasonable given the circumstances of this unique case and risks faced by Class Counsel. As set forth in the Supplemental Joint Declaration, attached hereto as Exhibit 2, Class Counsel have continued to spend time on this litigation, spending an additional 320 hours on various litigation and settlement tasks, including responding to class member inquiries about the Settlement, providing updates to the courts previously overseeing the related actions on the status of the settlement approval process here, and preparing the additional motions briefing and supporting material submitted to the Court. *See* Ex. 2, ¶ 3. These additional hours at the previously identified hourly rates reduces the multiplier to 2.64, further establishing that Class Counsel’s fee request is reasonable under a lodestar crosscheck analysis. *See id.* ¶ 4.

Finally, the Objector attaches, as “support” for his Objection an article from The American Tort Reform Association, an advocacy group that incorrectly (and inflammatorily) argues that class actions are “a means of defendant extortion” because class actions force defendants to settle “early on” to “avoid costly litigation” while rewarding “the plaintiffs’ counsel with millions in fees.”³¹ Not surprisingly, the article selectively highlights results of a few cases in an effort to argue class actions only benefit the lawyers, including a case where the “attorneys received almost four times as much as the class members” and citing an example of a claims-made settlement where “class counsel received \$7,065,940 in attorneys’ fees and litigation costs while only \$1,768,625 was allocated to the settlement class.” *See* Doc. 23 at 3. Whatever the circumstances of the settlements in these other cases depicted in the article, which were subject to the approval of other courts, the situation complained of in the article is not present here. Unlike those cases, Class Counsel is not requesting “four times as much” as the benefit provided to class members. On the contrary, in this common fund case, Class Counsel seeks an amount well within the traditional percentages approved in the Eighth Circuit and this District. Thus, if anything, the Objection supports, rather than detracts from, the requested fee in terms of the relevant legal factors. *See Rogowski*, 2023 WL 5125113, at *5 (overruling similar objection and awarding one-third of the settlement fund).

For these reasons, the Court should overrule the objection and grant Class Counsel’s Fee Motion with respect to an award of Attorney’s Fees.

The Fee Motion also requests reimbursement of Class Counsel’s litigation costs and expenses in the amount of \$824,678.54. Doc. 29. No objections were received related to Class

³¹ *See* <https://www.atra.org/issue/class-action-reform/> (last visited Mar. 7, 2024).

Counsel’s cost and expense reimbursement request, even though Class Counsel could have sought up to \$1.1 million under the Settlement. And because the costs and expenses incurred are reasonable, Class Counsel’s request for reimbursement of expenses should be approved. *See Rogowski*, 2023 WL 5125113, at *5 (noting no objections were received to the request for expense reimbursement and finding the costs and expenses reasonably incurred).

Finally, only one Settlement Class Member has submitted an objection to the requested Service Awards, indicating the Settlement Class’s overwhelming support for awarding \$25,000 to each Plaintiff for their important contributions to this case for the Settlement Class’s benefit. *See Doc. 29* at 42-43. As for the lone objection, it fails to meet the requirements to be considered a valid objection. Under Rule 23 and the requirements this Court approved in the Class Notice, an “objection *must* include the following information:

...

- A statement whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; and
- The signature of you or your counsel.

See 27-1 at 6-7 (emphasis added); *see also* Fed. R. Civ. P. 23(e)(5)(A) (“The objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class”). But the objection is not signed and does not state whether it applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class. *See Doc. 30-1*. Thus, the objection is invalid.

Nevertheless, the objection fails on the merits as well. First, the objection on its face misapprehends that Settlement Class Members’ distributions will be reduced by up to \$25,000 with the difference going to “Class Council.” *See id.* (referring to all Settlement Class Members

as “we the plaintiffs” and stating that “[r]equesting up to \$25,000 per plaintiff for a service award . . . will result in each plaintiff being shorted whatever is awarded up to \$25,000 from their award”). But the Settlement and Class Notice are clear that any service awards will go to the Plaintiffs, not to Class Counsel. Moreover, Settlement Class Members’ distributions will not be reduced by “up to \$25,000” each. Instead, Settlement Class Members’ distributions will be reduced the pro rata share of the service awards, or, in this case, approximately 28 cents per Settlement Class Member.

Second, even if the objection is construed as a complaint regarding the service award to each Plaintiff, the objection should still be overruled. In the Eighth Circuit, service awards are permitted to class representatives based upon their efforts to “protect the interests of the class; the degree to which the class has benefitted from those actions; and the amount of time and effort plaintiffs expended in pursuing the litigation.” *Tussey v. ABB, Inc.*, No. 06-04305-CV-C-NKL, 2012 WL 5386033, at *10 (W.D. Mo. Nov. 2, 2012), *vacated and remanded on other grounds*, 746 F.3d 327 (8th Cir. 2014) (citing *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002)). Here, the Class Representatives performed important work on the case, including helping to develop and review the factual allegations in each complaint and providing key guidance with respect to the Settlement, and for Buchanan and Millwood, their support also included sitting for depositions and answering discovery. *See* Doc. 29-1, ¶ 36. That work materially advanced the litigation and protected the Settlement Class’s interests. *Id.* Indeed, their time and effort made this Settlement possible. For the work performed, the requested Service Awards are justified and consistent with other awards approved in the Eighth Circuit and should therefore be approved. *See, e.g., Rogowski*, 2023 WL 5125113, at *6 (awarding the class representatives \$25,000 each).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court finally approve the Settlement, grant Plaintiffs' Motion for Attorney's Fees, Costs, Expenses and Service Awards, and enter judgment thereon.

Date: March 7, 2024

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Attorneys for Plaintiffs and the Settlement Class

CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2024, I filed the foregoing document via the Court's ECF system, which will cause a true and correct copy of the same to be served electronically on all ECF-registered counsel of record.

/s/ Norman E. Siegel
Attorney for Plaintiffs and the Settlement Class

EXHIBIT 1:

ADMINISTRATOR

DECLARATION

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

LORIN NIEWINSKI, JOHN BAKER)
MCCLANAHAN as personal representative of)
THE ESTATE OF MELISSA BUCHANAN,)
ROBERT A. BOZAICH, RONNIE JACKSON,)
and SHERIF B. BOTROS, Individually and)
On Behalf Of All Others Similarly Situated.,)

Case No. 2:23-cv-04159-BP

Plaintiffs,)

vs.)

STATE FARM LIFE INSURANCE COMPANY)
AND STATE FARM LIFE AND ACCIDENT)
ASSURANCE COMPANY,)

Defendants.)

**DECLARATION OF CAMERON R. AZARI, ESQ. ON IMPLEMENTATION AND
ADEQUACY OF NOTICE PLAN**

I, Cameron R. Azari, declare as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.
2. I am a nationally recognized expert in the field of legal notice, and I have served as an expert in hundreds of federal and state cases involving class action notice plans.
3. I am a Senior Vice-President of Epiq Class Action and Claims Solutions, Inc. (“Epiq”) and the Director of Legal Notice for Hilsoft Notifications, a firm that specializes in designing, developing, analyzing, and implementing large-scale, un-biased, legal notification plans. Hilsoft Notifications is a business unit of Epiq.
4. The facts in this declaration are based on my personal knowledge, as well as information provided to me by my colleagues in the ordinary course of my business at Epiq.

DECLARATION OF CAMERON R. AZARI, ESQ. ON IMPLEMENTATION AND
ADEQUACY OF NOTICE PLAN

OVERVIEW

5. This declaration describes the implementation of the Notice Plan (“Notice Plan”) for *Niewinski v. State Farm Life Insurance Company*, No. 2:23-cv-04159-BP, in the United States District Court for the Western District of Missouri. I previously executed my *Declaration of Cameron R. Azari, Esq. on Notice Plan*, on August 16, 2023, which described the Notice Plan, detailed Hilsoft’s class action notice experience, and attached Hilsoft’s *curriculum vitae*. I also provided my educational and professional experience relating to class actions and my ability to render opinions on overall adequacy of notice programs.

CAFA NOTICE

6. On September 1, 2023, Epiq sent 112 CAFA Notice Packages (“CAFA Notice”) on behalf of Defendants State Farm Life Insurance Company and State Farm Life and Accident Assurance Company, as required by the federal Class Action Fairness Act of 2005 (CAFA), 28 U.S.C. § 1715. The CAFA Notice was sent via United States Postal Service (“USPS”) Certified Mail to 111 officials (the Attorneys General of 49 states, the District of Columbia, and the United States Territories, and the Insurance Commissioners of each of the 50 states, the District of Columbia, and the United States Territories). As per the direction of the Office of the Nevada Attorney General, the CAFA Notice was sent to the Nevada Attorney General electronically via email. The CAFA Notice was also sent via United Parcel Service (“UPS”) to the Attorney General of the United States. Details regarding the CAFA Notice mailing are provided in the *Declaration of Kyle S. Bingham on Implementation of CAFA Notice*, dated September 1, 2023, which is included as **Attachment 1**.

NOTICE PLAN

7. On October 18, 2023, the Court approved the Notice Plan and appointed Epiq as the Settlement Administrator in the *Order Granting Unopposed Motion for Preliminary Approval of Class Action Settlement* (“Preliminary Approval Order”). In the Preliminary Approval Order, the Court approved the following “Settlement Class”:

All persons or entities who own or owned one of approximately 450,000 Form 86040/A86040 universal life insurance policies or Form 86075/A86075 universal life insurance policies in the United States that were issued and administered by State Farm or their predecessors in interest, including all applications, schedules, riders, and other forms specifically made a part of the policies at the time of their issue, plus all riders and amendments issued later, or otherwise part of “The Contract,” as defined in the Policy or Policies.

Excluded from the Class are State Farm; any entity in which State Farm has a controlling interest; any of the officers, or members of the board of directors of State Farm; the legal representatives, heirs, successors, and assigns of State Farm; and anyone employed with Plaintiffs’ counsel’s law firms. Also excluded is any Judge to whom this action or a Related Action is assigned, and his or her immediate family.

8. After the Court’s Preliminary Approval Order was entered, Epiq began to implement the Notice Plan. This declaration details the notice activities undertaken to date and explains how and why the Notice Plan was comprehensive and well-suited to reach the Settlement Class Members. This declaration also discusses the administration activity to date.

9. The Notice Plan was designed to reach the greatest practicable number of identified Settlement Class Members sent individual notice. The Notice Plan, described in detail below, reached approximately 98% of the identified Settlement Class Members. The reach was further enhanced by a Settlement Website. In my experience, the reach of the Notice Plan was consistent with other court-approved notice programs, was the best notice practicable under the circumstances, and satisfied the requirements of due process, including its “desire to actually inform” requirement.¹

10. Rule 23 of the Federal Rules of Civil Procedure directs that the best notice practicable under the circumstances must include “individual notice to all members who can be identified

¹ *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950) (“But when notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . .”).

through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means.”² The Notice Plan satisfied this requirement. The Notice Plan provided for individual notice via USPS first class mail to all Settlement Class Members who were reasonably identifiable.

Individual Notice

11. On August 25, 2023, Epiq received three data files with 445,830 unique, identified Settlement Class Member records, which included policy numbers, names and current or last known addresses. Epiq loaded the unique, identified Settlement Class Member records into its database. These efforts resulted in 445,828 unique, identified Settlement Class Member records, which were sent a Class Notice via United States Postal Service (“USPS”) first-class mail (two Settlement Class Member records did not contain a valid mailing address).

Individual Notice - Mail

12. From December 1, 2023, through December 4, 2023, Epiq sent 445,828 Class Notices to all Settlement Class Members identified through Defendants’ records with an available valid mailing address. The Class Notices clearly and concisely summarized the case, the Settlement, and the legal rights of the Settlement Class Members and directed Settlement Class Members to the Settlement Website for additional information. Prior to mailing, all mailing addresses were checked against the National Change of Address (“NCOA”) database maintained by the USPS.³ In addition, the addresses were certified via the Coding Accuracy Support System (“CASS”) to ensure the quality of the zip code, and verified through Delivery Point Validation (“DPV”) to verify the accuracy of the addresses. This address updating process is standard for the industry and for the majority of promotional mailings that occur today.

² FRCP 23(c)(2)(B).

³ The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person’s name and known address.

13. Class Notices returned as undeliverable were re-mailed to any new address available through USPS information. For example, to the address provided by the USPS on returned pieces if the forwarding order had expired but is still within the time period in which the USPS returns the piece with a forwarding address indicated, or to better addresses that were found using a third-party lookup service. In addition, the USPS automatically forwarded Class Notices with an available forwarding address order that has not expired (“Postal Forwards”). The return address on the Class Notices is a post office box that Epiq maintains for this case. As of March 4, 2024, Epiq has remailed 28,516 Class Notices. As of March 4, 2024, 8,661 Class Notices for unique Settlement Class Members remain undeliverable. The Class Notice is included as **Attachment 2**.

14. Additionally, a Class Notice was mailed to all Settlement Class Members who requested one via the toll-free telephone number or other means. As of March 4, 2024, Epiq mailed three Class Notices as a result of such requests.

Supplemental Postcard Notice

15. On January 16, 2024, Epiq sent 445,805 supplemental Postcard Notices to all unique, identified Settlement Class Members with an available valid mailing address who had not requested exclusion from the case. The Postcard Notice contained updated information about Class Counsel’s expenses and fees and directed Settlement Class Members to the Settlement Website for additional information. The supplemental Postcard Notice is included as **Attachment 3**.

Notice Results

16. As of March 4, 2024, a Class Notice was delivered to 437,167 of the 445,828 unique, identified Settlement Class Members who were sent notice. This means the individual notice efforts reached approximately 98% of the identified Settlement Class Members who were sent notice.

Settlement Website, Toll-free Telephone Number, Email, and Postal Mailing Address

17. On December 1, 2023, Epiq established a Settlement Website with an easy-to-remember domain name (www.NationalSF86Settlement.com). At the Settlement Website, Settlement Class Members are able to obtain detailed information about the case and review key documents, including the operative Complaint, Class Notice, Settlement Agreement, Preliminary Approval Order, Plaintiffs' Motion and Suggestions in Support for Attorney's Fees, Costs, Expenses, and Service Awards, and other important documents. In addition, the Settlement Website includes relevant dates, answers to frequently asked questions ("FAQs"), instructions for how Settlement Class Members could opt-out (request exclusion) from or object to the Settlement, contact information for the Settlement Administrator, and other case-related information. The Settlement Website address was displayed prominently on all Notice documents. As of March 4, 2024, there have been 13,764 unique visitor sessions to the Settlement Website, and 23,124 web pages have been presented.

18. On December 1, 2023, Epiq established a toll-free telephone number (1-888-431-3884) to allow Settlement Class Members to call for additional information, listen to answers to FAQs, and request that a Notice be mailed to them. This automated phone system is available 24 hours per day, 7 days per week. Live service agents are also available during normal business hours. The toll-free telephone number was prominently displayed in all Notice documents. As of March 4, 2024, there have been 4,742 calls to the toll-free telephone number representing 33,340 minutes of use, and live service agents have handled 3,185 incoming calls representing 30,999 minutes of use, and 174 outgoing calls representing 693 minutes of use.

19. Epiq created an email address, so Settlement Class Members can correspond by email. A post office box for correspondence about the Settlement was also established and continues to be available, allowing Settlement Class Members to contact the Settlement Administrator by mail with any specific requests or questions, including requests for exclusion.

Requests for Exclusion and Objections

20. The deadline to request exclusion (opt-out) from the Settlement or to object to the

Settlement was February 9, 2024. As of March 4, 2024, Epiq received 62 valid requests for exclusion from Settlement Class Members, and three requests for exclusion, which were deemed invalid after consultation with counsel for the parties. Initially, some of the requests for exclusion did not include all the required information set forth in the Settlement Agreement. At counsel's direction, Epiq conducted outreach to Settlement Class Members via phone, email or postal mail to obtain the missing required information. The Request for Exclusion Report is included as **Attachment 4**. As of March 4, 2024, Epiq received only one potential objection limited to the request for service awards for the class representatives, and expressly stating no objection to the request of one-third of the settlement fund for fees and no more than \$1,100,000 of the settlement fund for reimbursement of costs and expenses.

PLAIN LANGUAGE NOTICE DESIGN

21. The Class Notice contained all of the information necessary to allow Settlement Class Members to make informed decisions and included all of the information required by Rule 23(c)(2)(B), describing the central elements of Plaintiffs' claims in plain, easily understood language. The Class Notice stated the Settlement Class definition, a brief overview of the case, the options for any Settlement Class Member to opt-out or object and the procedure to do so, a statement that a judgment would be binding on Settlement Class Members who do not opt-out, and the right of any Settlement Class Member who did not opt-out to appear in the case through their own lawyer. Also, should additional information be needed, the Class Notice clearly designated and provided contact information for the Settlement Administrator and Class Counsel.

CONCLUSION

22. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, by federal rules and statutes, and by case law pertaining to the recognized notice standards under Rule 23. This framework directs that the notice plan be optimized to reach the class and that the notice or notice plan itself not limit knowledge of the availability of options—nor the ability to exercise those options—to class

members in any way. All of these requirements were met in this case.

23. The Notice Plan included individual, direct mail notice to all Settlement Class Members who could be identified with reasonable effort. Because of the availability of Settlement Class Member data for virtually the entire Class, individual notice reached approximately 98% of the identified Settlement Class. The reach was further enhanced by a Settlement Website. In 2010, the Federal Judicial Center (“FJC”) issued a Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide. This Guide states that, “the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%.”⁴ Here, we have developed a Notice Plan that readily achieved a reach at the higher end of that standard.

24. The Notice Plan provided for the best notice practicable under the circumstances of this case, conformed to all aspects of Rule 23 and Constitutional Due Process, and comported with the guidance for effective notice set out in the Manual for Complex Litigation, Fourth.

25. The Notice Plan schedule afforded sufficient time to provide full and proper notice to Settlement Class Members before the opt-out and objection deadlines.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 7, 2024, at Beaverton, Oregon.



Cameron R. Azari

⁴ FED. JUDICIAL CTR, JUDGES’ CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3 (2010), available at <https://www.fjc.gov/content/judges-class-action-notice-and-claims-process-checklist-and-plain-language-guide-0>.

Attachment 1

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

LORIN NIEWINSKI, JOHN BAKER)
MCCLANAHAN as Personal Representative of)
THE ESTATE OF MELISSA BUCHANAN,)
ROBERT A. BOZAICH, RONNIE JACKSON,)
and SHERIF B. BOTROS, Individually and on)
Behalf of All Others Similarly Situated,)

Plaintiffs,)

vs.)

STATE FARM LIFE INSURANCE)
COMPANY and STATE FARM LIFE AND)
ACCIDENT ASSURANCE COMPANY,)

Defendants.)

Case No. 2:23-cv-04159-BP

DECLARATION OF KYLE S. BINGHAM ON IMPLEMENTATION OF CAFA NOTICE

I, KYLE S. BINGHAM, hereby declare and state as follows:

1. My name is KYLE S. BINGHAM. I am over the age of 25 and I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am the Director of Legal Noticing for Epiq Class Action & Claims Solutions, Inc. (“Epiq”), a firm that specializes in designing, developing, analyzing and implementing large-scale, un-biased, legal notification plans. I have overseen and handled Class Action Fairness Act (“CAFA”) notice mailings for more than 400 class action settlements.

3. Epiq is a firm with more than 25 years of experience in claims processing and settlement administration. Epiq’s class action case administration services include coordination of all notice requirements, design of direct-mail notices, establishment of fulfillment services,

DECLARATION OF KYLE S. BINGHAM ON IMPLEMENTATION OF CAFA NOTICE

receipt and processing of opt-outs, coordination with the United States Postal Service (“USPS”), claims database management, claim adjudication, funds management and distribution services.

4. The facts in this Declaration are based on what I personally know, as well as information provided to me in the ordinary course of my business by my colleagues at Epiq.

CAFA NOTICE IMPLEMENTATION

5. At the direction of counsel for Defendants State Farm Life Insurance Company and State Farm Life and Accident Assurance Company, 113 federal and state officials (the Attorney General of the United States and the Attorneys General of each of the 50 states, the District of Columbia, and the United States Territories, and the Insurance Commissioners of each of the 50 states, the District of Columbia, and the United States Territories) were identified to receive CAFA notice.

6. Epiq maintains a list of these federal and state officials with contact information for the purpose of providing CAFA notice. Prior to mailing, the names and addresses selected from Epiq’s list were verified, then run through the Coding Accuracy Support System (“CASS”) maintained by the United States Postal Service (“USPS”).¹

7. On September 1, 2023, Epiq sent 112 CAFA Notice Packages (“Notice”). The Notice was mailed via USPS Certified Mail to 111 officials (the Attorneys General of 49 states, the District of Columbia, the United States Territories and the Insurance Commissioners of each of the 50 states, the District of Columbia, and the United States Territories). As per the direction of the Office of the Nevada Attorney General, the Notice was sent to the Nevada Attorney General electronically via email. The Notice was also sent via United Parcel Service

¹ CASS improves the accuracy of carrier route, 5-digit ZIP®, ZIP + 4® and delivery point codes that appear on mail pieces. The USPS makes this system available to mailing firms who want to improve the accuracy of postal codes, i.e., 5-digit ZIP®, ZIP + 4®, delivery point (DPCs), and carrier route codes that appear on mail pieces.

(“UPS”) to the Attorney General of the United States. The CAFA Notice Service List (USPS Certified Mail, Email, and UPS) is included as **Attachment 1**.

8. The materials sent to the federal and state officials included a Cover Letter, which provided notice of the proposed Settlement of the above-captioned case. The Cover Letter is included as **Attachment 2**.

9. The cover letter was accompanied by a CD, which included the following:

- a. **Per 28 U.S.C. § 1715(b)(1) – Complaint and Any Amended Complaints:** Class Action Complaint with Exhibits filed on August 22, 2023, ECF No. 1.
- b. **Per 28 U.S.C. § 1715(b)(3) – Notification to Class Members:** The proposed Class Notice submitted for the Court’s approval with the Unopposed Motion Pursuant to Rule 23(e) for Preliminary Approval of Class Action Settlement and Memorandum in Support. ECF No. 3-2 at 2-9.
- c. **Per 28 U.S.C. § 1715(b)(4) – Class Action Settlement Agreement:**
 - Settlement Agreement, ECF No. 3-1;
 - Unopposed Motion Pursuant to Rule 23(e) for Preliminary Approval of Class Action Settlement and Memorandum in Support, ECF No. 3;
 - [Proposed] Order Granting Unopposed Motion for Preliminary Approval of Class Action Settlement, ECF No. 3-3;
 - Declaration of Norman E. Siegel in Support of Plaintiffs’ Unopposed Motion Pursuant to Rule 23(E) for Preliminary Approval of Class Action Settlement, ECF No. 3-4;
 - Stueve Siegal Hanson Firm Resume, ECF No 3-5;
 - Miller Schirger Firm Resume, ECF No. 3-6;
 - Hausfeld Firm Resume, ECF No. 3-7;
 - The Van Winkle Law Firm Resume, ECF No. 3-8;
 - Kaliel Gold Firm Resume, ECF No. 3-9;
 - Declaration of Scott J. Witt, ECF No. 3-10;

DECLARATION OF KYLE S. BINGHAM ON IMPLEMENTATION OF CAFA NOTICE

- Witt Actuarial Services Curriculum Vitae, ECF 3-11;
 - Distribution Plan, ECF 3-12; and
 - Declaration of Cameron R. Azari, Esq. on Notice Plan, ECF 3-13.
- d. **Per 28 U.S.C. § 1715(b)(7) – Estimate of Class Members:** Estimated Class Members by State.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 1, 2023.



KYLE S. BINGHAM

Attachment 1

**CAFA Notice Service List
USPS Certified Mail**

Company	FullName	Address1	Address2	City	State	Zip
Office of the Attorney General	Treg Taylor	1031 W 4th Ave	Suite 200	Anchorage	AK	99501
Office of the Attorney General	Steve Marshall	501 Washington Ave		Montgomery	AL	36104
Office of the Attorney General	Tim Griffin	323 Center St	Suite 200	Little Rock	AR	72201
Office of the Attorney General	Kris Mayes	2005 N Central Ave		Phoenix	AZ	85004
Office of the Attorney General	CAFA Coordinator	Consumer Protection Section	455 Golden Gate Ave Suite 11000	San Francisco	CA	94102
Office of the Attorney General	Phil Weiser	Ralph L Carr Colorado Judicial Center	1300 Broadway Fl 10	Denver	CO	80203
Office of the Attorney General	William Tong	165 Capitol Ave		Hartford	CT	06106
Office of the Attorney General	Brian Schwalb	400 6th St NW		Washington	DC	20001
Office of the Attorney General	Kathy Jennings	Carvel State Bldg	820 N French St	Wilmington	DE	19801
Office of the Attorney General	Ashley Moody	State of Florida	The Capitol PL-01	Tallahassee	FL	32399
Office of the Attorney General	Chris Carr	40 Capitol Square SW		Atlanta	GA	30334
Department of the Attorney General	Anne E Lopez	425 Queen St		Honolulu	HI	96813
Iowa Attorney General	Brenna Bird	Hoover State Office Building	1305 E Walnut St	Des Moines	IA	50319
Office of the Attorney General	Raul Labrador	700 W Jefferson St Ste 210	PO Box 83720	Boise	ID	83720
Office of the Attorney General	Kwame Raoul	100 W Randolph St		Chicago	IL	60601
Office of the Indiana Attorney General	Todd Rokita	Indiana Government Center South	302 W Washington St Rm 5	Indianapolis	IN	46204
Office of the Attorney General	Kris Kobach	120 SW 10th Ave 2nd Fl		Topeka	KS	66612
Office of the Attorney General	Daniel Cameron	700 Capitol Ave Suite 118		Frankfort	KY	40601
Office of the Attorney General	Jeff Landry	PO Box 94005		Baton Rouge	LA	70804
Office of the Attorney General	Andrea Campbell	1 Ashburton Pl 20th Fl		Boston	MA	02108
Office of the Attorney General	Anthony G Brown	200 St Paul Pl		Baltimore	MD	21202
Office of the Attorney General	Aaron Frey	6 State House Station		Augusta	ME	04333
Department of Attorney General	Dana Nessel	PO BOX 30212		Lansing	MI	48909
Office of the Attorney General	Keith Ellison	445 Minnesota St Ste 1400		St Paul	MN	55101
Missouri Attorney General's Office	Andrew Bailey	207 West High Street	PO Box 899	Jefferson City	MO	65102
Mississippi Attorney General	Lynn Fitch	PO Box 220		Jackson	MS	39205
Office of the Attorney General	Austin Knudsen	215 N Sanders 3rd Fl	PO Box 201401	Helena	MT	59620
Attorney General's Office	Josh Stein	9001 Mail Service Ctr		Raleigh	NC	27699
Office of the Attorney General	Drew H Wrigley	600 E Boulevard Ave Dept 125		Bismarck	ND	58505
Nebraska Attorney General	Mike Hilgers	2115 State Capitol	PO Box 98920	Lincoln	NE	68509
Office of the Attorney General	John Formella	NH Department of Justice	33 Capitol St	Concord	NH	03301
Office of the Attorney General	Matthew J Platkin	25 Market Street	PO Box 080	Trenton	NJ	08625
Office of the Attorney General	Raul Torrez	408 Galisteo St	Villagra Bldg	Santa Fe	NM	87501
Office of the Attorney General	CAFA Coordinator	28 Liberty Street 15th Floor		New York	NY	10005
Office of the Attorney General	Dave Yost	30 E Broad St Fl 14		Columbus	OH	43215
Office of the Attorney General	Genther Drummond	313 NE 21st St		Oklahoma City	OK	73105
Office of the Attorney General	Ellen F Rosenblum	Oregon Department of Justice	1162 Court St NE	Salem	OR	97301
Office of the Attorney General	Michelle A. Henry	16th Fl Strawberry Square		Harrisburg	PA	17120
Office of the Attorney General	Peter F Neronha	150 S Main St		Providence	RI	02903
Office of the Attorney General	Alan Wilson	PO Box 11549		Columbia	SC	29211
Office of the Attorney General	Marty Jackley	1302 E Hwy 14 Ste 1		Pierre	SD	57501
Office of the Attorney General	Jonathan Skrmetti	PO Box 20207		Nashville	TN	37202
Office of the Attorney General	Ken Paxton	PO Box 12548		Austin	TX	78711
Office of the Attorney General	Sean D Reyes	PO Box 142320		Salt Lake City	UT	84114
Office of the Attorney General	Jason S Miyares	202 N 9th St		Richmond	VA	23219
Office of the Attorney General	Charity R Clark	109 State St		Montpelier	VT	05609
Office of the Attorney General	Bob Ferguson	800 5th Ave Ste 2000		Seattle	WA	98104
Office of the Attorney General	Josh Kaul	PO Box 7857		Madison	WI	53707
Office of the Attorney General	Patrick Morrissey	State Capitol Complex Bldg 1 Room E 26	1900 Kanawha Blvd E	Charleston	WV	25305
Office of the Attorney General	Bridget Hill	109 State Capital		Cheyenne	WY	82002
Department of Legal Affairs	Fainu'ulei Falefatu Ala'ilima-Utu	American Samoa Gov't Exec Ofc Bldg Utulei	Territory of American Samoa	Pago Pago	AS	96799
Attorney General Office of Guam	Douglas Moylan	Administrative Division	590 S Marine Corps Dr Ste 901	Tamuning	GU	96913
Office of the Attorney General	Edward Manibusan	Administration Bldg	PO Box 10007	Saipan	MP	96950
PR Department of Justice	Domingo Emanuelli Hernández	PO Box 9020192		San Juan	PR	00902
Department of Justice	Ariel K Smith	3438 Kronprindsens Gade Ste 2	GERS BLDG	St Thomas	VI	00802

**CAFA Notice Service List
State Insurance Commissioners
USPS Certified Mail**

Company	FullName	Address1	Address2	City	State	Zip
Alabama Department of Insurance	MARK FOWLER	PO Box 303351		Montgomery	AL	36130
Alaska Dept Commerce Comm. & Econ. Dev.	LORI K. WING-HEIER	Division of Insurance	550 West 7th Avenue Suite 1560	Anchorage	AK	99501
Arizona Department of Insurance	BARBARA D. RICHARDSON	100 N 15th Ave	Suite 261	Phoenix	AZ	85007
Arkansas Insurance Department	ALAN MCCLAIN	1 Commerce Way Bldg 4	Suite 502	Little Rock	AR	72202
California Department of Insurance	RICARDO LARA	300 Capitol Mall	17th Floor	Sacramento	CA	95814
Colorado Dept of Regulatory Agencies	MICHAEL CONWAY	Division of Insurance	1560 Broadway Suite 850	Denver	CO	80202
Connecticut Insurance Department	ANDREW N. MAIS	PO Box 816		Hartford	CT	06142
Delaware Department of Insurance	TRINIDAD NAVARRO	1351 West North Street	Suite 101	Dover	DE	19904
Government of the District of Columbia	KARIMA WOODS	Department of Insurance Securities & Banking	1050 First Street NE Suite 801	Washington	DC	20002
Office of Insurance Regulation	MICHAEL YAWORSKY	The Larson Building	200 E. Gaines Street Rm 101A	Tallahassee	FL	32399
Office of Ins. & Safety Fire Commissioner	JOHN F. KING	Two Martin Luther King Jr. Dr. SE	West Tower Suite 704 Floyd Bldg.	Atlanta	GA	30334
Dept of Commerce & Consumer Affairs	GORDON I. ITO	Insurance Division	PO Box 3614	Honolulu	HI	96811
Idaho Department of Insurance	DEAN L. CAMERON	PO Box 83720		Boise	ID	83720
Illinois Department of Insurance	DANA POPISH SEVERINGHAUS	320 W. Washington Street	4th Floor	Springfield	IL	62767
Indiana Department of Insurance	AMY L. BEARD	311 W Washington Street	Suite 103	Indianapolis	IN	46204
Iowa Insurance Division	DOUG OMMEN	1963 Bell Avenue	Suite 100	Des Moines	IA	50315
Kansas Insurance Department	VICKI SCHMIDT	1300 SW Arrowhead Rd		Topeka	KS	66604
Kentucky Department of Insurance	SHARON P. CLARK	PO Box 517		Frankfort	KY	40602
Louisiana Department of Insurance	JAMES J. DONELON	PO Box 94214		Baton Rouge	LA	70804
Department of Professional & Financial Reg.	TIMOTHY N. SCHOTT	Maine Bureau of Insurance	34 State House Station	Augusta	ME	04333
Maryland Insurance Administration	KATHLEEN A. BIRRANE	200 St Paul Place	Suite 2700	Baltimore	MD	21202
Office of Consumer Affairs & Business Reg.	GARY ANDERSON	Massachusetts Division of Insurance	1000 Washington Street 8th Floor	Boston	MA	02118
Dept. of Insurance & Financial Services	ANITA G. FOX	PO Box 30220		Lansing	MI	48909
Minnesota Department of Commerce	GRACE ARNOLD	85 7th Place East	Suite 280	St Paul	MN	55101
Mississippi Insurance Department	MIKE CHANEY	PO Box 79		Jackson	MS	39205
Missouri Dept Ins. Fin. Institutions & Prof. Reg.	CHLORA LINDLEY-MYERS	PO Box 690		Jefferson City	MO	65102
Montana Office Commissioner Securities & Ins.	TROY DOWNING	Montana State Auditor	840 Helena Avenue	Helena	MT	59601
Nebraska Department of Insurance	ERIC DUNNING	PO Box 95087		Lincoln	NE	68509
Nevada Dept. of Business & Industry	SCOTT KIPPER	Division of Insurance	1818 East College Pkwy Suite 103	Carson City	NV	89706
New Hampshire Insurance Department	D. J. BETTENCOURT	21 South Fruit Street	Suite 14	Concord	NH	03301
New Jersey Department of Banking & Ins.	JUSTIN ZIMMERMAN	20 West State Street	PO Box 325	Trenton	NJ	08625
Office of Superintendent of Insurance	ALICE T. KANE	PO Box 1689		Santa Fe	NM	87504
New York State Dept. of Financial Services	ADRIENNE A. HARRIS	One State Street		New York	NY	10004
North Carolina Department of Insurance	MIKE CAUSEY	1201 Mail Service Center		Raleigh	NC	27699
North Dakota Insurance Department	JON GODFREY	State Capitol	600 E. Boulevard Avenue 5th Floor	Bismarck	ND	58505
Ohio Department of Insurance	JUDITH L. FRENCH	50 West Town Street	Suite 300	Columbus	OH	43215
Oklahoma Insurance Department	GLEN MULREADY	400 NE 50th Street		Oklahoma City	OK	73105
Oregon Dept. of Consumer & Bus Svcs	ANDREW STOLFI	Division of Financial Regulation	PO Box 14480	Salem	OR	97309
Pennsylvania Insurance Department	MICHAEL HUMPHREYS	1326 Strawberry Square		Harrisburg	PA	17120
State of Rhode Island Dept of Business Reg.	ELIZABETH KELLEHER DWYER	Division of Insurance	1511 Pontiac Avenue Building 69-2	Cranston	RI	02920
South Carolina Department of Insurance	MICHAEL WISE	PO Box 100105		Columbia	SC	29202
South Dakota Dept of Labor & Reg. Div. of Ins.	LARRY D. DEITER	South Dakota Division of Insurance	124 South Euclid Avenue 2nd Floor	Pierre	SD	57501
Tennessee Department of Commerce & Ins.	CARTER LAWRENCE	Davy Crockett Tower Twelfth Floor	500 James Robertson Parkway	Nashville	TN	37243
Texas Department of Insurance	CASSIE BROWN	PO Box 12030		Austin	TX	78711
Utah Insurance Department	JON T. PIKE	4315 S. 2700 West	Suite 2300	Taylorsville	UT	84129
Department of Financial Regulation	KEVIN GAFFNEY	89 Main Street		Montpelier	VT	05620
Virginia State Corporation Commission	SCOTT A. WHITE	Bureau of Insurance	PO Box 1157	Richmond	VA	23218
Washington State Office of the Ins. Comm.	MIKE KREIDLER	PO Box 40255		Olympia	WA	98504
West Virginia Offices of the Insurance Comm.	ALLAN L. MCVIEY	PO Box 50540		Charleston	WV	25305
State of Wisconsin Office of the Comm. of Ins.	NATHAN HOUDEK	PO Box 7873		Madison	WI	53707
Wyoming Insurance Department	JEFF RUDE	106 East 6th Avenue		Cheyenne	WY	82002
Office of the Governor	PENI 'BEN' ITULA SAPINI TEO	American Samoa Government	A P Lutali Executive Office Building	Pago Pago	AS	96799
Department of Revenue & Taxation	MICHELLE B. SANTOS	Regulatory Division	PO Box 23607	GMF Barrigada	GU	96921
Commonwealth N Mariana Islands Dept Comm.	FRANCISCO D. CABRERA	Office of the Insurance Commissioner	PO Box 5795 CHRB	Saipan	MP	96950
Office of the Commissioner of Insurance	ALEXANDER ADAMS VEGA	361 Calle Calaf	PO Box 195415	San Juan	PR	00919
Office of the Lieutenant Governor	TREGENZA A. ROACH	Division of Banking Insurance & Financial Reg.	5049 Kongens Gade	St Thomas	VI	00820

CAFA Notice Service List

Email

Company	Contact Format	State
Office of the Attorney General for Nevada	All documents sent to NV AG at their dedicated CAFA email inbox.	NV

CAFA Notice Service List

UPS

Company	FullName	Address1	Address2	City	State	Zip
US Department of Justice	Merrick B. Garland	950 Pennsylvania Ave NW		Washington	DC	20530

Attachment 2

CAFA NOTICE ADMINISTRATOR

HILSOFT NOTIFICATIONS
10300 SW Allen Blvd
Beaverton, OR 97005
P 503-350-5800
DL-CAFA@epiqglobal.com

September 1, 2023

VIA UPS OR USPS CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Class Action Fairness Act – Notice to Federal and State Officials

Dear Federal and State Officials:

Pursuant to the Class Action Fairness Act of 2005 (“CAFA”), codified at 28 U.S.C. § 1715, please find enclosed information from Defendants State Farm Life Insurance Company and State Farm Life and Accident Assurance Company (collectively, “State Farm”) relating to the proposed settlement of a class action lawsuit. State Farm denies the allegations in the complaint and denies any liability whatsoever. But State Farm has decided to settle this action solely to eliminate the burden, expense, and uncertainties of further litigation.

- **Case:** *Niewinski v. State Farm Life Insurance Company*, Case No. 2:23-cv-04159-BP.
- **Court:** United States District Court for the Western District of Missouri Central Division.
- **Defendants:** State Farm Life Insurance Company and State Farm Life and Accident Assurance Company.
- **Documents Enclosed:** In accordance with the requirements of 28 U.S.C. § 1715, please find copies of the following documents associated with this action on the enclosed CD:
 1. **Per 28 U.S.C. § 1715(b)(1) – Complaint and Any Amended Complaints:** Class Action Complaint with Exhibits filed on August 22, 2023, ECF No. 1;
 2. **Per 28 U.S.C. § 1715(b)(2) – Notice of Any Scheduled Judicial Hearing:** The Court has not scheduled a preliminary approval hearing or a final approval hearing or any other judicial hearing concerning the settlement agreement at this time.
 3. **Per 28 U.S.C. § 1715(b)(3) – Notification to Class Members:** The proposed Class Notice has been submitted for the Court’s approval with the Unopposed Motion Pursuant to Rule 23(e) for Preliminary Approval of Class Action Settlement and Memorandum in Support. ECF No. 3-2 at 2-9.¹ The settlement website (www.nationalsf86settlement.com) will also be updated with information that will notify the settlement class members about the details of the settlement.
 4. **Per 28 U.S.C. § 1715(b)(4) – Class Action Settlement Agreement:** The following documents are included:
 - Settlement Agreement, ECF No. 3-1;

¹ Page numbers for ECF documents correspond to the Court-generated numbers at the bottom-right corner of each page.

CAFA NOTICE ADMINISTRATOR

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P 503-350-5800
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- Unopposed Motion Pursuant to Rule 23(e) for Preliminary Approval of Class Action Settlement and Memorandum in Support, ECF No. 3;
 - [Proposed] Order Granting Unopposed Motion for Preliminary Approval of Class Action Settlement, ECF No. 3-3;
 - Declaration of Norman E. Siegel in Support of Plaintiffs' Unopposed Motion Pursuant to Rule 23(E) for Preliminary Approval of Class Action Settlement, ECF No. 3-4;
 - Stueve Siegal Hanson Firm Resume, ECF No 3-5;
 - Miller Schirger Firm Resume, ECF No. 3-6;
 - Hausfeld Firm Resume, ECF No. 3-7;
 - The Van Winkle Law Firm Resume, ECF No. 3-8;
 - Kaliel Gold Firm Resume, ECF No. 3-9;
 - Declaration of Scott J. Witt, ECF No. 3-10;
 - Witt Actuarial Services Curriculum Vitae, ECF 3-11;
 - Distribution Plan, ECF 3-12; and
 - Declaration of Cameron R. Azari, Esq. on Notice Plan, ECF 3-13;
5. **Per 28 U.S.C. § 1715(b)(5) – Any Settlement or Other Agreements:** There are no other Settlements or Agreements between the parties.
6. **Per 28 U.S.C. § 1715(b)(6) – Final Judgment or Notice of Dismissal:** To date, the Court has not issued a final order, judgment or dismissal in this case.
7. **Per 28 U.S.C. § 1715(b)(7) – Estimate of Class Members:** Because of the difficulty in conclusively identifying class members, State Farm does not have a precise listing of class members and it is not currently feasible to provide the name and state of residence for each of the class members covered by the proposed settlement.² *See* 28 U.S.C. § 1715(b)(7)(A). State Farm has been able to identify the names and addresses of *potential* class members to whom class notice is being sent by mail but notes that some of the recipients of the notice

² The settlement agreement defines class members as “Owners of . . . Policies.” ECF No. 3-1 at 10. Various factors affect who is a policy “Owner” and, thus, a settlement class member. And policyholders (or their beneficiaries) may not inform or update State Farm with information related to those factors. For example, a policy Owner may have passed away, but State Farm is not aware of the passing and the beneficiary or successor in interest has not yet made a claim on the policy. Or, the previous policy Owner may have changed the beneficiary, but State Farm was not informed of that change or the change is currently being disputed.

CAFA NOTICE ADMINISTRATOR

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will not be class members.³ Accordingly, pursuant to 28 U.S.C. § 1715(b)(7)(B), State Farm’s best estimate of the number of class members per state and their estimated proportionate share of the entire settlement is included on the enclosed CD (“Estimated Class Members by State”). That estimate is based on the best information currently available to State Farm using information from State Farm’s life insurance policyholder master record. Plaintiffs’ counsel crafted the distribution plan and expect that the number of policies per state (based on approximate residence) expressed as a percentage of the total number of policies owned by all class members to be a fair estimate of the award allocation in each state. So, although the distribution of the settlement will ultimately be decided by Plaintiffs’ counsel, State Farm believes that this is a reasonable estimate.

8. **28 U.S.C. § 1715(b)(8) – Judicial Opinions Related to the Settlement:** To date, the Court has not issued an order preliminarily or finally approving the settlement or a final order or judgment in the above-referenced action.

If you have questions or concerns about this notice or the enclosed materials, please contact this office.

Sincerely,

CAFA Notice Administrator

Enclosures: CD with documents required under 28 U.S.C. § 1715(b).

³ Although State Farm has confidentiality concerns with disclosing class member-specific information, it is happy to discuss this if you have need for more detail.

Attachment 2

Niewinski v. State Farm
P.O. Box 2677
Portland, OR 97208-2677



December 4, 2023

CLASS NOTICE OF STATE FARM COST OF INSURANCE CLASS ACTION SETTLEMENT

Dear Class Member,

You have been sent this Class Notice of State Farm Cost of Insurance Class Action Settlement (the “Class Notice”) because you have been identified as a Settlement Class Member in the class action lawsuit, *Niewinski v. State Farm Life Insurance Company*, pending in the United States District Court for the Western District of Missouri, Case No. 2:23-cv-04159. This Class Notice summarizes a recent Settlement that impacts your rights. A full description of the Settlement is contained in the Settlement Agreement, which includes the precise definitions of capitalized terms used in this Class Notice. The Agreement is available for you to read at <http://www.nationalsf86settlement.com>. Please read it and this Class Notice carefully to understand your rights and obligations under the Settlement.

Records provided by State Farm Life Insurance Company and State Farm Life and Accident Assurance Company indicate that you are currently the owner or were the owner at the time of termination of a Form 86040/A86040 or Form 86075/A86075 universal life insurance policy issued and administered by State Farm. Throughout this Class Notice, State Farm Life Insurance Company and State Farm Life and Accident Assurance Company are collectively referred to as “State Farm.”

The Settlement involves the Cost of Insurance that State Farm deducted from the Cash Values of these life insurance policies. The Settlement provides that State Farm will fund a Settlement Fund in the amount of \$65 million, which will be used to pay: (1) cash to Settlement Class Members; (2) Class Counsel’s attorneys’ fees and expenses in an amount to be approved by the Court; (3) any service awards to the Plaintiffs in an amount to be approved by the Court; and (4) the expenses incurred in administering the Settlement.

Questions? Visit www.nationalsf86settlement.com or

call 1-888-431-3984 or email info@nationalsf86settlement.com



Policy Number: [REDACTED]

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

**If You Own or Owned a Form 86040, A86040, 86075, or A86075
Flexible Premium Adjustable Whole Life (or Universal Life)
Insurance Policy Issued and Administered by State Farm,
a Class Action Settlement May Affect Your Rights**

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

- A Settlement has been reached with State Farm in a class action lawsuit about the Cost of Insurance deducted from the Cash Value of these policies. If the Settlement is approved by the Court, you will automatically receive a payment. No further action is required.
- Generally, the Settlement includes current and former Form 86040/A86040 and 86075/A86075 Flexible Premium Adjustable Whole Life (or Universal Life) Insurance policy owners (*see* Questions 4 & 5 below).
- As part of the Settlement, Settlement Class Members will be eligible to receive a portion of a cash Settlement Fund funded by State Farm in the amount of \$65 million (*see* Question 6 below).

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

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

BASIC INFORMATION

1. Why did I get this Class Notice?

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

United States District Judge Beth Phillips of the United States District Court for the Western District of Missouri is overseeing this case. The case is known as *Niewinski v. State Farm Life Insurance Company*, Case No. 2:23-cv-04159. The persons who sued, Lorin Niewinski, John Baker McClanahan, personal representative of the Estate of Melissa Buchanan, Robert A. Bozaich, Ronnie Jackson, and Sherif B. Botros are called the "Representative Plaintiffs." State Farm Life Insurance Company and State Farm Life and Accident Assurance Company are collectively called "State Farm."

Questions? Visit www.nationalsf86settlement.com or

call 1-888-431-3984 or email info@nationalsf86settlement.com

The following is only a summary of the Settlement. A full description of the Settlement is in the Settlement Agreement. Nothing in this Class Notice changes the terms of the Settlement Agreement. You can read the Settlement Agreement by visiting www.nationalsf86settlement.com.

2. What is this lawsuit about?

This lawsuit is about whether State Farm's Cost of Insurance deductions were improper, including, specifically, whether they were consistent with the policy language in its Form 86040/A86040 and 86075/A86075 flexible premium adjustable whole life (or universal life) insurance policies ("Policies"). The Policies have a Cash Value that earns interest at or above a minimum rate guaranteed under the Policies. The Policies expressly authorize State Farm to take a Monthly Deduction from the Cash Value to cover various charges.

Representative Plaintiffs allege that State Farm took improper deductions from the Cash Values of its Policies. The Form 86040/A86040 Policy says that the Monthly Cost of Insurance Rates for each "policy year" will be "based on the Insured's age on the policy anniversary, sex, and applicable rate class," and the Form 86075/A86075 Policy says that the Monthly Cost of Insurance Rates for each "policy year" will be "based on the Insured's age on the policy anniversary and applicable rate class." Both Policies say that the rates "can be adjusted for projected changes in mortality." Representative Plaintiffs allege State Farm breached the Policies in five ways. First, Representative Plaintiffs allege that State Farm impermissibly used unauthorized and undisclosed factors to compute the Monthly Cost of Insurance Rates under the Policies. Second, while the Policies permit a separate Monthly Expense Charge, Representative Plaintiffs allege that State Farm impermissibly used expenses to compute the Cost of Insurance Rates that are in excess of the Monthly Expense Charge permitted by the Policies. Third, while the Policies state that Monthly Cost of Insurance Rates "can be adjusted for projected changes in mortality," Representative Plaintiffs allege State Farm failed to reduce its Monthly Cost of Insurance Rates when State Farm's expectations as to future mortality experience improved. Fourth, Representative Plaintiffs allege State Farm failed to consider and use only its expectations of future mortality when its Monthly Cost of Insurance Rates were adjusted. Fifth, Representative Plaintiffs allege State Farm failed to reduce its Monthly Cost of Insurance Rates to the full extent of mortality improvements experienced by State Farm when State Farm adjusted its Cost of Insurance Rates. Additionally, Representative Plaintiffs allege State Farm breached the covenant of good faith and fair dealing and converted monies belonging to policy owners by engaging in the aforementioned alleged conduct.

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

You can read Representative Plaintiffs' Class Action Complaint and other relevant documents at www.nationalsf86settlement.com.

3. Why is there a Settlement?

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

As with all litigation, the final outcome of the lawsuit, and two other related lawsuits, *McClanahan v. State Farm Life Ins. Co.*, No. 1:22-cv-01031-STA-JAY (W.D. Tenn.) and *Millwood v. State Farm Life Ins. Co.*, No. 7:10-CV-01445-DCC (D.S.C.), is uncertain. A settlement avoids the costs and risks of further litigation, if the lawsuit were to proceed through trial and appeals, and provides immediate relief to the Settlement Class Members. Based on their evaluation of the facts and law, Representative Plaintiffs and their attorneys have determined that the proposed Settlement is fair, reasonable, and adequate. They have reached this conclusion based on the substantial benefits the Settlement provides to Settlement Class Members and the risks, uncertainties, and costs inherent in the lawsuit.

There has been no trial and there has been no final appellate determinations on the merits of the claims or defenses. However, the two related cases demonstrate the uncertainty and risk of continuing to litigate claims. First, in *McClanahan* the trial court ruled against the Tennessee policy owners and dismissed the lawsuit in its entirety. A copy of this order may be found on the Settlement Website. Second, in *Millwood*, the trial court granted the plaintiff's motion for class certification, but a decision from the court on summary judgment was pending at the time this

Questions? Visit www.nationalsf86settlement.com or

lawsuit was resolved. Because the case has settled, there will be no trial or final determination on the merits of the remaining claims and defenses if the Court approves the Settlement. The Settlement does not indicate that State Farm has done anything wrong or that Representative Plaintiffs and the Settlement Class Members would win or lose if this lawsuit or any of the other lawsuits were to go to trial.

4. Who is included in the Settlement Class?

The Settlement Class includes all persons or entities who own or owned one of the approximately 450,000 **Policies** issued by State Farm. Policies means all Form 86040/A86040 flexible premium adjustable whole life (or universal life) insurance policies, as well as all Form 86075/A86075 flexible premium adjustable whole life (or universal life) insurance policies that were issued and administered by State Farm or their predecessors in interest. A Policy includes all applications, schedules, riders, and other forms that were specifically made a part of the Policies at the time of their issue, plus all riders and amendments issued later. Policies include everything that was part of “The Contract,” as that term is defined in your Policy or Policies.

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

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

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

If you are not sure whether you are included in the Settlement Class, you can get free help at www.nationalsf86settlement.com or by calling 1-888-431-3884 or by emailing info@nationalsf86settlement.com.

6. What does the Settlement provide?

State Farm has agreed to fund a Settlement Fund in the amount of \$65 million, which will be used to pay: (1) all payments to Settlement Class Members; (2) Class Counsel’s attorneys’ fees and expenses in an amount to be approved by the Court; (3) any service awards to Plaintiffs (including the named plaintiffs in the related litigation) in an amount to be approved by the Court; and (4) the expenses incurred in administering the Settlement. The Net Settlement Fund equals \$65 million less the amounts described in (2) through (4) as approved by the Court.

If the Court approves the Settlement, settlement checks will be mailed to Settlement Class Members in amounts that will vary according to a Distribution Plan. The Distribution Plan is designed to provide each Settlement Class Member an approximate *pro rata* portion of the Net Settlement Fund in proportion to the amount of monthly deductions actually paid by each Settlement Class Member for Cost of Insurance and Monthly Expense Charges. There will also be a minimum cash payment and more paid where a Settlement Class Member’s Policy is still in force.

The full Distribution Plan is attached to the Plaintiffs’ Motion for Preliminary Approval and is available on the Settlement Website.

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

7. How do I participate in the Settlement?

Settlement Class Members do not have to do anything to participate in the Settlement. No claims need to be filed. Upon approval of the Settlement, a settlement check will be sent to every Settlement Class Member in the amount determined by the Settlement Administrator using the method described in Question 6. If someone who would otherwise be a Settlement Class Member is deceased, his or her estate is a Settlement Class Member. If your address changes, you should contact the Settlement Administrator to give them your new address.

8. When will I receive my settlement check?

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

9. What happens if I do nothing?

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

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

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

The Settlement Agreement is available at www.nationalsf86settlement.com and describes the claims that you are giving up. If you have any questions, you can talk to the law firms listed in Question 12 for free, or you can hire your own lawyer.

10. Can I exclude myself from the Settlement?

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

- The Settlement Class Member’s name (or the name of the entity that owns the Policy), current address, telephone number, and e-mail address;
- Policy number;
- A clear statement that the Settlement Class Member elects to be excluded from the Settlement Class and does not want to participate in the Settlement in *Niewinski v. State Farm Life Insurance Company*, Case No. 2:23-cv-04159; and,
- The Settlement Class Member’s signature, or the signature of a person providing a valid power of attorney to act on behalf of the Settlement Class Member. If there are multiple owners of a Policy, all owners must sign the notice, unless the signatory submits a copy of a valid power of attorney to act on behalf of all then-current owners of the Policy.

If you want to exclude yourself from the Settlement, your written notice must be served on the Settlement Administrator by mailing it to *Niewinski v. State Farm*, PO Box 2677, Portland, OR 97208-2677 postmarked no later than February 9, 2024.

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

You can object to the Settlement if you do not like some part of it. The Court will consider your views. To object to the Settlement, you must serve a written objection in the case, *Niewinski v. State Farm Life Insurance Company*, Case No. 2:23-cv-04159. The objection must include the following information:

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

You must serve your objection on the Settlement Administrator by mailing it to Niewinski v. State Farm, PO Box 2677, Portland, OR 97208-2677 postmarked no later than February 9, 2024.

12. Do I have a lawyer in this case?

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

David M. Wilkerson The Van Winkle Law Firm 11 N. Market Street Asheville, NC 28801 dwilkerson@vwlawfirm.com	Melinda R. Coolidge Nathaniel Giddings Hausfeld LLP 888 16 th Street, NW, Suite 300 Washington, DC 20006 ngiddings@hausfeld.com
John J. Schirger Joseph M. Feierabend Miller Schirger LLC 4520 Main St., Suite 1570 Kansas City, MO 64111 Statefarm86settlement@millerschirger.com	Sophia Goren Gold Kaliel Gold PLLC 1875 Connecticut Avenue NW, 10 th Floor Washington, DC 20009 sgold@kalielpllc.com
Norman E. Siegel, Ethan M. Lange Stueve Siegel Hanson LLP 460 Nichols Rd., Suite 200 Kansas City, MO 64112 Statefarm86settlement@stuevesiegel.com	

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

13. How will the lawyers be paid?

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

Class Counsel will also request a service award payment of up to \$25,000 for each Plaintiff (including the named plaintiffs in the related litigation) for their service to the Settlement Class. This payment will also be paid from the Settlement Fund. The Court must approve any amounts paid to Class Counsel and to Plaintiffs.

Questions? Visit www.nationalsf86settlement.com or

call 1-888-431-3984 or email info@nationalsf86settlement.com

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

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

The Court will hold the Fairness Hearing at 10:00 a.m. on March 28, 2024, at the United States District Court for the Western District of Missouri, 400 E. 9th St., Kansas City, Missouri, 64106, in Courtroom 7A. The Fairness Hearing may be moved to a different date or time without additional notice being mailed to you, so it is a good idea to check www.nationalsf86settlement.com for any updates. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and in the best interests of Settlement Class Members and whether to award the requested attorneys' fees, expenses, and service awards. If there are objections, the Court will consider them and will listen to people who have asked to speak at the Fairness Hearing. After the Fairness Hearing, the Court will decide whether to approve the Settlement. We do not know how long the Court's decision will take.

15. Do I have to attend the hearing?

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

16. May I speak at the hearing?

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

17. How do I get more information?

This Class Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can find a copy of the Settlement Agreement at www.nationalsf86settlement.com. You may also send your questions to the Settlement Administrator, in writing, at Niewinski v. State Farm, PO Box 2677, Portland, OR 97208-2677 or call the Settlement Administrator at 1-888-431-3884. You can review the Court's docket in this case at www.pacer.gov.

If your address has changed or will change, please notify the Settlement Administrator by April 8, 2024.

DATE: December 4th, 2023

Attachment 3

Niewinski v. State Farm
Settlement Administrator
P.O. Box 2677
Portland, OR 97208-2677

Legal Notice
Niewinski v. State Farm
Case No. 2:23-cv-04159

Tracking Number: [REDACTED]

[REDACTED]

You were previously sent a Class Notice of State Farm Cost of Insurance Class Action Settlement (the “Class Notice”) because you were identified as a Settlement Class Member in the class action lawsuit, *Niewinski v. State Farm Life Insurance Company*, pending in the United States District Court for the Western District of Missouri, Case No. 2:23-cv-04159. This Legal Notice updates FAQ 13 in the Class Notice. Please regularly check the class website, www.nationalsf86settlement.com, for changes and the most up-to-date information.

13. How will the lawyers be paid?

Class Counsel and the other lawyers who were involved in the pending cases have not been paid for their work in this case. In addition to thousands of hours of labor spent on this case, Class Counsel have expended substantial expenses prosecuting this case. The Court will determine how much Class Counsel will be paid for fees and expenses. Class Counsel will seek an award for attorneys’ fees of up to one-third of the Settlement Fund, plus reimbursement of Class Counsel’s costs and expenses (no more than \$1,100,000), also to be paid from the Settlement Fund. You will not be responsible for payment of Class Counsel’s fees and expenses. Class Counsel will also request a service award payment of up to \$25,000 for each Plaintiff (including the named plaintiffs in the related litigation) for their service to the Settlement Class. This payment will also be paid from the Settlement Fund. The Court must approve any amounts paid to Class Counsel and to Plaintiffs. Class Counsel’s motion seeking an award of attorneys’ fees, reimbursement of costs and expenses, and service awards for the named plaintiffs is available at www.nationalsf86settlement.com.

If you want to remain in the Settlement, you do not need to do anything, you will automatically receive your share of the Settlement Fund (see Class Notice FAQ 9 for more information).

Questions? Visit www.nationalsf86settlement.com or call 1-888-431-3884 or email info@nationalsf86settlement.com

Attachment 4



Niewinski v. State Farm Life Insurance Company

Exclusion Report

Number	Name	Last 4 of Policy Number(s)
1	Alice Fay Batson	6521
2	Allen E Laturner	7610
3	Allen Kent Wolfenbarger	7500
4	Anthony P Swiatek	4722
5	B K L Trust Bruce A Schroeder Trustee	7105
6	Bernard A Gaydosik	4280
7	Bobby R Baker JR	6752
8	Charles R Tresky	8173, 8913
9	Charles T Buckerfield	7877
10	Charlie F Attaway	3371
11	Connie L Marrs	8259
12	Danny R Marrs	3211, 8215
13	David J Petry	6001
14	Denise L Madle	7982
15	Diane M Vance	5141
16	Donald L Hill	4355
17	Douglas W Johnson	1352
18	Edward Anderson Gresham	6790
19	Elizabeth Ann Howell	7014
20	Estate of Cheryl D Schrader	8852
21	Francis E Chandler	0082
22	Gary Clayton Voyles	9601
23	Gordon Wayne Evans Jr	5879
24	Hellen L Attaway	5007, 2521
25	Howard L Olson	4514
26	Jennifer B Baker	2404
27	John J Bidoli Jr	6491
28	John J Hreha JR	6563, 4122, 4113
29	Joseph M Polanski	6789
30	Joyce Van Der Kamp	2008
31	Julie Meulemans	1964
32	Kathleen D Voyles	9325, 1661
33	Kathleen D Young	5601
34	Larry N Jourdan	1078
35	Leisa E Anderson	6322
36	Linda D Andrews	7537
37	Lisa C Davies	1859
38	Louis S Shoemaker	0444
39	Mark Q Williams	6837
40	Marquita Clopton	2382

41	Michael D Wolfe	4251
42	Nancy J Behrens	7577
43	Nichelle M Hardy	1348
44	Paige Weaver	2090
45	Patricia M Zuehlke	9434
46	Phillip R Couto	5885
47	Phillip W Holland	7182
48	Randolph A Rackley	6930
49	Richard S Andrews	1073
50	Robert F Zuehlke	9425
51	Robert Scott Allison	2943
52	Robert T Thomas	4153
53	Samuel A McGuffe, Sr	8074
54	Sharon Anne Chance	5114
55	Steven M Demchuk	2539
56	Stephen W Holland	7188
57	Tere Kangas	5849
58	Thomas Lee Henderson	5968
59	Thomas R Saltsman	6007
60	Tina L Bossetti	4236
61	Wayne P Hebert	1328
62	William H Keeling	2224

EXHIBIT 2:

SUPPLEMENTAL JOINT

DECLARATION

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

LORIN NIEWINSKI, JOHN BAKER)	
MCCLANAHAN as Personal Representative of)	
THE ESTATE OF MELISSA BUCHANAN,)	
ROBERT A. BOZAICH, RONNIE JACKSON,)	
and SHERIF B. BOTROS, Individually and on)	
Behalf of All Others Similarly Situated,)	
)	
Plaintiffs,)	Case No. 2:23-cv-04159-BP
)	
vs.)	
)	
STATE FARM LIFE INSURANCE)	
COMPANY and STATE FARM LIFE AND)	
ACCIDENT ASSURANCE COMPANY,)	
)	
Defendants.)	

**SUPPLEMENTAL JOINT DECLARATION OF
NORMAN E. SIEGEL, JOHN J. SCHIRGER,
NATHANIEL C. GIDDINGS, DAVID WILKERSON, AND SOPHIA GOLD**

We, Norman E. Siegel, John J. Schirger, Nathaniel C. Giddings, David Wilkerson, and Sophia Gold, declare as follows, pursuant to 28 U.S.C. § 1746:

1. We are partners with our respective law firms, and we are counsel of record for the Plaintiffs in the above-captioned action. We previously submitted a declaration in support of Plaintiffs’ Motion and Suggestions in Support of Motion for Attorney’s Fees, Costs, Expenses, and Service Awards (“Fee Motion”). Doc. 29-1 (“Joint Decl.”). We make this Supplemental Declaration in further support of Plaintiffs’ Fee Motion to provide the Court updated information on the amount of time Class Counsel have spent on this litigation since the time through which Class Counsel calculated their lodestar in the Fee Motion. Each of us has personal knowledge of our own firm’s time, and if called upon, could and would, testify competently thereto.

2. As discussed in the prior Joint Declaration, as of early-January 2024, Class Counsel had worked for more than 9,440 hours litigating this case and the two related actions on behalf of the Settlement Class Members. Joint Decl., ¶ 30. This time was spent on intensive discovery, including expert discovery, and briefing class certification, dispositive motions, and *Daubert* motions. *Id.*, ¶¶ 7-17. We also reported that we conservatively expected to spend at least 1,888 hours on settlement administration, including responding to class member questions about the Settlement, supervising the administrator, making updates to the Court, overseeing check reissuances and distribution of benefits to deceased class members' estates, and ensuring that the distribution runs smoothly. *Id.*, ¶ 29. This estimated future time did not include any time necessary to obtain final approval or potentially defend any judgment on appeal. *Id.*

3. Class Counsel have continued to keep contemporaneous records of the time spent on the litigation. Since January 5, 2024—the date through which Class Counsel reported time in the Fee Motion—Class Counsel have spent an additional 321.9 hours in this litigation. This time was spent responding to class member inquiries about the Settlement, providing updates to the courts previously overseeing the Related Actions on the status of the settlement approval process here, and preparing the additional motions briefing and supporting material submitted to the Court.

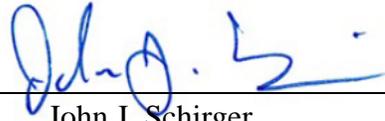
4. Thus, using the previously reported hourly rates (*see* Joint Decl., ¶ 30), Class Counsel's updated lodestar, including the additional work performed through March 1, 2024, and the anticipated future work, is \$8,208,848,86. This equates to a lodestar multiplier of 2.64 on Class Counsel's request for an attorney's fee of one-third of the Settlement Fund.

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

Executed this 7th day of March, 2024.



Norman E. Siegel



John J. Schirger



David Wilkerson



Nathaniel C. Giddings



Sophia Gold