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

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| PETER M. VAN ZANTEN, DWAIN E. VITTETOE, ROBERT R. FINE, and LARRY A. MCMILLAN, Individually and On Behalf Of All Others Similarly Situated, | ) | |
| Plaintiffs, | ) | Case No. 25-cv-00095-BP |
| vs. | ) | |
| KANSAS CITY LIFE INSURANCE COMPANY, | ) | |
| Defendant. | ) | |

**PLAINTIFFS' UNOPPOSED MOTION PURSUANT TO RULE 23(E) FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND SUGGESTIONS IN SUPPORT**

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## I. INTRODUCTION

Plaintiffs Peter M. van Zanten, Dwain E. Vittetoe, Robert R. Fine, and Larry A. McMillan ("Plaintiffs") brought this Action against Defendant Kansas City Life Insurance Company ("KCL") for the alleged breach of the terms of their standardized universal life insurance policies by deducting cost of insurance ("COI") charges from policyholders' policy cash value accounts in amounts greater than the policies authorize. This case, as recently amended, consolidates four pending lawsuits against KCL for these alleged contractual breaches, and asserts claims on behalf of a nationwide class.

Now, after six years of intensive and contentious litigation in multiple trial and appellate courts, both state and federal, Plaintiffs and KCL (the "Parties") have agreed to a nationwide settlement (the "Settlement"). They have executed a binding Settlement Agreement ("Agreement"), under which KCL will pay $45,000,000 into a non-reversionary Settlement Fund that will be used to provide payments to members of the Settlement Class in amounts representing a material portion of the alleged overcharges they each suffered. This Settlement is in addition to, and will not diminish, the judgments already paid by KCL in two prior lawsuits. As explained below, the Agreement is an outstanding result for the Settlement Class.

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

in this litigation, and the proposed Settlement Class satisfies the requirements of Rule 23. The Agreement easily meets these requirements.[1]

## II. STATEMENT OF FACTS

### A. SUMMARY OF THE LITIGATION

#### 1. The Claims

Plaintiffs each own one or more standardized life insurance policies sold by KCL and bring their claims individually and on behalf of policyholders with materially identical terms on specified policy forms (hereinafter, the "Policies"). Doc. 32 (Second Amended Class Action Complaint) ("Compl.") ¶¶ 16-22, 24.[2] The Policies are or were valid and enforceable written contracts between each policy owner and KCL. *Id.* ¶ 84.

The Policies are "universal life" insurance products, which are sold as permanent life insurance providing both a death benefit and an investment feature that allows the owner to pay premiums into a policy cash value account referred to herein as the "Accumulated Value." *Id.* ¶¶ 28-30.[3] The monthly calculation of the Accumulated Value is set forth in the Policies. *Id.* ¶ 32.

[1] The Parties have notified the courts overseeing the constituent cases of the Settlement; the *Fine* and *McMillan* courts have entered orders staying their proceedings until conclusion of the preliminary approval process in this Court, at which time the Parties will move to have the cases transferred to this Court and consolidated with this case. Agreement, ¶ 10.2.

[2] Those policy forms are the Better Life Plan, Better Life Plan Qualified, LifeTrack, AGP, MGP, PGP, Chapter One, Classic, Century II, Rightrack (89), Performer (88), Performer (91), Prime Performer, Competitor (88), Competitor (91), Executive (88), Executive (91), Protector 50, LewerMax, Ultra 20 (93), Competitor II, Executive II, Performer II, or Ultra 20 (96) life insurance policy issued that was issued or administered by KCL, or its predecessors in interest, and was active on or after January 1, 2002, except Century II policies issued in Missouri, which are the subject of *Sheldon v. Kansas City Life Insurance Co.*, Case No. 1916-CV26689, WD87931. Compl., ¶ 72.

[3] The savings component in certain of the Policies is identified by different names, including the "cash value," "contract value," and "accumulated value."

The Accumulated Value can grow over time with additional premium payments and applicable interest as identified in the Policies. *Id.*

The Policies authorize KCL to deduct a "Monthly Deduction" from the Accumulated Value each month. *Id.* ¶ 35. As relevant here, the Monthly Deduction is comprised of two distinct component charges: the cost of insurance charge ("COI Charge") and the monthly expense charge in a specified amount ("Expense Charge"). *Id.* ¶¶ 35-36. The Policies provide that the COI Charges are determined by multiplying the Monthly Cost of Insurance Rates ("COI rates") by the Policy's net amount at risk (the amount by which the death benefit amount exceeds the Accumulated Value, i.e., the amount of its own funds KCL must pay if the insured dies). *Id.* ¶ 40. The Policies state that the COI rates are based on certain characteristics of the insured that relate to the insured's mortality risk, and that KCL will determine the COI rates "based on its expectations as to future mortality experience." *Id.* ¶¶ 41-43.

Plaintiffs allege that KCL did not, in fact, determine the COI rates in accordance with these written requirements because KCL uses unlisted, non-mortality factors to increase the COI rates to recover expenses and additional profits. *Id.* ¶¶ 45-48. Plaintiffs also allege that this conduct violates the Expense Charge provision because it results in KCL deducting more than the stated amount in expenses in each Monthly Deduction. *Id.* ¶¶ 52-54. Lastly, Plaintiffs allege that KCL's mortality expectations for the Policies have improved since when it priced the Policies and that KCL was required to, but did not, lower the COI rates to reflect that improvement. *Id.* ¶ 56. In addition to breaching the contractual terms, Plaintiffs further allege that these unauthorized deductions are conversions of their money. *Id.* ¶¶ 101-105.

### 2. History of the Litigation

The claims in this case have been intensely litigated by the Parties around the country before several judges, including through three jury verdicts and two appeals. A summary of the litigation is recounted below.

**Karr v. Kansas City Life Insurance Co.**

On October 1, 2019, Plaintiff David B. Karr filed suit in the Circuit Court of Jackson County, Missouri against KCL asserting claims on behalf of himself and other similarly situated Missouri KCL universal life insurance policyholders whose policies were issued in Missouri. *See* No. 1916-CV26645. KCL removed the case to the United States District Court for the Western District of Missouri and asked for it to be consolidated with *Meek v. Kansas City Life Insurance Co.*, No. 4:19-cv-472-BP (W.D. Mo.), a pending case involving the same claims asserted on behalf of a putative 49-state class of KCL policyholders. On February 7, 2020, this Court granted Karr's motion to remand the litigation back to the Circuit Court of Jackson County, Missouri. *Karr v. Kansas City Life Ins. Co.*, No. 19-00882-CV-W-BP, 2020 WL 14034907 (W.D. Mo. Feb. 7, 2020).

The *Karr* action involved extensive discovery that formed the basis of much of the discovery in the other cases against KCL discussed below, including several rounds of document productions, interrogatories, and requests for admissions. Ex. 2 (Stueve Decl.), ¶ 14. Several depositions were conducted by the parties over the course of the litigation as well. The plaintiff and plaintiff's expert witness, Scott Witt, were deposed, and plaintiff also deposed several KCL witnesses, including KCL's designated corporate representatives, David Metzler and Mark Milton, and additional witnesses, including Matthew Dolliver, Don Krebs, Karen Dierker, Jill Daniel, Marc Bensing, Lendy Kesler, and Stephen Bader. *Id.*

On July 12, 2021, the court granted Karr's motion for class certification pursuant to Missouri Supreme Court Rule 52.08, of all Missouri citizens who own or owned certain specified

KCL universal life ("UL") policy forms that were issued in Missouri. *Karr v. Kansas City Life Ins. Co.*, No. 1916-CV26645, 2021 WL 7709466 (Mo. Cir. Ct. July 12, 2021); *see also id.* at 2021 WL 7709461, at *1 (Mo. Cir. Ct. Aug. 17, 2021) (listing policy forms).[4]

On July 8, 2021, KCL filed a motion for summary judgment on Karr's claims, arguing they were time-barred by the statute of limitations, that plaintiff's testimony could not support his breach of contract claims, and that plaintiff's conversion claim was without support. Karr opposed the motion arguing, principally, that the claims were not discoverable such that the applicable statute of limitations had not run on his or any class member's claims; the language KCL drafted into its non-negotiated policies plainly supported plaintiff's proposed interpretation of the COI and expense charge provisions; and, that KCL had admitted to the conduct demonstrating the breaches under plaintiff's proposed interpretation.

On July 8, 2021, plaintiff also filed a motion for partial summary judgment in favor of the class on KCL's statute of limitations defense and on its liability for breach on plaintiff's breach of contract claims. Briefing on summary judgment continued through the end of August 2021. On February 22, 2022, the court entered its order denying KCL's motion for summary judgment and granting plaintiff's motion for partial summary judgment in favor of the class. *Karr v. Kansas City Life Ins. Co.*, No. 1916-CV26645, 2022 WL 633903 (Mo. Cir. Ct. Feb. 22, 2022).

Additional contested briefing followed the parties' summary judgment motions. On August 17, 2021, KCL filed a motion for leave to file a second motion for summary judgment, which was denied on February 22, 2022, following briefing and oral argument because the court found KCL

[4] These included the Better Life Plan, Better Life Plan Qualified, LifeTrack, AGP, MGP, PGP, Chapter One, Classic, Rightrack (89), Performer (88), Performer (91), Prime Performer, Competitor (88), Competitor (91), Executive (88), Executive (91), Protector 50, LewerMax, Ultra 20 (93), Competitor II, Executive II, Performer II, or Ultra 20 (96).

failed to demonstrate excusable neglect and show good cause for extending the summary judgment deadline. On January 24, 2022, KCL also moved to decertify the class, which the court denied at the pretrial conference on November 21, 2022. On February 16, 2022, KCL also moved to exclude the declaration and testimony of Mr. Witt. Plaintiff opposed KCL's motion to exclude; and this motion was also denied at the pretrial conference.

On August 5, 2022, KCL filed a motion to reconsider, vacate, and/or modify the court's summary judgment order, asking the court to refer the case to the Missouri Department of Insurance. Following plaintiff's opposition and oral argument at the pretrial conference, on November 21, 2022, the court denied that motion. On November 22, 2022, KCL sought a writ of prohibition, seeking to bar the court from taking any action other than vacating its orders on summary judgment and KCL's motion to reconsider, vacate, and/or modify. The petition was denied one day later.

A jury trial was held December 6 - 9, 2022. The jury returned a verdict in favor of the class on all three breach of contract claims, finding damages in the full amount sought of $28,362,830.96. On December 21, 2022, plaintiff moved for an award of prejudgment interest on the jury's damages award at each policies' minimum credited interest rate. On May 10, 2023, the court entered judgment on the jury verdict and denied plaintiff's motion for prejudgment interest. On June 9, 2023, KCL moved for judgment as a matter of law, for a new trial, for decertification of the class, and for reconsideration of the court's summary judgment order. On August 24, 2023, the court entered orders denying KCL's post-trial motions. The court entered final judgment on August 24, 2023. Both parties appealed.

On September 24, 2024, the Missouri Court of Appeals, Western District, issued its opinion affirming the judgment in all respects as to KCL's appeal points but reversing as to plaintiff's

cross-appeal for an award of prejudgment interest and remanding for the court to award prejudgment interest. *Karr v. Kansas City Life Ins. Co.*, 702 S.W.3d 1 (Mo. Ct. App. 2024). On October 29, 2024, the court of appeals denied rehearing and transfer to the Missouri Supreme Court (*see* Case Nos. WD86550 and WD86566), and on December 23, 2024, the Missouri Supreme Court denied KCL's application for transfer, which was supported by the Missouri Attorney General, the Missouri Insurance Coalition, and the American Property Casualty Insurance Association. *See* Case No. SC100845.

On February 10, 2025, on remand, the circuit court entered an amended final judgment to include an award of $14,664,577.47 in prejudgment interest, plus $10,609.50 per day in post-judgment interest until satisfaction was made. On February 14 and 28, 2025, the circuit court clerk taxed plaintiff's trial and appellate costs against KCL in the total amount of $25,907.30. On March 14, 2025, plaintiff filed a Full and Final Satisfaction of Judgment stating that KCL had paid the full judgment and costs totaling $48,523,128.38.

**Meek v. Kansas City Life Insurance Co.**

Plaintiff Christopher Y. Meek filed a putative nationwide class on June 18, 2019, asserting the same claims as alleged in *Karr* on behalf of himself and other similarly situated KCL UL insurance policyholders. No. 4:19-cv-472-BP (W.D. Mo.), Doc. 1. On October 1, 2019, Meek filed a First Amended Complaint that modified the alleged putative class by removing owners covered by the putative classes in *Karr*, No. 1916-CV26645 and *Sheldon v. Kansas City Life Insurance Co.*, No. 1916-CV26689. Doc. 8, ¶ 55.

Substantial discovery was also taken in the *Meek* action, including several rounds of document requests, interrogatories, and requests for admission, as well as discovery disputes and motions to compel. Stueve Decl., ¶ 24. Plaintiff took the depositions of several current and former

employees of KCL, including Matthew Dolliver, Don Krebs, Marc Bensing, Lendy Kesler, Jill Daniel, Karen Dierker, Stephen Bader, Dave Metzler, and Mark Milton. Plaintiff also deposed KCL's expert, Timothy Pfeifer, and Mark Milton twice more in his capacity as a disclosed expert witness for KCL. KCL deposed plaintiff and twice deposed plaintiff's damages expert, Scott Witt. *Id.*

On July 1, 2021, Meek filed a motion for certification of a 49-state class of current or former owners of the same KCL UL insurance products at issue in *Karr* that were active on or after January 1, 2002. On January 7, 2022, both parties filed motions for summary judgment, and on January 28, 2022, they each filed oppositions. Docs. 118-19, 121, 123, 134-135, 137, 150-52.

On February 7, 2022, the Court certified a class of Kansas policyholders and denied KCL's motion to exclude Mr. Witt's class certification declaration. Doc. 136. The Court thereafter denied without prejudice the parties' motions for summary judgment, recognizing that the Court's choice of law rulings in its class certification order had obviated the parties' summary judgment analysis. Doc. 155. On October 20, 2022, the parties filed their second motions for summary judgment as well as *Daubert* motions. Docs. 183-186, 188-191, 215-216, 220-221, 227-228, 233-234. On November 10, 2022, the parties filed their respective oppositions thereto, Docs. 195-196, 198-199, 217-218, 222-223, 229-230, 235-236, and on December 1, 2022, they filed their respective replies, Docs. 203-204, 206-207, 219, 224-225, 231-232, 237-238.

On March 27, 2023, the Court issued its orders on the parties' summary judgment and *Daubert* motions. Docs. 243-44. In its summary judgment order, the Court ruled that under Kansas law, each monthly overcharge resulted in the accrual of a new breach of contract claim and therefore found that all breaches occurring within five years of the suit's filing (June 18, 2019) were timely. Doc. 243 at 6-9. For the breaches occurring before that date, the Court observed that

while Kansas law will equitably estop a defendant from asserting a statute of limitations defense, a ruling could not be made on whether KCL could be equitably estopped from asserting its defense on the presented summary judgment arguments and record. *Id.* at 9-11.

In construing the insurance policies, the Court ruled that KCL was limited to using the disclosed mortality factors when setting the COI rates, and that there was no dispute of fact that KCL had included amounts for unauthorized expense and profit factors in the COI rates in breach of the policies' COI rates (Count I) and expense charge (Count II) provisions. *Id.* at 12-16. On plaintiff's claim at Count III for KCL's failure to lower the COI rates in the face of improving mortality expectations, the Court ruled the policies required KCL to use its then-current expectations as to future mortality experience when setting the COI rates but found a fact dispute as to whether it had failed to do so. *Id.* at 16-17. The Court found Kansas law does not recognize a conversion claim on the facts of this case and entered summary judgment in KCL's favor on that claim. *Id.* at 18-19. The Court denied KCL's *Daubert* motion as to Mr. Witt, and granted in part plaintiff's *Daubert* motion as to certain testimony of KCL's experts. Doc. 244.

Following additional briefing on the applicability of equitable estoppel, which the parties agreed should be resolved by the Court rather than a jury (Docs. 253- 256), the Court concluded it would hear evidence on equitable estoppel during the jury trial setting outside the presence of the jury. Doc. 292. The parties agreed the jury should make damages findings for the breaches within the statute of limitations, and for all breaches over the decades the policies were in force (since 1982), to accommodate the Court's ultimate ruling on the applicability of equitable estoppel. *Id.*

The parties also submitted various pre-trial filings, including motions in limine and briefing thereon (Docs. 261-262, 279, 284), deposition designations and objections thereto (Docs. 264-265, 286-289, 291), proposed exhibit and witness lists (Docs. 266-267, 272-273, 293), proposed jury

instructions and objections thereto (Docs. 277, 280, 282-283, 302), proposed voir dire (Docs. 269, 271), and stipulated facts (Doc. 281). The parties appeared before the Court for three pretrial conferences and telephonic hearings to address trial-related matters. Docs. 263, 290, 298. On May 19, 2023, KCL moved to partially decertify the class to remove policyholders who did not have an active policy within five years of the filing of the lawsuit, arguing the applicability of equitable estoppel was a predominating individualized issue. Docs. 299-300.

A jury trial was held May 22 - 25, 2023. Docs. 304, 306-308. The jury returned a verdict in favor of the class on their claim for KCL's breach of the COI rates provision by including amounts for undisclosed, non-mortality factors in the COI rates, finding damages of $908,075.00 for the period June 18, 2014, to February 28, 2021 (the date through which Mr. Witt had calculated damages) and $5,059,275.00 for the period May 1, 1982, to February 28, 2021. Doc. 311. The jury did not find KCL failed to apply its then-current mortality rates in setting the COI, or damages for KCL's breach of the expense charge provision. *Id.*

On June 20, 2023, the Court granted KCL's motion to decertify in part and removed from the class policyholders who did not incur COI or expense charges between June 18, 2014, and February 28, 2021, and dismissed without prejudice all claims for breach occurring prior to June 18, 2014. Doc. 329. The Court then entered judgment in favor of the class as re-defined and against KCL for $908,075.00 for KCL's use of undisclosed, non-mortality factors to determine the COI rates.

On September 27, 2023, the Court entered its order on the post-trial motions, denying plaintiff's motion for a new trial; granting plaintiff's motion to alter or amend the judgment to include an award of post-judgment interest; denying KCL's motion to decertify the class; and

denying KCL's motion for judgment as a matter of law on Count I. Doc. 352. The Court entered judgment accordingly. Doc. 353.

Both parties appealed the judgment. Docs. 360, 365. KCL appealed the Court's interpretation of the policies on summary judgment, its class certification order, and its order denying KCL's motion for judgment as a matter of law. KCL also challenged class members' Article III standing and whether a class member who had received an Option A death benefit was entitled to damages. Plaintiff appealed the Court's choice of law rulings and its order denying plaintiff's motion for new trial.

On January 10, 2025, the Eighth Circuit issued its opinion affirming the Court's judgment. *Meek v. Kansas City Life Ins. Co.*, 126 F.4th 577 (8th Cir. 2025).

On April 16, 2025, the Court granted plaintiff's motion to establish a Qualified Settlement Fund, to appoint Analytics Consulting LLC as the administrator of the fund, and to approve plaintiff's proposed plan for allocating the judgment to the class. Doc. 393. On April 21, 2025, the Court awarded plaintiff taxable costs in the amount of $36,590.18. Doc. 394. On May 12, 2025, the Court provisionally granted Class Counsel's motion for an award of attorneys' fees of one-third of the judgment, for reimbursement of a portion of their non-taxable litigation expenses, and for a service award of $1,000 for Mr. Meek, subject to class members submitting their views on the requests after receiving notice. Doc. 395. On May 27, 2025, plaintiff filed a Satisfaction of Judgment stating that KCL had paid the judgment of $1,035,275.57 with all accrued post-judgment interest as well as the court-ordered costs. Doc. 398.

**Sheldon v. Kansas City Life Insurance Co.**

On October 1, 2019, Plaintiff J. Gregory Sheldon filed suit against KCL in the Circuit Court of Jackson County, Missouri making the same claims for breach of contract as alleged in *Meek* and

*Karr* on behalf of himself and a putative nationwide class of current or former owners of KCL's Century II variable universal life insurance policies. *See Sheldon v. Kansas City Life Insurance Co.*, No. 1916-CV26689. On November 7, 2019, KCL removed the case to federal court and moved for dismissal pursuant to the Securities Litigation Uniform Standards Act ("SLUSA"). Plaintiff moved for remand, and after full briefing, Judge Bough granted the motion to remand on January 15, 2020. *Sheldon v. Kansas City Life Ins. Co.*, No. 19-CV-00899-SRB, 2020 WL 8270387 (W.D. Mo. Jan. 15, 2020).

Like *Meek* and *Karr*, the *Sheldon* action involved substantial discovery, including requests for production of documents, interrogatories, and requests for admission. Stueve Decl., ¶ 42. Several depositions were conducted by the parties over the course of the litigation. Class Counsel produced both plaintiff and plaintiff's expert witness, Scott Witt, for depositions. Plaintiff also deposed several KCL witnesses, including KCL's designated corporate representative, Mark Milton, and additional witnesses, including, David Metzler, Karen Dierker, Lendy Kessler, Patricia Peebles, and Jill Daniel. *Id.*

On September 1, 2021, Sheldon moved to certify a nationwide class of Century II policyholders. The parties extensively briefed class certification between September and December 2021. The court heard oral argument on March 30, 2022. *Id.* On May 11, 2022, the court granted plaintiff's request, in part, and certified a Missouri class. *Sheldon v. Kansas City Life Ins. Co.*, No. 1916-CV26689, 2022 WL 2015591 (Mo. Cir. Ct. May 11, 2022).

On April 22, 2022, KCL filed a motion for summary judgment, arguing that plaintiff's claims were time-barred by the applicable statute of limitations period, that his alleged acknowledgement of the Century II's prospectus and illustration for his policy precluded all of his claims, that no reasonable person would read the relevant policy language as plaintiff had, that he

failed to provide damages evidence in support of his breach of contract theory, and that his declaratory and injunctive relief count was without support. Plaintiff opposed the motion.

On April 22, 2022, plaintiff also filed a motion for partial summary judgment in favor of the class on KCL's statute of limitations defense and on KCL's liability for breach of contract. Briefing on summary judgment continued through June 2022. On June 27, 2023, the court denied KCL's motion for summary judgment and granted plaintiff's motion for partial summary judgment. *Sheldon v. Kansas City Life Ins. Co.*, No. 1916-CV26689, 2023 WL 4423699 (Mo. Cir. Ct. June 27, 2023).

Additional contested briefing followed the cross-motions for summary judgment. KCL filed a motion to decertify the class on May 22, 2023. Motions in limine followed on May 23, 2023. KCL filed a motion to strike the declaration and exclude the testimony of plaintiff's expert Scott Witt on July 7, 2023. Plaintiff moved to strike KCL's experts Mary Jo Hudson and Henry Sanchez on July 31, 2023. The court rendered its orders on each of these motions following substantial briefing and oral argument, including denying KCL's motions to decertify the class and to exclude the testimony of Mr. Witt.

A jury trial was held September 18 – 21, 2023. The jury returned a verdict in favor of the class on all three breach of contract claims, finding damages in the full amount sought of $4,095,897.75. The court entered judgment on the jury verdict on November 1, 2023, and on December 1, 2023, plaintiff moved for an award of prejudgment interest, and KCL moved for judgment as a matter of law, for a new trial, for decertification of the class, and for reconsideration of the court's summary judgment order. On January 16, 2024, the court entered orders denying KCL's motion for reconsideration and motion for decertification of the class. On February 13, 2024, the court denied plaintiff's motion for an award of prejudgment interest.

On March 5, 2024, KCL filed a notice of appeal, and on March 12, 2024, plaintiff filed a notice of cross-appeal on the denial of prejudgment interest. On November 20, 2024, plaintiff moved to dismiss the appeals for lack of a final judgment in the trial court, which the court of appeals granted on November 26, 2024. On December 3, 2024, plaintiff moved for reconsideration of the court's order denying plaintiff's motion for prejudgment interest, citing the court of appeals' opinion in *Karr*, reversing and remanding for an award of prejudgment interest. On January 13, 2025, the court granted plaintiff's motion for reconsideration and awarded prejudgment interest at the Missouri statutory rate of 9% per annum. On January 16, 2025, the court entered an Amended Final Judgment, and on March 21, 2025, the court entered an order denying KCL's motions for new trial and for judgment notwithstanding the verdict. On March 28, 2025, KCL filed its notice of appeal. The parties will move for limited remand to the circuit court for approval of the Settlement as to the *Sheldon* Action.

**Fine v. Kansas City Life Insurance Co.**

On March 29, 2022, Plaintiff Robert R. Fine filed suit against KCL on behalf of himself and other current or former KCL universal and Century II variable universal life insurance policyholders whose policies were issued in California. Case No. 2:22-cv-0207 (C.D. Cal.), Doc. 1. On May 12, 2022, Fine filed a First Amended Class Action Complaint. Docs. 65-66. KCL moved to dismiss the First Amended Complaint contending that plaintiff failed to state a claim for relief, including that his interpretation of the policy language was unreasonable. Doc. 74. On September 14, 2022, the court granted in part and denied in part the motion to dismiss, dismissing the conversion claim without prejudice but denying the motion to dismiss with respect to the breach of contract claims, finding Fine's interpretation reasonable. Doc. 93; *Fine v. Kansas City Life Ins. Co.*, 627 F. Supp. 3d 1153 (C.D. Cal. 2022).

On September 20, 2022, Fine filed a Second Amended Class Action Complaint to re-plead the conversion claim. Doc. 95. On October 4, 2022, KCL moved to partially dismiss the Second Amended Class Action Complaint and to strike the request for punitive damages, but on February 21, 2023, the court denied KCL's motion. Docs. 102, 129.

The parties stipulated that the documents produced in *Meek*, *Karr*, and *Sheldon* could be treated as having been produced in *Fine*, but there was significant additional discovery as well. Stueve Decl., ¶ 55. Pursuant to court orders, the parties also participated in multiple Rule 26(f) conferences, filed four Joint Rule 26(f) Reports, and served initial disclosures (KCL also served supplemental initial disclosures). Docs. 62, 80, 82, 84, 88, 89-90, 92 208, 209. Several depositions were conducted by the parties over the course of the litigation. Class Counsel produced both Fine and Fine's expert witness, Scott Witt, for depositions. Class Counsel also deposed several KCL witnesses, including KCL's designated corporate representative, Aaron Bush, fact witnesses, Aaron Bush (this time in his personal capacity), Lendy Kesler, Lynn Robinson, and Mark Milton, and expert witnesses Timothy Hart, Christian Tregillis, Timothy Pfeifer, and Mary Bahna-Nolan. Stueve Decl., ¶ 56.

The discovery in *Fine* was particularly hard-fought, requiring numerous meet-and-confers, motions to compel, and discovery hearings before the court. *Id.* ¶ 57. The parties' discovery disputes spanned numerous topics such as the scope of KCL's corporate representative deposition, whether KCL could take absent class member depositions, and KCL's withholding of its mortality assumptions for the class products. *See* Docs. 97, 106, 112, 117, 127, 165, 178, 183-184, 201-202, 213, 216-217, 231, 237, 242, 224, 233, 239, 247, 253, 265, 267, 289, 290-292, 294-296, 320, 325. Related to these disputes, the parties participated in over a dozen discovery hearings before the

court, most of which lasted more than an hour, if not multiple hours. Docs. 97, 99, 106-107, 126, 130, 165, 167, 198, 213-215, 218, 224, 226, 253-255, 257, 270, 329.

On April 14, 2023, Fine moved to certify a class of California-issued KCL UL and Century II VUL policyholders, which, after briefing and oral argument, the court granted on November 6, 2023. Docs. 139, 146, 147, 161, 168; *Fine v. Kansas City Life Ins. Co.*, No. 2:22-CV-02071-SSS-PDX, 2023 WL 7393027 (C.D. Cal. Nov. 6, 2023). On November 20, 2023, KCL moved for reconsideration of the court's certification order, but after briefing the court denied the motion on January 25, 2024. Docs. 171, 185, 194, 197; *Fine*, 2024 WL 356463 (C.D. Cal. Jan. 25, 2024). On April 25, 2025, KCL moved to decertify the class, which was fully briefed and pending at the time the court stayed the case upon being notified of the Parties' execution of a settlement term sheet. Docs. 336, 338, 351.

On April 4, 2025, the parties filed competing motions for summary judgment. KCL contended it did not breach the policies or convert policyholders' funds, but in any event, claimed that Fine's claims were barred by the statute of limitations. Case No. 2:22-cv-0207 (C.D. Cal.), Doc. 309. Fine moved for partial summary judgment on policy interpretation, breach, the fact of damage, and several of KCL's affirmative defenses, including its statute of limitations defense. Docs. 312-313. The parties' motions for summary judgment were fully briefed and pending at the time of the settlement. Docs. 342-343, 346, 348-350.

After the Parties informed the court that they had executed a term sheet to settle the case, on May 22, 2025, the court stayed all deadlines in the case. Doc. 358.

**McMillan v. Kansas City Life Insurance Co.**

On May 5, 2022, Plaintiff Larry A. McMillan filed suit against KCL on behalf of policyholders whose policies were issued in Maryland. Case No. 1:22-cv-01100 (D. Md.), Doc. 1.

On May 31, 2022, KCL moved to dismiss the lawsuit contending that McMillan failed to state a claim for relief, including that his interpretation of the policy's language was disconnected with regulatory and actuarial standards and that McMillan's conversion claim is improper under Maryland law. Docs. 24-25. After the motion was fully briefed, including McMillan's surreply, on March 14, 2023, the court issued a memorandum opinion granting in part and denying in part the motion to dismiss, specifically holding that McMillan's interpretation of the policy language was reasonable and that McMillan stated a claim for conversion under Missouri law, which the court applied pursuant to its choice-of-law analysis. Docs. 35-37, 48; *McMillan v. Kansas City Life Ins. Co.*, No. 1:22-CV-01100-ELH, 2023 WL 2499746 (D. Md. Mar. 14, 2023). The court dismissed McMillan's claim for punitive damages without prejudice but with leave to amend. Doc. 48.

Accordingly, on April 4, 2023, McMillan filed his First Amended Class Action Complaint bolstering his claim for punitive damages. Doc. 52. But on April 18, 2023, KCL again moved to dismiss his claim for punitive damages. Docs. 54-55. On June 7, 2023, the court issued a memorandum order holding that McMillan can pursue punitive damages pursuant to his claim for conversion, but not for his other claims. Doc. 65; *McMillan v. Kansas City Life Ins. Co.*, No. 1:22-CV-01100-ELH, 2023 WL 3901279 (D. Md. June 7, 2023). On April 12, 2024, in the midst of briefing class certification, KCL again moved to dismiss the lawsuit contending that McMillan is not a member of the class alleged in the lawsuit, because he was a former third-party sales agent for KCL. Doc. 93. Docs. 97-98. The court denied KCL's motion. *McMillan v. Kansas City Life Ins. Co.*, 762 F. Supp. 3d 443, 456 (D. Md. 2025).

The *McMillan* action also involved significant discovery. Although the parties agreed to permit the use of documents, interrogatories, and depositions from the other cases, they also served additional requests for production of documents, interrogatories, and requests for admission.

Stueve Decl., ¶ 65. Class Counsel produced both McMillan and McMillan's expert witness, Scott Witt, for depositions. *Id.* In addition, KCL noticed McMillan's wife for a deposition, however, McMillan opposed the deposition, and the court ruled that the deposition would not go forward at that time. Doc. 105. In addition, KCL sought absent class member depositions, which McMillan opposed. The discovery dispute was raised to the court, however, it remained pending at the time the court stayed all deadlines upon being notified of the Parties' execution of a settlement term sheet. Docs. 121-123.

On January 17, 2024, McMillan moved to certify a class of Maryland KCL policyholders. Docs. 77-78. After briefing, including related to KCL's motion for leave to supplement its opposition, on January 10, 2025, the court granted the motion and certified a class of Maryland UL and Century II VUL policyholders. Docs. 88-91, 96, 112-113; *McMillan v. Kansas City Life Ins. Co.*, 762 F. Supp. 3d 443 (D. Md. 2025). On May 23, 2025, the court stayed all deadlines per the parties' request upon their execution of the settlement term sheet. Doc. 136.

**van Zanten & Vittetoe v. Kansas City Life Insurance Co.**

On February 12, 2025, Plaintiffs Peter M. van Zanten and Dwain E. Vittetoe filed the above-captioned case in this Court on behalf of themselves and other current or former KCL UL insurance policyholders whose policies were issued in Arizona, Colorado, Illinois, North Carolina, Pennsylvania, Texas, or Washington. Doc. 1. On March 20, 2025, KCL moved to consolidate the case with another case filed by Plaintiff van Zanten on his Century II VUL policy that KCL had removed from the Circuit Court of Jackson County, Missouri. Doc. 17. On April 3, 2025, Plaintiffs opposed consolidation because Plaintiff van Zanten had moved to remand his case on the Century II VUL back to state court. Doc. 19. The Court (the Honorable David Gregory Kays) denied KCL's

motion to consolidate without prejudice, subject to refiling pending the Court's ruling on the motion to remand. Doc. 20.

On April 10, 2025, KCL moved to dismiss Plaintiffs' claims as barred by the statutes of limitations and arguing their multi-state allegations were precluded by the Court's denial of Plaintiff Meek's motion to certify a 49-state class. On April 24, 2025, Plaintiffs filed a First Amended Complaint which mooted KCL's motion to dismiss. Docs. 24, 25. On May 8, 2025, KCL filed a motion to dismiss directed at the First Amended Complaint making the same arguments as its prior motion to dismiss. Docs. 26, 27. On May 22, 2025, Plaintiffs filed their suggestions in opposition, Doc. 28, and on June 5, 2025, KCL filed its reply, Doc. 31.

On May 27, 2025, the Parties jointly moved for the case to be transferred to the Honorable Beth Phillips due to the relatedness of this case to the claims and defenses asserted in *Meek*, which the Court granted the same day. Docs. 29, 30.

Contemporaneously with this filing, Plaintiffs have filed a Second Amended Class Action Complaint for purposes of effectuating the Settlement on behalf of the nationwide Settlement Class. Doc. 32.

**van Zanten v. Kansas City Life Insurance Co.**

On February 12, 2025, Plaintiff van Zanten filed a lawsuit in the Circuit Court of Jackson County, Missouri against KCL on behalf of himself and other current or former owners of KCL's Century II VUL whose policies were issued in Arizona, Colorado, Illinois, North Carolina, Pennsylvania, Texas, or Washington. *See van Zanten v. Kansas City Life Ins. Co.*, No. 2516-CV04172. On March 12, 2025, KCL removed the case to this Court contending there was federal subject matter jurisdiction pursuant to the Class Action Fairness Act (CAFA). *See* No. 25-CV-00179-DGK, Doc. 1. On March 19, 2025, KCL moved to dismiss van Zanten's claims as time-

barred and moved to strike his multi-state allegations as precluded by the Court's denial of Plaintiff Meek's motion to certify a 49-state class. Docs. 4, 5. On March 31, 2025, van Zanten moved to remand the case, arguing there was no federal subject matter jurisdiction under CAFA because CAFA exempts claims concerning securities, and the Century II VUL is a security. Plaintiff also argued there was no federal jurisdiction under SLUSA because Plaintiff's claims were for breach of contract and conversion, not for fraud in the sale of the Century II. Docs. 8, 9. Plaintiff's motion to remand and KCL's motion to dismiss were fully briefed when the Parties alerted the Court that they had executed a term sheet for a settlement of the cases.

**3. Settlement Negotiations**

Throughout the course of the litigation, the Parties participated in numerous settlement discussions, including several full-day mediation sessions on October 8, 2020, February 4, 2022, January 24, 2023, May 8, 2023, and December 10, 2024, with the assistance of four highly respected, experienced, neutral mediators, including two current and former judges. Stueve Decl., ¶ 77. Although the Settlement was not reached following the last mediation before John Phillips, that mediation session laid the groundwork for ongoing discussions, which counsel for the Parties continued directly over the course of several months, ultimately culminating in the Settlement. *Id.* Importantly, the ultimate terms were only negotiated after briefing completed in *Fine* on the summary judgment motions, KCL's motion to exclude Mr. Witt, and two motions for sanctions and remedial relief that were the subject of a half-day hearing in front of the Magistrate Judge. *Id*.

Throughout the process, the settlement negotiations were conducted by highly qualified and experienced counsel at arm's length. Plaintiffs' counsel was well informed of the material facts and legal risks and the negotiations were hard-fought and non-collusive. Having litigated the various legal and factual issues over nearly six years, including three cases to judgment and two through the entire appellate process, Plaintiffs' counsel was well-positioned to evaluate KCL's

positions and the risks facing the Settlement Class Members, advocated in the settlement negotiation process for a fair and reasonable Settlement that serves the best interests of the Settlement Class, and made fair and reasonable settlement demands of KCL. *Id.* ¶ 78.

### B. SUMMARY OF THE SETTLEMENT

The Agreement represents a compromise between Plaintiffs and the proposed Settlement Class and KCL regarding the claims pled in the Second Amended Class Action Complaint (which incorporates the claims pending in the other jurisdictions, except the *Sheldon* Action). If the Settlement is finally approved, KCL will fund a non-reversionary cash Settlement Fund in the amount of $45,000,000. Agreement, ¶¶ 1.38, 2.1. This amount represents compensation to the Settlement Class and the *Sheldon* Class that is in addition to the $49,558,403.87 in judgments already satisfied in *Karr* and *Meek* that will be distributed independent of the Agreement, making the total amount of gross funds collected $94,500,000. Stueve Decl., ¶ 81.

Under the Agreement, Plaintiffs' Counsel will move for an attorneys' fee award to be paid from the $40,000,000 portion of the Settlement Fund allocated to the Settlement Class not to exceed one-third of that amount and reimbursement of expenses not to exceed $1,175,000. *Id.* ¶ 8.1. Plaintiffs' Counsel will also move for Service Awards for the Plaintiffs in the amount of $25,000 each for Plaintiffs Fine and McMillan and $10,000 each for Plaintiffs van Zanten and Vittetoe. *Id.* ¶ 8.2.[5] The Settlement Fund will also cover the fees and expenses of the Settlement Administrator. *Id.* ¶¶ 1.19, 1.34, 1.38. The Settlement is not dependent on the approval of any particular amount of attorneys' fees, expenses, or service awards. *Id.* ¶ 8.4.

There is no "claims process." The Agreement provides for Plaintiffs' Counsel to submit a Distribution Plan for approval to the Court for the allocation of the Settlement Fund. *Id.* ¶¶ 2.2-

[5] Class Counsel will separately move in *Sheldon* for fees, expenses, and a service award for Mr. Sheldon from the $5,000,000 portion of the Settlement allocated to the *Sheldon* Class.

2.3. The Distribution Plan recommends allocating the value of the Settlement Fund available to the Settlement Class ($40,000,000 less approved attorneys' fees, expenses, service awards and administration costs) pursuant to an objective distribution plan that is designed to provide each Settlement Class Member a minimum payment of $10[6] plus an approximate pro rata portion of the Net Settlement Fund according to the amount of COI Charges paid by each Settlement Class Member,[7] with equitable adjustments for current policy owners. Ex. 3 (Witt Dec.), & Ex. B thereto.[8] In exchange for these benefits, the Parties will seek the entry of judgment on the claims asserted in this case and Settlement Class Members agree to release all claims arising out of the facts asserted in this case. *Id.* ¶¶ 3.1-3.7.

The Agreement permits any Settlement Class Member to file an objection to the Settlement terms or opt-out of the Settlement Class within 60 days after the date the Notice is mailed. *Id.* ¶¶ 5.1, 5.5.

### C. THE SETTLEMENT CLASS

The proposed Settlement Class includes the persons or entities who own or owned one or more of approximately 88,000 Policies issued or administered by KCL or its predecessors in

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

[7] Because Settlement Class Members who were a part of the *Karr* and *Meek* classes will receive a share of those judgments, their settlement share will be calculated using charges deducted outside the damages periods in those judgments. *See* Ex. 3 (Witt Dec.), & Ex. B thereto. Those Settlement Class Members will receive, or have received, their share of the judgments separately.

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

interest that were active on or after January 1, 2002 under the following plans: Better Life Plan, Better Life Plan Qualified, LifeTrack, AGP, MGP, PGP, Chapter One, Classic, Century II, Rightrack (89), Performer (88), Performer (91), Prime Performer, Competitor (88), Competitor (91), Executive (88), Executive (91), Protector 50, LewerMax, Ultra 20 (93), Competitor II, Executive II, Performer II, Ultra 20 (96), except Century II policies issued in the State of Missouri which are the subject of the *Sheldon* Action. The Settlement Class is made up of the Owners of the Policies on the Class List (Exhibit A to the Agreement), except the members of the *Sheldon* Class.[9] *Id.* ¶¶ 1.27, 1.36, 1.41-1.43.

The *Sheldon* Class will be entitled to $5,000,000 of the Settlement Fund through the *Sheldon* Action. *Id.* ¶ 1.38. The Settlement of the *Sheldon* Action is subject to the approval of the 16th Judicial Circuit Court of Jackson County, Missouri, where the *Sheldon* Action was tried. The Settlement of this and the *Sheldon* Action are contingent on both this Court and the Circuit Court approving the Settlement. *Id*. ¶ 10.3. This Court shall retain jurisdiction relating to the Settlement Class and the *Sheldon* Court shall retain jurisdiction over the *Sheldon* Class for all matters relating to the Settlement. *Id*. ¶ 10.5.

## III. ISSUING NOTICE TO THE SETTLEMENT CLASS IS JUSTIFIED.

### A. STANDARD FOR ISSUANCE OF NOTICE.

Class action settlements must be approved by the Court. Fed. R. Civ. P. 23(e). The first step is the Court's evaluation of whether directing notice of the proposed settlement to the settlement class is justified. Notice should issue if the parties have demonstrated to the court that

[9] The Settlement Class excludes KCL; any entity in which KCL has a controlling interest; any of the officers, employees or board of directors of KCL; the legal representatives, heirs, successors, and assigns of KCL; anyone employed with Plaintiffs' law firms; and any Judge to whom this Action or a Related Action is assigned, and his or her immediate family. Agreement, ¶ 1.36.

it will likely be able to: (i) approve the proposed settlement as fair, reasonable, and adequate; and (ii) certify the class for purposes of settlement. Fed. R. Civ. P. 23(e)(1)-(2).

In determining whether a proposed settlement should be approved, courts in the Eighth Circuit consider the factors set forth in the 2018 amendment to Federal Rule of Civil Procedure 23(e)(2) as well as those commonly known as the "*Van Horn* factors" from the Eighth Circuit opinion, *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988). *See Niewinski v. State Farm Life Ins. Co.*, No. 23-04159-CV-C-BP, 2024 WL 4902375, at *3 (W.D. Mo. Apr. 1, 2024) (citing *Van Horn*, 840 F.2d at 607); *Rogowski v. State Farm Life Ins. Co.*, No. 4:22-CV-00203-RK, 2023 WL 5125113, at *3 (W.D. Mo. Apr. 18, 2023) (same); *Swinton v. SquareTrade, Inc.*, No. 4:18-CV-00144-SMR-SBJ, 2020 WL 1862470, at *5 (S.D. Iowa Apr. 14, 2020) (holding that it is "appropriate for the Court to consider the Rule 23(e)(2) factors along with the *Van Horn* Factors"); *see also* Fed. R. Civ. P. 23(e)(2) Committee Notes to 2018 amendments ("The goal of this amendment [to Rule 23(e)(2)] is not to displace any [circuit case-law] factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.").

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

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

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

### B. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE.

As demonstrated below, the proposed Settlement is fair, reasonable, and adequate and the Court should conclude it will likely be able to approve the Settlement.

#### 1. The Class Representatives and Class Counsel Have Provided Excellent Representation to the Class.[10]

The adequacy-of-representation factor supports finding that the Settlement is fair, reasonable, and adequate. First, the Plaintiffs have shown their dedication to representing the Settlement Class, each providing information and documents, and for Fine and McMillan, sitting for depositions, in connection with this litigation. Each Plaintiff has worked with counsel to advance the litigation on behalf of himself and all members of the proposed Settlement Class, and each supports the Settlement and advocates for its approval. Stueve Decl., ¶ 88.

Second, the undersigned counsel are competent, experienced and qualified with expertise in class actions and cost of insurance cases on these and other life insurance policies and have vigorously prosecuted the claims asserted in this case. *Id.* ¶¶ 7-11. Plaintiffs' counsel have been

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

appointed as class counsel in dozens of class actions throughout the country, including in the *Meek* case that commenced this litigation, as well as the several cases against KCL that were filed after *Meek*,[11] and have significant experience handling complex disputes, including lawsuits involving other life insurance contracts. *See id.* and Exhibits A & B thereto. For example, in June 2018, Stueve Siegel and the lawyers at Schirger Feierabend successfully tried the *Vogt v. State Farm Life Insurance Co.* case, securing a jury verdict of $34,333,495.81 for Missouri policy owners, which was affirmed on appeal. *See Vogt*, No. 16-CV-04170-NKL, Docs. 358 & 360, *aff'd*, 963 F.3d 753 (8th Cir. 2020), *cert. denied*, 141 S. Ct. 2551 (Apr. 19, 2021). As recounted above, the same lawyers have already recovered $49,558,403.87 in satisfied judgments from KCL, in addition to the *Sheldon* judgment that will be resolved as part of the Settlement.[12]

Plaintiffs' Counsel have also obtained numerous settlements for COI overcharges during and prior to the pendency of this litigation. In May 2025, Stueve Siegel Hanson and Schirger Feierabend obtained final approval of a COI overcharge class action against Symetra Life

[11] *See Meek v. Kansas City Life Ins. Co.*, 2022 WL 499049 (W.D. Mo. Feb. 7, 2022); *Fine v. Kansas City Life Ins. Co.*, 2023 WL 7393027 (C.D. Cal. Nov. 6, 2023); *McMillan v. Kansas City Life Ins. Co.*, 762 F. Supp. 3d 443, 467 (D. Md. 2025); *Karr v. Kansas City Life Ins. Co.*, 2021 WL 7709466 (Mo. Cir. Ct. July 12, 2021); *Sheldon v. Kansas City Life Ins. Co.*, 2022 WL 2015591 (Mo. Cir. Ct. May 11, 2022); *Davis v. Symetra Life Ins. Co.*, No. 21-cv-00533-KKE (W.D. Wash. May 19, 2025), Docs. 150 at 6; *Niewinski v. State Farm Life Ins. Co.*, 2024 WL 4902375 (W.D. Mo. Apr. 1, 2024); *Rogowski v. State Farm Life Ins. Co.*, 2023 WL 5125113 (W.D. Mo. Apr. 18, 2023); *Larson v. John Hancock Life Ins. Co.*, 2017 WL 4284163 (Cal. Super. Ct. Mar. 23, 2017); *Vogt v. State Farm Life Ins. Co*., 2018 WL 1955425 (W.D. Mo. Apr. 24, 2018); *Bally v. State Farm Life Ins. Co.*, 335 F.R.D. 288 (N.D. Cal. 2020); *Spegele v. USAA Life Ins. Co.*, 2021 WL 4935978 (W.D. Tex. Aug. 26, 2021); *Whitman v. State Farm Life Ins. Co.*, 2021 WL 4264271 (W.D. Wash. Sept. 20, 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. 2022); *Toms v. State Farm Life Ins. Co.*, 2022 WL 5238841 (M.D. Fla. Sept. 26, 2022).

[12] *See Karr* (securing $28.36 million verdict in December 2022 in favor of approximately 8,000 Missouri policyholders); *Meek*, No. 4:19-cv-472-BP (securing over $900,000 jury verdict in May 2023 in favor of approximately 2,300 Kansas policyholders); *Sheldon* (securing $4.1 million verdict in September 2023 in favor of over 500 Missouri Century II VUL policy owners).

Insurance Company for $32,500,000 on behalf of the owners of approximately 43,000 policies issued in eleven states. *See Davis v. Symetra Life Ins. Co.*, No. 21-cv-00533-KKE (W.D. Wash. May 19, 2025), Docs. 150, 151. In 2023, after the litigation referenced above on the State Farm policy, the undersigned secured a $325 million settlement on behalf of a nationwide settlement class of approximately 760,000 State Farm policy owners. *See Rogowski v. State Farm Life Ins. Co.*, 2023 WL 5125113 (W.D. Mo. Apr. 18, 2023). In 2024, the undersigned also secured a $65 million settlement for a nationwide class of owners of 445,000 earlier-generation State Farm policies. *Niewinski v. State Farm Life Ins. Co.*, No. 23-04159-CV-C-BP, 2024 WL 4902375 (W.D. Mo. Apr. 1, 2024). In 2021, the undersigned settled a similar case against USAA Life Insurance Company, obtaining $90 million for a class of approximately 110,000 universal life insurance policy owners. *Spegele v. USAA Life Ins. Co.*, 2021 WL 4935978 (W.D. Tex. Aug. 26, 2021). In 2018, the undersigned settled a similar case against John Hancock Life Insurance Company, obtaining $59.75 million for a class of approximately 90,000 variable whole life insurance policy owners. *See Larson v. John Hancock Life Ins. Co*., No. RG16813803 (Alameda Cty., Cal.). In 2016, the undersigned 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 approximately 77,500 universal life policy owners. *See Bezich v. Lincoln Nat'l Life Ins. Co.*, No. 02C01-0906-PL-73 (Allen Cty., Ind.).

Counsel's depth of knowledge and experience gained through the litigation here and cases challenging cost of insurance charges under other similar life insurance policies allowed them to accurately evaluate and weigh the risks of continued litigation to reach a fair settlement of the claims asserted in this litigation, which Plaintiffs' counsel believe to be in the best interests of Plaintiffs and the Settlement Class. Stueve Decl., ¶¶ 80, 86-87. This factor thus supports finding

that the Settlement is fair, reasonable, and adequate, and that it will likely be approved, and therefore justifies issuing Notice of the Settlement to the Settlement Class. *See DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995) (recognizing that 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.[13]**

The extent and scope of litigation confirms that the Settlement is the product of arm's length negotiations. And, as explained in Part II.A.3., *supra*, the proposed Settlement is the product of significant negotiation by experienced counsel on both sides with the assistance of experienced, well-respected neutral mediators, culminating in the execution of the Agreement attached hereto as Exhibit 1. Stueve Decl., ¶¶ 77-78. The arm's length nature of the negotiations amongst experienced counsel supports a finding that the Settlement is fair, reasonable, and adequate and will likely be approved such that issuing Notice to the Settlement Class is justified. *See* Comment to December 2018 Amendment to Fed. R. Civ. P. 23(e) ("[T]he involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests."); *Vill. Bank v. Caribou Coffee Co., Inc.*, No. 19-CV-1640 (JNE/HB), 2020 WL 13558808, at *2 (D. Minn. July 24, 2020) (finding that "[t]he assistance of a retired United States Magistrate Judge as a mediator in the settlement process supports the conclusion that the Settlement was non-collusive and fairly negotiated at arm's length"); *Kelly v. Phiten USA, Inc.*, 277 F.R.D. 564, 570 (S.D. Iowa 2011) (finding the proposed settlement's fairness was supported by the fact that it was reached "after significant investigation and extensive arm's-length negotiations"). In addition, the amount of work—including three jury

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

trials and two appeals, class certification in two additional jurisdictions, and complete summary judgment briefing in *Fine*—leading up to the Settlement confirms that the Settlement was the product of not only arms-length negotiations but hotly-contested litigation by experienced counsel. Accordingly, this factor supports issuing Notice of the Settlement to the Settlement Class.

**3. The Relief Provided by the Settlement Is Excellent**.[14]

***i. The duration, costs, risks, and delay of trial and appeal support approval of the Settlement.***[15]

The $45,000,000 cash settlement—$40,000,000 of which is allocated to the Settlement Class—is an excellent result for the Settlement Class. The size of the fund represents a material portion of the alleged overcharges. Stueve Decl., ¶ 82. The result is even more impressive given the duration, costs, risks, and delay of trial and appeal, which supports a finding that the Court will likely be able to approve the Settlement, and thus, that Notice should issue to the Settlement Class. In the absence of the Settlement, the Settlement Class Members face significant risks related to KCL's statute of limitations defense, for example. As *Meek* demonstrated, the failure or inability to prove tolling to recover damages suffered outside the limitations period would have a substantial impact on damages because KCL's COI rates generally contained the highest percentages of allegedly impermissible factors in early policy years, and significant harm resulting from KCL's failure to lower the COI rates in the face of improved mortality also occurred outside the limitations period.

In addition, obtaining and maintaining certification of a litigation class would likewise involve lengthy and complex factual and legal development, expensive expert analysis, and likely

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

[15] 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.

requested Rule 23(f) review. And no matter the merit of Plaintiffs' claims, a class action jury trial is an inherently risky and unpredictable process, as demonstrated by the three jury trials that occurred in this hard-fought litigation. In the *Karr* and *Sheldon* jury trials, full damages were awarded by the juries, but in the *Meek* trial the jury awarded less than the amount sought. Moreover, absent settlement, the issue of policy interpretation would soon be before the Ninth Circuit in *Fine* for the first time. Consequently, there remains a significant risk that policy owners would recover substantially reduced damages or nothing through further litigation, supporting that the Settlement should ultimately be approved, and therefore that Notice should issue.

Further, KCL has argued that Plaintiffs' expert's damages calculations are unreliable, cannot be used to prove damages class-wide, and should be rejected by a jury. Since suffering the adverse judgments in *Karr*, *Meek*, and *Sheldon*, KCL's defenses have evolved, and KCL has disclosed four entirely different experts recently in *Fine*, including experts on economic damages modeling; actuarial science, pricing, and mortality improvement; and insurance regulation. None of these experts have been tested at trial, nor excluded from testifying by any of the courts in the pending cases.

For these reasons, there is significant uncertainty as to the damages that would be recovered at trial. Proving Plaintiffs' claims through trial would thus be a lengthy, costly, and uncertain process. *See Keil v. Lopez*, 862 F.3d 685, 698 (8th Cir. 2017) ("Class actions, in general, place an enormous burden of costs and expense upon parties. Here, the application of numerous states' laws made this a particularly complex case.") (quotations omitted); *In re Zurn Pex Plumbing Products Liab. Litig.*, 2013 WL 716088, at *7 (D. Minn. Feb. 27, 2013) (recognizing that "[t]he complexity and expense of class action litigation is well-recognized" and that "various procedural and substantive defenses . . ., the expense of proving class members' claims, the certainty that

resolution under [a] settlement will foreclose any subsequent appeals, and the fear that, unsettled, the ultimate resolution of the action . . . could well extend into the distant future, all weigh in favor of the settlement's approval."). In contrast, the Settlement, which provides a material portion of the damages, and more than the damages suffered during the limitations periods, is and an excellent result. *See* Stueve Decl., ¶ 82.

Finally, KCL—which has retained several lawyers from large and resourced law firms—has demonstrated it will challenge Plaintiffs' claims to the highest appellate levels before ultimately paying any judgment. For example, as it litigated its various challenges in *Karr* to the maximum extent possible, including seeking transfer to the Missouri Supreme Court, KCL did not pay the judgment—for a case that was tried in December 2022—until 2025. Stueve Decl., ¶ 87. Thus, even if Plaintiffs were to prevail on all issues in their respective cases, an uncertain proposition that itself would take considerable time for the reasons explained above, they would likely not obtain their due recovery for years. This delay further supports a finding that the Settlement, which provides certain recovery in the near-term in an amount representing a material portion of the damages that Settlement Class Members could have obtained had they prevailed in full on the merits of their claims, and more than they could have recovered if KCL prevailed on any one of its challenges or defenses, is a fair, reasonable, and adequate result, and should therefore ultimately be approved. *See, e.g.*, *Kelly*, 277 F.R.D. at 570 (finding settlement approval was supported by 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"); *Keil*, 862 F.3d at 696 ("As courts routinely recognize, 'a settlement is a product of compromise and the fact that a settlement provides only a portion of the potential recovery does not make such settlement unfair, unreasonable or inadequate.'") (quoting *In re BankAmerica Corp. Sec. Litig.*, 210 F.R.D. 694, 708 (E.D. Mo. 2002); citing *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 n.2 (2d Cir. 1974)); *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.") (cleaned up). "Weighing the uncertainty of relief against the immediate benefit provided in the settlement" supports approval here. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 933 (8th Cir. 2005).

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

#### *ii. The effectiveness of the proposed method of distributing relief to the Settlement Class supports approval of the Settlement.*[16]

Subject to Court approval, the Net Settlement Fund will be distributed pursuant to a proposed Distribution Plan that will provide each Settlement Class Member a minimum payment of $10 plus an approximate pro rata portion of the fund according to the amount of COI Charges paid by the Settlement Class Member (for *Karr* and *Meek* class members, only for those COI Charges deducted outside the damages periods in those cases) and an upward adjustment for

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

current owners. *See* Agreement, ¶ 2.2; Ex. 3 (Witt Dec.), & Ex. B thereto. Settlement checks will be delivered to each Settlement Class Member without the submission of a claim. Agreement, ¶¶ 2.2-2.3. That each Settlement Class Member will receive an equitable portion of the Settlement Fund according to the proportional amount of COI Charges paid (and, therefore, an amount proportional to the alleged loss suffered) without needing to submit a claim supports approval of the Settlement. *See, e.g.*, *In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d 1330, 1351 (S.D. Fla. 2011) ("The absence of a claims-made process further supports the conclusion that the Settlement is reasonable."); 4 Newberg and Rubenstein on Class Actions § 13:53 (6th ed.) (stating a class settlement distribution method should be "in as simple and expedient a manner as possible"). Given the simplified process for paying each Settlement Class Member and the fact that no funds will revert to KCL, this factor weighs in favor of approval.

#### *iii. The terms for the award of attorneys' fees, including the timing of payment, support approval of the Settlement.*[17]

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

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

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

award of reasonable attorneys' fees "'equal to some fraction of the common fund that the attorneys were successful in gathering during the course of the litigation.'") (quoting *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 244-45 (8th Cir. 1996)); *see also* Fed. R. Civ. P. 23(h) (permitting the court to award "reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement").

In addition, the Agreement's provision for an award of up to one-third of the fund is reasonable. District courts in the Eighth Circuit frequently assess the reasonableness of an attorney fee award paid from a common fund by the percentage sought, *West v. PSS World Med., Inc.*, No. 4:13 CV 574 CDP, 2014 WL 1648741, at *1 (E.D. Mo. April 24, 2014) ("where attorney fees and class members' benefits are distributed from one fund, a percentage-of-the-benefit method may be preferable to the lodestar method for determining reasonable fees") (citations omitted), and frequently approve awards of one-third as reasonable, particularly under facts like those here involving extensive litigation undertaken with significant contingent risk.[18] Accordingly, the

[18] *See, e.g.*, *Niewinski*, 2024 WL 4902375, at *5 (awarding one-third of $65 million settlement fund); *Rogowski*, 2023 WL 5125113, at *5 (awarding one-third of $325 million settlement fund); *Vogt v. State Farm Life Ins. Co.*, 2021 WL 247958, at *3 (W.D. Mo. Jan. 25, 2021) (awarding one-third of approximately $40 million judgment fund); *Davis v. Symetra Life Ins. Co.*, No. 21-cv-00533-KKE (W.D. Wash. May 19, 2025), Doc. 150 at 9 (awarding one-third of $32.5 million settlement fund); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (36% fee award reasonable); *Barfield*, 2015 WL 3460346, at *4 (finding one-third of $6,500,000 settlement fund for fees and expenses was a reasonable); *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1110 (D. Kan. 2018) (one-third of $1.51 billion settlement fund was reasonable); *In re: Urethane Antitrust Litig*., No. 04-1616-JWL, 2016 WL 4060156, at *5 (D. Kan. July 29, 2016) (finding that a "one-third fee is customary in contingent-fee cases" and awarding one-third of $835 million settlement fund); *Hale v. State Farm Mut. Auto. Ins. Co*., No. 12-0660-DRH, 2018 WL 6606079, at *16 (S.D. Ill. Dec. 16, 2018) (awarding one-third of $250 million settlement fund); *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig*., No. 17-MD-2785-DDC-TJJ, 2022 WL 2663873, at *4 (D. Kan. July 11, 2022) (awarding "one-third of the $264 million" settlement fund); *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.*, No. 17-MD-2785-DDC-TJJ, 2021 WL 5369798, at *3 (D. Kan. Nov. 17, 2021), judgment entered, No. 17-MD-2785-DDC-TJJ, 2021 WL 5369815 (D. Kan. Nov. 17, 2021) (awarding "one-third of the $345 million" settlement fund); *Yarrington v. Solvay Pharms., Inc.*,

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

Class Counsel will provide a thorough analysis of the reasonableness of their forthcoming attorneys' fee and expense award request in their fee motion. But importantly, the Parties' Agreement is not conditioned upon the Court's approval of the fee award. Agreement, ¶ 8.4. Accordingly, at this stage, the Court can and should conclude that it is likely to approve the Settlement for purposes of sending Notice to the Settlement Class, without regard to the issue of attorneys' fees and expenses.[19]

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697 F. Supp. 2d 1057, 1061-62, 1067 (D. Minn. 2010) (awarding one-third of $16 million settlement fund); *Carlson v. C.H. Robinson Worldwide, Inc.*, No. 02-3780, 2006 WL 2671105, at *8 (D. Minn. Sept. 18, 2006) (finding 35.5% fee award reasonable); *In re E.W. Blanch Holdings, Inc. Sec. Litig.*, No. 01-258, 2003 WL 23335319, at *3 (D. Minn. June 16, 2003) (awarding one-third of a $20 million settlement fund); *KK Motors v. Brunswick Corp.*, No. 98-2307, Doc. 67, pp. 2-3 (D. Minn. March 6, 2000) (awarding one-third of a $30 million settlement fund); *In re Airline Ticket Commission Antitrust Litig.*, 953 F. Supp. 280, 285-86 (D. Minn. 1997) (awarding one-third of $86.9 million settlement fund); *In re Iowa Ready–Mix Concrete Antitrust Litig*., No. C 10-4038-MWB, 2011 WL 5547159, at *3-4 (N.D. Iowa Nov. 9, 2011) (awarding 36.04% of $18.5 million settlement fund); *West*, 2014 WL 1648741, at *1 ("33 percent is a reasonable percentage for attorney's fees"); *Wiles v. Sw. Bill Tel. Co.*, No. 09-4236-CV-C-NKL, 2011 WL 2416291, at *5 (W.D. Mo. June 9, 2011) (recommending award of one-third of $900,000 settlement fund); *Ray v. Lundstrom*, No. 8:10CV199, 2012 WL 5458425, at *4-5 (D. Neb. Nov. 8, 2012) (awarding one-third of $3.1 million settlement fund); *Brehm v. Engle*, No. 8:07CV254, 2011 U.S. Dist. LEXIS 35127, at *6 (D. Neb. Mar. 30, 2011) (awarding one-third of $340,000 settlement fund); *Kelly v. Phiten USA, Inc*., 277 F.R.D. 564, 571 (S.D. Iowa 2011) (awarding 33% of settlement fund); *Tussey v. ABB, Inc.*, No. 06-CV-04305-NKL, 2019 WL 3859763, at *4 (W.D. Mo. Aug. 16, 2019) (awarding 1/3 of $55 million fund); *see also In re Xcel*, 364 F. Supp. 2d 980, 996 (D. Minn. 2005) (listing various settlements, including *In re Select Comfort Corp. Secs. Litig.*, No. 99-884, 2003 U.S. Dist. LEXIS 26409 (D. Minn. Feb. 28, 2003) (awarding 33.3% of the $5,750,000 settlement fund), and *In re Control Data Sec. Litig.*, No. 85-1341 (D. Minn. Sept. 23, 1994) (awarding 36.96% of $8 million fund)).

[19] Similarly, pursuant to the Agreement, Plaintiffs' Counsel will request Service Awards for Plaintiffs, in the amount of $25,000 each for Plaintiffs Fine and McMillan and $10,000 each for Plaintiffs van Zanten and Vittetoe. Agreement, ¶ 8.2. Service awards of this size have been found reasonable. *See, e.g.*, *Niewinski*, 2024 WL 4902375, at *5 (awarding $25,000 service awards each to several named plaintiffs); *Rogowski*, 2023 WL 5125113, at *6 (same). In addition, the Parties' Agreement is not conditioned on the Court's approval of this request. Agreement, ¶ 8.4.

#### *iv. 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 is likely to be 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 COI Charges deducted from their policy accounts. There is an upward adjustment proposed for current policy owners to reflect that they are still paying COI Charges and, for the members of the *Karr* and *Meek* classes, their share of the Settlement will be calculated using COI Charges deducted outside the damages periods in those cases because they have already or will receive a share of those judgments to reflect damages incurred during the damages periods. Accordingly, Settlement Class Members are treated equitably relative to each other under the Settlement, supporting its approval.

### 5. KCL's Financial Condition.[22]

KCL has shown both its willingness and financial ability to litigate this case to the greatest extent possible and use every procedural and legal challenge available to it, and also is able to comply with its financial obligations under the Settlement. Plaintiffs thus submit that this factor is neutral. *See Marshall*, 787 F.3d at 512 (finding this factor neutral where defendant was "in good

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

[21] *See* Fed. R. Civ. P. 23(e)(2)(D).

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

financial standing, which would permit it to adequately pay for its settlement obligations or continue with a spirited defense in the litigation").

**6. The Amount of Opposition to the Settlement Supports Approval.[23]**

As explained above, Plaintiffs' Counsel believe the Settlement is an excellent result for the Settlement Class, especially given the risks and delay of continued litigation, as detailed above. Stueve Decl., ¶¶ 80-87; *see Claxton v. Kum & Go, L.C.*, No. 6:14-CV-03385-MDH, 2015 WL 3648776, at *6 (W.D. Mo. June 11, 2015) (recognizing that when evaluating a settlement, the court should accord "deference to the attorneys in assessing their clients' claims/defenses"); *DeBoer*, 64 F.3d at 1178 (stating class counsel's "experience in this type of litigation" supports providing deference to their views as to the fairness of the settlement). Here, Plaintiffs' Counsel's experience litigating the cases in this litigation and similar ones has provided them a thorough understanding of the risks and potential ranges of recovery in this case, which has allowed Plaintiffs' Counsel to fairly consider the merits of the claims here and the value of the Settlement to the Settlement Class. In addition, Plaintiffs also support and approve the Settlement, believing it to be in the best interests of the Settlement Class. Stueve Decl., ¶ 88. While the Settlement Class Members have not yet had the opportunity to provide their views on the proposed Settlement, Plaintiffs' Counsel believe it will be well received, and any objections thereto will be provided to the Court and addressed in advance of the Fairness Hearing. Accordingly, this factor supports issuing Notice of the Settlement to the Settlement Class.

* * *

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

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

## IV. THE SETTLEMENT CLASS MEETS THE REQUIREMENTS FOR CERTIFICATION FOR PURPOSES OF SETTLEMENT.

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

### A. STANDARD FOR CERTIFYING SETTLEMENT CLASS.

A motion for class certification under Federal Rule of Civil Procedure 23 involves a two-part analysis. First, under Rule 23(a), the proposed class must satisfy the requirements of numerosity, commonality, typicality, and fair and adequate representation. Second, the proposed class must meet at least one of the three requirements of Rule 23(b). Fed. R. Civ. P. 23(a)-(b). Plaintiffs request certification for settlement purposes only under Rule 23(b)(3), which requires that the common questions predominate over any individualized questions, and that a class action is superior to other methods of adjudication. Fed. R. Civ. P. 23(b)(3). A district court has discretion in deciding whether a particular action complies with the requirements of Rule 23. *Meek*, 126 F.4th at 583.

### B. THE SETTLEMENT CLASS SATISFIES THE REQUIREMENTS OF RULE 23.

#### 1. The Settlement Class Meets Each of the Requirements of Rule 23(a).

The Settlement Class satisfies Rule 23(a)'s numerosity, commonality, typicality, and adequacy requirements. First, the Settlement Class satisfies the numerosity requirement because it is comprised of owners of approximately 88,000 Policies sold by KCL throughout the country. Stueve Decl., ¶ 79; *Meek*, 2022 WL 499049, at *10 (W.D. Mo. Feb. 7, 2022) (finding "evidence that Defendant issued over 80,000 life insurance policies" sufficient to satisfy numerosity); *Vogt v. State Farm Life Ins. Co.*, No. 2:16-CV-04170-NKL, 2018 WL 1955425, at *2 (W.D. Mo. Apr. 24, 2018) ("In assessing whether the numerosity requirement has been met, courts examine factors such as the number of persons in the proposed class, the nature of the action, the size of the individual claims, and the inconvenience of trying individual claims," concluding numerosity was satisfied for a class of approximately 24,000 Missouri policy owners) (quoting *Paxton v. Union Nat'l Bank*, 688 F.2d 552, 561 (8th Cir. 1982)).

Second, commonality is satisfied because the Policies are standard form contracts and KCL performs uniformly under them as to its inclusion of unlisted profit and expense factors in the COI rates as to all Settlement Class Members. *Meek*, 126 F.4th at 584 ("The matching policy language provided the necessary commonality, which predominated over other issues."); *Vogt*, 2018 WL 1955425, at *3 (finding commonality satisfied because plaintiff's claims all turned on interpretation of the standard form policy and the insurance company's uniform incorporation of non-mortality factors into its COI rates); *see also, e.g.*, *Advance Tr. & Life Escrow Servs., LTA v. ReliaStar Life Ins. Co.*, 2022 WL 911739, at *9 (D. Minn. Mar. 29, 2022) (finding commonality satisfied for similar claims for breach of universal life insurance policies as to multi-state class because "each turn on the interpretation of materially similar provisions in form UL insurance

policies"); *McKeage v. TMBC, LLC*, 847 F.3d 992, 999 (8th Cir. 2017) (finding commonality satisfied where breach arose from form contract term).

Further, because each Plaintiff is the owner of one of the Policies and, like every policy owner, was charged COI rates containing the allegedly improper amounts, their claims are typical of the Settlement Class and their interests are aligned with all policy owners in seeking to recover the amounts that allegedly violated the Policies. *See Vogt*, 2018 WL 1955425, at *4-5 (finding the plaintiff had no conflicts with other policy owners and that his claims were typical of those of the class because the claims arose from and related to the interpretation and application of the policy and the policy language, and the insurer's methodology for determining COI rates was uniform for all class members), *aff'd*, 963 F.3d at 767 ("[T]o forestall class certification the intra-class conflict must be so substantial as to overbalance the common interests of the class members as a whole."); *Meek*, 2022 WL 499049, at *11 (finding there was no conflict of interest in plaintiff seeking retrospective damages); *Fine*, 2023 WL 7393027, at *4 (finding typicality satisfied where the plaintiff's claims "arise from materially identical life insurance policies issued by KCL that contained identical promises to use the company's mortality expectations to calculate COI rates," and "KCL allegedly breached this promise by using undisclosed, non-mortality factors that caused the putative class members to pay higher COI charges").

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

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

**2. The Settlement Class Meets the Requirements of Rule 23(b)(3).**

Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only individual members, and [that] a class action is

superior to other available methods for fairly and efficiently adjudicating the controversy." As several courts have now concluded, the question whether KCL's uniform conduct violated the common form Policies is a common, predominating one. *E.g.*, *Meek*, 126 F.4th at 584 ("The matching policy language provided the necessary commonality, which predominated over other issues."); *McMillan v. Kansas City Life Ins. Co.*, 762 F. Supp. 3d 443, 463 (D. Md. 2025) (finding predominance satisfied because the Policies were standardized and non-negotiable) (citing *Custom Hair Designs by Sandy v. Cent. Payment Co., LLC*, 984 F.3d 595, 601 (8th Cir. 2020) (finding predominance and commonality met where "[t]he relevant contract term was uniform")).

And that is so even though Settlement Class Members' Policies were issued throughout the country and could be governed by the substantive laws of their respective states because states' breach of contract laws are materially the same, and the contracts at issue are uniform. *See Am. Airlines, Inc v. Wolens*, 513 U.S. 219, 233 n.8 (1995) ("[C]ontract law is not at its core diverse, nonuniform, and confusing."); *Burnett v. CNO Fin. Grp., Inc.*, 1:18-cv-00200-JPH-DML, 2022 WL 896871, at *13 (S.D. Ind. Mar. 25, 2022) (certifying multi-state class for breach of COI provision of life insurance policies, noting that "in cases arising under common law, the legal 'principles are the same, or materially the same, in many or even all U.S. states'") (quoting *Thomas v. UBS AG*, 706 F.3d 846, 849 (7th Cir. 2013)); *Advance Tr. & Life Escrow Servs., LTA v. N. Am. Co. for Life & Health Ins.*, 592 F. Supp. 3d 790, 809 (S.D. Iowa 2022) (finding predominance satisfied for similar claims for multi-state class of policy owners because "'the relevant contract term was uniform.'") (quoting *Custom Hair Designs by Sandy*, 984 F.3d at 601).

Courts have also repeatedly recognized that under the facts here, proceeding as a class action is superior to individualized proceedings. *Meek*, 2022 WL 499049, at *13; *Fine*, 2023 WL 7393027, at *8; *McMillan*, 762 F. Supp. 3d at 468. The requested certification here for purposes

of effectuating the Settlement is likewise superior "because a class-wide settlement is a more efficient use of the parties'—and the judiciary's—resources." *See Komoroski v. Util. Serv. Partners Priv. Label, Inc.*, No. 4:16-CV-00294-DGK, 2017 WL 3261030, at *6 (W.D. Mo. July 31, 2017). Further, because Plaintiffs seek class certification for purposes of Settlement, the Court need not consider whether certifying a nationwide class for trial would raise manageability concerns. *See Niewinski*, 2024 WL 4902375, at *3 ("When '[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial.'") (quoting *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997)); *Keil*, 862 F.3d at 695 (recognizing that certification of a multi-state class for litigation may have created "intractable management problems," but that these issues do not prevent certification for purposes of settlement and instead indicated settlement was the best outcome). Thus, the Settlement Class satisfies Rule 23(b)(3).

* * *

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

## V. THE COURT SHOULD APPOINT PLAINTIFFS' COUNSEL AS INTERIM CLASS COUNSEL.

As explained at Part III.B.1., *supra*, the undersigned counsel are highly experienced in class actions and litigation of this type, and have developed an unmatched depth of knowledge on the facts and legal issues related to the claims in this case. The undersigned have also shown perseverance and dedication to advancing the claims of the Settlement Class. Several courts have recognized the adequacy of Plaintiffs' Counsel here to represent the interests of KCL policy

owners. Plaintiffs thus request that the undersigned counsel be appointed as interim Class Counsel pursuant to Rule 23(g)(3) pending certification of the Settlement Class at Final Approval, for purposes of carrying out the issuance of Notice to the Settlement Class.

## VI. THE NOTICE SATISFIES RULE 23 AND DUE PROCESS REQUIREMENTS.

Under Rule 23(e)(1)(B), "[t]he court must direct notice in a reasonable manner to all class members who would be bound by a [settlement] proposal." Likewise, in directing notice "to a class proposed to be certified for purposes of settlement under Rule 23(b)(3)--the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). "[T]he notice need only satisfy the 'broad 'reasonableness' standards imposed by due process.'" *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1153 (8th Cir. 1999) (quoting *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975), *cert. denied*, 423 U.S. 864 (1975)). The Supreme Court has found that the notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 314 (1950); *see also* American Law Institute, Principles of the Law of Aggregate Litigation § 3.04(a) (2010) ("The purpose of a notice of a proposed class settlement is to set forth the major contours of the proposal and to inform class members of their right to attend the fairness hearing and to lodge written objections by a prescribed date should they so desire.").

The proposed Notice (Exhibit B-1 to the Settlement Agreement) readily meets these requirements, and the notice program, using direct mail delivery, constitutes the best practicable notice under the circumstances of this case. *See* Ex. 4, Simmons Decl., ¶ 35. The Notice uses "plain English" to inform Settlement Class Members of, among other things, the nature of the class claims, the essential terms of the Settlement, the date, time and place of the Fairness Hearing, how

to object or opt-out of the Settlement, and the binding effect of the Settlement on Settlement Class Members. The Notice also contains information regarding Plaintiffs' Counsel's forthcoming request for fees and expenses, and the proposed Service Awards to Plaintiffs. In addition, the Notice identifies and directs Settlement Class Members to the Settlement Website, where they can view the Settlement documents and relevant pleadings and motions. Agreement, ¶¶ 1.40, 4.6. Thus, the Notice satisfies the requirements of Federal Rule of Civil Procedure 23(c)(2)(B), informs Settlement Class Members of the terms of the proposed Settlement and their available options, is the best notice that is practicable under the circumstances, and should be approved by the Court.

## VII. THE COURT SHOULD APPOINT ANALYTICS AS SETTLEMENT ADMINISTRATOR.

Plaintiffs also request that the Court appoint Analytics to serve as Settlement Administrator. Analytics is well-versed in administering class action settlements, including in the cost of insurance litigation context (*see generally* Simmons Decl.). It has served as the Notice Administrator in each of the Related Actions, and is willing, able, and prepared to fulfill the role of Settlement Administrator in this case.

## VIII. PROPOSED TIMELINE OF EVENTS

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

## CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter the Proposed Order at Exhibit D-1 to the Agreement permitting issuance of notice of the proposed Settlement,

appointing the undersigned counsel as interim Class Counsel of the proposed Settlement Class, directing dissemination of the Notice, appointing Analytics as Settlement Administrator, and setting a Fairness Hearing for the purpose of deciding whether to grant final approval of the Settlement.

Dated: June 25, 2025

Respectfully submitted,

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*Attorneys for Plaintiffs and the Putative Settlement Class*

## APPENDIX A

| EVENT | TIMING |
|---|---|
| Deadline for Settlement Administrator to disseminate CAFA notices | [10 days from filing of Motion for Preliminary Approval] |
| Deadline for Kansas City Life to provide Notice List to Settlement Administrator | [21 days after Preliminary Approval Date] |
| Deadline for the Settlement Administrator to mail Court-approved Class Notice to Settlement Class | [45 days after Preliminary Approval Date] |
| Deadline for Class Counsel to file motion for Fees and Expenses and for Service Awards | [21 days prior to Objection deadline] |
| Deadline for motion for final approval of Settlement | [7 days prior to the Fairness Hearing] |
| Objection deadline | [60 days after Notice Date] |
| Opt-out deadline | [60 days after Notice Date] |
| Deadline for Class Counsel to file with the Court all objections served on the Settlement Administrator | [5 days after Objection deadline] |
| Deadline for responses to any timely objections | Any time prior to the Fairness Hearing |
| Fairness Hearing | [Approximately 100 days after Preliminary Approval Date] |