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

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
v.	)	
KANSAS CITY LIFE INSURANCE COMPANY,	)	
Defendant.	)	

ORDER GRANTING (1) MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND (2) MOTION FOR ATTORNEY FEES, EXPENSE REIMBURSEMENT, AND SERVICE AWARDS

Before the Court is Plaintiffs' unopposed[1] motion for final approval of class action settlement ("Final Approval Motion") (Doc. 46) and Plaintiffs' motion for attorney's fees, expense reimbursement, and service awards ("Fee Motion") (Doc. 44).[2] For the reasons detailed herein, the Court (1) **GRANTS** both motions and (2) dismisses the Action with prejudice.

I. BACKGROUND

This is a class action lawsuit arising out of three cases consolidated before the Court to effectuate a proposed nationwide settlement between the Plaintiffs and Defendant.[3] In summary, Plaintiffs purchased universal life insurance policies from Defendant, and they allege Defendant

[1] The named Plaintiffs are Peter M. van Zanten, Dwain E. Vittetoe, Robert R. Fine, and Larry A. McMillan. The Defendant is Kansas City Life Insurance Company.

[2] All defined terms in this order have the same meaning ascribed to them in the Agreement. (*See* Doc. 34-1.)

[3] The Settlement Agreement also resolves similar claims against Defendant in a different case: *Sheldon v. Kansas City Life Insurance Co.*, pending in the 16th Circuit Court of Jackson County, Missouri, Case No. 1916-CV26689.

imposed charges greater than permitted under those policies. On July 14, 2025, the Court entered an order granting preliminary approval of the Settlement pursuant to Federal Rule of Civil Procedure 23(e). In doing so, the Court found that, given the nature of the claims and the settlement amount ($40 million), "it w[ould] likely approve the Settlement as 'fair, reasonable, and adequate' under the relevant factors[.]" (Doc. 37, p. 2.) The Court further found that "it will likely be able to certify the Settlement Class for purposes of entering judgment on the Settlement under Rule 23(a) and (b)(3)." (*Id*., p. 4.) The Court thus directed the Settlement Administrator and the Parties to provide a Class Notice, in a form approved by the Court, to the members of the Settlement Class.

The Court has been informed that the appointed Settlement Administrator issued the Court-approved Class Notice by first class mail to the Settlement Class Members. The Class Notice advised Settlement Class Members of the material terms of the Settlement, including that the amount of the settlement for the claims in this case was $40 million and that Class Counsel would seek attorney's fees of up to one-third of the Settlement Fund, costs and expenses in an amount up to $1.175 million, and service awards of up to $25,000 for each of the four class representatives. Pursuant to the deadlines established in the July 14, 2025, Order, the Class Notice also notified Settlement Class Members that the deadline to submit objections to the Settlement or to opt out of the Settlement Class was October 27, 2025. Six policy owners excluded themselves from the Settlement Class, and no Settlement Class Members submitted objections.

On October 3, 2025, Class Counsel filed their Fee Motion seeking one-third of the Settlement Fund in attorney's fees, reimbursement for expenses in the amount of $641,712.45, and Service Awards in the amount of $25,000 for Plaintiffs Fine and McMillan and $10,000 for Plaintiffs van Zanten and Vittetoe. (Doc. 44.) On November 21, 2025, Plaintiffs filed their Final

Approval Motion. On December 12, 2025, the Court held a Fairness Hearing to consider the pending motions.

II. FINAL APPROVAL OF CLASS ACTION SETTLEMENT

To certify a Settlement Class for the purposes of settlement the Court must conclude that the requirements of Rule 23(a) and at least one of the requirements of Rule 23(b) are satisfied. *See* Fed. R. Civ. P. 23. The Court must also ensure the settlement meets the requirements of Rule 23(e). After considering Plaintiffs' Final Approval Motion and the supporting documents, the Court concludes that both rules are satisfied.

1. Class Certification. The Settlement Class is defined as follows:

> All persons or entities who own or owned one or more of approximately 88,000 Universal Life and Variable Universal Life policies issued or administered by Defendant under the following plans that were active on or after January 1, 2002: 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, and Ultra 20 (96), except Century II policies issued in the State of Missouri.
>
> Excluded from the class are Defendant; any entity in which Defendant has a controlling interest; any of the officers, employees, or board of directors of Defendant; the legal representatives, heirs, successors, and assigns of Defendant; 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.

The Court finds that each element of Rule 23(a) and Rule 23(b)(3) are satisfied.

The Court first considers the requirements of Rule 23(a). The Court finds that the Settlement Class is "so numerous that joinder of all class members is impracticable." Fed. R. Civ. P. 23(a)(1). Here, the Settlement Class consists of approximately 82,000 members, who collectively own approximately 90,000 Policies, which clearly meets the numerosity requirement.

The Court also finds that there is at least one "question[] of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Even a single common question will do," *Wal-Mart Stores, Inc.*

v. Dukes, 564 U.S. 338, 359 (2011) (cleaned up), so long as it is such that the question "will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 350. As Plaintiffs explain in their Motion, other courts have readily concluded that the claims presented here satisfy this requirement, *see, e.g., Vogt v. State Farm Life Ins. Co.*, 2018 WL 1955425, at *2 (W.D. Mo. Apr. 24, 2018), and the Court agrees.

Third, the Court finds that the claims or defenses of the representative parties are typical of those of the Settlement Class. Fed. R. Civ. P. 23(a)(3). This requirement "is fairly easily met so long as other class members have claims similar to the named plaintiff." *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1174 (8th Cir. 1995). In assessing typicality, courts consider whether the named plaintiff's claim "arises from the same event or course of conduct as the class claims, and gives rise to the same legal or remedial theory." *Alpern v. UtiliCorp United, Inc.*, 84 F.3d 1525, 1540 (8th Cir. 1996). Here, the Policy terms and the method Defendant used to determine the amounts charged were the same for every class member. Each class member's claims—including Plaintiffs'—arise from the same operative facts and course of conduct and are therefore substantively identical. The requirement of typicality thus is satisfied.

Fourth, the Court finds that the "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "The adequacy inquiry . . . serves to uncover conflicts of interest between named parties and the class they seek to represent." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997). The Court does not find any conflicts of interest that would preclude a finding of adequacy. The Court therefore finds the adequacy requirement satisfied.

The Court now turns to the requirements of Rule 23(b)(3), which requires "that the 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." Matters pertinent to these findings include:

> **(A)** the class members' interests in individually controlling the prosecution or defense of separate actions;
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> **(B)** the extent and nature of any litigation concerning the controversy already begun by or against class members;
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> **(C)** the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
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> **(D)** the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(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." *Amchem*, 521 U.S. at 619-20 (citation omitted). The Court finds that common questions of law and fact predominate because the relevant contractual language at issue is the same for all members of the Settlement Class and Defendant uniformly administered the Policies. *See Meek v. Kansas City Life Ins. Co.*, 126 F.4th 577, 583-84 (8th Cir. 2025); *Vogt*, 2018 WL 1955425, at *6. Moreover, the Court also finds that a class action is superior to individual lawsuits as individual litigations "would be more burdensome and less efficient[.]" *Id.* at * 7.

For these reasons, the Court certifies the Settlement Class, appoints Plaintiffs to act as the Settlement Class Representatives, and appoints Class Counsel to represent the Settlement Class.

2. Class Notice. Next, the Court confirms the Class Notice was implemented in accordance with the Court's July 14, 2025, Order. (Doc. 37, p. 5-7.) The Court further confirms its prior findings that the form and substance of the Class Notice meet, and have met, the requirements of Rule 23(c) and the Due Process Clause of the United States Constitution.

3. **Approval of the Settlement.** To approve a settlement under Rule 23(e), the Court must find that the settlement is "fair, reasonable, and adequate" after considering several listed factors. *See* Fed. R. Civ. P. 23(e); *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988). The Court has considered the identified factors as well as the submissions by Plaintiffs. The Court finds that each of the factors listed in Rule 23(e) and identified by the Eighth Circuit support approval of the Settlement. First, Plaintiffs and Class Counsel have adequately represented the Settlement Class as reflected by the extensive litigation they undertook against Defendant on these claims across multiple jurisdictions and through the negotiation of the Settlement. Second, the Settlement was the product of arm's length negotiation, reached following five full-day mediation sessions with the assistance of four experienced neutral mediators. Third, the relief provided to the Settlement Class – $40,000,000 – is significant, particularly given the costs, risks, and delay of trial and appeal. Fourth, the Settlement treats Settlement Class Members equitably relative to one another because the Settlement proceeds will be distributed in proportion to the amount of charges paid by each Settlement Class Member, in addition to providing equitable adjustments for Settlement Class Members whose policies remain in effect and for those who have already received compensation through judgments in related actions. Furthermore, the proceeds and other relief provided by the Settlement will be distributed without the need for a claims process, which also supports approval. For these reasons, the Court concludes that the Settlement is fair, reasonable, and adequate and approves the Settlement.

4. **Releases.** As of the Final Settlement Date, the Releasing Parties shall be deemed to have, and by operation of this Order and the contemporaneously entered Final Judgment shall have, fully finally, and forever released, relinquished, and discharged the Released Parties of and

from all Released Claims and waived any and all Released Claims against the Released Parties, other than Excluded Claims.

5. **Dismissal and Continuing Jurisdiction.** The Court hereby dismisses this Action with prejudice except the Court retains jurisdiction over this Action and the Parties, attorneys, and Settlement Class Members for all matters relating to this Action, including (without limitation) the administration, interpretation, and effectuation or enforcement of the Settlement Agreement, this Order, and the contemporaneously entered Final Judgment. The Settlement Class Representatives and Settlement Class Members are hereby permanently enjoined from filing, prosecuting, maintaining, or continuing litigation based on or related to the Released Claims. This permanent bar and injunction is necessary to protect and effectuate the Settlement Agreement, this Order, and this Court's authority to effectuate the Settlement Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments.

III. ATTORNEY FEES, EXPENSE REIMBURSEMENT, AND SETTLEMENT CLASS REPRESENTATIVE SERVICE AWARDS

Class Counsel request an attorney's fee award of one-third (33⅓ percent) of the Settlement Fund plus reimbursement of litigation costs and expenses in the amount of $641,712.45. They also request that the Court award Service Awards from the Settlement Fund in the amount of $25,000 each for Plaintiffs Fine and McMillan and $10,000 each for Plaintiffs van Zanten and Vittetoe. For the following reasons, the Court grants the requests.

1. **Attorney's Fees.** Under Federal Rule of Civil Procedure 23(h), "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." As the Supreme Court recognized, "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." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478

(1980). The most used approach for awarding attorney's fees in common fund cases is the "percentage of the fund" approach. *See, e.g.*, *Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999). The Court agrees that awarding a percentage of the fund is appropriate here.

The touchstone for an award of attorney's fees is whether the award is ultimately reasonable. In evaluating the reasonableness of an award of attorney's fees, the Eighth Circuit has explained that courts should consider the twelve *Johnson*[4] factors. *Rawa*, 934 F.3d at 870. The Court concludes that an award of attorney's fees equal to one-third (33⅓ percent) of the Settlement Fund is supported by those factors here.

First, Class Counsel have invested over 13,000 hours on a contingent basis representing the Plaintiffs and prosecuting the claims of the Settlement Class. Given the size of the Settlement Class, they will likely need to spend additional time on matters relating to the administration of the Settlement. Furthermore, the amount of work required necessarily precluded Class Counsel's ability to take other work, and representing Plaintiffs on a contingency basis supports the fee award.

Second, the settlement's terms justify the fee request. $40 million represents a significant recovery for the Settlement Class. Moreover, the Settlement Class overwhelmingly supports this result, as evidenced by the fact that no objections were received to the Settlement or to Class Counsel's fee request. Given the risks faced, the Court concludes that the result supports the requested fee.

Third, the Court concludes that the claims present novel and difficult questions that required a high degree of skill and experience, which Class Counsel exhibited here. The Court

[4] *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 719-20 (5th Cir. 1974).

also finds that Class Counsel exhibited a high degree of skill in obtaining the Settlement as demonstrated by the successful outcome they secured despite vigorous opposition.

Fourth, Class Counsel seek a fee based on a percentage (33⅓ percent) that is common in contingent fee litigation and class actions. The Eighth Circuit has noted that courts have "frequently awarded attorneys' fees ranging up to 36% in class actions." *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017). Class Counsel have identified several class actions in which courts have awarded fees equal to 33⅓ percent of the settlement fund. Given the amount of work required, the multi-jurisdictional nature of litigation, and the risk undertaken, the Court finds that the percentage requested here is reasonable and awards one-third of the settlement ($13,333,333.33) in attorney fees to be paid from the settlement fund.

2. Expense Reimbursement. It is also well-established that "[r]easonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit by the settlement." *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1067 (D. Minn. 2010) (quoting *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996)). Under the Settlement, Class Counsel could seek up to $1.175 million in actual costs and expenses reimbursement. Class Counsel has submitted $641,712.45 in costs and expenses, including a summary by category of the costs and expenses incurred. No objections were received to the request for these reimbursements. The Court finds these costs and expenses were reasonably incurred and are reimbursable from the fund.

The Court notes that $185,063 of the reimbursement requested by Class Counsel is for unreimbursed costs and expenses they incurred while litigating a related case, *Meek v. Kansas City Life Insurance Co.*, No. 4:19-cv-00472-BP (W.D. Mo.), on behalf of a class of Kansas policyholders. Following the trial in that case, the Court partially decertified the class (by limiting

it to charges incurred after June 18, 2014) after concluding that the class members' request for equitably tolling the statute of limitations could not be resolved on a class wide basis. The decertification resulted in the removal of over half of the policyholders, who were (and are) free to pursue their requests for equitable tolling on an individualized basis. However, those removed policyholders will now receive Settlement benefits for those claims as Settlement Class Members in the present case. In addition, Settlement Class Members who remained in the *Meek* class but whose claims were limited by the statute of limitations will receive consideration for overcharge claims suffered prior to June 18, 2014. Therefore, it is appropriate and equitable for Class Counsel to be reimbursed from the Settlement Fund for these unreimbursed *Meek* expenses.

3. **Service Awards.** The Court also approves the Service Awards of $25,000 each for Plaintiffs Fine and McMillan and $10,000 each for Plaintiffs van Zanten and Vittetoe. Courts routinely approve service awards to compensate class representatives for the services they provide and the risks they incur on behalf of the class. The factors for deciding whether the service awards are warranted are: "(1) actions the plaintiffs took to protect the class's interests, (2) the degree to which the class has benefitted from those actions, and (3) the amount of time and effort the plaintiffs expended in pursuing litigation." *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 867 (8th Cir. 2017). Plaintiffs Fine and McMillan helped to advance the litigation by sitting for depositions and answering discovery. Moreover, each Plaintiff made contributions to benefit the entire Settlement Class, including helping to develop and review the factual allegations in each complaint and providing guidance with respect to the Settlement. Given the size of the Settlement fund, the amount requested for service awards is reasonable. *See Tussey v. ABB, Inc.*, 850 F.3d 951, 961 (8th Cir. 2017) (approving $25,000 service awards).

IV. CONCLUSION

The Motion for Final Approval of Class Action Settlement, (Doc. 46), and the Motion for Attorneys' Fees, Expense Reimbursement, and Service Awards, (Doc. 44), are **GRANTED**, and the case is **DISMISSED WITH PREJUDICE.**

The Settlement Class Representatives and Settlement Class Members are hereby permanently enjoined from filing, prosecuting, maintaining, or continuing litigation based on or related to the Released Claims. Each party shall bear their own costs except as provided in this Order.

This Court retains jurisdiction over this Action and the parties to administer, supervise, interpret, and enforce the Settlement Agreement, this Order, and the Final Judgment.

IT IS SO ORDERED.

/s/ Beth Phillips
BETH PHILLIPS, CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATE: December 12, 2025