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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

WILLIAM F. WREN and JOHN MURPHY, on behalf of themselves and others similarly situated,

Plaintiffs,

v.

TRANSAMERICA LIFE INSURANCE COMPANY,

Defendant.

Case No. 5:21-cv-00178-JGB-SP

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR CERTIFICATION OF SETTLEMENT CLASS AND FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Hearing Date: November 9, 2026
Time: 9:00 a.m.
Courtroom 1

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 4

A. The Unpaid CVIs 4

B. The Class Action Litigation 4

C. The "*Wren* Crediting Project" 6

D. Settlement Negotiations 7

E. The Settlement Agreement 7

1. The Settlement Class 7

2. Consideration 8

3. Release 8

F. Preliminary Approval, Notice, and Opt-Out Period 9

G. Fees, Costs, and Awards 10

H. Plan of Allocation 10

III. ARGUMENT 11

A. The Proposed Settlement Warrants Final Approval 11

1. Legal Standard 11

2. The Settlement Satisfies Rule 23(e)(2) and All Other Relevant Factors 12

3. The Notice Satisfied Rule 23 and Due Process 21

4. The Court Should Certify the Class 21

IV. CONCLUSION 21

TABLE OF AUTHORITIES

Cases

37 Besen Parkway, LLC v. John Hancock Life Ins. Co.,
No. 15-CV-9924, Dkt. 164 (S.D.N.Y. Apr. 18, 2019) 2

Amador v. Baca,
2020 WL 5628938 (C.D. Cal. Aug. 11, 2020) 16

Atchison v. Ashley Furniture Indus., Inc.,
2019 WL 12536043 (C.D. Cal. Mar. 4, 2019) 20

Bolanos v. Crossroads Equip. Lease & Fin., LLC,
2025 WL 4681211 (C.D. Cal. June 6, 2025) 13

Chen v. W. Digital Corp.,
2021 WL 9720778 (C.D. Cal. Jan. 5, 2021) 17

Churchill Village L.L.C. v. Gen. Elec.,
361 F.3d 566 (9th Cir. 2004) 17

Clay v. Prolink Staffing Servs., LLC,
2020 WL 13302814 (C.D. Cal. July 22, 2020) 20

Davis v. Symetra Life Ins. Co.,
2025 WL 1434727 (W.D. Wash. May 19, 2025) 19

Farrar v. Workhorse Grp., Inc.,
2023 WL 5505981 (C.D. Cal. July 24, 2023) 18

Fleisher v. Phoenix Life Ins. Co.,
2015 WL 10847814 (S.D.N.Y. Sept. 9, 2015) 2

Handorf v. Transamerica Life Ins. Co.,
No. 23-CV-32, Dkt. 196-1 (N.D. Iowa Sept. 29, 2026) 17

Harris v. Vector Mktg. Corp.,
2011 WL 1627973 (N.D. Cal. Apr. 29, 2011) 20

In re Cal. Pizza Kitchen Data Breach Litig.,
129 F. 4th 667 (9th Cir. 2025) 20

In re Heritage Bond Litig.,
2005 WL 1594403 (C.D. Cal. June 10, 2005) 14

In re Hyundai & Kia Fuel Econ. Litig.,
926 F.3d 539 (9th Cir. 2019) 13

In re Lloyd's Am. Tr. Fund Litig.,
2002 WL 31663577 (S.D.N.Y. Nov. 26, 2002) 18

In re Mego Fin. Corp. Secs. Litig.,
213 F.3d 454 (9th Cir. 2000) 17

In re Stable Rd. Acquisition Corp.,
2024 WL 3643393 (C.D. Cal. Apr. 23, 2024) 18, 20

In re Syncor ERISA Litig.,
516 F.3d 1095 (9th Cir. 2008) 11

Innovative Bus. P'ships, Inc. v. Inland Ctys. Reg'l Ctr., Inc.,
194 Cal. App. 4th 623 (2011) 16

Lane v. Facebook, Inc.,
696 F.3d 811 (9th Cir. 2012) 12

Ma v. Covidien Holding, Inc.,
2014 WL 2472316 (C.D. Cal. May 30, 2014) 18

Manzarek v. St. Paul Fire & Marine Ins. Co.,
519 F.3d 1025 (9th Cir. 2008) 16

McKinney-Drobnis v. Oreshack,
16 F.4th 594 (9th Cir. 2021) 12

Meek v. Kansas City Life Ins. Co.,
126 F.4th 577 (8th Cir. 2025) 17

Odom v. ECA Mkt., Inc.,
2021 WL 7185059 (C.D. Cal. Dec. 22, 2021) 4

Powers v. McDonough,
732 F. Supp. 3d 1184 (C.D. Cal. 2024) 13

Rodriguez v. W. Publ'g Corp.,
563 F.3d 948 (9th Cir. 2009) 11

Roes, 1-2 v. SFBSC Mgmt., LLC,
944 F.3d 1035 (9th Cir. 2019) 12, 14

Romano v. Rockwell Int'l, Inc.,
14 Cal. 4th 479 (1996) 16

Rubin-Knudsen v. Arthur Gallagher & Co.,
2021 WL 4924765 (C.D. Cal. Mar. 19, 2021) 14, 19, 21

Savaglio v. Wal-Mart Stores, Inc.,
149 Cal. App. 4th 588 (2007) 16

Wren v. Transamerica Life Ins. Co.,
2024 WL 977685 (9th Cir. Mar. 7, 2024) 5

Rules

Fed. R. Civ. P. 23(c)(2)(B) 21

Fed. R. Civ. P. 23(e)(1)(B) 21
Fed. R. Civ. P. 23(e)(2) 4, 12
Fed. R. Civ. P. 23(e)(2)(C)(iii) 19
Fed. R. Civ. P. 23(e)(2)(D) 19

I. INTRODUCTION

Plaintiffs respectfully request that the Court grant final approval to the outstanding settlement achieved for the Settlement Class in this case. As Plaintiffs reported to the Court in their motion for preliminary approval, the settlement provides more than $142 million in value to class members. Transamerica paid $110 million in cash under the Settlement—an amount that by the time of the final approval hearing will have grown to approximately $111 million because of the accrual of interest—that will be sent directly to class members using addresses on file without any need to fill out a claim form. And when the additional nonmonetary benefits are added, the total value of the Settlement exceeds $142 million. This result was made possible after more than five years of hard-fought litigation that included a successful appeal to the Ninth Circuit of an adverse summary judgment decision, the completion of fact discovery, post-remand implementation of the "*Wren* Crediting Project," hotly contested motions to compel, and multiple rounds of negotiation with the assistance of an experienced mediator.[1]

The cash fund alone represents more than 90% of the unpaid Cash Value Increases ("CVIs") owed to Class Members. In addition to the cash fund, Transamerica guaranteed increases to the cash value of eligible Class Members' policy accounts for their policies' 30th and 40th anniversaries, worth more than $26.5 million. Transamerica also agreed to pay the first $5.8 million in attorneys' fees from a separate fund in addition to and on top of these other benefits. And Transamerica has agreed not to challenge the validity of any Class Policy on insurable interest grounds or misrepresentations made in connection with the original application—relief the Class could not even have obtained at trial. Altogether, the mean net recovery (after deducting all requested fees, litigation expenses, administration costs, and service awards, if approved by the Court) would be $37,790. There are 2,356

[1] Unless noted, all referenced exhibits are attached to the Declaration of Steven G. Sklaver, and all capitalized terms mean the same as in the Settlement Agreement, attached as Exhibit 3 and cited as "Settlement Agreement."

Class Members, and no one filed an objection nor opted out.

A comparison with similar settlements underscores the exceptional nature of this result. The $110 million cash Settlement Fund represents between 90.6% and 134.8% of the unpaid CVIs that Plaintiffs contend Transamerica owes to Class Members, as calculated by Robert Mills, an expert economist who analyzed the relevant data that Transamerica produced. Dkt. 207-12 ("Mills Decl."), at ¶¶ 6–7. That percentage of recovery far exceeds amounts that courts in other breach-of-contract actions against insurers have called "quite extraordinary," *37 Besen Parkway, LLC v. John Hancock Life Ins. Co.*, No. 15-CV-9924, Dkt. 164 at 20:10 (S.D.N.Y. Apr. 18, 2019); *id.*, Dkt. 145, at 19 (Jan. 18, 2019) (percentage of recovery: 42%), and "one of the most remunerative settlements this court has ever been asked to approve," *Fleisher v. Phoenix Life Ins. Co.*, 2015 WL 10847814, at *10–11 (S.D.N.Y. Sept. 9, 2015) (percentage of recovery: 68.5%).

This total recovery is especially impressive when viewed in light of the substantial risks faced throughout the litigation. Transamerica argued that a prior class action settlement released these very claims. This Court initially granted Transamerica's summary judgment motion and terminated the case, holding that the *Oakes* settlement barred any relief for Plaintiffs. Only by successfully challenging that adverse summary judgment decision on appeal could Plaintiffs proceed to full fact discovery on remand. Then, Plaintiffs faced obstacles obtaining the discovery they needed to prosecute their claims, and had to prevail on a motion to compel to obtain the necessary documents to seek classwide relief. Dkt. 114.

Moreover, had this case not settled, and instead proceeded to summary judgment and trial, Plaintiffs would have faced a real risk of no recovery. Transamerica would have disputed whether the contracts entitled the Class to any CVIs, and trial would not have been the end. Even if Plaintiffs had proceeded to trial and won, this case would likely have been tied up in years of post-trial briefing and appeals, as the prior appeal showed. The Settlement obviates these risks and delays,

and recovers substantial funds for the Class, with payments likely distributed this year and non-cash benefits available immediately after final approval.

Plaintiffs were able to achieve this extraordinary result because of tenacious, high-quality work over more than five years. Class Counsel drew on its extensive experience litigating insurance class actions and dedicated over 6,180 hours to this case. First, Class Counsel turned what otherwise would have been a total loss into a viable case by securing reversal on appeal. From there, Class Counsel won a critical motion to compel that required Transamerica to produce the evidence necessary to establish classwide relief, reviewed over 2 million pages of documents and complex spreadsheets with the help of multiple experts, and took and defended 12 depositions, including a 30(b)(6) deposition that spanned three days, three corporate representatives, and more than 100 subtopics. As fact discovery came to a close, Class Counsel then won another motion to compel, which required Transamerica to either produce privileged documents or forgo a key defense—that Transamerica had reasonably relied on the *Oakes* settlement in refusing to pay CVIs. Dkt. 167.

After litigating the case through the close of fact discovery, and following extensive, arm's-length negotiations with the assistance of an experienced JAMS mediator, Mr. Robert Meyer, Esq., the parties reached an agreement on the key terms of the nationwide settlement for which final approval is now sought. Mr. Meyer believes the final Settlement Agreement to be a "highly successful result" for the class. Dkt. 207-11 ("Meyer Decl."), at ¶ 18.

Preliminary approval of the Settlement was granted on July 30, 2026, Dkt. 211 ("PAO"), and the Settlement Administrator ("JND") then mailed notices to the 2,356 Class Members on August 18, 2026, Declaration of Susan Waskiewicz ¶ 5. Not a single objection has been filed and no opt-outs have been received. *Id.* ¶¶ 13, 15. The absence of objections and opt-outs indicates the Class's strong support, creates a "strong presumption" that the terms are favorable to the Class, and weighs in favor of approval. *Odom v. ECA Mkt., Inc.*, 2021 WL 7185059, at *6 (C.D. Cal. Dec. 22,

2021) (Bernal, J.) (citation omitted). The Settlement secures immediate and substantial relief to Class Members, with checks from the Net Settlement Fund likely distributed before year's end. When the Settlement's guaranteed benefits, "comparable or even superior to a trial victory," are viewed in light of the uncertain, "long and expensive" road ahead, PAO 13, the Court should grant final approval to the Settlement and Plan of Allocation as "fair, reasonable, and adequate," Fed. R. Civ. P. 23(e)(2).

II. BACKGROUND

A. The Unpaid CVIs

The Settlement Class consists of owners of 2,356 life insurance policies ("Class Policies"), issued by Transamerica, known as "Direct Recognition Life" policies. Mills Decl. ¶ 4; Settlement Agreement ¶¶ 35, 67, 71. The Class Policies contain CVIs for certain policy anniversaries—*e.g.*, the 20th, 30th, and 40th years—when Transamerica would increase the policies' cash values. But in 2016, Transamerica notified policyholders that "we will not credit any cash value bonuses" for "the 30th and 40th anniversary years." *See*, *e.g.*, Dkt. 207-7, Declaration of Zachary B. Savage in Support of Plaintiffs' Preliminary Approval Motion ("Savage Decl.") Ex. 5. Transamerica's explanation for its refusal to pay the bonuses was that this was "[c]onsistent with the terms of the settlement of [the *Oakes*] class action lawsuit[] in 2001 that included your policy." *Id.* Transamerica also contended in this litigation that the plain language of the contracts did not require payment of the CVIs and raised numerous other defenses to liability and damages. *See*, *e.g.*, Dkt. 145.

B. The Class Action Litigation

In February 2021, after his policy's 30th anniversary, Plaintiff Wren filed this lawsuit on behalf of a proposed class of policyholders for whom Transamerica refused to pay 30-year CVIs, asserting breach-of-contract claims, among others. Dkt. 1. Transamerica moved to dismiss one claim, which the Court denied. Dkt. 30. In December 2021, the Court referred the case for private mediation, Dkt. 43, which

was unsuccessful. Sklaver Decl. ¶ 23. In January 2022, after limited discovery, the parties filed cross-motions for early summary judgment concerning the effect of *Oakes* on Plaintiff's claims. *See* Dkt. 46; Dkt. 51. On November 9, 2022, the Court granted Transamerica's motion. Dkt. 90. The Court held that *Oakes* barred Plaintiff from enforcing the uncredited CVIs, and entered judgment against Plaintiff and in favor of Transamerica. *Id.* at 9–10, 13; Dkt. 91.

Plaintiff Wren appealed and retained Susman Godfrey to handle the appeal and any litigation to follow. After briefing and oral argument, the Ninth Circuit reversed, holding that Plaintiff's "current claims could not have been raised at the time of the prior class action suit," so they are "not barred." 2024 WL 977685, at *1 (9th Cir. Mar. 7, 2024); Sklaver Decl. ¶¶ 9–10. After the Ninth Circuit's mandate issued, full fact discovery began, but discovery disputes followed. Sklaver Decl. ¶¶ 11–16. As Plaintiff Wren detailed in the first motion to compel, Transamerica had failed to produce *any* of the requested policy or non-policy files by the date the motion was filed. Dkt. 114, at 6–7. The Court ordered Transamerica to produce all policy file documents and to commence production of custodial documents by dates certain. *Id.* at 7, 10. Those rulings were critical, and resulted in essential discovery about Transamerica's internal decision to refuse to pay CVIs.

By the time fact discovery closed on September 30, 2025, Plaintiffs had served Transamerica with 102 requests for production, with Transamerica making 59 document productions, consisting of more than 2 million pages of documents, more than 1,800 Excel spreadsheets, and more than 580 audio files. Sklaver Decl. ¶ 14. Plaintiffs also served Transamerica with 34 requests for admission and 4 sets of interrogatories. *Id.* Transamerica collectively provided 10 sets of responses to the interrogatories. *Id.* Plaintiffs also deposed nine current and former Transamerica employees and took a 30(b)(6) deposition on 19 topics (including more than 100 sub-topics) over three days and from three individuals. *Id.* ¶ 15.

Toward the close of fact discovery, Plaintiffs filed another important motion

to compel the production of documents concerning Transamerica's interpretation of the *Oakes* settlement, documents that Transamerica withheld as privileged. Transamerica had asserted privilege over these documents while, Plaintiffs contended, selectively disclosing attorney-client communications concerning its interpretation of *Oakes*, and invoking what was "effectively an advice of counsel defense" concerning *Oakes*. *Id.* ¶ 16; Dkt. 167 at 12. On September 26, 2025, Magistrate Judge Pym granted Plaintiffs' motion, ordering Transamerica to either produce the withheld *Oakes* documents or withdraw its affirmative defense and "agree[] it will not argue it relied in good faith on its interpretation of the *Oakes* settlement"—the primary defense to a claim in this case. Dkt. 167 at 13. Magistrate Judge Pym temporarily stayed the ruling pending Transamerica's appeal to this Court, Dkt. 173, and less than two weeks later the parties stipulated to stay the case pending mediation, Dkt. 183.

C. The "*Wren* Crediting Project"

On May 27, 2025, while the case was in the middle of fact discovery, Transamerica informed Plaintiffs' counsel that it would provide the relief sought in the litigation for some, but not all, Class Members. Sklaver Decl. ¶ 18. Transamerica would pay their 30-year CVIs after all, with interest, and would pay those policyholders their 40-year CVIs as well, assuming the policies reached the 40-year milestone. *Id.* As Plaintiffs confirmed in discovery, Transamerica then credited the 30-year CVIs in multiple waves, for a total of $14.6 million to these Class Members' accounts, without any requirement of premiums to be paid and without deducting any premium load charges either. *See id.* ¶ 21; Mills Decl. ¶ 8.

Plaintiffs also confirmed the obvious in discovery: These credits were paid due to this litigation. Transamerica's internal documents called this crediting project the "*Wren* Crediting Project"—*i.e.*, named after this lawsuit. Sklaver Decl. ¶ 20 (citation omitted; emphasis added). Those documents also stated that the project was undertaken "in light of an appellate court order that disagreed with [Transamerica's]

prior rationale for not doing so"—*i.e.*, the Ninth Circuit's decision in this case. *Id.* The Settlement ensures that Transamerica cannot roll back any of these credits that it has already paid, and it codifies Transamerica's commitment to pay them going forward. Settlement Agreement ¶ 86.

D. Settlement Negotiations

On October 9, 2025, nine days after fact discovery ended, the parties participated in a full-day mediation with Robert Meyer, Esq., of JAMS. Meyer Decl. ¶ 8; Sklaver Decl. ¶ 26; Settlement Agreement ¶ 9. Mr. Meyer has served as a mediator for 20 years, and has extensive experience mediating class actions and insurance matters. Meyer Decl. ¶ 3. That first mediation session was unsuccessful, but the parties agreed to a second session on January 12, 2026. *Id.* ¶¶ 9–10.

At the end of that second mediation, the parties agreed to the framework of a tentative settlement, subject to further negotiation and Transamerica corporate governance approval. *See* Sklaver Decl. ¶¶ 30–31; Settlement Agreement ¶ 9. The parties accordingly sought to stay all deadlines, Dkt. 200, and then subsequently negotiated and agreed to a long-form settlement agreement. These settlement negotiations were conducted by highly experienced counsel, at arm's length, and were non-collusive. *See* Sklaver Decl. ¶¶ 22–32; Meyer Decl. ¶¶ 6–17. The mediator believes the Settlement is a highly successful result for Class Members, and is fair and reasonable. Meyer Decl. ¶¶ 18–19.

E. The Settlement Agreement

1. The Settlement Class

The Settlement Agreement provides for a Settlement Class of "all persons or entities who presently own or formerly owned a Settlement Class Policy that was in force during the Settlement Class Period"—that is, the Direct Recognition Life policies, specified by plan code and product code, that were "in force as of January 1, 2016." Settlement Agreement ¶¶ 67, 70. The Settlement Class excludes policies that timely and validly opt out during the Rule 23(e)(4) opt-out period (and no one

did), as well as six other groups of potential Class Members, including, for example, Class Counsel, Transamerica, and the Court. *Id.* ¶ 67.

2. Consideration

The Settlement provides cash and non-cash relief. This includes (1) a $110 million, non-reversionary Settlement Fund, payable into an interest-bearing escrow account within 30 days after Preliminary Approval, which will also earn interest for the benefit of the Class, *id.* ¶¶ 74, 79–80; (2) guaranteed payments in account value credits for the 30th and 40th anniversaries for eligible policies, without the need to pay any premium load charges, valued at more than $26.5 million, all as part of the *Wren* Crediting Project; *id.* ¶ 86; Mills Decl. ¶¶ 10–12; (3) a Non-Contestability Benefit: Transamerica agrees not to "deny coverage of death claims" by Settlement Class Members "based on any alleged lack of insurable interest or misrepresentations made in connection with the original application process," Settlement Agreement ¶ 88; and (4) Transamerica's agreement to pay the first $5.8 million in fees awarded by the Court for, among other reasons, the benefits created by the *Wren* Crediting Project, separate and on top of the Settlement Fund, *id.* ¶¶ 124, 127. On August 12, 2026, Transamerica paid into an interest-bearing escrow account the $110 million in cash. Sklaver Decl. ¶ 35. By the time of the final approval hearing, the fund is estimated to have accrued approximately $1 million in interest, bringing the total cash recovery by the time of distribution to more than $111 million. *Id.* In total, those benefits are worth more than $142 million.[2]

3. Release

Once the settlement becomes final, the Settlement Class will "release and discharge" Transamerica and certain related parties from "any and all claims" "from the Final Settlement Date through the end of time, arising out of or relating to the

[2] Interest is posted to the account at the end of every calendar month. Because the interest rate can change, the exact future interest to be earned cannot be stated precisely, but is estimated to be approximately $994,261.77 through Nov. 9, 2026 and growing thereafter until distribution. Sklaver Decl. ¶ 35. _

Cash Value Increases for the Settlement Class Policies." *Id.* ¶ 114. The Settlement Class also will "release and discharge" Transamerica and those related parties from "any and all claims" "from the beginning of time through the Final Settlement Date, arising out of or relating to [Transamerica's] refusal to credit the Settlement Class Policies' Cash Value Increases and its good faith in connection with the same." *Id.* ¶ 113. Excluded from that release are claims arising from (a) payment of a death benefit, other than claims for unpaid CVIs; (b) the terms of a DRL Policy unrelated to the CVIs; or (c) enforcement of the Settlement. *Id.*

F. Preliminary Approval, Notice, and Opt-Out Period

On July 30, 2026, the Court preliminarily approved the Settlement. PAO 15. The Court held that preliminary approval was warranted given "the risk, expense, and likely duration of further litigation," "the difficulties posed to each individual of pursuing his or her claim and the fact that Settlement Class Members will be recovering, at minimum, 90% of the amount owed to them," and the fact that the Settlement was reached "only after lengthy litigation" and "extensive discovery," following "arms-length" negotiations "with an experienced and well-regarded mediator." PAO 11–13. In the preliminary approval order, the Court requested that Plaintiffs include in the final approval motion "greater detail as to the dollar amount to be recovered by the Settlement Class Members," and briefing on any "governmental participant in this action" and "the reaction of the class members to the proposed settlement." PAO 12, 14. In connection with the anticipated motion for attorneys' fees, reimbursement of litigation expenses, and service awards, the Court also requested "greater detail about [the Plaintiffs'] time spent participating in the litigation," support for the "anticipated fee award request," and "the estimated costs for the services of the Settlement Administrator." PAO 14.

The appointed Settlement Administrator, JND, sent the Court-approved Settlement Class Notices to the 2,356 Class Members on August 18, 2026. Waskiewicz Decl. ¶ 5. Notices were sent to the addresses on file in Transamerica's

records. *Id.* ¶¶ 3–5. JND conducted additional research to forward or re-send notices to updated addresses for any notices that were returned as undeliverable. *Id.* ¶ 6. Through these methods, direct mail reached over 95% of the Class Members. *Id.* JND also posted the Long Form Settlement Notice on the public website it created for this Action and operated a toll-free number for information by phone.[3] *Id.* ¶¶ 7, 10.

The deadline to opt out and to object was October 2, 2026. *See* PAO 16. JND received no opt-outs or objections. Waskiewicz Decl. ¶¶ 13, 15.

G. Fees, Costs, and Awards

The Settlement Notice informed the Class Members that Class Counsel would seek an attorneys' fee award of up to 33 1/3 percent of the gross Settlement benefits, plus reimbursement of litigation expenses, and a service award of up to $25,000 for each Plaintiff. *See* Ex. 3 at 118. The Notice also explained that, pending Court approval, attorneys' fees would be paid from the $110 million cash fund, as well as a separate $5.8 million fund. *Id.* at 112. It further stated that the Class Members could object to any term of the Settlement and explained how to do so. *Id.* at 112, 118.

Consistent with the relief requested in the Settlement Notice, Class Counsel filed its Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards on September 18, 2026. *See* Dkt. 212. Class Counsel seeks 33 1/3 percent of the gross benefits of the Settlement, which is $47,455,027, plus a *pro rata* share of the interest earned on the settlement fund, as well as the amount of incurred litigation expenses, and a $25,000 service award for each of the two Plaintiffs. Dkt. 212-1, at 21. No Class Member objected to the motion. Waskiewicz Decl. ¶ 15.

H. Plan of Allocation

The Plan of Allocation is set forth in the Settlement Agreement, Ex. 3 at 103, described in the July 10, 2026 Savage Declaration, Dkt. 207-2, at ¶ 38, and is available on the Court-approved website established for this Action, *see* Waskiewicz

[3] Transamerica mailed notices pursuant to the Class Action Fairness Act to the U.S. Attorney General and state officials required by 28 U.S.C. § 1715(b). Ex. 5.

Decl. ¶ 7. The Plan of Allocation provides that the Net Settlement Fund will be distributed on a *pro rata* basis. Each *pro rata* share will be that Class Member's share of the total damages in the Settlement Fund, calculated as follows: (1) the Settlement Class Member's alleged unpaid CVI will be calculated as set forth in the Plan; (2) the unpaid CVI for each Class Member will be divided by the total unpaid CVIs; and (3) the resultant percentage will be multiplied by the Net Settlement Fund to obtain the amount owed to each Class Member. Ex. 4. Policies that already received their full unpaid CVIs under the *Wren* Crediting Project will not have an unpaid CVI for purposes of allocation. *Id.* Any other policies will receive a minimum payment of $100. *Id.*

Checks will be automatically sent to eligible Settlement Class Members. Settlement Agreement ¶ 133; Sklaver Decl. ¶ 40. Class Members will not need to fill out claim forms. Sklaver Decl. ¶ 40. Payments will be mailed automatically, using the addresses in Transamerica's files as of the applicable date. *Id.* Within one year plus 30 days after the date the Settlement Administrator mails the first checks, and to the extent feasible, any funds remaining will be re-distributed *pro rata* to Settlement Class Members who had previously cashed their checks. *Id.*; Ex. 4. None of the Final Settlement Fund or other benefits provided by the *Wren* Crediting Project will revert to Transamerica. Settlement Agreement ¶¶ 85–86. No Class Member objected to the Plan of Allocation. Waskiewicz Decl. ¶ 15.

III. ARGUMENT

A. The Proposed Settlement Warrants Final Approval

1. Legal Standard

"[T]here is a strong judicial policy that favors settlements" in "complex class action litigation," *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008), an area in which "[t]his circuit has long deferred to the private consensual decision of the parties." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). Rule 23(e) governs court approval of a class action settlement. Approval of a settlement

reached before a class has been certified requires a "higher level of scrutiny for evidence of collusion or other conflicts of interest" "to ensure that class representatives and their counsel do not secure a disproportionate benefit at the expense of" absent class members. *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048 (9th Cir. 2019) (citations and quotation marks omitted). Although Rule 23 imposes strict procedural requirements on the approval of a class settlement, "a district court's only role in reviewing the substance of that settlement is to ensure that it is 'fair, adequate, and free from collusion.'" *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) (citation omitted).

Under Rule 23(e)(2), courts may approve a settlement as "fair, reasonable, and adequate" after considering whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys' 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). Because these factors were introduced in 2018 to supplement those courts had long used to evaluate class-action settlement proposals, the Court may also consider some additional factors, summarized below, Section III.A.2.e. *McKinney-Drobnis v. Oreshack*, 16 F. 4th 594, 609 n.4 (9th Cir. 2021).

2. The Settlement Satisfies Rule 23(e)(2) and All Other Relevant Factors

a. Plaintiffs and Class Counsel Adequately Represent the Class

To determine if the class will adequately be represented, the Court must determine whether Plaintiffs and Class Counsel "have any conflicts of interest with

other class members," and if they "prosecute[d] the action vigorously on behalf of the class." *Powers v. McDonough*, 732 F. Supp. 3d 1184, 1196 (C.D. Cal. 2024) (citation omitted). The Court already found that "Plaintiffs do not have interests antagonistic to those of the settlement class, have actively participated in this case, and understand their obligations," and that Class Counsel "have been lead counsel in numerous cases similarly dealing with an insurer's alleged breach of its policies and have vigorously prosecuted this case for years." PAO 5. Nothing has occurred that would undermine those prior findings. Plaintiffs are members of the Settlement Class and suffered the same injury: monetary losses associated with uncredited CVIs. They share the same interests in obtaining the largest monetary recovery possible for the uncredited CVIs. Moreover, Plaintiffs and Class Counsel have vigorously and expertly litigated this case past summary judgment and through appeal to the Ninth Circuit, through intensive fact discovery, and mediations. Rule 23(e)(2)(A) is satisfied.

b. The Parties Negotiated the Settlement Agreement at Arm's Length, After Extensive Fact Discovery, With the Help of an Experienced Mediator, and the Agreement is Supported by Class Counsel

The Court has held that "settlement negotiations were conducted at arms-length" "with an experienced and well-regarded mediator," which the Court explained "tends to establish that the settlement process was not collusive." PAO 13. The Settlement is indeed presumed fair because the parties agreed to it following extensive discovery and "genuine arms-length negotiation." *Bolanos v. Crossroads Equip. Lease & Fin., LLC*, 2025 WL 4681211, at *6 (C.D. Cal. June 6, 2025) (Bernal, J.) (citation omitted). Courts in this Circuit "put a good deal of stock" in such a settlement. *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 570 (9th Cir. 2019) (citation omitted). And, as described in detail above, none of the hallmarks of a collusive pre-class-certification settlement is present here, including that counsel

received "a disproportionate distribution of the settlement" or created "a reverter that returns unclaimed [funds] to the defendant." *Roes, 1-2*, 944 F.3d at 1049 (citation omitted; alteration in original).

The Settlement provides for a non-reversionary fund and, subject to Court approval, attorneys' fees will be limited to 33 1/3 percent of the gross benefits provided to the Settlement Class—well in line with other approved awards. *See, e.g.*, *Rubin-Knudsen v. Arthur Gallagher & Co.*, 2021 WL 4924765, at *7 (C.D. Cal. Mar. 19, 2021) (Bernal, J.) (explaining that courts in this Circuit "routinely award attorneys' fees equal to one-third of a gross settlement amount," and granting final approval to a settlement under which counsel requested one-third fee). Transamerica has also agreed not to make any deductions from the benefits provided by the *Wren* Crediting Project and to pay the first $5.8 million in Court-approved attorneys' fees from a separate fund on top of and in addition to the Settlement Fund. Settlement Agreement ¶¶ 86, 124, 127.

The mediator, Robert Meyer, Esq., of JAMS, has filed a declaration "strongly support[ing] the approval of the settlement" because it "is a highly successful result for all parties and the class," and is "particularly fair, adequate, and reasonable . . . because it provides a very substantial recovery for the class, especially when measured against the obstacles standing in the way of achieving a successful resolution of the claims." Meyer Decl. ¶¶ 18–19.

Moreover, in considering final approval, the Court should give "[g]reat weight . . . to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation." *In re Heritage Bond Litig.*, 2005 WL 1594403, at *9 (C.D. Cal. June 10, 2005) (citation omitted) (noting "[a] presumption of correctness" attaches to settlements reached "after meaningful discovery"). Here, as the Court has acknowledged, counsel for both sides have vigorously litigated this case over the course of five years. They both strongly favor Settlement approval.

c. The Relief Provided to the Settlement Class is Adequate and Strongly Supported by the Settlement Class

Rule 23(e)(2)(C) requires that "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)." The Settlement satisfies each.

i. The costs, risks, and delay of trial and appeal.

The Settlement, which provides at least 90% of the unpaid CVIs owed to the Class, warrants approval given the substantial risks, costs, and delay of further litigation.

Further litigation would have been complex, costly, and extremely risky. As the Court noted, without this Settlement, Plaintiffs would have been required to prevail on "the ultimate merits of the case—a process which the Court acknowledge[d] is long and expensive." PAO 13. This nationwide class action would have involved the application of numerous states' laws to insurance policies dating back almost 40 years, and expert testimony on technical accounting and actuarial topics. And Plaintiffs' claims carry substantial risks. While Plaintiffs believe their claims are strong, Transamerica has aggressively challenged the merits—including by persuading this Court to grant summary judgment. The Ninth Circuit reversed that decision but additional liability risks remain.

For one, Transamerica intended to argue that its failure to pay CVIs did not breach Plaintiffs' policies. Plaintiffs' theory is that Transamerica breached the policies by not paying CVIs that the policies did not expressly "guarantee." Transamerica would have contended that this interpretation renders superfluous other language in the contracts. For example, each of Plaintiffs' policies states that it

"assumes" the CVIs—but elsewhere uses the word "guarantee." *See, e.g.*, Dkt. 140 at Ex. B (Wren issue illustration); *id.* at Ex. D (Murphy issue illustration).

For another, Transamerica contended that it had no obligation to pay CVIs on policies that terminated after Transamerica notified policyholders that it would not pay the 30-year CVIs in 2016 because those policyholders failed to mitigate their damages or "immediately seek damages for breach of contract," following the 2016 notification, *Romano v. Rockwell Int'l, Inc.*, 14 Cal. 4th 479, 489 (1996) (citation omitted), and because they waived their CVIs by "induc[ing]" Transamerica to reasonably believe that their rights were "relinquished," *Savaglio v. Wal-Mart Stores, Inc.*, 149 Cal. App. 4th 588, 598 (2007) (citation omitted).

If Transamerica's arguments on the breach-of-contract claims were accepted, Transamerica would argue that Plaintiffs' bad-faith claims would fail as well. *See Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1034 (9th Cir. 2008); *Innovative Bus. P'ships, Inc. v. Inland Ctys. Reg'l Ctr., Inc.*, 194 Cal. App. 4th 623, 631–32 (2011).

Transamerica also contended that it did not act in bad faith because it reasonably relied on *Oakes* to not pay the CVIs. That argument might have taken on particular force because this Court initially rejected Plaintiffs' claims based on *Oakes*. *See* Dkt. 90 at 10. Plaintiffs had successfully argued to Magistrate Judge Pym that Transamerica should not be able to mount that defense—unless it waived privilege over the *Oakes* materials, Dkt. 167 at 12–13—but that ruling was on appeal to this Court when the parties reached the settlement, Dkt. 178.

Even if Plaintiffs were to prevail on liability, Transamerica would have contested any damages award. And Transamerica likely would have appealed any adverse final judgment, which would have long delayed relief for any Class Member. *See Amador v. Baca*, 2020 WL 5628938, at *3 (C.D. Cal. Aug. 11, 2020) ("[T]he possibility that any final judgment would lead to reversal on appeal" favors approval.). As just one example of the risks plaintiffs face in similar litigation, a

recent class action alleging breach of insurance policies resulted in a $5 million jury verdict for plaintiffs—around 27% of the plaintiffs' expert's damages estimate of about $18 million. *Meek v. Kansas City Life Ins. Co.*, 126 F.4th 577, 589 (8th Cir. 2025) (affirming denial of additur).

Yet the Settlement provides for substantial benefits now, and each Settlement Class Member will receive their benefits without even needing to file a claim. The Settlement's benefits eliminate substantial uncertainty about the chances of recovery and guarantee, *at minimum*, nearly as much relief as the Class could hope to recover with a full trial victory. *Cf. In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of settlement worth "roughly one-sixth of the potential recovery").

There is no better endorsement for the Settlement than the Settlement Class's reaction—which has been overwhelmingly positive. There are no opt-outs and no objections. That reaction confirms that this Settlement is indeed an exceptional result. *See, e.g.*, *Churchill Village L.L.C. v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (settlement approved with 45 objections from 90,000 notices); *Chen v. W. Digital Corp.*, 2021 WL 9720778, at *3 (C.D. Cal. Jan. 5, 2021) (approving settlement with no objections and six opt-outs, amounting to an opt-out rate of 0.32%). "Policies like the ones involved in this case are often owned by savvy investors and professionals and if there were significant issues with the Settlement," "at least some opposition" would be "expected"—but it is "telling that there were no objections and" zero "opt-outs out of thousands of class members," and "[e]ven the request for attorneys' fees, which are significant here, were not objected to by any class member." *Handorf v. Transamerica Life Ins. Co.*, No. 23-CV-32, Dkt. 196-1, at 5 (N.D. Iowa Sept. 29, 2026) (granting final approval). Strong support from the Class Members is unsurprising, given that the Settlement provides, with interest, what will soon be over $111 million in cash alone—representing over 90% of the unpaid CVIs owed—and guarantees the increases to eligible Class Member accounts through the *Wren*

Crediting Project worth more than $26.5 million. "[I]t is not uncommon for a class action settlement to amount to approximately 10% of the total potential value." *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, at *3 (C.D. Cal. May 30, 2014).

The Court further requested in preliminarily approving the Settlement that Plaintiffs "provide greater detail as to the dollar amount to be recovered by the Settlement Class Members." PAO 12. The mean net recovery (after deducting all requested fees, litigation expenses, administration costs, and service awards, if approved by the Court) would be $37,790, per Class Member. Sklaver Decl. ¶ 39. This is an extraordinary result.

ii. The effectiveness of any proposed method of distributing relief to the class.

Plaintiffs' "proposed method of distributing relief to the class, including the method of processing class-member claims," will be highly "effective[]" and thus satisfies Rule 23(e)(2)(C)(ii). Class Counsel, which has extensive class action experience, prepared the Plan of Allocation with the assistance of damages expert Robert Mills, who also has significant life insurance class action experience. *See* Sklaver Decl. ¶¶ 3, 40; Mills Decl. ¶¶ 1–2. The Plan of Allocation, which provides for a *pro rata* distribution of settlement proceeds, without any claim form or process, is "fair, reasonable, and adequate." *In re Stable Rd. Acquisition Corp.*, 2024 WL 3643393, at *10 (C.D. Cal. Apr. 23, 2024) (citation omitted). The proposed *pro rata* formula has "a reasonable, rational basis" and is "recommended by experienced and competent counsel." *Farrar v. Workhorse Grp., Inc.*, 2023 WL 5505981, at *13 (C.D. Cal. July 24, 2023) (citation omitted). Courts regularly approve *pro rata* distributions such as this one. *See, e.g.*, *id.*; *In re Lloyd's Am. Tr. Fund Litig.*, 2002 WL 31663577, at *19 (S.D.N.Y. Nov. 26, 2002).

Moreover, once the Settlement is approved, eligible Class Members will likely receive checks from the Net Settlement Fund before year's end, and will see the other benefits of the Settlement immediately. This also strongly favors approval.

iii. The terms of any proposed award of attorneys' fees.

The third Rule 23(e)(2)(C) subfactor requires the Court to consider "the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). Here, Class Counsel seeks an award of 33 1/3 percent of the total benefits of the Settlement after more than five years of litigation on a purely contingent basis. Class Counsel explained the reasonableness of this request in detail in its September 18, 2026 Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards and accompanying brief, Dkt. 212-1, which was posted to the class website the next business day, Waskiewicz Decl. ¶ 8.

The reaction of the Class also supports the amount of attorneys' fees. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii). No Class Member objected to any portion of the Fee Motion, which seeks 33 1/3 percent of the total benefits of the Settlement. "[C]ourts within this Circuit routinely award attorneys' fees equal to one-third of a gross settlement amount." *Rubin-Knudsen*, 2021 WL 4924765, at *7 (collecting authorities). This lack of objections to the fee request is strong evidence that the requested amount is reasonable. *See, e.g.*, *Davis v. Symetra Life Ins. Co.*, 2025 WL 1434727, at *6 (W.D. Wash. May 19, 2025).

iv. Agreements required to be identified under Rule 23(e)(3).

The Settlement Agreement references a Confidential Termination Agreement, ¶¶ 138–39, that allows the parties to exercise their discretion to terminate the Settlement if certain conditions relating to the number of opt-outs are triggered following the notice period. There were no opt-outs, so this termination option is inapplicable and moot. This factor thus also favors final approval.

d. The Plan of Allocation Treats All Settlement Class Members Equitably

Finally, "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). The proposed plan of allocation distributes the Net

Settlement Fund equally on a *pro rata* basis subject to a $100 minimum and accounting for policies already paid their CVIs under the *Wren* Crediting Project. The Settlement Agreement does not "improperly grant[] preferential treatment to class representatives." *Atchison v. Ashley Furniture Indus., Inc.*, 2019 WL 12536043, at *16 (C.D. Cal. Mar. 4, 2019) (citation omitted). The Settlement Agreement permits seeking Court approval for payment of a service award of up to $25,000 to each Plaintiff for their substantial work and dedication to this litigation, *see* Sklaver Decl. ¶ 17, and the Court will ultimately determine whether such an award, and the amount if any, is reasonable, following the notice period and opt-out period—and no class member objected to the proposed service award or opted out. *See, e.g.*, *Clay v. Prolink Staffing Servs., LLC*, 2020 WL 13302814, at *6 (C.D. Cal. July 22, 2020) (Bernal, J.) (finding that an incentive award did not constitute preferential treatment); *Harris v. Vector Mktg. Corp.*, 2011 WL 1627973, at *9 (N.D. Cal. Apr. 29, 2011) (similar, for "incentive award of up to $25,000").

e. Ninth Circuit Factors Favor Approval

The amendments to Rule 23 "do not displace any previously adopted factors" by the Ninth Circuit but instead focus the approval of a proposed settlement "on the core concerns of procedure and substance." *Stable Rd.*, 2024 WL 3643393, at *5 (citation and quotation marks omitted); *In re Cal. Pizza Kitchen Data Breach Litig.*, 129 F. 4th 667, 674 (9th Cir. 2025) (listing factors). Many of the Ninth Circuit factors have been discussed here as part of Rule 23(e)(2) and favor approval—*e.g.*, the strength of the plaintiff's case; the risk and duration of further litigation; the risk of maintaining class action status; the amount offered in settlement; the extent of discovery completed and the stage of proceedings; and the experience and views of counsel.

While there was not enough information at preliminary approval to evaluate the remaining non-Rule 23(e)(2) factors, they both now strongly support approval. First, Transamerica served CAFA notices on the U.S. Attorney General and

appropriate state officials as required by 28 U.S.C. § 1715(b). There has not been any indication of disapproval from any government agency. Ex. 5 (Transamerica's CAFA Decl.) ¶¶ 6–11. Second, Class Members' reaction to the Settlement is overwhelmingly positive. There have been no objections to any aspect of the Settlement, and there have been no opt-outs—an extraordinary result.

3. The Notice Satisfied Rule 23 and Due Process

The Class Notice also satisfied Rule 23, which requires a "reasonable manner" of giving notice "to all class members who would be bound" by the Settlement. Fed. R. Civ. P. 23(e)(1)(B). In accordance with the Court's Preliminary Approval Order, JND mailed 2,356 copies of the Class Notice to Class Members, updated the class action website, and activated the toll-free telephone number regarding the Settlement. Waskiewicz Decl. ¶¶ 5, 7, 10. Just through direct mailing, JND reached over 95% of Class Member addresses. Waskiewicz Decl. ¶ 6.

4. The Court Should Certify the Class

At the preliminary approval stage, the Court certified the Class for settlement purposes. PAO 15. The Court "need not find anew that the settlement class meets the certification requirements." *Rubin-Knudsen*, 2021 WL 4924765, at *5 (citation omitted) (collecting cases). Plaintiffs respectfully request that the Court finally certify the Class, as defined in the Settlement Agreement and summarized in Section II.E, for the reasons in Plaintiffs' Motion for Preliminary Approval, Dkt. 207-1, at 17–21.

IV. CONCLUSION

The Court should certify the Settlement Class, and because Rule 23(e) supports finding that the Settlement is fair, reasonable, and adequate, the Court should grant final approval of the Settlement; approve the notice program as complying with Rule 23 and due process; and approve the plan of distribution as fair, reasonable, and adequate.

Dated: October 9, 2026

SUSMAN GODFREY L.L.P.

By: */s/ Steven G. Sklaver*

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiffs, certifies that this memorandum contains 6,995 words, which complies with the word limit of L.R. 11-6.1, and does not exceed 25 pages, in compliance with Section 9 of the Standing Order.

Dated: October 9, 2026

By: /s/ *Steven G. Sklaver*
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