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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 PRELIMINARILY CERTIFYING SETTLEMENT CLASS AND APPROVING CLASS ACTION SETTLEMENT

Hearing Date: August 3, 2026
Time: 9:00 a.m.
Courtroom 1

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Plaintiffs William Wren and John Murphy, individually and on behalf of the proposed Settlement Class,[1] have entered into a settlement agreement with Defendant Transamerica Life Insurance Company. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs move for an order: (1) Preliminarily certifying the proposed Class for Settlement, and appointing Plaintiffs as class representatives and Susman Godfrey and Bonnett Fairbourn Friedman & Balint as Class Counsel; (2) Preliminarily approving the Settlement and Plan of Allocation; (3) Approving the form and manner of notice, appointing JND Legal Administration as Settlement Administrator, and directing notice to the Class; and (4) Scheduling a final approval hearing. The Settlement, if approved, will fully conclude this class litigation.

I. INTRODUCTION

After more than 5 years of hard-fought and complex litigation, including a summary judgment ruling, an appeal to the Ninth Circuit, the close of fact discovery, and multiple rounds of negotiations with the assistance of an experienced mediator, Plaintiffs have secured an extraordinary settlement for the Class. The Settlement provides more than $142 million in value for Class Members. This includes (i) a non-reversionary cash Settlement Fund of $110 million—with checks from that fund to be paid to eligible Class Members, without any need to fill out claim forms; (ii) guaranteed, non-reversionary increases to the cash value of eligible Class Members' policy accounts for their policies' 30th and 40th anniversaries, worth more than $26.5 million; (iii) an agreement by Transamerica not to challenge the validity of any Class Policy on insurable interest grounds or misrepresentations made in connection with the original application; and (iv) an agreement by Transamerica to pay the first $5.8 million in attorneys' fees awarded by the Court, separate and on top of the Settlement Fund.

These results are outstanding: the $110 million Settlement Fund alone

[1] Unless noted, all capitalized terms mean the same as in the Settlement Agreement, attached as Exhibit 3 to the Declaration of Zachary Savage and cited below as "Settlement Agreement."

represents between 90.6% and 134.8% of the unpaid Cash Value Increases ("CVIs") that Plaintiffs contend Transamerica owes to Class Members, as calculated by Plaintiffs' expert, Robert Mills, an expert economist who analyzed the relevant data that Transamerica produced. Mills Decl. ¶¶ 6–7. And the overall recovery of more than $142 million in value represents a stunning 116.9% to 174.0% of the Class's maximum possible compensatory damages. That is a remarkable result. *Compare, e.g.*, *37 Besen Parkway, LLC v. John Hancock Life Ins. Co.*, 15-cv-9924 (S.D.N.Y. Mar. 18, 2019), Dkt. 164, at 20:10 (characterizing life-insurance class settlement with cash fund equal to 42% of damages as "quite extraordinary"), Dkt. 145, at 19; *Fleisher v. Phoenix Life Ins. Co.*, 2015 WL 10847814, at *10–11 (S.D.N.Y. Sept. 9, 2015) (describing life-insurance class action settlement with cash award equal to 68.5% of past damages as "one of the most remunerative settlements this court has ever been asked to approve").

This exceptional settlement was made possible only by the significant effort and skill that Plaintiffs and their counsel devoted to this case. In 2022, this Court initially *granted* Transamerica's motion for summary judgment, concluding that the prior *Oakes* settlement barred all of the claims here. After appellate briefing and oral argument, the Ninth Circuit reversed. Following remand, Plaintiffs' counsel obtained and analyzed millions of pages of documents, took and defended 12 depositions, and prevailed in two hotly disputed and significant discovery disputes. Dkts. 114, 167. After the close of fact discovery, the parties engaged in two rounds of arm's-length negotiations with the assistance of an experienced mediator, Robert Meyer, Esq. of JAMS, which ultimately resulted in the Settlement.

At preliminary approval, the question is whether the Court "will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B). The proposed Settlement easily satisfies both tests.

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.*, Savage Decl. Ex. 5. Transamerica's stated justification was its belief that its refusal to pay the bonuses 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 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. Savage Decl. ¶ 22. 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. *Id.* at 9–10, 13.

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); Savage Decl. ¶¶ 8–9. After the Ninth Circuit's mandate issued, full fact discovery began, but discovery disputes followed. Savage Decl. ¶¶ 11–12. 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. Savage Decl. ¶ 13. 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.* ¶ 14.

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.* ¶ 15; 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 key 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. <u>The "Bonus Crediting Project"</u>

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. Savage Decl. ¶ 17. 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.* ¶ 20; 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. Savage Decl. ¶ 19 (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. <u>Settlement Negotiations</u>

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; Savage Decl. ¶ 25; 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* Savage Decl. ¶¶ 27–30; Settlement Agreement ¶ 9. The parties accordingly sought to stay all deadlines, Dkt. 200, and then 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* Savage Decl. ¶¶ 24–31; 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. <u>The Settlement Agreement</u>

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, 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; that amount is proportionally reduced based on aggregate shares of total unpaid 30-year CVI amounts for Settlement Class policies that timely and validly opt-out, *id.* ¶¶ 58, 81; (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 Bonus 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 Bonus Crediting Project, separate and on top of the Settlement Fund, *id.* ¶¶ 124, 127. In total, those benefits are worth more than $142 million.

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 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.*

4. Awards, Costs, and Fees

The Settlement provides, subject to Court approval, for a service award of up to $25,000 for each of the two Plaintiffs. *Id.* ¶¶ 28, 121–23. The Settlement Agreement also provides notice that Class Counsel will move for approval of fees not to exceed 33 1/3% of the gross benefits provided to the Settlement Class, as well as reimbursement for expenses. *Id.* ¶ 124. Transamerica additionally agreed, subject to Court approval, to pay Class Counsel $5,835,397.97 in fees in connection with the more than $26.5 million in benefits provided to certain Class Members as a result of the Bonus Crediting Project. *See* Section II.C; Settlement Agreement ¶ 127. Those fees paid by Transamerica, if approved by the Court, will not be paid from the Final Settlement Fund nor by any deduction of the credits provided by the Bonus Crediting Project but instead, separate and in addition to that amount. Settlement Agreement ¶¶ 86, 124, 127; Dkt. 143-1. The portion of fees in excess of $5.8 million, approved by the Court, will be paid out of the Final Settlement Fund. Settlement Agreement ¶ 124. No costs, fees, or awards will be distributed without Court order.

F. <u>Notice</u>

Plaintiffs request that the Court approve the proposed notice plan described in paragraphs 90–96 of the Settlement Agreement, paragraphs 32–38 of the Savage Declaration, and paragraphs 11–25 of the Declaration of Gina Intrepido-Bowden. Within 14 days of the Court's order granting preliminary approval, Transamerica will provide JND Legal Administration with owner-address information available from their files. *See* Savage Decl. ¶ 34; Intrepido-Bowden Decl. ¶ 16. No later than 28 days after preliminary approval, JND will mail the notice form. *See* Settlement Agreement Ex. C; *id.* ¶ 91; Savage Decl. ¶ 35; Intrepido-Bowden Decl. ¶ 18. JND will update addresses using a national database and re-mail notices to forwarding addresses. Settlement Agreement ¶ 96; Intrepido-Bowden Decl. ¶ 19 & n.3. JND will also post the notice to a settlement website and will maintain a toll-free number and case-specific email address for information about the case. *See* Intrepido-Bowden Decl. ¶¶ 20–23. Class Members who wish to be excluded from the Settlement Class must send a written request to JND postmarked no later than 45 days after the Notice Date. *See* Settlement Agreement ¶ 100; Savage Decl. ¶ 37.

Within 10 days after this motion is filed, Transamerica shall serve notices of the proposed Settlement upon the appropriate officials as required by the Class Action Fairness Act, 28 U.S.C. §1715. *See* Settlement Agreement ¶ 97.

G. Plan of Allocation

The proposed Plan of Allocation provides that the Final 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 Final Settlement Fund to obtain the amount owed to each Class Member. Savage Decl., Ex. 4 (Plan of Allocation). Policies that received full unpaid CVIs under the Bonus 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 within 60 days after the Final Settlement Date. Settlement Agreement ¶ 133; Savage Decl. ¶ 38. 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. Ex. 4 (Plan of Allocation). None of the Final Settlement Fund or other benefits provided by the Bonus Crediting Project will revert to Transamerica. Settlement Agreement ¶¶ 85–86.

III. ARGUMENT

A. The Proposed Settlement Warrants Preliminary Approval under Rule 23(e)

1. Legal Standard

Rule 23(e) requires court approval for a class action settlement. Approval "involves a two-step process": the Court first decides whether to grant "preliminary approval and then, after notice is given to class members, whether final approval is warranted." *Marin v. Gen. Assembly Space, Inc.*, 2018 WL 4999955, at *3 (C.D. Cal. July 31, 2018) (citation omitted). Preliminary approval "is warranted when it is sufficiently likely that a court will be able to grant final approval of the settlement to justify directing notice," and final approval in turn requires the settlement be "fair, reasonable, and adequate" under the Rule 23(e)(2) factors. *LSIMC, LLC v. Am. Gen. Life Ins. Co.*, 2023 WL 2628106, at *1 (C.D. Cal. Feb. 16, 2023). Those factors include 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; 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).

"[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). Preliminary approval is thus "appropriate if the proposed settlement" is "the product of serious, informed, non-collusive negotiations," "has no obvious deficiencies," "does not improperly grant preferential treatment to class representatives or segments of the class," and "falls within the range of possible approval." *In re Vizio, Inc. Consumer Privacy Litig.*, 2019 WL 12966639, at *8 (C.D. Cal. Jan. 4, 2019) (citation omitted). 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).

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). There are no conflicts of interest here. 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 competently litigated this case past summary judgment and through appeal to the Ninth Circuit, through intensive fact discovery, and mediation. The results of these efforts are benefits that exceed $142 million, including a non-reversionary cash recovery of $110 million—between 90.6% and 134.8% of the unpaid CVIs that Plaintiffs contend Transamerica owes to Class Members —as well as the more than $26.5 million in value that Class Members received during the litigation under the Bonus Crediting Project, plus additional valuable relief. Rule 23(e)(2)(A) therefore supports approving the Settlement.

b. The Parties Negotiated the Settlement Agreement at Arm's Length

Courts in the Ninth Circuit "put a good deal of stock" in a settlement that is "the product of an arms-length, non-collusive, negotiated resolution." *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 570 (9th Cir. 2019) (citation omitted). Settlements following sufficient discovery and "genuine arms-length negotiation" are presumed fair. *Bolanos v. Crossroads Equip. Lease & Fin., LLC*, 2025 WL 4681211, at *6 (C.D. Cal. June 6, 2025) (Bernal, J.) (citation omitted). As described in detail above, the Settlement here is the result of arm's-length negotiations among experienced counsel and an experienced mediator. *See* Section II.D. Rule 23(e)(2)(B) supports approval. None of the hallmarks of a collusive pre-class-certification settlement is present here, including that counsel received "a disproportionate distribution of the settlement" and 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 that, 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 within 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 a one-third fee). Transamerica has also agreed not to make any deductions from the benefits provided by the Bonus Crediting Project and to pay in connection with the Bonus Crediting Project, subject to the Court's approval, an additional $5.8 million on top of and in addition to the Settlement Fund to Plaintiffs' counsel. Settlement Agreement ¶¶ 86, 124, 127; *see also Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[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."). Class Members will be given an opportunity to object to that application, which will be filed prior to the objection deadline.

c. The Relief Provided to the Settlement Class is Adequate

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

To assess the costs, risks, and delay of trial and appeal, "courts may need to forecast the likely range of possible classwide recoveries and the likelihood of success in obtaining such results." Fed. R. Civ. P. 23, 2018 Advisory Note, Paragraphs (C) and (D). The Settlement, which by some measures exceeds any possible trial recovery, warrants approval in light of the substantial risks, costs, and delay of further litigation.

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, terminating the litigation. *See* Dkt. 90. 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 its 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—lest it waive 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.).

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").

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). The proposed 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).

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

The relief provided to the Settlement Class is also adequate in light of "the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). The Settlement Agreement provides that Plaintiffs will move for a fee award that will not exceed 33 1/3% of the gross settlement benefits, plus expenses. *See* ¶ 124. "[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); *In re Banc of Cal. Secs. Litig.*, 2020 WL 1283486, at *1 (C.D. Cal. Mar. 16, 2020) (33% award). The first $5.8 million of any fee award approved by the Court will be paid by Transamerica directly, separate and on top of the Final Settlement Fund, due to Class Counsels' success in creating the enormous benefits of the Bonus Crediting Project. Settlement Agreement ¶¶ 124, 127. Class Counsel's fee request does not weigh against preliminary approval and will be briefed more fulsomely at final approval.

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

The Settlement Agreement references a Confidential Termination Agreement, ¶¶ 138–39, which will be provided to the Court upon request, that allows the parties to exercise their discretion to terminate the Settlement if certain conditions relating to opt-outs are triggered following the notice period. This factor is neutral.

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 recovery equally on a *pro rata* basis, and the releases are all identical in scope and do not affect the apportionment of damages.

The proposal also warrants approval under the heightened scrutiny due to pre-certification settlements. 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 payment of a service award of up to $25,000 to each Plaintiff for their substantial work and dedication to this litigation, *see* Savage Decl. ¶ 16, 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. *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); *see also 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. The remaining non-Rule 23(e)(2) factors are presently irrelevant. There is no governmental participant, and Class Members have not reacted to the Settlement because notice has not yet been issued.

3. The Proposed Class Likely Meets the Requirements for Settlement Class Certification

Before the Court grants preliminary approval and directs notice, the Court must determine that it "will likely be able to" "certify the class." Fed. R. Civ. P. 23(e)(1)(B)(ii).

Even when considering whether to certify a litigation class—when courts must consider whether class litigation would present "management problems," a consideration that is absent here, *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997)—courts have certified classes in breach-of-contract cases involving Transamerica's standardized life insurance policies. *See, e.g.*, *Feller v. Transamerica Life Ins. Co.*, 2017 WL 6496803, at *13 (C.D. Cal. Dec. 11, 2017) (certifying nationwide contract case because "Plaintiffs' claims are premised on Transamerica's uniform policy language and uniform conduct"); *Handorf, et al. v. Transamerica Life Ins. Co.*, 349 F.R.D. 540, 548–49 (N.D. Iowa June 3, 2025) (similar). Courts likewise regularly certify classes in other breach-of-contract cases involving other life-insurance companies' form contracts. *See, e.g.*, *Chastain v. Union Security Life Ins. Co.*, 2008 WL 11333691, at *4–*5 (C.D. Cal. 2008) (certifying class alleging breach of form insurance contracts).

a. Numerosity

Numerosity is satisfied under Rule 23(a)(1) because 2,356 policies fall under the proposed Settlement Class definition, Mills Decl. ¶ 4, which "make[s] joinder of all class members' claims impracticable," *Metrow v. Liberty Mut. Managed Care LLC*, 2017 WL 4786093, at *6 (C.D. Cal. May 1, 2017) (Bernal, J.) (finding numerosity satisfied by a class of 51).

b. Commonality

Commonality is satisfied where, as here, a class-wide proceeding may "generate common answers apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (emphasis omitted). A single common question is sufficient. *See Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013).

Common questions of law and fact abound here. Those questions can be resolved with common answers on a class-wide basis—they all turn on Transamerica's uniform conduct in breaching materially similar provisions in form insurance policies. The questions of what that policy language means, and whether Transamerica was required to credit CVIs on policies' 30 and 40-year anniversaries, are all common questions with common answers for the entire Class. Thus, "every class members' claim turns on the same central liability issue, the interpretation of [the insurer's] policies." *Rodriguez v. Farmers Ins. Co. of Ariz.*, 2013 WL 12109896, at *2 (C.D. Cal. Aug. 4, 2013) (Bernal, J.) (certifying settlement class); *see also, e.g.*, *Feller*, 2017 WL 6496803, at *6–*7; *Hanks v. Lincoln Life & Annuity Co. of N.Y.*, 330 F.R.D. 374, 379–80 (S.D.N.Y. 2019).

c. Typicality

Rule 23(a)(3) requires "the claims or defenses of the representative parties [be] typical of the claims or defenses of the class." The named Plaintiffs' claims are typical of the Class if the claims are "reasonably coextensive with" the absent class members'; they need not be "substantially identical." *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014). Each class member's claim must "arise[] from the same course of events," with "similar legal arguments to prove the defendant's liability."

Immigrant Defs. L. Ctr. v. Mayorkas, 2023 WL 3149243, at *49 (C.D. Cal. Mar. 15, 2023) (citation omitted) (Bernal, J.).

Typicality is amply satisfied: Plaintiffs are both members of the Settlement Class and possess the same interests and suffered the same alleged injury as each Settlement Class Member through Transamerica's uniform course of conduct. Plaintiffs, like all Settlement Class Members, were not credited CVIs when they were due, in alleged violation of their policies' terms, and they share a common interest in holding Transamerica liable for these policy violations. *See*, *e.g.*, *Feller*, 2017 WL 6496803, at *8; *Rodriguez*, 2013 WL 12109896, at *3; *Hanks*, 330 F.R.D. at 380–81.

d. Adequacy

Rule 23(a)(4) requires that the "representative parties will fairly and adequately protect the interests of the class," and Rule 23(g)(4) requires that "class counsel [will] fairly and adequately represent the interests of the class." As explained above, these tests are satisfied if the plaintiff and counsel have no conflicts of interest and will prosecute the action vigorously on behalf of the class. *See* Section III.A.2.a. "The typicality and adequacy inquiries tend to significantly overlap." *Salinas v. Cornwell Quality Tools Co.*, 635 F. Supp. 3d 954, 975 (C.D. Cal. 2022) (citation and alteration omitted). Typicality is satisfied here and Plaintiffs' interests are directly aligned with Settlement Class Members'. *See* Sections III.A.3.c & III.A.2.a. Plaintiffs actively participated in the litigation, understand their obligations, and should be appointed as class representatives.

Moreover, Susman Godfrey and Bonnett Fairbourn Friedman & Balint have vigorously prosecuted this case, for years, on behalf of the Class. Their lawyers are experienced class-action attorneys with resources to administer this settlement, and they have been found adequate class counsel in many other cases involving an insurer's alleged breach of its life insurance policies. *See* Savage Decl. Ex. 1, Ex. 2 (firm resumes).

e. The Settlement Class Satisfies Rule 23(b)(3)

Certifying a Rule 23(b)(3) class for settlement purposes only requires demonstrating 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," Fed. R. Civ. P. 23(b)(3)—manageability is not at issue, *Amchem*, 521 U.S. at 620.

Because Plaintiffs' claims involve breach of standardized provisions in integrated, form contracts, as discussed above, common factual issues predominate—Transamerica's decision not to credit 30-year CVIs was common to all Class Members. *See, e.g.*, *Feller*, 2017 WL 6496803, at *11; *Rodriguez*, 2013 WL 12109896, at *3–4.

The Ninth Circuit does not require uniform damages for certifying a Rule 23(b)(3) class, *Vaquero v. Ashley Furniture Indus., Inc.*, 824 F.3d 1150, 1155 (9th Cir. 2016), but regardless, "damages will be computed by one methodology applicable to each class member"—a common "rote arithmetic" exercise "based on Transamerica's own business records": multiplying the CVI percentage by the first ten years of scheduled premiums. *Feller*, 2017 WL 6496803, at *13; Savage Decl. Ex. 6, at 5 (outlining this simple calculation).

Class adjudication is also far superior to individual litigation, given the costs of experts and burdensome discovery that make litigating uncredited-CVI claims on a policy-by-policy basis challenging at best. Class-wide litigation will thus "reduce litigation costs and promote greater efficiency," *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996), as other courts have found in actions challenging an insurer's actions on a class of life insurance policies, *see e.g., Fleisher v. Phoenix Life Ins. Co.*, 2013 WL 12224042, at *15-18 (S.D.N.Y. July 12, 2013).

Concentrating Settlement Class Members in this forum is desirable because 2,356 policies are affected, and centralized adjudication "ensure[s] judicial economy and … guard[s] against the risk of inconsistent results." *De Stefan v. Frito-Lay, Inc.*, 2011 WL 13176229, at *8 (C.D. Cal. June 6, 2011). Rule 23(b)(3) is therefore satisfied.

B. <u>The Proposed Form and Manner of Notice is Appropriate</u>

Notice under the Settlement Agreement is directed "in a reasonable manner to all class members who would be bound by the proposal," as Rule 23(e)(1)(B) requires.

First, the parties agree that the proposed notice satisfies Rule 23(c)(2)(B) because it apprises Class Members of the terms of the Settlement and the options open to them in plain English, including specific information regarding the date, time, and place of final approval. *See* Settlement Agreement ¶ 93; *id.*, Ex. B; *id.* Ex. C.

Second, the parties agree to appoint JND Legal Administration as Settlement Administrator, *see* Savage Decl. ¶ 32, which has extensive experience serving as administrator in large, complex class actions. *See* Intrepido-Bowden Decl. ¶¶ 3–8.

Third, direct mailing of the notice to Class Members is particularly effective because in-force policyholders can be expected to maintain their current address with Transamerica. A website will also be maintained so that anyone can read about the settlement and easily find all pertinent documents. Settlement Agreement ¶ 95; Intrepido-Bowden Decl. ¶¶ 20–21. The Settlement Administrator will also research and attempt re-delivery of any notices returned as undeliverable. *Id.* ¶ 19 & n.3.

The Court should therefore approve the proposed form and manner of notice as described in paragraphs 90–96 of the Settlement Agreement, paragraphs 32–38 of the Savage Declaration, and paragraphs 11–25 of the Declaration of Gina Intrepido-Bowden, as well as Exhibits B and C to the Settlement Agreement, because it is the "best notice that is practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B).

C. <u>Proposed Schedule for Notice, Objections, and Final Approval</u>

Subject to Court approval, Plaintiffs propose the following schedule, which provides due process for Class Members related to their rights under the Settlement:

Event	**Days from Preliminary Approval**
Deadline for Transamerica to provide Class Member addresses to JND	14 days
Deadline for JND to send notice to Class Members	28 days
Deadline for JND to file proof of mailing	28 days
Deadline to file motion for award of attorneys' fees, expenses, and service awards	59 days
Deadline to request exclusion from the Settlement Class or object to the Settlement	73 days
Deadline to file motion for final approval	76 days
Deadline to serve any reply brief in support of any motion	83 days
Deadline to file list of opt-outs	83 days (14 days prior to Final Approval Hearing)
Final Approval Hearing	97 days

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (i) preliminarily approve the proposed Settlement, Plan of Allocation, and the form and manner of notice, and certify the proposed Class for settlement; (ii) direct notice to the Class under Rule 23(e)(1); and (iii) schedule a date and time for a hearing to consider final approval of the Settlement and related matters.

Dated: July 10, 2026

SUSMAN GODFREY L.L.P.

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiffs, certify that this memorandum contains 6,889 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: July 10, 2026

By: /s/ *Steven G. Sklaver*
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