UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARBUCKLE FUNDING, LLC, and BRIGHTON TRUSTEES LLC, on behalf of and as Trustee for COOK STREET MASTER TRUST III, individually and on behalf of all others similarly situated, Plaintiffs, vs. TALCOTT RESOLUTION LIFE AND ANNUITY INSURANCE COMPANY and TALCOTT RESOLUTION LIFE INSURANCE COMPANY, Defendants.	Civil Action No. 7:23-cv-07972-CS

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL AND PREMIUM TAX CLASS CERTIFICATION

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Abbreviation		Term
Plaintiffs	Arbuckle	Plaintiff Arbuckle Funding, LLC
	Brighton	Brighton Trustees LLC, on behalf of and as Trustee for Cook Street Master Trust III
Defendants	Talcott	Talcott Resolution Life and Annuity Insurance Company
	HLIC	Talcott Resolution Life Insurance Company

TABLE OF EXHIBITS[1]

No.	Title
1	Susman Godfrey L.L.P. Class Action Profile and Plaintiffs' Counsel's Profiles
2	Settlement Agreement
3	Proposed Plan of Allocation
4	Proposed Class Notice
5	Pre-Motion Hearing Conference Transcript (Jul. 28, 2025)

[1] All exhibits are attached to the accompanying Declaration of Ryan C. Kirkpatrick.

I. INTRODUCTION

After over two and a half years of litigation, Plaintiffs obtained a fair, reasonable and favorable settlement of the Premium Tax Claims (Counts II and III) alleging that Defendants breached their contracts by applying a premium tax charge rate in excess of the premium tax charge permitted by the terms of the contracts. The cost of insurance claim in Count I against Talcott is not part of this Settlement and remains pending.

The proposed settlement has two main components:

1. **Cash**: An $11 million all-cash settlement fund. This is not a claims-made settlement; Settlement Class members will not need to fill out any claim forms. No funds will revert to Defendants. Following final approval, checks will be mailed directly to each Settlement Class Member.

2. **Premium Tax Practice Change**: Defendants agreed to (i) cease to apply the retaliatory premium tax rate assessed to Defendants by states with a lower premium tax rate than Defendants' domicile state of Connecticut, and instead apply those states' lower statutory premium tax rate and (ii) cease to apply a premium tax rate in excess of 0.7%, which Plaintiffs assert is New York's statutory premium tax rate, for New York policyowners. In other words, Defendants will assess premium taxes on these policies in the way Plaintiffs argued they should be assessed.

Each component, by itself, is significant. The cash component amounts to approximately 76% of the alleged past premium-tax overcharges—assuming a jury found in favor of Plaintiffs on every disputed question of fact and law—and roughly 56% of the amount that Plaintiffs could recover at trial when prejudgment interest is factored in. *See* Declaration of Ryan C. Kirkpatrick (Kirkpatrick Decl.) ¶ 13. On a percentage basis, the cash payment alone represents a significantly greater proportion of damages compared to other settlements approved in this District, including those for other insurance overcharges. *See 37 Besen Parkway, LLC v. John Hancock Life Ins. Co.*, No. 15-CV-09924 (S.D.N.Y. Mar. 18, 2019), ECF No. 164 at 20:9–10 (approving a "quite extraordinary" settlement for 42% of historical cost of insurance overcharges); *see also Cymbalista v. JPMorgan Chase Bank, N.A.*, 2021 WL 7906584, at *6 (E.D.N.Y. May 25, 2021) (characterizing settlement as a "substantial recovery" in consumer protection case where settlement was 53%–65% of damages), *report and recommendation adopted*, Minute Entry (Nov. 22, 2021); *In re GSE Bonds Antitrust Litig.*, 2019 WL 6842332, at *4 (S.D.N.Y. Dec. 16, 2019) (approving antitrust settlement where settlement was 10.9% to 21.3% of damages). And the prospective relief provides millions of dollars in additional benefits to Premium Tax Settlement Class Members. Kirkpatrick Decl. ¶ 13.

As described in detail below, the Premium Tax Claims began as a straightforward claim about the failure to update an address. But through extensive discovery and investigation, including interrogatories, requests for production, and requests for admission, additional overcharge claims were identified and asserted by Plaintiffs, and will be remedied by this settlement.

But what makes this settlement even more notable is that success on the merits was never guaranteed. Defendants planned to move to dismiss certain Premium Tax Claims, which presented difficult questions of contract interpretation that had not been litigated in this context before. At the July 28, 2025 pre-motion conference, the Court observed that the policy language at issue "sure looks ambiguous." Ex. 5 (Hrg. Tr.) at 2:18–19. Among other things, Defendants argued that (a) under state retaliatory tax statutes, the "rate assessed" by states with lower premium tax rates than Connecticut is actually Connecticut's higher rate; and (b) New York's minimum statutory tax on premiums is 1.5%, not 0.7% as Plaintiffs alleged. ECF No. 81 at 2–3. The Court concluded by noting that "both [parties] have decent arguments, which is why we'll have motion practice." Hrg.

Tr. at 11:25–12:1.[2]

Ultimately, after extensive arm's-length negotiations spanning three in-person and virtual sessions on April 30, August 4, and September 26, 2025—in addition to numerous telephone conferences and email exchanges—the parties reached an agreement in principle. And after months of negotiations over the details, the Settlement presented here easily merits preliminary approval. It was negotiated by experienced counsel after thorough investigation of the law and facts. And it provides meaningful monetary relief and prospective business practice changes that will benefit class members going forward, while minimizing the risks, expenses, and uncertainty of continued litigation.

Accordingly, Plaintiffs respectfully request that the Court enter an order: (1) preliminarily approving the Settlement Agreement; (2) certifying the Premium Tax Settlement Class for settlement purposes; (3) appointing Susman Godfrey L.L.P. as Class Counsel; (4) approving the proposed Class Notice and notice plan; (5) appointing JND as Claims Administrator; and (6) scheduling a Final Approval Hearing. Defendants do not oppose.

II. BACKGROUND

A. Procedural History and Factual Background

On September 8, 2023, Plaintiff Arbuckle commenced this putative class action in the U.S. District Court for the Southern District of New York. The original complaint alleged two distinct breach of contract claims. In Count I, Plaintiff alleged that Talcott failed to reduce cost of insurance ("COI") rates following the enactment of the Tax Cuts and Jobs Act of 2017 ("TCJA"). ECF No. 1 at ¶¶ 5–7, 23–31, 47–52. The TCJA reduced the federal corporate income tax rate from 35% to

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[2] After the pre-motion conference, the parties asked the Court to extend the briefing deadlines "to facilitate further discussion by the parties of a partial resolution of the dispute and potentially obviate the need for the briefing of the motion," and, ultimately, asked the Court to hold the deadlines in abeyance. *See* ECF Nos. 90, 95. The Court granted the requests. *See* ECF No. 91, 96.

21%, and Arbuckle alleged breach of contractual provisions requiring Talcott to determine COI rates based on its future expectations of taxes. *Id.* That COI Claim is not at issue in this motion and remains pending.

Count II of the original complaint, relevant here, alleged that Talcott breached its contracts with New York policyholders by failing to update the premium tax charge rate applied when the policyowner's state of residence changed to a state with a different premium tax rate, and by assessing a premium tax charge rate in excess of 0.7% for New York policyowners. Plaintiff Arbuckle's policy, which was issued in California, contains the following Premium Tax Change Language:

DEDUCTIONS FROM PREMIUM PAYMENTS

TYPE OF CHARGE	POLICY YEARS	PERCENT OF PREMIUMS PAID
PREMIUM CHARGE	1 - 20 21+	5.00% 2.00%
PREMIUM TAX	ALL	2.35%

* THE PREMIUM TAX PERCENTAGE RATE DEPENDS UPON THE RATE ASSESSED BY YOUR STATE OR MUNICIPALITY OF RESIDENCE. IF YOUR STATE OR MUNICIPALITY OF RESIDENCE CHANGES AND/OR IF YOUR STATE OR MUNICIPALITY CHANGES ITS PREMIUM TAX RATE, THE PREMIUM TAX RATE WILL CHANGE TO EQUAL THAT NEW RATE.

Id. at ¶ 11.

In 2019, Arbuckle, a New York-based company, acquired the policy from the original policyowner in a secondary market transaction. *Id.* at ¶ 12. The change in ownership and address was recorded with Talcott, and Talcott thereafter sent annual reports and other policy correspondence to Arbuckle's address in New York. *Id.* Yet Talcott continued to assess a premium tax charge equal to 2.35% of premiums paid (the California premium tax rate), rather than New York's much lower premium tax rate, which Arbuckle alleged to be 0.7%. *Id.* Plaintiff Arbuckle alleged that Talcott had been overcharging thousands of other New York policyholders in the same way. *Id.*

As the case progressed, Plaintiff Arbuckle and undersigned counsel conducted extensive discovery and investigation into the Premium Tax Claims, obtaining from Talcott and The Prudential Insurance Company of America ("Prudential")—the administrator of the policies—extensive documentation, written discovery responses, and policy-level data for the proposed Premium Tax Settlement Class. Although the parties' discovery involved both the unresolved COI claim and the Premium Tax Claims, the total figures reveal the magnitude of discovery. Plaintiffs served 65 requests for production, 15 interrogatories, and 50 requests for admission. Talcott has produced over 8,000 documents and data sets, including policy-level data, actuarial information, and communications. Kirkpatrick Decl. ¶ 13.

In March 2024, based on information learned through discovery, Plaintiff filed its Second Amended Complaint (ECF No. 44), which expanded the Premium Tax Overcharge Class beyond New York policyholders to include all policyholders affected by address update failures nationwide. Discovery revealed, as Defendants' administrator Prudential acknowledged, that for a period beginning April 1, 2015 until corrected in 2025—in the middle of and as a result of this litigation—the system field used to determine the premium tax rate on one administrative system was not updated when a policyholder's address changed, resulting in overcharges for policyholders with policies administered on that system who had moved to states with lower premium tax rates. This issue became known as the Address Update Claim (Count II). *See* Ex. 2 (Settlement Agreement) at 4–5.

As before, Plaintiff Arbuckle pressed forward on discovery to investigate claims and gather evidence. Continued discovery then revealed additional issues with the Defendants' administration of premium tax charges. In March 2025, Plaintiff filed its Third Amended Complaint (ECF No. 62), adding Count III due to information discovered through the litigation relating to two overcharge issues:

- *Retaliatory Tax Rate Issue:* For policyholders residing in fifteen states with statutory premium tax rates lower than Connecticut's (Talcott's domicile state)—including New York, the District of Columbia, Idaho, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Nebraska, New Hampshire, Ohio, Oregon, South Carolina, and Wyoming—Defendants applied Connecticut's higher premium tax rate rather than the lower statutory premium tax rate assessed by the policyholder's actual state of residence. *Id.* at ¶ 46. The policies reference only premium tax rates and make no specific reference to retaliatory taxes, which Plaintiffs contend are distinct charges with different purposes. *Id.* at ¶ 45.
- *Rate Update Issue:* Talcott failed to update premium tax rates when Arizona, Connecticut, and the District of Columbia reduced their statutory premium tax rates. *Id.* at ¶ 18. For example, Connecticut decreased its premium tax rate from 1.75% to 1.5% effective January 1, 2018, yet discovery revealed that premium tax charge rates were not updated to reflect this change until January 2025, with that change in practice occurring as a consequence of this lawsuit. *Id.* Because Talcott assessed retaliatory taxes using Connecticut's premium tax rate, this change impacted not only Connecticut-domiciled policyholders, but all policyholders (including Arbuckle) who reside in a state that has a lower premium tax rate than Connecticut's.

Subsequent discovery also revealed that Talcott's affiliate, Talcott Resolution Life Insurance Company ("HLIC") was assessing premium tax charges in the exact same way as Talcott. Accordingly, in April 2026, with Defendants' consent, Plaintiffs filed the Fourth Amended Complaint (ECF No. 116), adding Brighton Trustees LLC as an additional plaintiff and HLIC as an additional defendant solely with respect to Counts II and III.

B. Settlement Negotiations

The Settlement Agreement was reached as a result of extensive, good-faith, and arm's-length negotiations between the Parties and their counsel. Before entering into the Settlement Agreement, the parties, through their respective counsel, conducted a thorough investigation and evaluation of the relevant law, facts, allegations, and defenses to assess the merits of the Premium Tax Claims, the strengths and weaknesses of the claims, and the appropriateness of class certification and the legal and factual grounds for opposition thereto. *See* Kirkpatrick Decl. ¶¶ 7–11.

Beginning on April 30, 2025, counsel for the parties met in person to evaluate and commence negotiation of a potential class-wide settlement of the Premium Tax Claims. *Id.* ¶ 6. The parties continued settlement discussions and negotiations through additional in-person and virtual sessions on August 4, 2025 and September 26, 2025, and exchanged emails and phone calls between and subsequent to these meetings. *Id.* ¶ 6. These negotiations were conducted by highly qualified and experienced counsel on both sides. *Id.* ¶¶ 5–6.

Throughout the process, the parties considered the risks, uncertainties, delays, and expenses involved in prosecuting and defending the Premium Tax Claims. *Id.* ¶¶ 7–11. Ultimately, the parties reached an agreement in principle and have spent several months negotiating the details of the Settlement Agreement.

C. The Settlement Agreement

The Settlement Agreement, if approved, will resolve Counts II and III of the Fourth Amended Complaint and provide substantial relief to the Premium Tax Settlement Class Members.

1. Premium Tax Settlement Class

The Settlement provides for certification of a Premium Tax Settlement Class defined as all current and former Policyowners of all Premium Tax Settlement Class Policies. *See* Settlement

Agreement § X.A.3. A "Premium Tax Settlement Class Policy" is any individual universal life or variable universal life insurance policy issued or insured by Defendants, containing the Premium Tax Change Language, for which a premium payment subject to one or more of the Premium Tax Claims was made during the Class Period, and: (1) for which a new address was registered with Defendants or Prudential after issuance, and which were assessed a Premium Tax Charge Rate in excess of the Statutory Premium Tax Rate assessed by the State associated with the new registered address; or (2) for which an address in Arizona, Connecticut, the District of Columbia, Idaho, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Nebraska, New Hampshire, New York, Ohio, Oregon, South Carolina, or Wyoming was registered with Defendants or Prudential.[3] *Id.* § II.HH. Defendants have conditionally consented to certification of the Settlement Class for settlement purposes only. *Id.* § XII.E.

2. **Consideration**

The Settlement provides the following primary benefits for the Premium Tax Settlement Class:

<u>Cash</u>: Defendants will cause Prudential (the administrator and 100% reinsurer for the Class Policies) to fund a non-reversionary common fund with $11 million in full and final resolution of the Released Claims. Settlement Agreement § III.A. This is not a claims-made settlement. Premium Tax Settlement Class Members will not need to fill out any claim forms. Following final approval, checks will be mailed directly to Authorized Claimants using the address of record on file with Prudential or a new address identified by the Claims Administrator. *See id.* § III.B. No

[3] Excluded from the Premium Tax Settlement Class are: (a) officers or directors of Defendants or Prudential; (b) any judicial officer presiding over the Action and the members of his or her immediate family and judicial staff; (c) anyone employed in Plaintiffs' Counsel's firm; and (d) Policyowners who submit a valid and timely Request for Exclusion. Settlement Agreement § II.GG.

portion of the Settlement Amount will revert to Defendants; instead, any unclaimed funds will escheat to the appropriate state authorities. *Id.*

Change to Premium Tax Practices: Within thirty days of entry of the Preliminary Approval Order, for the Premium Tax Settlement Class Policies, Defendants, and Prudential as administrator, will prospectively: (1) cease to apply Connecticut's statutory premium tax rate, the premium tax rate assessed to Defendants in states with a lower statutory premium tax rate than Connecticut under retaliatory tax laws, and instead assess a premium tax charge rate that does not exceed those states' own non-retaliatory statutory premium tax rate; and (2) cease to apply a premium tax charge rate in excess of the premium tax rate set forth in N.Y. Tax Law § 1510(b), currently 0.7%, which Plaintiffs allege to be New York's statutory premium tax rate, for policyholders residing in New York. Settlement Agreement § III.D. Their agreement to cease these practices going forward is a victory for the Premium Tax Settlement Class Members and will benefit similarly situated policyholders for years to come.

3. **Release**

Upon the Effective Date of the Settlement, Plaintiffs, the Premium Tax Settlement Class, and the Releasing Parties shall be deemed to have fully, finally, and forever released the Releasees from the Released Claims. Settlement Agreement § IV.B. The Released Claims encompass, to the fullest extent permitted by law, any and all claims arising out of, based on, or related to the Premium Tax Charge Rate applied to any premium payment for any Premium Tax Settlement Class Policy during the Class Period.

The Released Claims do not include the COI Claim (Count I) or any claims arising after the Effective Date of the Agreement. *Id.* § II.P. Arbuckle and Talcott have not resolved, and the Settlement Agreement does not resolve, the COI Claim, which remains pending. *Id.* § I.C n.1. Arbuckle and Talcott have not, and do not, make any representations, releases, or admissions concerning the COI Claim in the Settlement Agreement, and nothing in the Settlement Agreement shall be construed as affecting Arbuckle's or Talcott's rights, obligations, defenses, or liabilities concerning the COI Claim. *Id.* This carve-out preserves Arbuckle's ability to continue pursuing the COI Claim, which presents distinct legal issues from the Premium Tax Claims resolved here.

4. **Attorneys' Fees, Costs, and Incentive Awards**

Plaintiffs' Counsel intends to apply to the Court for an award of reimbursement of all litigation costs and expenses incurred for the Premium Tax Claims and an award of attorneys' fees not to exceed 33 1/3% of the Settlement Amount, to be paid from the Escrow Account. Settlement Agreement § IX.A. Defendants have agreed not to oppose a motion for the Fee and Expense Award to the extent it does not exceed these amounts. *Id.* This application will be filed and noticed before the Objection and Opt-Out Deadline, providing Class Members an opportunity to review and object to the application before the Final Approval Hearing.

Plaintiffs' Counsel may also apply to the Court for an Incentive Award not to exceed $25,000 payable to Plaintiff Arbuckle in recognition of its efforts on behalf of the Premium Tax Settlement Class.[4] Defendants have agreed to take no position with respect to any Incentive Awards provided they are consistent with the Settlement Agreement. *Id.*

5. **Notice and Plan of Allocation**

The proposed notice plan provides that within a specified period following entry of the Preliminary Approval Order, the Claims Administrator will mail the Class Notice to all persons and entities associated with Premium Tax Settlement Class Policies using the Notice List provided by Prudential. *See* Settlement Agreement § VI.D; Ex. 4 (Proposed Class Notice). Prior to mailing,

[4] While the Settlement Agreement provides that Plaintiffs' Counsel may seek an Incentive Award not to exceed $25,000 for each Plaintiff, Counsel intends to apply for such an award for Arbuckle only.

the Claims Administrator will run the Notice List through the U.S. Postal Service's National Change of Address Database for verification and correction of addresses to reduce the number of returned mail items. *Id.* The Claims Administrator will also re-mail any Class Notice returned with a forwarding address and will retain a commercial address verification service to attempt to find an address for any returned Class Notice without a forwarding address. *Id.* A copy of the Class Notice will also be posted on a dedicated Settlement Website. *Id.* § IV.E.

The proposed Plan of Allocation distributes the Net Settlement Fund (the Settlement Amount less Claims Administration Expenses, any Incentive Awards, and any Fee and Expense Award) on a pro-rata basis, as follows: The Plan will allocate to each Premium Tax Settlement Class Policy that was subject to a premium tax overcharge due to the Address Update Issue and/or Rate Update Issue an amount equal to the full overcharge amount attributable to those issues, less a proportionate share of Total Expenses. Settlement Agreement § III.B. The remaining funds are then allocated on a pro-rata basis among policyholders subject to overcharges due to the Retaliatory Tax Rate Issue. *Id.* This proposed allocation accounts for the differing levels of litigation risk associated with the various Premium Tax Claims.

Settlement checks will be mailed directly to Authorized Claimants; no claim forms are required. Ex. 3 (Plan of Allocation) § 1. For policies with multiple owners of record, the pro-rata share will be divided equally among the owners. *Id.* § 3. Checks will be mailed to the address of record or a new address identified by the Claims Administrator of the most recent registered owner of record as of the Preliminary Approval Date. *Id.* § 4. Following this distribution, any remaining unclaimed funds shall be escheated to state authorities. *Id.* § 6.

III. <u>ARGUMENT</u>

As described below, the Proposed Settlement was negotiated at arm's length by experienced counsel after extensive discovery and investigation; the relief provided, including $11 million in cash and valuable prospective changes to Defendants' business practices, is substantial in light of the risks and delays of continued litigation; and the proposed class satisfies all requirements for certification. The Court should grant preliminary approval and direct that notice be sent to Class Members.

A. <u>The Proposed Settlement Merits Preliminary Approval</u>

Under Rule 23(e), class action settlements are subject to court approval, and "[i]t is within a district court's discretion to approve proposed class action settlements." *Zimmerman v. Paramount Glob.*, 2025 WL 763734, at *3 (S.D.N.Y. Mar. 11, 2025). Courts in this Circuit have long acknowledged a "strong judicial policy in favor of settlements, particularly in the class action context." *E.g.*, *Nnebe v. Daus*, 2025 WL 1333425, at *2 (S.D.N.Y. May 7, 2025) (Sullivan, J.) (quoting *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 27 (E.D.N.Y. 2019)). Accordingly, courts are "hesitant to substitute their judgment for that of the parties who negotiated the settlement" absent "fraud or collusion." *Christine Asia Co., Ltd. v. Ma*, 2019 WL 5257534, at *8 (S.D.N.Y. Oct. 16, 2019) (alterations adopted) (citation omitted).

For preliminary approval, the Court must assess whether it "will likely be able to . . . approve the proposal under Rule 23(e)(2)" following a hearing "and only on finding that it is 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 the costs, risks, and delay of trial and appeal, the effectiveness of any proposed method of distributing relief, the terms of any proposed award of attorneys' fees, and 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)(1), (e)(2). The first two factors focus on "procedural fairness," while the latter two factors focus on "substantive fairness." *Christine Asia*, 2019 WL 5257534, at *9–10. As discussed below, all factors weigh in favor of approving the Proposed Settlement.

1. The Proposed Settlement Is Procedurally Fair

a. The Class Representatives and their Counsel Have Adequately Represented the Class

To assess adequacy of representation, courts consider "whether: 1) plaintiff's interests are antagonistic to the interest of other members of the class and 2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation." *Cordes & Co. Fin. Servs., Inc. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 99 (2d Cir. 2007) (citation omitted). Both factors favor approval.

First, Plaintiffs' interests are aligned with the interests of all other members of the Settlement Class: all share a common interest in maximizing recovery from Defendants for the alleged premium tax overcharges at issue in the contracts each Plaintiff owns with each Defendant. There is accordingly no conflict between the Class Representatives and the other Class Members.

Second, Plaintiffs' Counsel, Susman Godfrey L.L.P., has significant experience in class actions, insurance litigation, and class action insurance litigation. *See* Ex. 1. In this District alone, Susman Godfrey has been appointed Class Counsel in numerous life insurance and other class action litigation, including *In re: AXA Equitable Life Insurance Co.* (S.D.N.Y.), *Fleisher v. Phoenix Life Insurance Co.* (S.D.N.Y.), *37 Besen Parkway, LLC v. John Hancock Life Insurance Co.* (S.D.N.Y.), and *Kenney v. PHL Variable Insurance Co.* (S.D.N.Y.), and the *LIBOR-Based Financial Instruments Antitrust Litigation* (S.D.N.Y.), among others. *See* Kirkpatrick Decl. ¶ 3 & Ex. 1. Susman Godfrey has diligently litigated the Premium Tax Claims and believes the Proposed Settlement represents a very favorable resolution. *See id.* ¶ 20.

b. The Proposed Settlement Was Negotiated at Arm's Length

Rule 23(e)(2)(B) requires courts to evaluate whether a settlement was negotiated at arm's length as a factor bearing on procedural fairness. Here, the Proposed Settlement satisfies this requirement because it exemplifies many of the hallmarks courts in this Circuit have found indicative of arm's-length negotiations. *See, e.g.*, *Reyes v. Summit Health Mgmt., LLC*, 2024 WL 472841, at *3 (S.D.N.Y. Feb. 6, 2024) (citing "extensive pre-negotiation discovery" that provided parties "a full opportunity to acquaint themselves with the strength of the case prior to initiating negotiations" as sign of "good faith arm's-length negotiations"); *Durand v. Excelsior Care Grp. LLC*, 2021 WL 5409097, at *4 (E.D.N.Y. July 14, 2021) ("[T]he settlement agreement was the product of arm's-length bargaining reached only after protracted discovery and extensive settlement discussions with experienced counsel.").

The parties commenced settlement discussions with a meeting on April 30, 2025, nearly two years after this litigation began and only after significant discovery had been completed. *See* Kirkpatrick Decl. ¶ 6. The parties continued to meet and confer regarding settlement through additional in-person and virtual sessions on August 4 and September 26, 2025, as well as numerous telephone conferences and email exchanges between and subsequent to these meetings. *Id.* They ultimately reached an agreement in principle in October 2025, after which they spent five months negotiating the details of the long-form Settlement Agreement.

By the time the parties reached an agreement in principle, Plaintiffs' Counsel was well informed of the material facts, strengths, and weaknesses of the case. *Id.* ¶ 7. During the course of the litigation, Plaintiffs' Counsel obtained and analyzed extensive documentation and data from Defendants and Prudential, including policy-level data, interrogatory responses, and documents reflecting Defendants' premium tax practices. *Id.* ¶¶ 9–10. This discovery informed Plaintiffs' Counsel's evaluation of the strengths and weaknesses of the claims and allowed it to make informed judgments about the fairness and adequacy of the Settlement.

Finally, the fact that the parties have not settled the COI Claim, and indeed continue to actively litigate it, reinforces the conclusion that they have reached an arm's-length resolution of the Premium Tax Claims.

2. The Proposed Settlement Is Substantively Fair

a. The Relief Is Adequate

i. Costs, Risks, and Delay of Trial and Appeal

Rule 23(e)(2)(C) articulates four factors relevant to determining the adequacy of relief: (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)." Each of these factors supports approval of this Settlement, particularly in light of the significant litigation risks Plaintiffs faced.

Until Rule 23(e)(2)(C)'s four-factor framework was codified in 2018, courts in this Circuit employed a nine-factor framework from *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974). The two frameworks have "significant overlap," and the 2018 amendments to Rule 23 were intended to "add to, rather than displace, the *Grinnell* factors." *In re Payment Card Interchange Fee & Merch. Discount Antitrust Litig.*, 330 F.R.D. at 29 (citing Fed. R. Civ. P. 23 advisory committee's note to 2018 amendment). Under both frameworks, the proposed Settlement is more than adequate. It represents a very favorable result given the novel legal questions presented and Defendants' anticipated defenses.

The $11 million cash payment, combined with the prospective change in business practices, is a significant recovery in light of the substantial risks and uncertainties the Class would face if this litigation were to continue. Talcott and HLIC denied all allegations of wrongful conduct with respect to the Retaliatory Tax Rate Issue, contending that Connecticut's premium tax rate was properly applied as the premium tax charge rate for states with lower statutory rates due to retaliatory tax laws, and that a 1.5% rate is proper for New York residents.

As Talcott explained in its June 16, 2025 pre-motion letter, its position was that “the policy language is clear and unambiguous that the premium tax charge percentage rate is the premium tax rate assessed by the policyowner’s state of residence—not the state’s statutory premium tax rate when that is not the rate assessed due to retaliatory tax laws.” ECF No. 81 at 1–2. Defendants also argued that state tax law principles supported their premium tax practices and that for New York policyholders, Article 33 of the New York Tax Law imposes a minimum 1.5% premium tax, not the 0.7% premium tax Plaintiffs cited. *Id.* at 2–3. The Premium Tax Claims presented difficult questions of contract interpretation that had not been litigated in this context before, and there was genuine uncertainty about how the Court would resolve these novel issues. At the July 28, 2025 conference, the Court acknowledged that “both” parties had “decent arguments” and that the policy language was “debatable.” Hrg. Tr. at 2:17, 11:25–12:1.

Had the litigation continued, the Class would have faced the risks of contested class certification, potential summary judgment motions, and additional risks at trial and on appeal. Such a process can span years with no guarantee of a recovery. *See Charron v. Pinnacle Grp. N.Y. LLC*, 874 F. Supp. 2d 179, 201 (S.D.N.Y. 2012) (observing that settlement “assures immediate payment of substantial amounts to Class Members, ‘even if it means sacrificing speculative payment of a hypothetically larger amount years down the road’” (citation omitted)). The Settlement avoids these risks and provides certain, immediate relief to Class Members. This factor weighs strongly in favor of approval.

ii. Effectiveness of Proposed Method of Distributing Relief

The proposed distribution method is also highly effective. Settlement checks will be mailed directly to Authorized Claimants without the need to submit claims. Each Authorized Claimant's pro-rata share will be computed from the individual overcharge amounts attributable to each policy, as described more fully in Section II.C.5.

"A reasonable plan may consider the relative strength and values of different categories of claims." *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 580 (S.D.N.Y. 2008). As long as distribution plans have a "reasonable, rational basis," courts have approved them as fair and reasonable. *Fleisher v. Phoenix Life Ins. Co.*, 2015 WL 10847814, at *12 (S.D.N.Y. Sept. 9, 2015) (citation omitted). Given the uncertainty with respect to the Retaliatory Tax Claims, combined with Defendants' acknowledgements regarding the Address Update/Rate Update Claims, the proposed plan of allocation reasonably and rationally allocates pro-rata shares of the Net Settlement Fund for the Address/Rate Overcharge Payments first and the Remaining Fund is then distributed on a pro-rata basis for all Retaliatory Overcharge Payments.

iii. <u>The Terms of Any Proposed Award of Attorneys' Fees</u>

Rule 23(e)(2)(C)(iii) considers the "terms of any proposed award of attorneys' fees, including timing of payment." In *Kurtz v. Kimberly-Clark Corp.*, 142 F.4th 112 (2d Cir. 2025), the Second Circuit clarified that Rule 23(e) "requires courts to compare the proportion of total recovery allocated to the class to the proportion of total recovery allocated to class counsel," *id.* at 115. The Court explained that "[w]hereas Rule 23(h) asks whether fees are reasonably calculated and genuinely earned—using class recovery as a measuring stick for attorney success—Rule 23(e) safeguards the fairness of a settlement for the class by posing a comparative inquiry: does the proportion of the total recovery allocated to attorney's fees compared to the proportion of the total recovery allocated to the class raise any questions about the adequacy of class relief?" *Id.* at 121.

The *Kurtz* court emphasized that district courts have discretion in the mechanics of the calculation "[s]o long as the proportion of the total recovery that goes to attorneys' fees is compared to the proportion of 'relief provided for the class.'" *Id.* at 119 (citation omitted). Although *Kurtz* was decided less than a year ago, at least one district court in this Circuit has already recognized that *Kurtz* "did not change the approach taken to assess the fairness of a class settlement in common fund cases." *Caccavale v. Hewlett-Packard Co.*, 2025 WL 2960237, at *11 (E.D.N.Y. Oct. 20, 2025).

Here, the Settlement provides that Plaintiffs' Counsel may seek attorneys' fees up to 33 1/3% of the Settlement Amount, which is within the range typically awarded in this Circuit. *See, e.g.*, *Puddu v. 6D Glob. Techs., Inc.*, 2021 WL 1910656, at *6 (S.D.N.Y. May 12, 2021) (Nathan, J.) (finding 33.3% fee reasonable); *Sykes v. Harris*, 2016 WL 3030156, at *17 (S.D.N.Y. May 24, 2016) (Chin, J.) (affirming that "[d]istrict courts in the Second Circuit routinely award attorneys' fees that are 30 percent or greater" (citation omitted)). Applying the *Kurtz* framework confirms the reasonableness of a 33 1/3% award here, especially given that there is a common fund and no funds will revert to Defendants. Settlement Agreement § II.RR. The Settlement Agreement also provides that any such award would be paid within ten days after the Court's order on the fee award or the Effective Date, whichever is later. *Id.* § IX.B.

Moreover, "given that the terms of the fee award have not yet been formally proposed and are specifically reserved to the Court's discretion," they "pose no obstacle to preliminary approval." *Nnebe*, 2025 WL 1333425, at *4 (quoting *Rosenfeld v. Lenich*, 2021 WL 508339, at *7 (E.D.N.Y. Feb. 11, 2021) (cleaned up)).

iv. <u>Any Agreement Identifiable Under Rule 23(e)(3)</u>

The final factor considers "any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C)(iv). Rule 23(e)(3) requires the "parties seeking approval" to "file a statement identifying any agreement made in connection with the proposal." There are no agreements beyond the Settlement Agreement. The Settlement Agreement references the Claims Administrator's agreement to comply with Prudential's data security requirements in administering the Settlement, Section VIII.A, and those details can be provided to the Court upon request.

b. The *Grinnell* Factors Favor Approval

As discussed, courts in this Circuit continue to consider various factors from *Grinnell*, but Rule 23 covers many already. For example, Rule 23(e)(2)(C)(i)'s consideration of "the costs, risks, and delay of trial and appeal" "subsumes several *Grinnell* factors." *Hesse v. Godiva Chocolatier, Inc.*, 2022 WL 22895466, at *6 (S.D.N.Y. Apr. 20, 2022) (citation omitted). Still, courts have held that certain *Grinnell* factors remain relevant and should still be considered: (a) the reaction of the class to the settlement (factor 2);[5] (b) the stage of the proceedings and the amount of discovery completed (factor 3); (c) the ability of the defendant to withstand a greater judgment (factor 7); and (d) the range of reasonableness of the settlement fund in light of the best possible recovery and attendant risks (factors 8 and 9). *See C.K. ex. rel. P.K. v. McDonald*, 2026 WL 220984, at *9 (E.D.N.Y. Jan. 15, 2026); *see also Hesse*, 2022 WL 22895466, at *9–10.

At the preliminary approval stage, the relevant *Grinnell* factors weigh strongly in favor of approval here. First, regarding the stage of the proceedings (factor 3), this inquiry relates to "whether the plaintiffs have obtained a sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy of the settlement." *In re AOL Time Warner, Inc.*, 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006). Here, extensive discovery was conducted over the course of this litigation, including document production, interrogatories, requests for

[5] "Since no notice has been sent, consideration of this factor is premature." *In re Warner Chilcott Ltd. Sec. Litig.*, 2008 WL 5110904, at *2 (S.D.N.Y. Nov. 20, 2008).

admission, and the production of comprehensive policy-level data. With the benefit of this discovery, Plaintiffs' Counsel thoroughly evaluated the strengths and weaknesses of the claims before negotiating this Settlement.

Second, regarding the range of reasonableness of the settlement (factors 8 and 9), "[t]he adequacy of the amount achieved in settlement may not be judged in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 191 (S.D.N.Y. 2012) (citation omitted). The $11 million recovery, combined with the prospective business practice changes, represents a significant and certain benefit to the Class alleging legal theories that were hotly contested. Courts routinely approve settlements representing a fraction of maximum potential damages. Considering the contested nature of the Retaliatory Tax Claim and the risk that Defendants could successfully defend against them at trial, the Settlement is well within the range of reasonableness.

Third, the fact that the Defendants could withstand a greater judgment (factor 7) does not undermine the fairness of the Settlement. *See McBean v. City of New York*, 233 F.R.D. 377, 388 (S.D.N.Y. 2006) (Lynch, J.) (rejecting contention that a defendant must "empty its coffers" and explaining that "the ability of defendants to pay more, on its own, does not render the settlement unfair, especially where the other *Grinnell* factors favor approval"); *see also D'Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001) ("[T]his factor, standing alone, does not suggest that the settlement is unfair.").

The *Grinnell* factors thus strongly support preliminary approval. In light of the risks and complexity involved, Plaintiffs' Counsel considers the Settlement to be an excellent result. *See* Kirkpatrick Decl. ¶ 20; *see also In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *5 (S.D.N.Y. Dec. 19, 2014) (affording "great weight" to favorable opinions of class counsel, citing familiarity by virtue of experience and involvement in the case (citation omitted)).

c. The Proposal Treats Class Members Equitably

Rule 23(e)(2)(D) considers whether a settlement "treats class members equitably relative to each other." Courts recognize that "the adequacy of an allocation plan turns on whether counsel has properly apprised itself of the merits of all claims, and whether the proposed apportionment is fair and reasonable in light of that information." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 133 (S.D.N.Y. 1997); *see also In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d at 580 ("A reasonable plan may consider the relative strength and values of different categories of claims."). "Counsel's conclusion that the distribution plan is fair, adequate, and reasonable . . . is entitled to great weight." *Fleisher*, 2015 WL 10847814, at *12.

Here, the proposed Plan of Allocation, recommended by Plaintiffs' Counsel as fair, adequate, and reasonable, distributes the Net Settlement Fund to policyholders on a pro-rata basis in proportion to their share of the overall overcharges. The Plan first pays Class Members their pro-rata share of the Net Settlement Fund for Address Update and Rate Update overcharges, which Defendants acknowledged existed and for which there is less legal uncertainty, and then distributes the remaining funds pro-rata among policyholders harmed by the Retaliatory Tax Rate Issue, which was much more contested and would be subject to a motion to dismiss in the absence of this Settlement. The distribution plan therefore has a "reasonable, rational basis" and should be approved as fair and reasonable. *See Fleisher*, 2015 WL 10847814, at *12 (quoting *Maley v. Del Global Techs. Corp.*, 186 F.Supp.2d 358, 367 (S.D.N.Y. 2002)).

B. The Settlement Class Merits Preliminary Certification

This Court must also determine whether it will likely be able to certify the class for purposes of judgment on the proposal. Fed. R. Civ. P. 23(e)(1)(B)(ii). "[I]t is important to remember that when considering certification in the context of a proposed settlement, 'courts must take a liberal rather than a restrictive approach.'" *Velez v. Novartis Pharms. Corp.*, 2010 WL 4877852, at *9 (S.D.N.Y. Nov. 30, 2010) (citation omitted). A court may grant certification where the Settlement Class satisfies the four requirements of Fed. R. Civ. P. 23(a) and at least one subsection of Rule 23(b).

Even where a higher standard applies to *litigation* classes, courts in this District and across the country have certified litigation classes in breach-of-contract life insurance cases because the insurer engaged in class-wide conduct that allegedly breached form contracts. *See In re AXA Equitable Life Ins. Co. COI Litig.*, 2020 WL 4694172, at *7 (S.D.N.Y. Aug. 13, 2020) ("The class members' contract claims rise and fall together. Their contracts with AXA are identical in all material respects, and Plaintiffs allege that AXA breached each contract through a single course of action with respect to every policy included in the class."); *Hanks v. Lincoln Life & Annuity Co. of N.Y., et al.*, 330 F.R.D. 374, 382 (S.D.N.Y. 2019) (noting "contract language at issue does not vary by individual class member and is not materially different across the eighteen policies" in decision certifying nationwide class in insurance overcharge case).

1. The Settlement Class Satisfies Rule 23(a)

a. <u>Numerosity Is Satisfied</u>

"Numerosity is presumed for classes larger than forty members." *Pa. Pub. Sch. Emps. Ret. Sys. v. Morgan Stanley & Co.*, 772 F.3d 111, 120 (2d Cir. 2014) (citation omitted). The Class here includes approximately 60,000 policies. Kirkpatrick Decl. ¶ 15. The numerosity requirement is therefore satisfied.

b. <u>Commonality Is Satisfied</u>

The commonality inquiry is satisfied when a class action may "generate common answers apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350

(2011) (citation omitted). It is "a low hurdle." *McIntire v. China MediaExpress Holdings, Inc.*, 38 F. Supp. 3d 415, 424 (S.D.N.Y. 2014) (cleaned up).

Here, there are numerous common questions stemming from form contracts that are susceptible to common answers, including: (a) the interpretation of the Premium Tax Change Language in the form insurance policies; (b) whether Defendants were required to, but failed to adjust premium tax charge rates when policyholders moved states; and (c) whether Defendants were permitted to apply retaliatory premium tax charge rates in excess of the statutory premium tax rates. *See Fleisher v. Phoenix Life Ins. Co.*, 2013 WL 12224042, at *3 (S.D.N.Y. July 12, 2013) ("Claims arising from interpretations of a form contract appear to present the classic case for treatment as a class action." (citation omitted)).

c. <u>Typicality Is Satisfied</u>

Similarly, the typicality requirement is "not demanding." *Tsereteli v. Residential Asset Securitization Trust 2006-A8*, 283 F.R.D. 199, 208 (S.D.N.Y. 2012) (citation omitted). Typicality is satisfied where "each class member's claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant's liability." *Surdu v. Madison Glob., LLC*, 2017 WL 3842859, at *4 (S.D.N.Y. Sept. 1, 2017) (citation omitted).

Here, all claims, including Plaintiffs' claims, arise from Defendants' failure to apply correct premium tax charge rates across all Settlement Class Policies containing the same or materially identical Premium Tax Change Language. "When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of minor variations in the fact patterns underlying individual claims." *Robidoux v. Celani*, 987 F.2d 931, 936–37 (2d Cir. 1993). Accordingly, the typicality requirement is satisfied.

d. <u>Adequacy of Representation Is Satisfied</u>

As discussed in Section III.A.2.c, Plaintiffs' interests are aligned with the interests of all other Class Members: all share the common goal of maximizing recovery from Defendants for premium tax overcharges. Counsel is highly qualified and experienced in insurance litigation and class actions. There are no conflicts between the Class Representatives and the other Class Members.

e. The Proposed Class Is Readily Ascertainable

Rule 23's "implied requirement of ascertainability," as articulated by the Second Circuit, is satisfied here. *In re Petrobras Sec.*, 862 F.3d 250, 260 (2d Cir. 2017) (quoting *Brecher v. Republic of Argentina*, 806 F.3d 22 (2d Cir. 2015)). "[A] class is ascertainable if it is defined using objective criteria that establish a membership with definite boundaries." *Id.* at 257. The proposed Settlement Class is ascertainable: it consists of policyholders who own policies for which premium tax charges allegedly in excess of those permitted by the specific language appearing in their policies were assessed, and Defendants records contain the policy numbers and ownership data for each such policy. *See Nelipa v. TD Bank, N.A.*, 2024 WL 3017141, at *18 (E.D.N.Y. June 17, 2024) (finding proposed class ascertainable where membership could be identified by reviewing defendant's account records based on objective criteria); *Hanks*, 330 F.R.D. at 382 n.2 (holding that proposed insurance overcharge class was ascertainable because it was "defined by identifiable objective criteria" and "all policyholders can be identified in business records produced in discovery").

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

a. Predominance

Certifying a class under Rule 23(b)(3) also requires a finding that "questions of law or fact common to class members predominate over any questions affecting only individual members." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (quoting Fed. R. Civ. P. 23(b)(3)).

The predominance requirement is more easily satisfied for a settlement class because there will be no trial, so "the manageability concerns posed by numerous individual questions . . . disappear." *In re Am. Int'l Grp., Inc. Sec. Litig.*, 689 F.3d 229, 241 (2d Cir. 2012).

Courts in this Circuit regularly find predominance satisfied for claims alleging breach of standardized, form contracts. *See Fleisher*, 2013 WL 12224042, at *13 ("There is widespread agreement that certification under Rule 23(b)(3) is warranted for claims that involve contracts that . . . contain the same or essentially the same terms."). Here, the Premium Tax Settlement Class Policies all contain the same or materially identical Premium Tax Change Language, and Plaintiffs allege a common course of conduct by Defendants with respect to the policies. As a result, common issues predominate.

b. <u>A Class Action is Superior</u>

Class adjudication is exceedingly superior to individual litigation. The complexity of the premium tax issues and the expense of litigating individual claims means that few, if any, class members could afford to seek legal redress individually. Certification of a settlement class, on the other hand, "will achieve economies of scale, conserve judicial resources, preserve public confidence in the integrity of the judicial system by avoiding the waste and delay of repetitive proceedings, and prevent inconsistent adjudications of similar claims." *Chhab v. Darden Rests., Inc.*, 2016 WL 3004511, at *3 (S.D.N.Y. May 20, 2016) (citation omitted).

3. **Proposed Class Counsel Satisfies Rule 23(g)**

For the reasons described in Section III.A.1.a, *supra*, proposed Class Counsel satisfies Rule 23(g) and should be appointed counsel for the Class. Counsel has a track record of successfully litigating insurance class actions and has done the same here by diligently pursuing claims throughout discovery. *See* Kirkpatrick Decl. ¶¶ 3–4; *see also* Ex. 1.

C. <u>Notice to the Class</u>

Rule 23(e)(1)(B) requires that notice be directed "in a reasonable manner to all class members who would be bound by the proposal." To satisfy Rule 23 and due process, the notice must (1) "describe[] the terms of the settlement generally, inform[] the Class about the allocation of attorneys' fees, and provide[] specific information regarding the date, time, and place of the final approval hearing," *Caccavale*, 2025 WL 2960237 at *6 (quoting *In re Payment Card Interchange Fee & Merch. Discount Antitrust Litig*., 330 F.R.D. at 58–59), and (2) be "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort," *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997) (quoting Fed. R. Civ. P. 23(c)(2)).

The proposed Class Notice and notice plan satisfy both requirements. The Notice describes the terms of the Settlement, the Premium Tax Settlement Class, the Plan of Allocation, and that the Settlement Amount will be used to pay any Court approved reimbursement of costs, attorneys' fees, and incentive awards. It also provides the date, time, and place of the Final Approval Hearing, and informs Class Members of their rights to opt out or object. The manner of notice is the best notice practicable: direct mailing to individual Class Members at their last known address of record, supplemented by posting on a dedicated Settlement Website. Furthermore, even prior to mailing, the Claims Administrator will verify addresses through the U.S. Postal Service's National Change of Address Database and will re-mail any notices returned with a forwarding address. Plaintiff requests that the Court approve the proposed notice, appoint JND as Claims Administrator, and approve the proposed 45-day opt-out period.

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

Plaintiffs propose the following schedule:

Event	Days from Preliminary Approval
Deadline for Defendants to provide Class Member last-known addresses to Settlement Administrator	30 days
Deadline to send notice to Class Members	60 days
Deadline to file motion for award of attorneys' fees, expenses and service awards	90 days
Opt-Out and Objection Deadline	105 days
Deadline to file Final Approval motion	119 days
Final Approval Hearing	133 days

IV. CONCLUSION

For the foregoing reasons, Plaintiffs Arbuckle Funding, LLC and Brighton Trustees LLC respectfully request that this Court: (1) preliminarily approve the Settlement and Plan of Allocation as fair, reasonable, and adequate; (2) preliminarily certify the Premium Tax Settlement Class; (3) preliminarily appoint Plaintiffs as Class Representatives and Susman Godfrey L.L.P. as Class Counsel; (4) approve the proposed form and manner of notice to the Premium Tax Settlement Class; (5) appoint JND as Claims Administrator; and (6) schedule a Final Approval Hearing to consider final approval of the Settlement and related matters.

Dated: April 20, 2026

Respectfully submitted,

/s/ Ryan C. Kirkpatrick

Seth Ard
Ryan C. Kirkpatrick
Zachary B. Savage
Ari S. Ruben
Daniel D. Duhaime
Andrew Nassar
SUSMAN GODFREY L.L.P.
One Manhattan West, 50th Floor
New York, New York 10001
Telephone: 212-336-8330
Facsimile: 212-336-8340

sard@susmangodfrey.com
rkirkpatrick@susmangodfrey.com
zsavage@susmangodfrey.com
dduhaime@susmangodfrey.com
anassar@susmangodfrey.com

Steven G. Sklaver (*pro hac vice*)
Glenn C. Bridgman (*pro hac vice*)
Halley W. Josephs
Kimberly C. Page (*pro hac vice*)
Erik L. Wilson
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, California 90067-6029
Telephone: 310-789-3100
Facsimile: 310-789-3150
ssklaver@susmangodfrey.com
gbridgman@susmangodfrey.com
kpage@susmangodfrey.com

Attorneys for Plaintiffs

CERTIFICATE OF WORD COUNT

Pursuant to Local Civil Rule 7.1(c), I hereby certify that this brief contains 8,088 words and complies with the 8,750 word-count limitation.

/s/ Ryan C. Kirkpatrick
Ryan C. Kirkpatrick

CERTIFICATE OF SERVICE

I hereby certify that, on April 20, 2026, I caused a true and correct copy of the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification to the attorneys of record and is available for viewing and downloading.

/s/ Ryan C. Kirkpatrick
Ryan C. Kirkpatrick