

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

PHT HOLDING II LLC, on behalf of itself and all others similarly situated,	)	
	)	Civil Action No. 18-CV-00368
Plaintiff,	)	Honorable Stephanie M. Rose
	)	Honorable Helen C. Adams
vs.	)	
NORTH AMERICAN COMPANY FOR LIFE AND HEALTH INSURANCE,	)	<b>DECLARATION OF SETH ARD</b>
	)	<b>IN SUPPORT OF CLASS</b>
	)	<b>COUNSEL’S MOTION FOR</b>
	)	<b>ATTORNEYS’ FEES,</b>
	)	<b>REIMBURSEMENT OF</b>
Defendant.	)	<b>LITIGATION EXPENSES, AND</b>
	)	<b>SERVICE AWARD</b>

I, Seth Ard, declare as follows:

1. I submit this declaration in support of Class Counsel’s Motion for Attorneys’ Fees, Reimbursement of Litigation Expenses, and Service Award.

2. I am a partner at the law firm of Susman Godfrey L.L.P. (“SG” or “Class Counsel”), which is counsel for Plaintiffs and the Court-appointed Class Counsel in this Action. I have personal, first-hand knowledge of the matters set forth herein and, if called to testify as a witness, could and would testify competently thereto.

3. Susman Godfrey has significant experience with insurance litigation and class actions, including cost of insurance (“COI”) class actions and settlements thereof. Susman Godfrey has been appointed sole Class Counsel in numerous cases seeking recovery of COI overcharges against insurers, including cases involving Phoenix Life Insurance Company, Security Life of Denver Insurance Company, Genworth Life Insurance & Annuity Company, Voya Retirement Insurance and Annuity Company, Lincoln Life & Annuity Company of New York,

AXA Equitable Life Insurance Company, ReliaStar Life Insurance Company, John Hancock Life Insurance Company (U.S.A.), and PHL Variable Insurance Company.<sup>1</sup>

4. My firm's results in such cases have been lauded by federal judges as "superb," *Fleisher v. Phoenix Life Ins. Co.*, No. 11 Civ. 8405 (S.D.N.Y. Sep. 24, 2015), Dkt. 319 at 3:9-11, "the best settlement pound for pound for the class I've ever seen," *id.*, and "quite extraordinary," *37 Besen Parkway, LLC v. John Hancock Life Insurance Co.*, 15-cv-9924 (PGG), Dkt. 164 at 20:10 (S.D.N.Y. Apr. 18, 2019). I also closely follow other class actions involving life insurance, particularly COI class actions. I am thus intimately familiar with the terms of settlement in these types of cases, how to evaluate the relative strengths and weaknesses in such cases, and what a successful result looks like.

5. This case was originally filed over four years ago on October 30, 2018. Fact discovery lasted until March 4, 2021, with supplemental discovery obligations under Federal Rule of Civil Procedure 26(e) continuing thereafter. Class Counsel and its experts analyzed over 17,600 documents spanning more than 115,000 pages, which included extensive actuarial tables, policy-level data reflecting the historical credits and deductions to the account value of all Class Members' policies, and thousands of complex spreadsheets. In total, Plaintiff issued 39 requests for production, 25 interrogatories, and 3 requests for admission, and Defendant issued 29 requests

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<sup>1</sup> The following is a non-exhaustive list of COI cases in which Susman Godfrey has been found to be "adequate" class counsel: *Fleisher v. Phoenix Life Ins. Co.*, 2013 WL 12224042, at \*12 (S.D.N.Y. July 12, 2013); *Vida Longevity Fund, LP v. Lincoln Life & Annuity Co. of N.Y.*, 2022 WL 986071, at \*5 (S.D.N.Y. Mar. 31, 2022); *Advance Tr. & Life Escrow Servs., LTA v. Sec. Life of Denver Ins. Co.*, 2021 WL 62339, at \*9 (D. Colo. Jan. 6, 2021); *Hanks v. Lincoln Life & Annuity Co. of N.Y.*, 330 F.R.D. 374, 387 (S.D.N.Y. 2019); *Advance Tr. & Life Escrow Servs., LTA v. ReliaStar Life Ins. Co.*, 2022 WL 911739, at \*11 (D. Minn. Mar. 29, 2022); *Advance Tr. & Life Escrow Servs., LTA v. N. Am. Co. for Life & Health Ins.*, 592 F. Supp. 3d 790, 809-10 (S.D. Iowa 2022); and *37 Besen Parkway, LLC v. John Hancock Life Ins. Co.*, 15 Civ. 9924 (S.D.N.Y. Nov. 1, 2018), Dkt. 139 ¶¶ 7-8.

for production and 17 interrogatories. Plaintiff also issued subpoenas to North American's parent and sister companies. Class Counsel engaged in numerous rounds of meet and confers with respect to these discovery requests, including extended negotiations over search terms, custodians, privilege logs, and other issues. Class Counsel's diligence was rewarded, as it uncovered key documents on liability issues during the discovery process. *See* Dkt. 231 (MSJ Res) at 22–23, 37.

6. Class Counsel also secured access to Milliman's MG-ALFA actuarial software, which was used by North American to model its corporate loss reserves and other financials and was essential to allow Plaintiff's experts to opine on the impropriety of North American's failure to decrease its COIs despite improved mortality.

7. Class Counsel took 6 highly technical fact depositions (one of which took place over three days). Through these depositions, which included testimony from North American's corporate representatives under Federal Rule of Civil Procedure 30(b)(6), Plaintiff obtained key admissions that it deployed to support class certification, overcome summary judgment, and win key motions *in limine*, which created significant risk for North American at trial. Class Counsel also defended two depositions of corporate representatives and prepared for and participated in the deposition of the original owner of Plaintiff's policy.

8. This Action involved significant expert analyses and reporting. Plaintiff produced expert reports from the following experts: actuarial expert Howard Zail and damages expert Robert Mills. Plaintiff produced opening expert reports from Zail and Mills on June 6, 2022. In response, North American designated actuarial expert Jack Gibson and financial expert Craig Merrill. North American produced reports from its experts on July 22, 2022. On September 9, 2022, Plaintiff produced rebuttal reports from Zail and Mills. North American then served sur-rebuttal reports from Gibson and Merrill on October 26, 2022, and October 31, 2022, respectively. All four experts

were deposited. After receiving updated policyholder data, Plaintiff's experts produced supplemental reports on May 18, 2023. In response to the Court's order excluding certain opinions by Merrill and the updated policyholder data, North American's experts produced supplemental reports on May 31, 2023. Zail and Mills produced supplemental rebuttal reports on June 5, 2023. Collectively, the parties produced eighteen expert reports that totaled approximately 583 pages, with thousands of pages of exhibits and appendices. Class Counsel also retained a consulting expert, who provided invaluable assistance to Plaintiff and the Class. Plaintiff's litigation and consulting experts engaged in extensive analyses of North American's models, data and documents produced in the Action.

9. The parties engaged in extensive motion practice in this Action. On March 22, 2022, after over 200 pages of briefing (and over 40,000 pages of exhibits), the Court certified a nationwide class "consisting of all current and former owners of Classic Term UL I or II issued or insured by North American Company for Life & Health Insurance, or its predecessors, during the Class Period." Dkt. 148 at 29. As part of its class certification submission, Class Counsel provided over 50 pages of comprehensive surveys marshaling the law across the nationwide class on state rules of contract interpretation and statute of limitations and synthesized that law into a manageable approach for trial. Dkt. 92-5-8 & 92-10. The Court found that this analysis overcame the shortcoming in *Taylor v. Midland Nat'l Life Ins. Co.*, Case No. 4:16-cv-00140-SMR- HCA, 2019 WL 7500238 (S.D. Iowa May 3, 2019), another case involving a challenge to COI charges, where the plaintiff failed to submit an "extensive analysis of state law variations' to carry his burden of demonstrating compliance with Rule 23(b)(3)" resulting in the denial of class certification and supported a finding here that common questions of fact and law predominated. Dkt. 148-25-26 (citing *Taylor*, 2019 WL 7500238, at \*7). In appointing Susman Godfrey as class

counsel, the Court noted that Susman Godfrey has “extensive experience litigating class actions, including class actions very similar to this case” and had already expended “[s]ubstantial time, years in fact, investigating potential claims in this case during discovery.” Dkt. 148 at 28–29.

10. In opposition to Plaintiff’s motion for class certification, Defendant filed motions to exclude Plaintiff’s experts. Dkt. Nos. 117, 119. Class Counsel opposed these motions, including submitting rebuttal declarations by Zail and Mills. Dkts. 132, 133, 134-1, 134-3. In its order denying North American’s motions to exclude, the Court refused to adopt North American’s attempt to “resurrect the long-buried theory-of-the-pleadings doctrine” by arguing that Zail’s opinions must be excluded; rejected North American’s incorrect claim that Mills’ opinions should be excluded because his models were inconsistent with models he has prepared in other COI cases; and dismissed North American’s other attacks as relating to merits or credibility issues, not the admissibility of the testimony. Dkt. 148 at 9-18.

11. At class certification, North American made its first of three attempts to offer testimony from previously undisclosed witnesses in violation of Rule 26(a). Specifically, North American submitted declarations from four undisclosed agent witnesses to inject individualized issues of contract interpretation. Dkts. 116-32, 116-33, 116-34. 116-55. Class Counsel moved to strike these declarations, arguing that despite knowing from the outset of the case that it might rely on agent witnesses and a direct disavowal by its corporate representative of any knowledge of communications with agents, North American engaged in “litigation by ambush” by not disclosing such witnesses until after the close of discovery causing prejudice and harm to Plaintiff. Dkt. 128. Agreeing with Class Counsel, the Court rejected North American’s self-serving attempts to justify its belated disclosure of these witnesses and concluded that exclusion of these witnesses was appropriate. Dkt. 148 at 9 (“None of these declarations may be used as evidence in this case.”).

12. On April 14, 2022, North American filed a “Motion to Clarify or Modify the Court’s Order Striking the Declarations of Four Insurance Agents [Dkt. 148].” Dkt. 154. North American sought “clarification that the agents’ testimony should be admissible for trial and other post-class certification proceedings.” *Id.* Plaintiff filed its opposition on April 27, 2022, Dkt. 157, and North American filed its reply on May 4, 2022. Dkt. 158. On December 5, 2022, the Court denied the motion. Dkt. 221. The Court stated that “North American presents no newly discovered evidence, nor errors of law or fact” and rejected North American’s argument that it could use the agent declarations for impeachment. *Id.* at 8–10 (“It argues that it wishes to use the agent declarations as impeachment but, as Advance Trust points out, it is unclear what witnesses the agents would impeach.”).

13. Following class certification, the Court approved Class Counsel’s proposed notice plan and appointed JND Legal Administration LLC (“JND”) as the Notice Administrator. Dkt. 188 at 2. Class Members were given notice by first-class mail and were given a 45-day window in which to opt out. Dkt. 156-2 ¶¶ 13 & 16; Dkt. 188. JND also set up a website with information in a long form notice, as well as a toll-free number that Class Members could call. Dkt. 156-2 ¶¶ 14–15. JND received 7 requests from Class Members to opt out of the class during the opt-out period. It is my opinion that JND adequately discharged its duties in its role as the Notice Administrator.

14. On September 16, 2022, North filed a “Motion for an Order to Show Cause Why the Court Should Not Appoint a Neutral Expert under FRE 706.” Dkt. 175. Class Counsel filed an opposition on October 14, 2023, arguing that the appointment of a Rule 706 expert was unnecessary, would delay trial, and would confuse the jury. Dkt. 183. Class Counsel further argued that “[i]dentifying an expert that is truly ‘neutral’ will therefore be critical, but likely impossible” because “most actuaries are tied to the insurance industry.” *Id.* North American filed its reply on

October 21, 2023. Dkt. 189. On December 5, 2023, the Court denied North American's motion, stating that "[t]he Court agrees with Advance Trust that this is not an 'extraordinary case' requiring a Rule 706 expert." Dkt. 221 at 2–8.

15. On November 18, 2022, North American moved for summary judgment arguing, among other things, that Plaintiff cannot demonstrate genuine issues of fact exist demonstrating breach of contract, that the case is barred by statute of limitations and laches and that Plaintiff's claim is barred by fraud. Dkt. 201; Dkt. 210. On January 31, 2023, Plaintiff filed its opposition to summary judgment. Dkt. 227; Dkt. 231. After full briefing by the parties, encompassing over 150 pages of briefing (and over 1000 pages of exhibits), the Court denied North American's motion for summary judgment against the Plaintiff. Dkt. 294. Agreeing with Plaintiff, the Court found that the policy provisions at issue were ambiguous. *Id.* at 22 ("PHT's interpretation of 'based on' is not unreasonable and the proper interpretation of 'based on' contained in the COI rate provision is ambiguous."); *id.* at 23 ("The COI rate provision of the Class Policies is ambiguous and PHT has offered a reasonable interpretation of it."). The Court also held that whether North American breached the contract was a question of fact for the jury. *Id.* at 24. The Court further rejected North American's affirmative defenses that Plaintiff's claims were barred by fraud and statute of limitations. *Id.* at 35 ("North American's fraud defense is barred by the incontestability clause."); *Id.* at 28 ("Put simply, PHT's claim for breach of contract did not accrue years ago."). The Court found that summary judgment was not proper on North American's affirmative defense of laches. *Id.* at 29.

16. At summary judgment, North American submitted declarations from two previously undisclosed witnesses. Dkts. 201-4, 201-5. Class Counsel moved to strike these two declarations, arguing that North American again, without justification, failed to disclose witnesses

in violation of Rule 26. The Court agreed, holding that “[i]t is clear that North American has violated Rule 26” and “exclusion in the proper remedy.” Dkt. 294 at 61–62.

17. Both parties filed *Daubert* motions to exclude the other party’s experts. Dkts. 193, 194, 195-1, 199, 200. The parties submitted over 150 pages of briefing and over 1200 pages of exhibits and appendices in connection with the *Daubert* motions. The Court denied North American’s motion to exclude Plaintiff’s experts. Dkt. 294 at 53 & 57. The Court, however, granted Plaintiff’s motion in part, prohibiting “[Craig] Merrill from offering testimony or opinions on actuarial matters.” *Id.* at 44. This was a core component of Merrill’s proposed expert testimony.

18. Class Counsel conducted a professionally administered full-day mock trial in Des Moines on April 13, 2023 with over two dozen mock jurors from the local community.

19. The Court initially set a trial date for June 12, 2023, but due to the Court’s trial schedule reset the trial date to June 20, 2023. Dkts. 250, 260. After the Court denied North American’s late-breaking requests for a continuance and to extend the discovery period, Dkts. 260, 286, the parties prepared intensely for trial, including readying trial examinations, deposition designations, exhibit lists, witness lists, stipulations, jury instructions, verdict forms, and the proposed joint pretrial order (which the parties revised substantially following the Court’s ruling on summary judgment and *Daubert* motions). Dkts. 276, 278, 279, 280, 281, 282, 297, 298, 299, 303.

20. The parties briefed a total of 15 motions *in limine* and filed more than 30 pages of single-spaced briefing on hotly contested jury instructions relating to *contra proferentem*, statute of limitations, laches, and damages. Dkts. 252, 253, 263, 266, 281-2, 292, 293, 297-2. For a third time, North American tried to circumvent Rule 26 by listing four previously undisclosed witnesses on its trial exhibit list. Plaintiff filed a motion *in limine* to exclude these witnesses from trial.



Finding Plaintiff's motion had merit, the Court refused to permit three of the witnesses to testify and limited the testimony of the fourth witness to verifying certain extracted data is true and correct. Dkt. 296 at 2.

21. During the final pretrial conference on June 16, 2023, the Court granted Plaintiff's request for certain preliminary jury instructions and stated the Court would adopt Plaintiff's proposed final jury instructions on *contra proferentem* and laches. Dkts. 306, 308 at 12:12–13, 31:14–21.

22. The parties held an in-person mediation session on December 9, 2022 in Corona Del Mar, California, with mediators Hon. Layn R. Phillips, Jeffrey Mishkin, and Clay Cogman of Phillips ADR. As part of the mediation process, the parties exchanged lengthy mediation statements, several settlement offers and counteroffers as well as the summary judgment and *Daubert* briefing filed with the Court, and updated damages estimates for the case. The parties had sharply different views about virtually all issues, including class certification, merits, damages, and what could be argued to the jury. The parties were unable to reach an agreement but continued to work through six months of extensive mediator-facilitated settlement negotiations as trial approached. The parties ultimately executed a term sheet with trial less than 72 hours away, with the assistance of Judge Phillip's office. These negotiations were hard-fought and conducted at arm's length by highly qualified and experienced counsel. Those negotiations were fruitful only after the parties had extensively litigated key issues in the case and were days from trial.

23. SG worked this case on a fully contingent fee basis. SG frequently takes high-stakes, non-class commercial cases on a contingent fee basis (e.g., patent, legal malpractice, antitrust, etc.). In cases where the firm is advancing expenses, like this one, the firm typically negotiates contingent fee arrangements starting at 40% of the gross sum recovered, which

increases to 45% of the gross sum recovered for a settlement that occurs after the 60th day preceding a trial, plus reimbursement of expenses. Highly sophisticated parties and institutions routinely agree to these standard market terms. The requested fee of 1/3 of the gross settlement value is a substantially lower percentage than what SG would receive under its standard contingency agreement entered into in a competitive market.

24. The schedule below is a summary reflecting the amount of time spent by the SG attorneys and professional support staff who were involved in this litigation, and the lodestar calculation using 2023 billing rates or equivalent 2023 billing rates for an attorney or paralegal who left the firm prior to 2023. The following schedule was prepared from time records regularly prepared and maintained by SG, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of related expenses are excluded from the below and not reflected. Hours worked by summer associates and a few attorneys and staff who provided occasional “spot project” support at various points in the case also have been excluded and are not reflected below.

<b>Attorneys</b>	<b>Current Rate</b>	<b>Hours</b>	<b>Value</b>
Adamson, Michael (Associate) <sup>2</sup>	\$775.00	23.80	\$18,445.00
Ard, Seth (Partner)	\$1,200.00	478.10	\$573,720.00
Bridgman, Glenn (Partner)	\$800.00	2,584.10	\$2,067,280.00
Brightman, Michael (Associate)	\$650.00	31.30	\$20,345.00
Bundy, Daniel (Staff Attorney)	\$350.00	10.60	\$3,710.00
Caforio, Bryan J. (Partner)	\$925.00	17.00	\$15,725.00
Daegele, Monica (Associate)	\$600.00	106.50	\$63,900.00
Fenwick, Samantha (Staff Attorney)	\$400.00	76.20	\$30,480.00
Josephs, Halley (Partner)	\$800.00	351.10	\$280,880.00
Kaminsky, Alex (Staff Attorney)	\$400.00	57.80	\$23,120.00
Kirkpatrick, Ryan C. (Partner)	\$1,000.00	540.40	\$540,400.00
Krsulich, Lora (Associate)	\$775.00	271.40	\$210,335.00
Nath, Rohit (Partner)	\$800.00	44.50	\$35,600.00
O'Brien, Mary (Staff Attorney)	\$350.00	385.60	\$134,960.00
Pachman, Krysta K. (Partner)	\$800.00	655.10	\$524,080.00
Page, Kim (Of Counsel)	\$800.00	358.50	\$286,800.00
Sargent, Edgar G. (Partner)	\$800.00	70.80	\$56,640.00
Savage, Zachary B. (Partner)	\$800.00	7.20	\$5,760.00
Sklaver, Steven G. (Partner)	\$1,300.00	606.90	\$788,970.00
Spear, Nicholas (Partner)	\$800.00	1,331.50	\$1,065,200.00
Stemkovsky, Alex (Staff Attorney)	\$525.00	23.20	\$12,180.00
Waite, Hannah (Associate)	\$775.00	475.20	\$368,280.00
<b>Paralegals</b>	<b>Current Rate</b>	<b>Hours</b>	<b>Value</b>
Polanco, Rodney	\$350.00	348.50	\$121,975.00
Loaiza, Nicholas (Case Assistant)	\$150.00	1.10	\$165.00
<b>Grand Total</b>		<b>8,856.40</b>	<b>\$7,248,950.00</b>

25. The total number of hours expended on this litigation by SG attorneys and paralegals through September 30, 2023, is 8,856.40 hours. The total lodestar value of these hours, derived by multiplying each SG professional's hours by his or her current hourly rate, is

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<sup>2</sup> Glenn Bridgman and Nicholas Spear began working on this matter as associates. Mr. Bridgman was elected to the SG partnership in December 2021 and Mr. Spear in December 2022.

\$7,248,950. SG also retained local counsel to assist on this matter, Hopkins & Huebner P.C. (“H&H” or “Local Counsel”). H&H attorneys and paralegals spent 778.8 hours on this matter through August 31, 2023, excluding hours worked by a few attorneys and staff who provided occasional “spot project” support at various points in the case, representing a lodestar of \$271,100. *See* Declaration of Chandler Surrency, filed herewith. Together, the total number of hours expended on this litigation by Class Counsel and Local Counsel through August 31, 2023, is 9,635.2 hours, representing a total lodestar value of \$7,520,050.

26. All time spent litigating this matter was reasonably necessary and appropriate to prosecute this Action, and the results achieved further confirm that the time spent on the case was proportionate to the amount at stake. The hourly rates for SG’s attorneys and professional support staff are the firm’s standard hourly rates. The hourly rates of Class Counsel’s attorneys range from \$400 to \$1,300.

27. In a nationwide survey of AmLaw 50 law firms performed by PwC Product Sales, LLC and issued in June 2023, the median standard billing rate for equity partners was \$1,463, the first quartile standard billing rate was \$1,655, and the third quartile standard billing rate was \$1,371. The same survey indicates that the median standard billing rate for associates was \$933, the first quartile standard billing rate was \$1,018, and the third quartile standard billing rate was \$838.

28. Here, seven of the SG partners working on this matter have billing rates of \$800—below the median standard billing rate for *associates*. Moreover, all of them bill at rates below the 2022 median standard billing rate for equity partners. And the billing rates of the associates who have worked on this case are significantly below the 2022 median standard billing rate for associates.

29. Based on the reported total lodestar of \$7,520,050, the requested award of \$19,666,666.67 yields a multiplier of 2.61. That multiplier will only decrease as SG and H&H invest additional attorney time into preparing to move for final approval, managing Class Member inquiries about the settlement, and administering the Settlement, if the settlement receives final approval from the Court.

30. As categorized and shown in the below schedule, SG advanced a total of \$1,785,634.28 in un-reimbursed expenses (not including settlement administration expenses) in connection with the prosecution of this case. H&H has further advanced \$1,094.05 in expenses, totaling to \$1,786,728.33. These expenses were reasonably necessary to the prosecution of this case and are of the type SG normally incurs in litigation. Expert and consultant expenses are by far the largest category below (\$1,480,337.89):

<b>Expense Category</b>	<b>Amount</b>
Deposition Expenses/Witness Fees/Client Charges	\$ 68,129.16
Document Review Hardware/Hosting	\$ 38,183.95
Experts/Consultants	\$ 1,480,337.89
Filing/Service/Court Reporter Fees/Transcripts	\$ 16,644.62
Mediation Fees and Expenses	\$ 22,500.00
Photocopies/Reproduction	\$ 9,377.07
Research Expenses	\$ 32,116.54
Secretarial Overtime	\$ 1,818.60
Telephone/Postage	\$ 71.67
Travels/Meals/Hotel/Transportation	\$ 67,961.85
Trial and Trial Prep	\$ 48,492.93
<b>GRAND TOTAL</b>	\$ 1,785,634.28

31. The amount of expenses incurred by Settlement Administrator JND Legal Administration (“JND”) is \$63,253.27 through September 30, 2023, and JND estimates that its

remaining Settlement Administration Expenses will be approximately \$75,000 to \$90,000, including work in connection with benefit distribution and administration completion.

32. Class Representative PHT Holding II LLC (“PHT”) has been significantly involved in this Action.

33. PHT was substituted in for Advance Trust & Life Escrow Services, LTA (“ATLES”) as a Class Representative on March 3, 2023. *See* Dkts. 246–47. The reason for the substitution was that ATLES transferred its ownership interest in the policy at issue to PHT. *See* Dkt. 251. Since that time, PHT has been actively involved in the litigation, including in the lead up to trial. PHT became familiar with the documentation and took over for ATLES pre-settlement and engaged in significant efforts, on short turnaround, to facilitate a favorable resolution of this matter for the Class, including collecting additional documents, sitting for an additional 30(b)(6) deposition, and preparing for examination at trial.

34. A settlement notice that was sent to the Class informed them that Class Counsel would move the Court for an award of attorneys’ fees up to “Class Counsel will move for attorneys’ fees not to exceed 33 1/3% of the value of all benefits provided by this Settlement to the Final Class Members, provided that all Class Counsel Fees and Expenses and all Settlement Administration Expenses, combined, will not exceed \$21,366,666.67.” The notice further stated that “Class Counsel will also seek a Service Award up to \$25,000 for Plaintiff for its service as the representative on behalf of the Class.”

35. The notice informed the Class Members that they could object to any term of the Settlement. As of October 16, 2023, a single objection on behalf of two class members was emailed to Class Counsel. The objection stated that current policyholders would only benefit if they cashed out their policies before they died. But under the settlement, current policyholders are paid in

credits to their accumulation value, which provides multiple benefits to current policyholders, including the opportunity to pay less premiums out of pocket as a result of the credit. I spoke with the objector on October 6, 2023, and clarified these factual points. In response, the objector stated that he would “retract my objection to the settlement.” By letter to the Clerk dated October 13, 2023, the objector withdrew the objection to the Settlement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: October 16, 2023

*/s/ Seth Ard*  
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Seth Ard