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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GAIL THOMPSON, et al.,

Plaintiffs,

vs.

TRANSAMERICA LIFE INSURANCE COMPANY,

Defendant.

Case No. 2:18-cv-05422-CAS-GJSx

CLASS ACTION

MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF PROPOSED NATIONWIDE CLASS ACTION SETTLEMENT AGREEMENT AND PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS

Hearing Date: May 4, 2020
Hearing Time: 10:00 am
Courtroom: 8D – 8th Floor
Judge: Hon. Christina A. Snyder

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Plaintiffs Gail Thompson, Hans Sunder, Belinda Bucci, Debra Lewis, Diana Lewis, Marc Soble, Michael H. Stephens, Sandra Rosner, and Kathleen M. Swift (collectively, "Plaintiffs"), individually and on behalf of the proposed Settlement Class, respectfully submit this memorandum in support of Plaintiffs' Motion for Preliminary Approval of Proposed Nationwide Class Action Settlement Agreement and Preliminary Certification of Settlement Class. (ECF No. 141).

I. INTRODUCTION

Plaintiffs seek preliminary approval of the nationwide settlement of this "cost of insurance" ("COI") class action, providing well over $96 million in settlement benefits. If approved by the Court, the proposed nationwide settlement will resolve all claims alleged against Defendant Transamerica Life Insurance Company ("TLIC") arising out of the Monthly Deduction Rate ("MDR") increases challenged in *Thompson v. Transamerica Life Ins. Co.*, Case No. 18-cv-05422 CAS (GJSx) (the "Action"). The terms and conditions of the proposed settlement are memorialized in the Settlement Agreement and Release and its exhibits (collectively, the "Settlement"). *See* Joint Declaration of Co-Lead Class Counsel in Support of Plaintiffs' Motion for Preliminary Approval of Proposed Nationwide Class Action Settlement and Preliminary Certification of Settlement Class, ECF No. 143 ("Joint Decl."), Exhibit 1. Throughout this brief, capitalized terms are as defined in Section II of the Settlement Agreement.

The Settlement provides the following key benefits to members of the Settlement Class:

- In-Force Policies Settlement Common Fund: TLIC will contribute up to $88 million to the In-Force Policies Settlement Common Fund, to be distributed to In-Force Policyowners and Death Claim Policyowners who are Settlement Class Members. The amount of the In-Force Settlement Common Fund will be determined by proportionately reducing the maximum $88 million by the

Settlement Proportions of In-Force Policies and Death Claim Policies requesting exclusion from the Settlement Class. The resulting In-Force Policies Settlement Common Fund, as further reduced pursuant to Section IX of the Settlement Agreement, will then be proportionately distributed based on the Settlement Proportion of each Class Policy that is an In-Force Policy or Death Claim Policy; provided, however, that the minimum payout for each In-Force Policy or Death Claim Policy will be $200 and the maximum payout for each Death Claim Policy will be the Additional MD Collected for such Death Claim Policy.

- Terminated Policies Settlement Common Fund: TLIC will contribute an amount equivalent to the total Additional MDs Collected for all Terminated Policies owned by Settlement Class Members to the Terminated Policies Settlement Common Fund. The resulting Terminated Policies Settlement Common Fund, as reduced pursuant to Section IX of the Settlement Agreement, will be distributed *pro rata*, based on the proportion of the Additional MD Collected for each Terminated Policy owned by a Settlement Class Member in relation to the total Additional MD Collected for all Terminated Policies owned by all Settlement Class Members; provided, however, that the minimum payout for each Terminated Policy will be $200.
- MDR Increase Protection Benefit: TLIC agrees that it will not impose any additional MDR increase(s) on any Class Policy within 7 years of the Execution Date, unless ordered to do so by a state regulatory body (the "MDR Increase Protection Benefit").
- Non-Contestability Benefit: TLIC agrees it will not seek to void, rescind, cancel, have declared void, or otherwise deny coverage of death claims submitted by Settlement Class Members based on any alleged lack of insurable interest or misrepresentations made in connection with the original application process (the "Non-Contestability Benefit").

- Contribution Towards Attorneys' Fees and Expenses: Separate and apart from the foregoing benefits, TLIC agrees to pay to Plaintiffs' Counsel the first $8 million (the "TLIC Fee and Expense Contribution") of Plaintiffs' Counsels' fees and expenses approved by the Court. The amount of any fees or costs awarded by the Court in excess of the $8 million TLIC Fee and Expense Contribution (a) will be paid by TLIC, but (b) will proportionately reduce the In-Force Policies Settlement Common Fund and the Terminated Policies Settlement Common Fund.
- Service Awards. TLIC will pay such service awards as approved by the Court, not to exceed $10,000 to any one recipient (the "Service Award Benefit").
- Notice and Administrative Costs: TLIC alone will pay and otherwise alone bear the administrative expenses incurred after the Execution Date of this Settlement Agreement (including publication, printing, and mailing costs of the Class Notice and administration costs of the Settlement Relief), which will not be paid or otherwise reimbursed by Plaintiffs, Plaintiffs' Counsel, Co-Lead Class Counsel, or the Settlement Class should the Settlement be terminated or disapproved for any reason, or should the Final Settlement Date otherwise not be attained for any reason (the "Notice and Administrative Costs Benefit").

The proposed Settlement thus provides immediate, crucial economic benefits to the owners of the more than 7,800 Policies subjected to TLIC's challenged MDR increases, including a cash benefit to those Class Members who have terminated their Policies. Joint Decl. ¶ 16. Indeed, the gross cash settlement benefits equate to a refund equaling approximately 100% of the alleged total overcharges paid by the Class Members. *Id*. There will be no reversion of the In-Force Policies Settlement Common Fund or the Terminated Policies Settlement Common Fund to TLIC.

At this stage, of course, the Court makes only a preliminary determination on the fairness, reasonableness, and adequacy of the proposed Settlement, so that notice

may be given to the Settlement Class and a hearing may be scheduled to make a final determination regarding the fairness of the proposed Settlement. *See* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* §11:25 (4th ed. 2002); *Manual for Complex Litigation*, §21.632 (4th ed. 2004) ("*Manual*"). In so doing, the Court reviews the proposed Settlement to determine that it is not collusive and, "taken as a whole, is fair, reasonable and adequate to all concerned." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982).

The proposed Settlement easily exceeds this standard. The Settlement is the product of two years of complex and hard-fought litigation by experienced class action law firms from across the country, the exchange and review of nearly a million pages of complicated insurance-related documents and electronic data, months of arm's-length negotiations, extensive expert analysis, and a mediation overseen by a nationally-recognized and well-respected mediator, the Honorable Dickran Tevrizian (Ret.), of JAMS Los Angeles. Joint Decl. ¶¶ 7, 9-10. As detailed below, the proposed Settlement compares very favorably with class settlements in similar cases involving COI increases on universal life insurance policies. The proposed Settlement also appropriately reflects the strengths, weaknesses and risks of Plaintiffs' claims, avoids the expense and delay of continued litigation, and provides finality and certainty to TLIC and the Settlement Class. Finally, the proposed Settlement Class satisfies all the requirements for certification of an opt-out class under Federal Rule of Civil Procedure 23, and the proposed Class Notice satisfies all the requirements of Rule 23(c)(2)(B).

Plaintiffs therefore respectfully request that the Court enter the proposed form of Preliminary Approval Order filed concurrently herewith, which (1) preliminarily approves the proposed Settlement; (2) conditionally certifies the proposed Settlement Class; (3) schedules a Fairness Hearing to consider whether to grant final approval of the proposed Settlement, and consider the application by Co-Lead Class Counsel for an award of attorneys' fees and expenses and service awards to the Class

Representatives; (4) directs the dissemination of Class Notice of the Settlement and the Fairness Hearing to the members of the proposed Settlement Class; and (5) preliminarily enjoins parallel litigation threatening this Court's jurisdiction.

II. BACKGROUND OF THE LITIGATION

The allegations and claims in the Action are very familiar to the Court, and Plaintiffs will therefore provide only a brief overview of the facts and procedural history at this preliminary approval stage.

A. Summary of the Facts

Plaintiffs are or were owners of universal life insurance policies known as the "TransUltra 115 98/99" policies and the "TransSurvivor 115 97/98/99" policies issued by TLIC (the "Policies") from approximately 1997 through 2001. Plaintiffs contend that TLIC imposed a series of contractually-prohibited increases in the MDRs used to determine the deductions withdrawn each month from the accumulation values of these long-time TLIC Policyowners. TLIC imposed these allegedly unlawful increases during 2017 and 2018 (the "MDR Increases"), ultimately affecting approximately 7,800 Policies.

Plaintiffs primarily assert that the MDR Increases contravene the uniform, express contractual term in the Policies prohibiting any such increases that recoup past losses (the "Non-Recoupment Provision"). The Court has previously found that this common contractual prohibition limits TLIC's ability to impose the MDR Increases. *See* ECF No. 82, at 14. However, TLIC contends that the MDR Increases did not in fact recoup past losses, and were instead a contractually permissible response to changes in the Policies' future profitability due to adverse changes in expectations of future cost factors such as mortality, persistency, and interest rates.

B. Course of Proceedings

Plaintiff Gail Thompson on June 18, 2018, initiated the above-captioned, first-filed putative class action against TLIC MDR Increases implemented by TLIC on the Policies.

On September 19, 2018, TLIC moved to dismiss Plaintiff Thompson's Complaint (ECF No. 45). On December 26, 2018, the Court entered an order granting in part and denying in part TLIC's motion to dismiss Plaintiff Thompson's claims on the merits and denied TLIC's motion to dismiss for lack of personal jurisdiction (ECF No. 82). In denying TLIC's motion to dismiss Plaintiff Thompson's claims, the Court sustained the adequate pleading of both (a) certain of Plaintiff Thompson's claims and (b) jurisdiction over claims asserted on behalf of TLIC policyowners residing outside of California. *Id*., at 10.

On May 8, 2019, Plaintiff Thompson filed a First Amended Complaint ("FAC"), clarifying the class claims based on interim discovery and adding eight additional named plaintiffs. (ECF No.91). TLIC filed its Answer to the FAC on May 29, 2019. (ECF No. 98).

Plaintiffs allege that the TLIC Policies all contain two common contractual provisions limiting TLIC's ability to increase the MDRs:

> Any change in the monthly deduction rates will be prospective and will be subject to our expectations as to future cost factors. Such cost factors may include but are not limited to: mortality; expenses; interest; persistency; and any applicable federal, state and local taxes,

and:

> We do not distribute past surplus or recover past losses by changing the monthly deduction rates.

FAC. ¶¶ 45–46. Plaintiffs further allege that TLIC's imposition of the MDR Increases breached the foregoing contractual provisions. *Id*. ¶¶ 129–130.

On July 1, 2019, the Court appointed Andrew S. Friedman of Bonnett Fairbourn Friedman & Balint, PC, Harvey Rosenfield of Consumer Watchdog, and Adam M. Moskowitz of The Moskowitz Law Firm PLLC to serve as interim counsel for the putative class ("Co-Lead Class Counsel"). (ECF No. 104). On September 24, 2019, Plaintiffs moved for certification of their putative class claims under Federal Rule of Civil Procedure 23. (ECF No. 107).

C. Settlement Background Facts

This Settlement was reached through extended arm's-length negotiations between Co-Lead Class Counsel and TLIC's Counsel under the auspices of the Honorable Dickran Tevrizian (Ret.), with JAMS Los Angeles, an experienced and highly-regarded mediator. Joint Decl., ¶¶ 7, 11. Representatives for both sides engaged in an in-person mediation before Judge Tevrizian on December 10, 2019. *Id.*, ¶ 11. The Parties then conducted numerous follow-up mediation discussions, including a follow-up mediation telephone conference with Judge Tevrizian. *Id.* The Parties ultimately reached a settlement on behalf of a proposed settlement class of TLIC Policyowners and executed the Settlement Agreement memorializing the terms of the proposed nationwide class settlement. *Id.*

Before agreeing to settle the Action, Plaintiffs, through Co-Lead Class Counsel and their experts, conducted extensive formal discovery and a thorough investigation of the claims, defenses, and underlying events and transactions that are the subject of the Action. Joint Decl., ¶ 9. The investigation included, among other things: (i) reviewing and analyzing the evidence and applicable law, including nearly a million pages of documents and data files produced by TLIC; (ii) consulting with highly-experienced actuarial and other experts retained by Co-Lead Class Counsel; (iii) taking and defending depositions; (iv) engaging in extensive motion practice, including preparing Plaintiffs' opposition to TLIC's motion to dismiss and Plaintiffs' motion for class certification; and (v) conducting witness interviews of several key TLIC employees. *Id.*

In addition to taking the foregoing actions, Co-Lead Class Counsel also engaged in comprehensive preparation for fully-informed settlement negotiations. Joint Decl., ¶ 10. Before meeting in person, the Parties participated in pre-mediation conferences and exchanged additional discovery, information and electronic data. In advance of the mediation, the Parties also prepared and exchanged detailed mediation statements addressing liability, damages, and potential settlement

structures. *Id.* In connection with our litigation of the Action, and in furtherance of our pre-mediation preparation, Co-Lead Class Counsel acquired a license for each of two different proprietary software modeling programs used by TLIC in connection with the development and implementation of the challenged MDR Increases. *Id*. Access to the proprietary software allowed our consulting actuary to model the MDR Increases using alternative actuarial assumptions. *Id.* Plaintiffs' actuarial expert also prepared a model to compute reliably the alleged overcharges associated with the MDR Increases and the values and savings resulting from the proposed settlement benefits. *Id.*

Only then did the Parties participate in the full-day mediation session before Judge Tevrizian on December 10, 2019, making progress but not reaching a complete agreement at that time. Joint Decl., ¶ 11. The Parties continued to exchange letters and information and participate in numerous conference calls to negotiate proposed settlement terms. *Id.* The Parties negotiated the final terms of the proposed Settlement several weeks after the in-person mediation session and worked to obtain necessary client approvals. *Id.* The Parties also devoted substantial efforts to preparation of the necessary Settlement documentation, which thereafter was approved by Plaintiffs and TLIC. *Id.*

Throughout the process, the settlement negotiations were conducted by highly qualified and experienced counsel on both sides. Joint Decl., ¶¶ 5, 8 & Exhibits 2–4. Co-Lead Class Counsel analyzed all contested legal and factual issues to thoroughly evaluate TLIC's contentions and defenses, advocated in the settlement negotiation process for a fair and reasonable settlement that serves the best interests of the Class, and made fair and reasonable settlement demands of TLIC. *Id.*, ¶¶ 9–15, 17. Co-Lead Class Counsel were well informed of material facts and the negotiations were hard-fought and non-collusive. *Id.*

III. SUMMARY OF THE SETTLEMENT

A. The Settlement Class

The Settlement defines the Settlement Class as the following opt-out plaintiff settlement class to be certified by the Court pursuant to Federal Rule of Civil Procedure Rule 23(b)(3):

All persons or entities who owned a Policy as of the Policy Status Date.

Excluded from the Settlement Class are: (a) the Honorable Christina A. Snyder, United States District Court Judge of the Central District of California (or other Circuit, District, or Magistrate Judge presiding over the Action through which this matter is presented for settlement) and court personnel employed in Judge Snyder's (or such other Judge's) chambers or courtroom; (b) TLIC and its parents, subsidiaries, successors, predecessors, and any entity in which TLIC has a controlling interest; (c) any officer or director of TLIC reported in its most recent Annual Statements; (d) Policyowners who properly execute and timely file a request for exclusion from the Class; (e) those Policyowners challenging the MDR Increases in any pending or resolved lawsuit against TLIC other than the Action; and (f) the legal representatives, successors, or assigns of any of the foregoing excluded Policyowners (but only then in their capacity as legal representative, successor, or assignee).

B. The Settlement Benefits

TLIC will contribute up to $88 million to the "In-Force Policies Settlement Common Fund," to be distributed to In-Force Policyowners and Death Claim Policyowners who are Settlement Class Members. The amount of the In-Force Settlement Common Fund will be determined by proportionately reducing the maximum $88 million by the Settlement Proportions of In-Force Policies and Death Claim Policies requesting exclusion from the Settlement Class pursuant to Section

VI of the Settlement.[1] The resulting In-Force Policies Settlement Common Fund, as further reduced pursuant to Section IX of the Settlement Agreement, will then be proportionately distributed based on the Settlement Proportion of each Class Policy that is an In-Force Policy or Death Claim Policy; provided, however, that the minimum payout for each In-Force Policy or Death Claim Policy will be $200 and the maximum payout for each Death Claim Policy will be the Additional MD Collected for such Death Claim Policy. Distributions will be effectuated as follows:

a. For In-Force Policies, distributions will be made by credit to accumulation value if possible, regardless of whether the Policy's accumulation value is negative or positive.

b. For Death Claim Policies and for any In-Force Policies for which TLIC cannot apply a credit to accumulation value, distributions will be made by check payment.

TLIC will also contribute an amount equivalent to the total Additional MDs Collected for all Terminated Policies owned by Settlement Class Members to the "Terminated Policies Settlement Common Fund." The resulting Terminated Policies Settlement Common Fund, as reduced pursuant to Section IX of the Settlement Agreement, will be distributed *pro rata*, based on the proportion of the Additional MD Collected for each Terminated Policy owned by a Settlement Class Member in relation to the total Additional MD Collected for all Terminated Policies owned by all Settlement Class Members; provided, however, that the minimum payout for each Terminated Policy will be $200. Distributions from the Terminated Policies Settlement Common Fund will be effectuated by check payment.

The In-Force Policies Settlement Common Fund and the Terminated Policies Settlement Common Fund (collectively, the "Settlement Common Funds") will be distributed automatically to the Settlement Class; Settlement Class Members are not

[1] For example, if In-Force Policies and Death Claim Policies with a total Settlement Proportion of 5% exclude from the Settlement Class, then the In-Force Policies Settlement Common Fund would be reduced from $88 million to $83.6 million.

required to fill out a claim form to receive these benefits. The Settlement Common Funds will be reduced proportionately by the amounts that otherwise would have been distributed under the foregoing formula to those Policyowners requesting exclusion from the Settlement Class. There will be no reversion of the Settlement Common Fund to TLIC, however, once the Settlement Class is determined. Upon final approval, TLIC will distribute the net Settlement Common Funds to the Settlement Class Members within 60 days of the Final Settlement Date.

In addition to the Settlement Common Funds, the Settlement includes additional monetary benefits to the Settlement Class. First, TLIC alone will pay and otherwise alone bear all administrative expenses incurred after the execution of the Settlement Agreement (including publication, printing, and mailing costs of the Class Notice and administration costs of the Settlement Relief), which will not be paid or otherwise reimbursed by Plaintiffs, Plaintiffs' Counsel, Co-Lead Class Counsel or the Settlement Class should the Settlement be terminated or disapproved for any reason, or should the Final Settlement Date otherwise not be attained for any reason.

In addition to the Settlement Common Funds, TLIC agrees to pay to Plaintiffs' Counsel the first $8 million of any attorneys' fees and expenses that are awarded and approved by the Court. TLIC also agrees to fund the payment of such service awards as approved by the Court, not to exceed $10,000 per recipient, without otherwise diminishing any other benefit of the Settlement.

In addition to all the foregoing settlement benefits, the Settlement also includes valuable prospective relief that directly benefits Settlement Class Members now and into the future. First, TLIC agrees that it will not impose any additional MDR increase(s) on any Class Policy within seven years of the Execution Date, unless ordered to do so by a state regulatory body. Second, TLIC agrees it will not seek to void, rescind, cancel, have declared void, or otherwise deny coverage or death claims submitted by Settlement Class Members based on any alleged lack of

insurable interest or misrepresentations made in connection with the original application process.

C. Notice, Opt-Out, and Release Provisions

Subject to the requirements of any orders entered by the Court, and no later than 45 days after the Preliminary Approval Date, TLIC will send a Class Notice Package by first-class mail to the last known address of each reasonably identifiable person and entity in the Settlement Class. Settlement Class Members will have 45 days after the notice is sent to exclude themselves from the Settlement Class by sending a Request for Exclusion to Co-Lead Class Counsel. Settlement Class Members will also have 45 days to object to the proposed Settlement by filing a written statement of objection with the Court. The Settlement also provides that TLIC may terminate the Settlement, in its discretion, if the requests for exclusion exceed the number set forth in the Termination Agreement between the Parties.

Once the Settlement becomes final, Plaintiffs and Settlement Class Members will release and discharge TLIC from and against any and all claims arising out of or relating to the MDR Increases or any claims or causes of action that were or could have been alleged in the First Amended Complaint based on the same factual predicate, including but not limited to the decision to implement the MDR Increases. The Settlement Class Members do not release claims based on any future increase in the Policies' MDR schedules implemented by TLIC. Nor do the Settlement Class Members release any claims based on TLIC's failure to pay any death benefits under the terms of the Policies. TLIC for its part will release the Class Representatives and Co-Lead Class Counsel from any claims arising out of or relating to prosecution or resolution of the Action.

D. Appointment of the Class Representative and Co-Lead Class Counsel, and Payments of Attorneys' Fees, Reimbursed Litigation Expenses, and Service Awards

The Settlement contemplates that the Court will (a) appoint Gail Thompson,

Hans Sunder in his capacity as Trustee for the Sunder Irrevocable Trust, Debra Lewis, Diana Lewis, Michael H. Stephens, Sandra Rosner in her capacity as Trustee of the Rosner 1998 Irrevocable Trust Dated 5/19/98, Kathleen M. Swift, and Marc Soble in his capacity as Trustee for the Marilyn B. Soble Irrevocable Trust Dated 11/19/1997, as the Class Representatives of the Settlement Class, (b) appoint the Law Offices of Bonnett Fairbourn Friedman & Balint, PC, The Moskowitz Law Firm, PLLC and Consumer Watchdog attorneys as Co-Lead Class Counsel for the Settlement Class, and (c) expressly confirm that these proposed appointments satisfy Rule 23(g).

Co-Lead Class Counsel will file a separate motion for approval of Plaintiffs' attorneys' fees, litigation expenses and service awards, together with supporting submissions, sufficiently in advance of the deadline for objections. *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994 (9th Cir. 2010) (explaining that, in cases involving a common fund settlement where award of attorneys' fees diminishes class recovery, separate motion for attorneys' fees must allow sufficient time for class members to review fee motion). At this stage, of course, the Court need not preliminarily approve the amount of such awards (nor even the method by which the reasonableness of such fees and reimbursement of expenses will be reviewed); rather, the Court need only approve the form of notice informing Class Members of the proposed amount of TLIC's payment. *See, e.g., Thomas v. TD Ameritrade, Inc.*, No. C 08-2307 WDB, 2009 WL 8730144, at *9 (N.D. Cal. May 22, 2009).

IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

A. The Settlement is Fair, Reasonable and Adequate, and Well-Within the Range of Settlements Approved as Reasonable

"[S]trong judicial policy . . . favors settlement[], particularly where complex class action litigation is concerned." *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Settlements are particularly favored "in class actions and

other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *In re NVIDIA Corp. Derivative Litig.*, No. C-06-06110-SBA (JCS), 2008 WL 5382544, at *2 (N.D. Cal. Dec. 22, 2008) (quotation marks omitted); *accord, Rodriguez v. West Publ'g Corp.,* 563 F.3d 948, 966 (9th Cir. 2009).

Approval of class action settlements normally proceeds in two stages: (1) preliminary approval followed by notice to the class, and then (2) final approval. *Manual* § 21.632. The preliminary approval stage requires the Court to "make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms." *Id*. At the preliminary approval stage, the Court conducts a limited *prima facie* review of the relief provided by the Settlement to determine that notice should be sent to the Settlement Class Members. *See id.* The Court's review is "limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Officers for Justice*, 688 F.2d at 625; *accord Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

Preliminary approval of a settlement and notice to the proposed class is appropriate if: "[1] the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to class representatives or segments of the class, and [4] falls within the range of possible approval[.]" *In re Tableware Antitrust Litig.,* 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (citing *Manual* § 30.44 (2d ed. 1985)); *see also, e.g., Villegas v. J.P. Morgan Chase & Co.*, No. CV 09–00261 SBA (EMC), 2012 WL 5878390, at *5 (N.D. Cal. Nov. 21, 2012) (preliminarily approving settlement based on four-factor test); *Harris v. Vector Mktg. Corp.*, No. C–08–5198 EMC, 2011 WL 1627973, at *7 (N.D. Cal. Apr. 29, 2011) (same). The proposed Settlement readily satisfies these four requirements for preliminary

approval.

1. The Settlement is the Product of Good Faith, Arm's Length Negotiations among Experienced Counsel Mediated by an Experienced Private Mediator

"An initial presumption of fairness is usually involved if the settlement is recommended by class counsel after arms'-length bargaining." *Wren v. RGIS Inventory Specialists*, No. C–06–05778 JCS, 2011 WL 1230826, at *6 (N.D. Cal. Apr. 1, 2011) (citing 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* §11:42 (4th ed. 2002)). This Court is familiar with the lengthy and intensely adversarial history of this case. Through extensive discovery, each side has amassed substantial factual evidence and expert analysis in support of their positions, and the Court has already addressed many key issues in its rulings denying TLIC's motion to dismiss. *See* ECF No. 82. Plaintiffs filed their motion for class certification (ECF No. 107–115) demonstrating Plaintiffs' serious commitment to litigating this case on behalf of all Settlement Class Members. That motion is currently pending.

Further, Plaintiffs and the Court have drawn on their experience of litigating *Feller v. Transamerica Life Insurance Company*, No. 2:16-cv-01378 CAS (AJWx) ("*Feller*"). In *Feller*, the Court granted certification of a litigation class consisting of all TLIC policyowners with an in-force policy adversely affected by the challenged MDR increases. *Feller*, 2017 WL 6496803 (C.D. Cal. Dec. 11, 2017). The Court certified the nationwide litigation class under both Rule 23(b)(2) and (b)(3). 2017 WL 6496803, at *18. TLIC ultimately agreed to resolve the claims alleged in *Feller* through a class settlement that included all TLIC policyowners impacted by the challenged MDR increases, whether their policy remained in-force or had terminated (though lapse, surrender or payment of the death benefit). *See Feller* Final Approval Order [*Feller* Doc. 444 at 5].

Only after the outlines of the case had come into sharper focus and serious investments of time and money had been made into calculating damages for the MDR Increases did Co-Lead Class Counsel enter settlement negotiations and

mediation before a highly qualified and respected mediator, Judge Tevrizian of JAMS. The Parties' participation in a formal mediation process demonstrates that the Parties reached the Settlement in a procedurally sound manner and not as a result of collusion or bad faith by the Parties or counsel. *See Satchell v. Fed. Exp. Corp.*, Nos. C03–2659 SI, C03-2878 SI, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007) ("The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive."); *see also, e.g., Harris*, 2011 WL 1627973, at *8 (citing *Satchell* and other authority); *Carter v. Anderson Merch., LP*, Nos. EDCV 08-0025-VAP (OPx), EDCV 09-0216-VAP (OPx), 2010 WL 1946784, at *7 (C.D. Cal. May 11, 2010) (citing *Satchell*).

Further, Co-Lead Class Counsel have all concluded that the proposed Settlement is fair, reasonable, and adequate. *See* Joint Decl., ¶ 18. Courts give counsel's opinion considerable weight because they are closest to the facts and risks associated with the litigation. *See Low v. Trump Univ., LLC*, 246 F. Supp. 3d 1295, 1302–03 (S.D. Cal. 2017) ("Where [b]oth Parties are represented by experienced counsel, the recommendation of experienced counsel to adopt the terms of the proposed settlement is entitled to a great deal of weight . . . [and] should be given a presumption of reasonableness.") (internal citations and quotation marks omitted). Here, Co-Lead Class Counsel have a thorough understanding of the merits and risks of the claims and defenses asserted in the Action and extensive experience in universal life cost of insurance increase litigation, including *Feller*. Co-Lead Class Counsel's conviction in the fairness and reasonableness of the Settlement warrants a presumption of reasonableness.

2. The Settlement Has "No Obvious Deficiencies"

The Settlement "has no obvious deficiencies [and] does not improperly grant preferential treatment to class representatives or segments of the class[.]" *Young v. Polo Retail, LLC*, No. C-02-4546 VRW, 2006 WL 3050861, at *5 (N.D. Cal. Oct. 25, 2006). The $88 million In-Force Policies Settlement Common Fund, the

Terminated Policies Settlement Common Fund, the $8 million TLIC Fee and Expense Contribution, and the Notice and Administrative Costs Benefit together constitute very substantial and certain benefits for the Settlement Class Members of nearly $100 million. Moreover, the additional settlement benefits—the MDR Increase Protection Benefit, and the Non-Contestability Benefit—add millions of dollars worth of additional settlement value, by ensuring that Settlement Class Members will be protected for years to come.

3. The Proposed Relief Does Not "Grant Preferential Treatment to Class Representatives"

The Class Representatives are treated the same under the Settlement as every other Settlement Class Member, except for a service award to Plaintiffs of the sort commonly awarded in class litigation. *Rodriguez*, 563 F.3d at 958–59 ("Incentive awards are fairly typical in class action cases.") (emphasis omitted).

4. The Proposed Relief is Well-Within the "Range of Possible Approval"

To determine whether a settlement "falls within the range of possible approval," the Court focuses on "substantive fairness and adequacy," and "consider[s] plaintiffs' expected recovery balanced against the value of the settlement offer." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1080. Additionally, to determine whether a settlement is fundamentally fair, adequate, and reasonable, the Court may preview the factors that will ultimately inform final approval: (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of class members to the proposed settlement. *Harris*, 2011 WL 1627973, at *9 (citing *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).

Here the proposed Settlement falls easily within the "range of possible

approval," as it provides well over $96 million in immediate monetary benefits to the Settlement Class Members (besides the valuable prospective relief to all Settlement Class Members), without the risk and delays of continued litigation, trial, and appeal. Joint Decl., ¶¶ 13–14, 16. The gross amount of the Settlement cash benefits equates to a refund of approximately100% of the alleged total overcharges, without considering the substantial additional value provided by the prospective settlement relief. *Id.*, ¶ 16.

This result compares favorably to similar settlements that courts have approved in recent COI cases. *See, e.g., Feller* Doc. 444 at 7 (concluding 62% of past overcharges "represents a fair and complete resolution of all claims"); *Fleisher v. Phoenix Life Ins. Co.*, No. 1:11-cv-08405-CM-JCF (S.D.N.Y.), at Doc. 309 (explaining that settlement common fund provided $34,759,820.88 in cash payments to class members, amounting to 68.5% of the plaintiffs' overcharge damages); *In re Conseco Life Ins. Co. Lifetrend Ins. Sales & Mktg. Litig.*, No. 3:10-md-02124-SI (N.D. Cal.), at Doc. 496 (seeking approval of settlement in COI litigation that provided $27 million in benefits (mostly in the form of injunctive relief) and did not create a settlement common fund to refund past overcharges); *Yue v. Conseco Life Ins. Co.*, No. 2:11-cv-09506-DSF(SH) (C.D. Cal.), at Doc. 153 (explaining that settlement, which provides for cost of insurance rate reductions, represents "an aggregate present value cost to Conseco of approximately $73 million (including administrative costs and attorneys' fees), $60 million of which represents the present value of COI rate reductions"); *37 Besen Parkway, LLC v. John Hancock Life Ins. Co. (U.S.A.)*, No. 1:15-cv-09924-PGG-HBP (S.D.N.Y.), at Doc. 139 (granting preliminary approval of settlement providing for $91.25 million cash payment to policyholders in challenge to life insurance company's cost of insurance rates, amounting to approximately 42% of overcharges).

Moreover, the proposed Settlement achieves a result that is not only economically attractive but expeditious as well. Such expediency is essential given

the advanced age of many Settlement Class Members and the inevitable lengthy delays were the case to be litigated to conclusion. Joint Decl., ¶¶ 13-15. If Plaintiffs do not settle now, the risk, expense, and likely duration of continued litigation would take an immediate, continuing and difficult toll on Settlement Class Members who are relying upon needed life insurance coverage at a time when many of them are at an advanced age. Furthermore, the battle of the actuarial and damages experts that would have ensued at trial could result in a wide range of outcomes – including a possible zero recovery. *Id*., ¶ 12. Given the risk, expense, and significant delay associated with continued litigation, the Settlement is undeniably an excellent result. *Id.* ¶¶ 11-17.

The Settlement also provides meaningful additional ***prospective*** relief, which is enormously beneficial to the Settlement Class Members. Joint Decl., ¶ 16. Even if Plaintiffs were to prevail at trial, the best they might achieve would be a refund of overcharges and determination that the MDR Increases were unlawful. There would be an unavoidable risk that, following trial, TLIC could have increased the MDRs to a level comparable to the challenged MDR Increases. *Id.*, ¶ 12. By instituting a seven-year freeze on any additional MDR increases for Settlement Class Members, the Settlement protects Policyowners – elderly Policyowners in particular – from increases that could have been instituted even if Plaintiffs had been successful at trial. Thus, a trial victory might not have been as beneficial as the Settlement.

B. The Court Should Certify the Settlement Class

The Ninth Circuit has long recognized that courts may certify class actions for settlement purposes only. *See Hanlon,* 150 F.3d at 1019. Rule 23(a) sets forth four prerequisites to class certification: (i) numerosity, (ii) commonality, (iii) typicality, and (iv) adequacy of representation. In addition, the class must meet one of the three requirements of Rule 23(b). *See* Fed. R. Civ. P. 23; *In re UTStarcom, Inc. Sec. Litig.*, No. C 04-04908 JW, 2010 WL 1945737, at *3 (N.D. Cal. May 12, 2010) (citing *Hanlon*, 150 F.3d at 1019).

Certification of the proposed Settlement Class in this action is completely consistent with the Court's certification of the settlement class in the *Feller*. Other courts have likewise frequently certified class actions, like this one, alleging breaches of identical COI provisions of standardized life insurance policies. *See, e.g.*, *Fleisher v. Phoenix Life Ins. Co.*, No. 11 Civ. 8405 (CM), 2013 WL 12224042, at *13 (S.D.N.Y. July 12, 2013) ("Because the 2011 class alleges breach of contract case arising out of standardized insurance policy forms, the common questions of law and fact predominate over any individual questions. The insurance policies at issue contain provisions regarding how COI rates are set and what Phoenix can consider in making any changes in rates, and these terms are substantively identical for all the policies held by the members of the Class[]."); *In re Conseco Life Ins. Co. Lifetrend Ins. Sales & Mktg. Litig.*, 270 F.R.D. 521, 529–30 (N.D. Cal. 2010); *In re Conseco Life Ins. Co. Cost of Ins. Litig.*, No. ML 04-1610, 2005 WL 5678842, at *4 (C.D. Cal. Apr. 26, 2005).

Against this background of regular certification of COI challenges, and of this Court's earlier certification of a nationwide litigation class in this type of action, there is no obstacle to certifying a ***settlement*** class here. Certification of a settlement class "has been recognized throughout the country as the best, most practical way to effectuate settlements involving large numbers of claims by relatively small claimants." *In re Prudential Sec. Inc. Ltd. P'ship Litig.*, 163 F.R.D. 200, 205 (S.D.N.Y. 1995).

1. The Settlement Class Meets the Requirements of Rule 23(a)

a. Numerosity is Satisfied

Rule 23(a)(1) requires that a class be sufficiently numerous such "that joinder of all members is impracticable." The Settlement Class encompasses approximately 7,800 Policies, easily satisfying the impracticability standard. *See, e.g., Louie v. Kaiser Found. Health Plan, Inc.*, No. 08cv0795 IEG RBB, 2008 WL 4473183, at *3 (S.D. Cal. Oct. 6, 2008) (concluding that only 770 class members were "far too

numerous to be joined as plaintiffs in this lawsuit"); *accord*, *Feller*, 2017 WL 6496803 at *5.

b. Commonality is Satisfied

Commonality exists if there are questions of law or fact common to the class. Fed. R. Civ. P. 23(a)(2). The common legal or factual contention underlying the claims "must be of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes,* 564 U.S. 338, 350 (2011).

The Settlement Class satisfies commonality because Plaintiffs' claims are based on the disputed interpretation of standardized contract language of the Policies, which TLIC must necessarily construe consistently for all Policyowners. *See Conseco,* 270 F.R.D. at 530 (concluding commonality satisfied where "interpretation of the standard written policy language will present a question common to the class"). *See also Vedachalam v. Tata Consultancy Servs., Ltd.*, No. C 06–0963 CW, 2012 WL 1110004, at *9–10 (N.D. Cal. Apr. 2, 2012) (concluding "a class-wide proceeding will generate common answers regarding whether Defendants engaged in practices that violated the parties' agreements" that, as in this case, were made with form contracts); *accord*, *Feller*, 2017 WL 6496803 at **6-7.

c. Typicality is Satisfied

Rule 23 next requires that "the claims or defenses of the representative parties" be "typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "The purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010). "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Ellis v. Costco*

Wholesale Corp., 657 F.3d 970, 984 (9th Cir. 2011) (quotation marks omitted). Thus, typicality is satisfied if the plaintiffs' claims are "reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon,* 150 F.3d at 1020.

The typicality requirement is easily met because Plaintiffs and Settlement Class Members assert precisely the same claims challenging TLIC's contractual authority to impose the MDR increases, based on identical material terms in all of the form contracts. *See Schlagal v. Learning Tree Int'l*, No. CV 98-6384 ABC (EX), 1999 WL 672306, at *3 (C.D. Cal. Feb. 23, 1999) (concluding typicality met where the plaintiff's claims "stem from the same event or course of conduct as other class members' claims and are based on the same legal theory as the absent members"). As in *Conseco*, typicality is satisfied because Plaintiffs planned to "confine their presentation to claims susceptible of common proof." 270 F.R.D. at 531; *accord, Feller*, 2017 WL 6496803 at *8.

d. Adequacy of Representation is Satisfied

In the Ninth Circuit, representation is adequate where (1) counsel for the class is qualified and competent to vigorously prosecute the action and (2) the interests of the proposed class representatives are not antagonistic to the interests of the class. *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). This standard is met here. *Accord, Feller*, 2017 WL 6496803 at *9.

First, Co-Lead Class Counsel are extremely qualified and experienced in some of the largest class action litigation in the country and have performed extensive work for many years here, including: identifying and investigating potential claims for months prior to filing these claims; preparing the detailed class action complaint and an amended complaint; successfully defeating the motion to dismiss; preparing and filing the motion for class certification; and successfully negotiating a global settlement that protects the interests of all Settlement Class Members. Joint Decl., ¶¶ 8-9, 17 & Exhibits 2–4. Second, there is no conflict between Plaintiffs' interests

and those of the Settlement Class Members: all assert the same legal claims, and their alleged injury arises out of the same course of conduct by TLIC.

2. The Settlement Class Meets the Requirements of Rule 23(b)(3)

Pursuant to the Settlement, Class Members will receive both monetary relief and injunctive relief. Accordingly, the Settlement Class merits certification under Rule 23(b)(3).

Under Rule 23(b)(3), class certification is appropriate "if Rule 23(a) is satisfied" and if "the court finds that [1] the questions of law or fact common to class members predominate over any questions affecting only individual members, and that [2] a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3); *Local Joint Exec. Bd. of Culinary/Bartender Tr. Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162–63 (9th Cir. 2001). However, courts need not consider the Rule 23(b)(3) criteria regarding manageability of the class action, as settlement obviates the need for a manageable trial. *See Morey v. Louis Vuitton N. Am., Inc.,* No. 11CV1517 WQH (BLM), 2014 WL 109194, at *12 (S.D. Cal. Jan. 9, 2014) ("[B]ecause this certification of the Class is in connection with the Settlement rather than litigation, the Court need not address any issues of manageability that may be presented by certification of the class proposed in the Settlement Agreement."). The Settlement Class clearly meets both of Rule 23(b)(3)'s requirements.

a. Predominance

"The predominance inquiry of Rule 23(b)(3) asks whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 571 F.3d 953, 957 (9th Cir. 2009) (internal quotation marks and citation omitted). "Considering whether questions of law or fact common to class members predominate begins, of course, with the elements of the underlying cause of action." *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S.

804, 809 (2011) (internal quotation marks omitted).

Common questions predominate regarding Plaintiffs' breach of contract claim. *See Feller*, 2017 WL 6496803 at *10-13. This claim turns on the common actions of TLIC in unilaterally developing and implementing the MDR Increases in violation of the uniform express terms of standardized policy contracts. *See id.* ("With respect to the breach of contract claims, courts have long found that "claims arising from interpretations of a form contract appear to present the classic case for treatment as a class action."); *In re Med. Capital Sec. Litig.*, No. SACV-09-1048 DOC (RNBx), 2011 WL 5067208, at *3 (C.D. Cal. July 26, 2011) ("Courts routinely certify class actions involving breaches of form contracts."); *see generally, Kleiner v. First Nat'l Bank of Atlanta*, 97 F.R.D. 683, 692 (N.D. Ga. 1983) (noting that "claims arising from interpretations of a form contract appear to present the classic case for treatment as a class action," and citing numerous cases in which such claims were certified). If TLIC breached its contracts as to the named Plaintiffs when imposing the MDR Increases, it necessarily breached the same standardized contract as to the other members of the Settlement Class.

These key similarities support a finding of predominance, as many courts have concluded in analogous situations. *See, e.g., Conseco,* 270 F.R.D. at 529 ("[C]ourts have recognized that the law relating to the element of breach does not vary greatly from state to state"); *see also Klay v. Humana, Inc.,* 382 F.3d 1241, 1263 (11th Cir. 2004) ("A breach is a breach is a breach, whether you are on the sunny shores of California or enjoying a sweet autumn breeze in New Jersey."). This is particularly true because Plaintiffs' breach of contract claims are premised on a uniform express contractual provision against TLIC's recouping past losses. *See Conseco*, 270 F.R.D. at 529. As this Court previously concluded, the breach of contract claims "are premised on TLIC's uniform policy language and uniform conduct[,]" and thus, "common questions predominate as to liability[.]" *Feller*, 2017 WL 6496803 at *13; *accord*, *id.* at *10-13.

b. Superiority

Superiority is demonstrated where "classwide litigation of common issues will reduce litigation costs and promote greater efficiency." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). Rule 23(b)(3) sets forth factors for determining whether "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). As explained by the Ninth Circuit in *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180 (9th Cir. 2001), '"consideration of these factors requires the court to focus on the efficiency and economy elements of the class action so that cases allowed under subdivision (b)(3) are those that can be adjudicated most profitably on a representative basis.'" *Id*. at 1190.

The four "superiority" factors in Rule 23(b)(3) weigh heavily in favor of preliminary class certification. For most Policyowners, it is neither economically feasible nor judicially efficient to pursue these claims on an individual basis, and none have manifested any intent to do so. Moreover, class litigations concerning this controversy have already been consolidated into this most convenient forum to minimize duplication and ease management. "[R]esolution on a class wide basis will be superior to other methods of resolving claims by members of the Class." *See Feller*, 2017 WL 6496803 at *15.

C. The Court Should Appoint Co-Lead Class Counsel for the Settlement Class

Rule 23(g)(1) requires the Court to appoint counsel to represent the interests of the class. This Court has already done so on a preliminary basis. (ECF No. 104). For the same reasons, (1) Bonnett Fairbourn Friedman & Balint, PC, (2) The Moskowitz Law Firm, and (3) attorneys for Consumer Watchdog are all very "well equipped" to vigorously, competently, and efficiently represent the Settlement Class. *See Villegas*, 2012 WL 5878390, at *8; *Harris*, 2011 WL 1627973, at *16.

V. PROPOSED CLASS NOTICE

Under Federal Rule of Civil Procedure 23(e), the "court must direct notice in a reasonable manner to all class members who would be bound by the proposal." The district court has considerable discretion in directing the form and manner of notice under this reasonableness standard, which must generally describe the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and exercise their right to come forward and be heard. *Rodriguez,* 563 F.3d at 962. To satisfy due process considerations, the notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994). The Class Notice Package that will be sent to all Settlement Class Members by direct mail based on TLIC's company records exceeds these requirements, as it assures reasonable steps to notify all Settlement Class Members of the Settlement and provides a thorough explanation of all the information necessary for Settlement Class Members to make fully informed decisions.

VI. THE COURT SHOULD PRELIMINARILY ENJOIN SETTLEMENT CLASS MEMBERS FROM INITIATING PARALLEL PROCEEDINGS

The Parties finally seek entry of an order preliminarily enjoining all Settlement Class Members who do not execute and timely file a Request for Exclusion from the Settlement Class from filing, prosecuting, maintaining or continuing litigation in federal or state court based on or related to the claims or facts alleged in the Action. This type of injunctive relief is commonly granted in preliminary approvals of class action settlements pursuant to the All Writs Act.

The All Writs Act authorizes the Court to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). The Act empowers the Court to enjoin "conduct which, left unchecked, would have had the practical effect of diminishing

the court's power to bring the litigation to its natural conclusion." *In re Am. Online Spin-Off Accounts Litig.*, No. CV 03-6971-RSWL, 2005 WL 5747463, at *4 (C.D. Cal. May 9, 2005) (quoting *ITT Cmty. Dev. Corp. v. Barton*, 569 F.2d 1351, 1359 (5th Cir. 1978)).

In cases such as this, where parties to complex, multidistrict litigation have reached a settlement agreement after lengthy, protracted, and difficult negotiations, parallel proceedings can "'seriously impair the federal court's flexibility and authority' to approve settlements in the multi-district litigation" and threaten to "destroy the utility of the multidistrict forum otherwise ideally suited to resolving such broad claims." *In re Baldwin-United Corp.*, 770 F.2d 328, 337 (2d Cir. 1985) (citation omitted); *see also In re Diet Drugs Prods. Liab. Litig.*, 282 F.3d 220, 236 (3d Cir. 2002) (finding threats to court's jurisdiction "particularly significant where there are conditional class certifications and impending settlements in federal actions"). Under these circumstances, the Court has the power and authority to enjoin current or future federal proceedings and future state court proceedings. *See In re Joint E. & S, Dist. Asbestos Litig.,* 134 F.R.D. 32, 37 (E.D.N.Y. & S.D.N.Y. 1990) ("Whether viewed as an affirmative grant of power to the courts or an exception to the Anti-Injunction Act, the All-Writs Act permits courts to certify a national class action and to stay pending federal and state cases brought on behalf of class members); *Newby v. Enron Corp.*, 302 F.3d 295 (5th Cir. 2002) (concluding that district court has authority to enjoin prospective state court actions).

All individual actions brought by Settlement Class Members who do not opt out should therefore be enjoined pending the Court's determination whether to finally approve the proposed Settlement. If the Settlement is approved, any cases subsequently brought by Settlement Class Members related to the MDR Increases that would be subject to the injunction will be moot.

Accordingly, pursuant to its authority under the All-Writs Act, the Court should include in its order a preliminarily injunction against parallel proceedings

pending the settlement approval process. *See, e.g., Shelby v. Two Jinns, Inc.*, No. 2:15-cv-03794-AB-GJS, 2017 WL 6347370, at *5 (C.D. Cal. Feb. 8, 2017) (entering an injunction against asserting released claims pending settlement approval and concluding that it is "necessary to protect and effectuate the settlement, this Order, and the Court's flexibility and authority to effectuate this settlement and to enter judgment when appropriate, and is ordered in aid of the Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C. §1651(a)"); *Davis v. Chase Bank U.S.A., N.A.*, No. CV 06-04804 DDP (PJWx), 2014 WL 12626107, at *4 (C.D. Cal. June 5, 2014) ("This injunction [pending final settlement approval] is necessary to protect and effectuate the Settlement, this Order, and this Court's flexibility and authority to effectuate this Settlement and to enter judgment when appropriate, and is ordered in aid of this Court's jurisdiction and to protect its judgements pursuant to 28 U.S.C. section 1651(a).").

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant the joint motion and enter a Preliminary Approval Order (a) preliminarily certifying the Settlement Class, appointing Class Representatives for the Settlement Class and appointing Co-Lead Class Counsel as counsel for the Settlement Class, (b) preliminarily approving the proposed Settlement as appearing sufficiently fair, adequate and reasonable to warrant the dissemination of the Class Notice Package, and (c) preliminarily enjoining all Settlement Class Members who do not execute and timely file a Request for Exclusion from the Settlement Class from filing, prosecuting, maintaining or continuing litigation based on or related to the claims or facts alleged in the Action.

Respectfully submitted this 6th day of April, 2020.

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