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12 *Class Counsel*

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**

17 LSIMC, LLC, on behalf of itself and all
18 others similarly situated,

19 Plaintiff,

20 vs.

21 AMERICAN GENERAL LIFE
INSURANCE COMPANY,

22 Defendant.

Case No. 2:20-cv-11518-SVW (PVCx)

**PLAINTIFF’S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF ITS MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: June 26, 2023

Time: 1:30 p.m.

Ctrm: 10A

Judge: Stephen V. Wilson

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Cases

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Churchill Village LLC v. Gen. Elec.,
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In re Aftermarket Auto. Lighting Prods. Antitrust Litig.,
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In re Mego Fin. Corp. Sec. Litig.,
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In re Pac. Enters. Sec. Litig.,
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1 **I. INTRODUCTION**

2 The Court should grant final approval to the Settlement¹ negotiated in this
3 complex class action involving the credited interest rates applied to universal life
4 insurance (“UL”) policies owned by members of the Settlement Class. This
5 Settlement is an outstanding result: \$55.5 million in cash and additional accumulation
6 value, and an additional \$9.24 million in non-monetary benefits. The cash and
7 additional accumulation value, alone, represents over 44% of the interest that AmGen
8 allegedly under-credited Settlement Class Members.² When considering the
9 additional \$9.24 million in non-monetary benefits, the Settlement’s total gross
10 benefits rise to more than \$64.74 million—over 51.5% of AmGen’s total potential
11 liability. Response to the Settlement has been overwhelmingly positive. Not a single
12 Settlement Class Member has objected, and the Settlement Administrator has
13 received just two opt-out requests. Intrepido-Bowden Decl. ¶¶ 17, 20; Bridgman
14 Decl. ¶¶ 38, 40.

15 This Settlement is the result of vigorous advocacy from counsel for both sides.
16 All told, Class Counsel invested more than 3,200 hours in time into this case, which
17 included reviewing over 6,000 pages of documents and complex actuarial data sets,
18 and assisting the preparation of six detailed expert reports from three experts (all of
19 whom were deposed). The parties litigated this case to the eve of trial, completing
20 briefing on AmGen’s motion for summary judgment and motions to exclude each
21 other’s experts. The parties also filed thirteen motions *in limine*, memorandums of
22 contentions of fact and law, witness lists, and a joint exhibit list—in preparation for
23 the final pretrial conference on November 21, 2022. Following months of extensive,
24 arm’s-length negotiations, and with the assistance of an experienced mediator, the

25
26 ¹ Unless noted, all referenced exhibits are attached to the Declaration of Glenn
27 Bridgman, and all capitalized terms mean the same as in the Settlement Agreement.
28 Ex. I.

² Plaintiff’s expert, Robert Mills, analyzed nationwide data AmGen provided and
estimated that AmGen allegedly under-credited the Settlement Class a total of \$125.7
million in interest. Dkt 215-3.

1 Hon. Gary A. Feess (Ret.), the parties reached agreement in November 2022 on the
2 key terms of the nationwide settlement for which final approval is now sought.

3 The Settlement Administrator (“JND”) mailed over 40,500 notices to potential
4 Settlement Class Members, with direct mail reaching 94.5% of potential Settlement
5 Class Member addresses. The absence of objections and the extraordinarily low opt-
6 out rate (0.0049%) indicates the Settlement Class’s strong support, and creates a
7 “strong presumption” for approval. *Nat’l Rural Telecomms. Coop. v. DIRECTV,*
8 *Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004). The Settlement secures immediate and
9 substantial relief to Settlement Class Members, with checks from the Final
10 Settlement Fund likely to be distributed before year’s end. When the Settlement’s
11 guaranteed benefits are viewed “in light of the long, contentious, and uncertain road
12 that Class Members would have to traverse to receive relief” the Court should grant
13 final approval to the Settlement and Plan of Allocation as fair, reasonable, and
14 adequate. Dkt 217 at 2.

15 **II. PROCEDURAL HISTORY**

16 **A. The Litigation**

17 The proposed Settlement Class consists of the current or most recent owner of
18 40,567 AmGen UL policies. UL policies combine the insurance component of life
19 insurance with a savings component known as the “accumulation value.” Premium
20 payments are saved into the accumulation value, which can grow by earning interest
21 at rates AmGen sets, and is used to pay for the policy’s insurance component.
22 AmGen’s discretion in redetermining interest rates is contractually limited. Every
23 policy in the Settlement Class contains the below provision, which constrains
24 AmGen’s ability to redetermine interest rates:

25 “This policy does not participate in our profits or surplus. . . . **Any**
26 **redetermination of interest rates will be based only on expectations**
27 **of future investment earnings.** We will not change these rates or
28 charges in order to recoup any prior losses.”

1 Plaintiff LSIMC, LLC owns an AmGen policy issued in California with this
2 provision. Ex. 2. On December 21, 2020, Plaintiff filed this lawsuit on behalf of a
3 proposed class of current and former owners of California Policies. The Complaint
4 included one claim for breach of contract, alleging AmGen failed to redetermine
5 interest rates “based only on” expectations of future investment earnings (“EFIE”).
6 Plaintiff alleged that the “New Premiums” interest rate AmGen disclosed to
7 policyholders on annual statements did not correlate with AmGen’s publicly reported
8 investment earnings. AmGen vigorously contested each aspect of that allegation.

9 On February 12, 2021, AmGen filed the first of three motions to dismiss
10 (“MTD”). Dkt. 22. Plaintiff filed an Amended Complaint on March 5, 2021. Dkt.
11 24. AmGen filed its second MTD on April 5, 2021, which the Court granted with
12 leave for Plaintiff to amend. Dkts. 28, 34. In granting AmGen’s second MTD, the
13 Court held that Plaintiff’s attempt to rely on AmGen’s public, companywide rate of
14 investment return for 2019 was insufficient to create an inference of breach. Instead,
15 “[w]ithout a fuller picture of how Defendant’s interest rates changed over time
16 relative to its investment returns, or what returns could have been reasonably
17 expected when a redetermination was made, it is unreasonable to infer a profit
18 motivation” from the facts alleged. Dkt. 34 at 4. The Court gave Plaintiff just 14 days
19 to plead additional facts to plausibly support the inference that AmGen’s investment
20 returns were higher than the interest rates it credited policyholders. This required
21 Class Counsel to hire—at its own expense—experts to further analyze additional
22 paywalled data concerning AmGen’s investment returns (like AmGen’s National
23 Association of Insurance Commissioners annual statements) to attempt to satisfy the
24 issues the Court identified. Bridgman Decl. ¶ 7.

25 Plaintiff’s efforts succeeded. Plaintiff filed its Second Amended Complaint on
26 June 22, 2021, which added eight pages of factual allegations related to AmGen’s
27 historic investment returns and credited rates. Dkt. 35. AmGen filed its third MTD
28 on July 26, 2021, which the Court denied on September 28, 2021. Dkts. 40, 45. In

1 total, the parties spent over 140 pages briefing AmGen’s three MTDs. Bridgman
2 Decl. ¶ 8.

3 The parties then engaged in extensive discovery, during which Class Counsel
4 uncovered important facts concerning AmGen’s process for crediting interest. These
5 included that AmGen uses two types of interest rates to credit Policies—a “New
6 Money” (or “New Premiums”) rate applicable to premiums paid within the past 36
7 months (and which AmGen disclosed to policyholders), and a “Portfolio” rate
8 applicable to premiums saved in accumulation values for longer than 36 months (and
9 which AmGen never disclosed to policyholders until after this litigation began).
10 Plaintiff also uncovered facts related to AmGen’s decision-making process for
11 redetermining interest rates and the “benchmark earned rates”³ upon which new
12 interest rates are based. These facts prompted Plaintiff to file a Third Amended
13 Complaint on February 9, 2022. Dkt. 81.

14 On February 10, 2022, Plaintiff moved to certify a class of current and former
15 owners of California Policies (the “California Class”). Dkt. 85. On August 4, the
16 Court certified the California Class on the issue of AmGen’s liability for breach of
17 contract pursuant to Rule 23(c)(4), and denied certification of a b(3) damages class.
18 Dkt. 113. The Court set trial for November 29, 2022. Dkt. 114.

19 The parties next agreed to a briefing schedule for summary judgment motions,
20 and undertook expert discovery. Plaintiff designated two experts: economist Robert
21 Mills to opine on AmGen’s historical data on earned and credited rates; and Kevin
22 Fry to opine on UL policy mechanics. AmGen designated Craig Reynolds as an
23 insurance and actuarial expert. Plaintiff designated Linley Baker for rebuttal to Mr.
24 Reynolds’s actuarial opinions. The parties produced eight total expert reports and
25 took and defended all four experts’ depositions. Bridgman Decl. ¶ 9.

26
27 ³ Plaintiff alleged that AmGen’s “benchmark earned rates” are equivalent to
28 AmGen’s EFIE such that the “only” consideration AmGen can base redeterminations
of interest rates on is its benchmark earned rates.

1 AmGen moved for summary judgment on September 29, 2022, and the parties
2 also filed competing *Daubert* motions to exclude the other’s insurance experts. *Id.* at
3 ¶¶ 13, 14. While these motions were pending, each party filed its memorandum of
4 contentions of fact and law and witness list, and submitted a joint exhibit list. *Id.* at
5 ¶ 15. The parties also filed thirteen total motions *in limine*, scheduled to be heard at
6 the November 21, 2022 final pretrial conference. *Id.* at ¶ 16.

7 **B. Settlement Negotiations, Preliminary Approval, and Class Notice**

8 The Settlement was reached following the parties’ extensive, arms-length
9 negotiations assisted by Judge Feess (Ret.) as mediator. Dkt. 215-4, ¶¶ 6–10. The
10 parties conducted an all-day mediation on September 29, 2022. That session was
11 unsuccessful, but the parties continued negotiating over the following weeks,
12 exchanging numerous offers. Negotiations were complicated, at least in part because
13 of the case’s posture and the certification of a liability-only class for trial.
14 Nevertheless, the parties discussed various structures for a possible settlement, and
15 AmGen also provided data that permitted Plaintiff and Class Counsel to evaluate a
16 potential nationwide settlement. Bridgman Decl. ¶ 18.

17 The parties worked hard to resolve this dispute, at the same time as they
18 completed briefing on summary judgment and *Daubert*, and through several other
19 pretrial filings. It was not until the week of November 7, 2022 that the parties agreed
20 on a settlement structure that provided substantial monetary relief to the Settlement
21 Class. The parties executed a binding Term Sheet on November 14, 2022. *Id.* at ¶
22 17.

23 Throughout negotiations, Class Counsel analyzed all contested legal and
24 factual issues to thoroughly evaluate AmGen’s contentions, and advocated for a
25 settlement that serves the Settlement Class’s best interests. Judge Feess believes the
26 Settlement is a highly successful result for Settlement Class Members. Dkt. 215-4, ¶
27 10.

1 On January 20, 2023, Plaintiff filed a motion for preliminary approval of the
2 Settlement. Dkt. 215. Following a hearing, the Court granted preliminary approval
3 on February 16, 2023. Dkt. 217. The Court held that “preliminary approval is
4 warranted” because “Plaintiffs and their counsel have vigorously litigated this case,
5 and the settlement was reached after arm’s-length negotiations, including those
6 facilitated by an experienced mediator.” *Id.* at 2. Moreover, “the relief provided for
7 in the settlement is sufficiently adequate to warrant preliminary approval at this
8 stage” because it “provides approximately \$55.5 million of benefits in the form of
9 cash to the Settlement Class and additional accumulation value for Settlement Class
10 Member[s] with In Force Policies.” *Id.*

11 Following preliminary approval, JND disseminated notice to the Settlement
12 Class consistent with the preliminary approval order. JND mailed 40,569 notices to
13 potential Settlement Class Members using addresses AmGen provided. JND
14 conducted additional research to forward or re-send notices to updated addresses for
15 any notices that were returned as undeliverable. Through these methods, direct
16 mailing reached an outstanding 94.5% of potential Settlement Class Member
17 addresses. Intrepido-Bowden Decl. ¶ 10. JND also posted the notice on the
18 Settlement Website and continued operating a toll-free number for Settlement Class
19 Members to obtain information by phone. As of May 24, 2023, the Settlement
20 Website had 2,754 page views, and the toll-free number had received 366 calls. *Id.*
21 at ¶¶ 12, 15. JND and Class Counsel have promptly responded to all inquiries from
22 potential Settlement Class Members.

23 On January 30, 2023, JND mailed notices pursuant to the Class Action
24 Fairness Act (“CAFA”) to the United States Attorney General and appropriate state
25 officials required by 28 U.S.C. § 1715(b). *Id.* at ¶ 4. There have been no objections
26 to the Settlement from any recipient. *Id.* at ¶ 5.

27 On April 3, 2023, Class Counsel moved for attorneys’ fees, reimbursement of
28 litigation expenses, and service awards (“Fee Motion”). Dkt. 221. Class Counsel

1 sought \$8 million in attorneys’ fees, equaling 14.4% of the cash and additional
2 accumulation value, or 12.4% of the Settlement’s total benefits when factoring in the
3 Non-Contestability Benefit. Class Counsel also sought reimbursement of incurred
4 litigation expenses and a \$25,000 service award for Plaintiff.

5 Settlement Class Members had until April 24, 2023 to opt out or object to any
6 aspect of the Settlement or Fee Motion. Not a single Settlement Class Member has
7 filed an objection to the Settlement or Fee Motion (either before or after the deadline),
8 and JND has received only two opt-out requests. Intrepido-Bowden Decl. ¶¶ 17, 20;
9 Bridgman Decl. ¶¶ 38, 40.

10 **III. SUMMARY OF SETTLEMENT**

11 **A. The Settlement Class**

12 The Settlement Class consists of:

13 The current or the most recent owner as of January 13, 2023, of one or
14 more life insurance policies issued by American General Life Insurance
15 Company, or its predecessors, on which American General Life
16 Insurance Company credited interest to the accumulation value, and that
17 provide that any redetermination of interest rates will be based “only on
18 expectations of future investment earnings” and that have a guaranteed
19 minimum annual effective interest rate of 3.00%. Excluded from the
20 Settlement Class are: (a) officers or directors of American General;
21 (b) any judicial officer presiding over the Action and the members of
22 his or her immediate family and judicial staff; and (c) Policyowners who
23 submitted a timely and valid opt out in response to the notice regarding
24 the Court’s order granting class certification in part or who submit a
25 valid and timely Request for Exclusion.

26 This definition is nearly identical to the California Class the Court previously
27 certified. The Settlement Class expands to include owners of Policies AmGen issued
28 nationwide.

29 **B. Settlement Benefits**

30 The Settlement provides significant value, totaling approximately \$55.5
31 million in cash and additional accumulation value, alone. The Court has already held
32 that this amount—representing over 44% of the under-credited interest Plaintiff
33 alleged that AmGen owed Settlement Class Members (e.g., AmGen’s total potential
34 liability), is “sufficiently adequate” to warrant preliminary approval. Dkt. 217 at 2.

1 What is more, the percentage of possible recovery increases to over 51.5%
2 (approximately \$64.74 million) when accounting for the Settlement’s Non-
3 Contestability Benefit, which Plaintiff’s actuarial expert has estimated as providing
4 an additional value of \$9.24 million to the Settlement Class. Dkt. 221-3. The relief
5 the Settlement provides is outstanding result, and warrants final approval.

6 *First*, the Settlement provides Settlement Class Members with cash and
7 increased accumulation value worth approximately \$55.5 million. Those substantial
8 monetary benefits are non-reversionary, and Settlement Class Members will not need
9 to file claims to receive relief. Settlement Class Members will automatically receive
10 checks from the Final Settlement Fund mailed to the addresses provided by AmGen
11 for Class Notice.

12 The Settlement’s “Interest Rate Bonus” benefit provides that, for a period of
13 four years, AmGen will increase the credited interest rate applied to the accumulation
14 values of Settlement Class Members’ In Force Policies not offset by a policy loan as
15 follows:

Time Period	Bonus Amount
Year 1	0.80%
Year 2	0.70%
Year 3	0.60%
Year 4	0.50%

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20 A Policy that would otherwise earn interest at 3.00% is now *guaranteed* to earn
21 interest at a rate of at least 3.80% for the first year after Settlement Approval, 3.70%
22 the second year, and so on. This bonus is applicable to both the New Money and
23 Portfolio credited rates, and is additional to any interest rate bonus already applied.
24 Ex. 1, ¶ 48.

25 The Portfolio Rate Benefit requires AmGen to, for four years, “lock in” the
26 spread it earns between its Portfolio benchmark earned rate and its Portfolio credited
27 interest rate such that the spread between the two cannot exceed those below:
28

Product	Spread Temporary (bps)
ContinUL	110
Elite Survivor G	60
Elite Universal Life G	60
Elite Universal Life G 2003	60
Platinum Survivor Ultra G	75
Elite Transition UL	46
Elite UL	81
Elite Universal Life 2003	56
Platinum Provider Ultra 2003	71

These spreads are either those that AmGen set at product pricing or those in effect as of November 2022, whichever is smaller. *Id.* at ¶ 49.

At the preliminary approval hearing, the Court asked how likely it was that Settlement Class Members would receive benefits associated with the Interest Rate Bonus and Portfolio Rate Benefit. *Every* Settlement Class Member with an In-Force policy is *guaranteed* to receive additional interest through these benefits as long as their Policies remain in force. As counsel for AmGen stated:

It's pretty definitive that, given the way the bonus is structured and locking in the spread, that these amounts will be paid into the cash value of the policies. As long as these policies are in force, there's no reason to believe we're going to have some kind of mass termination of the policies. **There is a 100% likelihood that the accumulation value of the policies will be impacted positively by the settlement.**

Dkt. 221-2 at 168 (emphasis added).

The "100% likelihood" of positive impact is because *every* Policy earns interest on its accumulation value through the Policy's standard operation. The amount of interest policyholders earn depends on the interest rate and the amounts already in the accumulation value—the higher the accumulation value (or the higher the interest rate), the more the interest credited. These two benefits significantly increase the interest rates Settlement Class Members are already earning, resulting in higher accumulation values. Higher accumulation values allow Settlement Class Members to, among other things, reduce premium payments while maintaining the same accumulation value—meaning they need to pay less money out of pocket to

1 keep the same Policy benefits. And because the additional interest credited
2 compounds over time, these benefits can extend beyond the four-year period.

3 *Second*, AmGen has agreed to not recoup the cost of this Settlement through a
4 cost of insurance increase or by adjusting its methodology for calculating its
5 benchmark earned rates. Settlement Class Members thus need not worry about the
6 risk of increased cost-of-insurance rates due to this Settlement. Ex. 1, ¶¶ 52, 53.

7 *Third*, AmGen will not void or otherwise deny coverage of any Settlement
8 Class Members' death claims because of an alleged lack of insurable interest (the
9 "Non-Contestability Benefit"). *Id.* at ¶ 51. Settlement Class Members receive
10 certainty knowing that future death claims will not be denied, that their beneficiaries
11 will receive payouts, and that AmGen will not try to indirectly unwind the
12 Settlement's benefits through death benefit challenges. Plaintiff's expert Mr. Philip
13 Bieluch—an expert with over 40 years of actuarial experience—has quantified the
14 value of the Non-Contestability benefit at \$9.24 million. Dkt. 221-3. The \$9.24
15 million represents the value of death benefit payments that AmGen may otherwise
16 not have had to pay if it challenged the validity of Settlement Class Policies for lack
17 of an insurable interest. When considering the Non-Contestability Benefit, the
18 Settlement's total combined benefits rise to approximately \$64.74 million.

19 **C. Release**

20 The Settlement Class will release AmGen from all claims "arising out of or
21 relating to the redetermination of credited interest rates on the Policies," including
22 claims "that were or could have been alleged in the Action" that arise from the same
23 factual predicate, "including but not limited to (a) the redetermination of New Money
24 or Portfolio Rates, including the use of a spread when redetermining any New Money
25 or Portfolio Rates and the amount of any such spread; and (b) any under-crediting of
26 interest on the Policies." Ex. 1, ¶ 69. The Settlement Class will not release any claims
27 that arise more than 4 years after the first redetermination of interest rates that occurs
28 after final approval "related to the redetermination of interest rates." *Id.* The

1 Settlement Class will also not release any claims related to “any claim for payment
2 of a death benefit” or “any claims or rights to otherwise enforce the terms of a Policy
3 unrelated to crediting of interest.” *Id.*

4 **D. Awards, Costs, and Fees**

5 The Class Notice disseminated provides that Class Counsel would seek an
6 attorneys’ fee award not to exceed the lesser of \$8 million or 33.3% of the combined
7 value of the Settlement’s cash and increased accumulation value components, plus
8 reimbursement of litigation expenses; and that LSIMC will not seek a service award
9 of more than \$25,000.

10 Class Counsel filed its Fee Motion on April 3, 2023, seeking \$8 million in
11 attorneys’ fees, which is 12.4% of the Settlement’s overall benefits (and well below
12 the Ninth Circuit’s 25% benchmark), incurred litigation expenses, and a \$25,000
13 service award for LSIMC. Dkt. 221. Settlement Class Members had the opportunity
14 to object to the Fee Motion, and no objections have been filed. Intrepido-Bowden
15 Decl. ¶ 20; Bridgman Decl. ¶ 40.

16 **E. Plan of Allocation**

17 The Court has already preliminarily approved the Plan of Allocation, which
18 will distribute the Final Settlement Fund to Settlement Class Members on a *pro-rata*
19 basis. Dkt. 217. Each Settlement Class Member’s *pro-rata* share is as follows: (1)
20 the Settlement Class Member’s alleged under-credited interest is calculated in
21 accordance with the methodology set forth in the February 10, 2022 Declaration of
22 Robert Mills; (2) the resultant under-credited interest amount for each Settlement
23 Class Member will be divided by the total amount of alleged under-credited interest
24 on Settlement Class Member Policies to obtain a percentage; and (3) that percentage
25 will be multiplied by the Final Settlement Fund to obtain the amount each Settlement
26 Class Member receives. Ex. 3. This process ensures that disbursements are
27 distributed equitably and that all Settlement Class Members who did not opt out
28 receive a cash distribution.

1 Checks from the Final Settlement Fund will be sent automatically without need
2 for claims. And within one year plus 30 days after JND mails the checks, and to the
3 extent feasible, any funds remaining in the Final Settlement Fund will be re-
4 distributed *pro rata* to Settlement Class Members who previously cashed checks.

5 The notice papers distributed to the Settlement Class included a description of
6 the Plan of Allocation, and JND also included a copy of the Plan on the Settlement
7 Website. There have been no objections to any aspect of the Plan of Allocation.

8 **IV. ARGUMENT**

9 **A. The Proposed Settlement Warrants Final Approval**

10 **1. Legal Standard**

11 In the Ninth Circuit, “voluntary conciliation and settlement are the preferred
12 means of dispute resolution.” *Officers for Justice v. Civil Serv. Comm’n of the City*
13 *and Cnty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). “This is especially
14 true in complex class action litigation,” *id.*, where “[t]his circuit has long deferred to
15 the private consensual decision of the parties.” *Rodriguez v. W. Publ’g Corp.*, 563
16 F.3d 948, 965 (9th Cir. 2009). This is to advance the “overriding public interest in
17 settling and quieting litigation. . . . particularly . . . class action suits[.]” *Van*
18 *Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

19 Rule 23(e) governs how courts should evaluate class action settlements for
20 approval. “Although Rule 23 imposes strict procedural requirements on the approval
21 of a class settlement, a district court’s only role in reviewing the substance of that
22 settlement is to ensure that it is ‘fair, adequate, and free from collusion.’” *Lane v.*
23 *Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) (citation omitted).

24 Under Rule 23(e)(2), courts may approve a settlement as “fair, reasonable, and
25 adequate” after considering whether:

26 (A) the class representatives and class counsel have adequately
27 represented the class;

28 (B) the proposal was negotiated at arm’s length;

1 (C) the relief provided for the class is adequate, taking into account: (i)
2 the costs, risks, and delay of trial and appeal; (ii) the effectiveness of
3 any proposed method of distributing relief to the class, including the
4 method of processing class-member claims; (iii) the terms of any
5 proposed award of attorney’s fees, including timing of payment; and (iv)
6 any agreement required to be identified under Rule 23(e)(3); and

7 (D) the proposal treats class members equitably relative to each other.

8 Courts may consider additional factors⁴: (1) the strength of the plaintiffs’ case;
9 (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk
10 of maintaining class action status throughout the trial; (4) the amount offered in
11 settlement; (5) the extent of discovery completed, and the stage of the proceedings;
12 (6) the experience and views of counsel; (7) the presence of a governmental
13 participant; and (8) the reaction of the class members to the proposed settlement.
14 *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003).

15 **2. The Settlement Satisfies Rule 23(e)(2) and the Ninth Circuit’s**
16 **Factors**

17 ***i. Plaintiff and Class Counsel Have Adequately Represented***
18 ***the Settlement Class***

19 The Court has held throughout this litigation that Plaintiff and Class Counsel
20 have performed their roles competently and with professionalism. Most recently, the
21 Court observed that “Plaintiffs and their counsel have vigorously litigated this case”
22 when granting preliminary approval. Dkt. 217 at 2. This conclusion re-affirms the
23 Court’s prior observation when certifying the California Class, that “there are no
24 apparent conflicts of interest between Plaintiff and any other class members” and that
25 “Plaintiff has prosecuted the action vigorously through its experienced counsel
26 Susman Godfrey, which has been appointed as class counsel in a number of similar
27 cases.” Dkt. 113 at 22.

28 ⁴ The Rule 23(e)(2) factors supplement, rather than displace, the existing factors
courts use to evaluate settlements. *Amador v. Baca*, 2020 WL 5628938, at *4 (C.D.
Cal. Aug. 11, 2020).

1 Class Counsel have advocated on behalf of the Settlement Class with similar
2 vigor, negotiating with AmGen over months and exchanging proposals and
3 counterproposals regarding the Settlement’s structure and the amount of monetary
4 relief. Since the Court has already found Plaintiff and Class Counsel adequate
5 representatives throughout the course of this litigation, it should do so again for
6 purposes of final approval. *See Hudson v. Libre Tech. Inc.*, 2020 WL 2467060, at *5
7 (S.D. Cal. May 13, 2020) (noting how the adequacy requirement of Rule 23(e)(2)(A)
8 is “redundant of Rule 23(a)(4)”).

9 ***ii. The Settlement is Fair Because it was Negotiated at Arm’s***
10 ***Length After Substantial Discovery with the Help of an***
11 ***Experienced Mediator, and is Supported by Class Counsel***

12 The Court has held that this “settlement was reached after arm’s-length’s
13 negotiations, including those facilitated by an experienced mediator,” Dkt. 217 at 2,
14 which satisfied the Court’s “large[] focus on whether ‘the proposed settlement
15 appears to be the product of serious, informed, non-collusive negotiations[.]’” *Id.* at
16 1 (quoting *Chen v. Chase Bank USA, N.A.*, 2020 WL 264332, at *6 (N.D. Cal. Jan.
17 16, 2020)).

18 Indeed, the Settlement “is entitled to a presumption of fairness” because the
19 parties agreed to it on the eve of trial following months of negotiations that “were
20 overseen by an experienced mediator,” and only *after* substantial discovery *and*
21 completed briefing on a motion for summary judgment and *Daubert* motions.
22 *Anderson v. Nextel Retail Stores, LLC*, 2010 WL 8591002, at *15 (C.D. Cal. Apr. 12,
23 2010); *see also Nat’l Rural Telecomms.*, 221 F.R.D. at 528 (“A settlement following
24 sufficient discovery and genuine arms-length negotiation is presumed fair.”).

25 The mediator, Judge Feess, has filed a declaration “strongly support[ing]”
26 Settlement approval because, in his view, it “represents a recovery and outcome that
27 is reasonable and fair for the Settlement Class and all parties involved” and that “it
28

1 was in the best interest of the parties that they avoid the burdens and risks associated
2 with taking a case of this size and complexity to trial.” Dkt. 215-4, ¶ 10.

3 Moreover, in considering final approval, the Court should give “[g]reat weight
4 [] to the recommendation of counsel, who are most closely acquainted with the facts
5 of the underlying litigation.” *In re Heritage Bond Litig.*, 2005 WL 1594403, at *9
6 (C.D. Cal. June 10, 2005) (citation omitted) (noting that “[a] presumption of
7 correctness” attaches to settlements reached “after meaningful discovery”). This is
8 because “[p]arties represented by competent counsel are better positioned than courts
9 to produce a settlement that fairly reflects each party’s expected outcome in
10 litigation.” *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, as
11 the Court has repeatedly acknowledged, counsel for both sides have vigorously
12 litigated this case over the course of two years. They both strongly favor Settlement
13 approval.

14 ***iii. The Relief Provided is Adequate and Strongly Supported by***
15 ***the Settlement Class***

16 The Settlement relief is fair, reasonable, and adequate when accounting for the
17 Rule 23(e)(2)(C) factors.

18 *First*, proceeding to trial would have been costly and extremely risky. As the
19 Court noted, “[g]iven that the Class was certified for liability purposes only, Plaintiff
20 faced several risks in terms of presenting a theory of damages that would survive
21 summary judgment, defending against attempts by Defendant to decertify the class
22 after the trial, and converting a liability judgment into actual damages.” Dkt. 217 at
23 2. Even if Plaintiff prevailed at trial, converting a liability verdict into damages would
24 have been very difficult, and likely would have involved cost- and time-intensive
25 follow-on actions that may have prevented many Settlement Class Members from
26 ever seeing meaningful relief. As just one example of the risks plaintiffs face in
27 similar litigations, a recent class action alleging breach of UL policies resulted in a
28 \$5 million jury verdict for plaintiffs—less than 27% of the plaintiffs’ expert’s

1 damages estimate of at least \$18.7 million. *Compare Meek v. Kansas City Life Ins.*
2 *Co.*, Case No. 4:19-cv-472-BP (W.D. Mo.), Dkt. 311 *with* Dkt. 233-2, ¶ 118. Here,
3 the Settlement guarantees cash and additional accumulation value equaling
4 approximately 44% of AmGen’s total liability.

5 Moreover, “the possibility that any final judgment would lead to reversal on
6 appeal” further increases risk to the Settlement Class. *Amador*, 2020 WL 5628938,
7 at *3 (holding that this factor favored settlement approval); *Heritage Bond Litig.*,
8 2005 WL 1594403, at *10 (noting that “the Court acknowledges that some risk exists
9 with respect to Plaintiffs not being able to maintain class action status throughout
10 trial” as favoring approval).

11 *Second*, the method (and amount) of delivering relief to the Settlement Class
12 favors approval. There is no better endorsement for the Settlement than the
13 Settlement Class’s reaction—which has been overwhelmingly positive. There are
14 only two opt outs and no objections from the 40,569 notices mailed. This is an
15 exceptional result. *See Churchill Village LLC v. Gen. Elec.*, 361 F.3d 566, 577 (9th
16 Cir. 2004) (settlement approved with 45 objections from 90,000 notices).⁵ Here, the
17 two out opts account for 0.0049% of Settlement Class Policies. Bridgman Decl. ¶ 38.
18 “It is established that the absence of a large number of objections to a proposed class
19 action settlement raises a strong presumption that the terms of a proposed class action
20 are favorable to the class members.” *Nat’l Rural Telecomms.*, 221 F.R.D. at 528–29.

21 Strong support from Settlement Class Members is unsurprising, given that the
22 Settlement provides \$55.5 million in cash and additional accumulation value, alone.
23 This represent over 44% of AmGen’s total potential liability, which—when

24 ⁵ *See Chen v. Western Digital Corp.*, 2021 WL 9720778, at *3 (C.D. Cal. Jan. 5,
25 2021) (approving settlement with no objections and six opt outs, amounting to an
26 opt-out rate of 0.32%); *Rodriguez v. El Toro Med. Investors Ltd. P’ship*, 2018 WL
27 11348094, at *3 (C.D. Cal. June 26, 2018) (approving settlement with no objections
28 and three opt outs out of 2,501 mailed notices); *Pedraza v. Pier 1 Imports U.S. Inc.*,
2018 WL 11327201, at *4 (C.D. Cal. June 19, 2018) (no objections and an opt-out
rate of 0.58% supported approval); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp.
2d 848, 852 (N.D. Cal. 2010) (noting that “zero objections and sixteen opt-outs
(comprising 4.86% of the class)” “strongly supports settlement”).

1 compared to other class action settlements—is “an exceptional result.” *Marshall v.*
2 *Northrop Grumman Corp.*, 2020 WL 5668935, at *2–*3 (C.D. Cal. Sept. 18, 2020)
3 (settlement for “approximately 29% of Plaintiffs’ claimed damages” was
4 “exceptional” that warranted upward adjustment for attorneys’ fees). “[I]t is not
5 uncommon for a class action settlement to amount to approximately 10% of the total
6 potential value.” *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, at *3 (C.D. Cal.
7 May 30, 2014); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000)
8 (affirming approval of class settlement totaling one-sixth of potential recovery).

9 Moreover, once the Settlement is approved, Settlement Class Members will
10 likely receive checks from the Final Settlement Fund before year’s end, and will see
11 increases to the interest rates applied to their In Force Policies within 90 days. Ex. 1,
12 ¶ 49. This factor strongly favors approval.

13 *Third*, the reaction of the Settlement Class also supports the amount of
14 attorneys’ fees. Class Counsel has moved for attorneys’ fees of \$8 million, which is
15 12.4% of the Settlement’s total gross benefits (well below the Ninth Circuit’s 25%
16 benchmark). No Settlement Class Member has objected to any portion of the Fee
17 Motion. Attorneys’ fee awards in this range are presumptively valid. *See Vizcaino v.*
18 *Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (“[T]he ‘benchmark’ award is
19 25 percent of the recovery obtained, with 20–30% as the usual range.” (cleaned up)).

20 *Fourth*, there are no agreements beyond the Settlement that require
21 identification under Rule 23(e)(3).

22 ***iv. The Settlement Treats Class Members Equitably***

23 The Settlement treats class members equitably because each Settlement Class
24 Member’s *pro-rata* share of the Final Settlement Fund is calculated the same way:
25 the share is dependent on the amount of interest that AmGen allegedly under-credited
26 each Settlement Class Member. The more under-crediting AmGen is alleged to have
27 owed, the higher the Settlement Class Member’s share of the Final Settlement Fund.
28 Every Settlement Class Member, including LSIMC, is subject to the same formula.

1 The Settlement “does not provide preferential treatment to Plaintiff[] or segments of
2 the class” and “the proposed Plan of Allocation compensates all Settlement Class
3 Members and Class Representatives equally in that they will receive a *pro rata*
4 distribution . . . based on their net losses.” *Ciuffitelli v. Deloitte & Touche LLP*, 2019
5 WL 1441634, at *18 (D. Or. Mar. 19, 2019) *report and recommendation adopted*
6 2019 WL 2288432 (D. Or. May 29, 2019).

7 Settlement Class Members with In Force Policies also share the same Interest
8 Rate Bonus and Portfolio Rate Benefit. As counsel for AmGen noted at the
9 preliminary approval hearing, “[t]here is a 100% likelihood that the accumulation
10 value of the policies will be impacted positively by the settlement” and that “given
11 the way the bonus is structured and locking in the spread . . . these amounts will be
12 paid into the cash value of the policies” as long as the Policies remain in force. Dkt.
13 221-2 at 168. Settlement Class Members also benefit equally from the Non-
14 Contestability Benefit as AmGen has agreed to not challenge the death benefits owed
15 to any Policy for lack of an insurable interest. Finally, the release agreed to in the
16 Settlement is identical for all Settlement Class Members, which is tied to the liability
17 theory asserted in this case.

18 ***v. Ninth Circuit Factors Not Included in Rule 23(e)(2) Favor***
19 ***Approval***

20 This memorandum has already addressed many of the Ninth Circuit’s non-
21 Rule 23(e)(2) factors—the strength of the plaintiffs’ case; the risk and duration of
22 further litigation; the risk of maintaining class action status; the amount offered in
23 settlement; the extent of discovery completed and the stage of proceedings; and the
24 experience and views of counsel.

25 While there was not enough information at preliminary approval to evaluate
26 the remaining non-Rule 23(e)(2) factors, they both now strongly support approval.
27 First, AmGen served CAFA notices on the U.S. Attorney General and appropriate
28 state officials as required by 28 U.S.C. § 1715(b). There has not been any indication

1 of disapproval from any government agency. Intrepido-Bowden Decl. ¶ 5. Second,
2 class members’ reaction to the Settlement is overwhelmingly positive. There have
3 been no objections to any aspect of the Settlement, and there have been just two small
4 opt outs—an extraordinary result.⁶ See *Amador*, 2020 WL 5628938, at *4 (noting
5 that “the reaction of the class supports approval of the settlement” when more than
6 40,000 claims were submitted compared to twelve individuals expressing
7 objections).

8 **3. The Plan of Allocation Warrants Final Approval**

9 Plaintiff also seeks final approval of the Plan of Allocation, which apportions
10 each Settlement Class Member a *pro-rata* share of the Final Settlement Fund tied to
11 the amount of interest AmGen allegedly under-credited throughout the life of the
12 Policy. See Sec. III.E, *supra*. The same standards that govern settlement approval
13 also govern approval of an allocation plan. *Laster v. Hartford Life and Accident Life*
14 *Ins. Co.*, 2019 WL 12529140, at *6 (C.D. Cal. Jan. 14, 2019). A plan that distributes
15 funds *pro rata* “need only have a reasonable, rational basis, particularly if
16 recommended by experienced and competent counsel” to be approved. *In re*
17 *Aftermarket Auto. Lighting Prods. Antitrust Litig.*, 2014 WL 12591624, at *4 (C.D.
18 Cal. Jan. 10, 2014) (cleaned up). The Plan of Allocation accomplishes this goal, and
19 the Court has already preliminary approved the Plan. And like the rest of the
20 Settlement, there are no objections to the proposed Plan.

21 **4. The Notice Satisfied Rule 23 and Due Process**

22 The Class Notice satisfied Rule 23’s requirements, which requires a
23 “reasonable manner” of giving notice “to all class members who would be bound”
24 by the Settlement. Fed. R. Civ. P. 23(e)(1)(B). In accordance with the Court’s
25 preliminary approval Order, JND mailed 40,569 copies of the Class Notice to
26

27 ⁶ Reduction of the Settlement Fund for opt outs is calculated according to the Plan of
28 Allocation by determining the *pro-rata* amount that would have been disbursed to
any opt outs. The two individuals who opted out were entitled to ~0.00085% of the
Final Settlement Fund. Bridgman Decl. ¶ 39.

1 potential Settlement Class Members, updated the class action website
2 (www.AmGenCreditedRateLitigation.com), and updated the toll-free telephone
3 number regarding the Settlement. Intrepido-Bowden Decl. ¶¶ 8–15. Just through
4 direct mailing, JND reached approximately 94.5% of potential Settlement Class
5 Member addresses. *Id.* at ¶ 10.

6 The Class Notice provides all necessary information for Settlement Class
7 Members to make an informed decision on the Settlement—including information
8 on the lawsuit’s allegations, the Settlement’s relief, release, and Plan of Allocation,
9 and Class Counsel’s Fee Motion. It thus “generally describes the terms of the
10 settlement in sufficient detail to alert those with adverse viewpoints to investigate
11 and come forward and be heard.” *Rodriguez*, 563 F.3d at 962 (citation omitted). This
12 combination of information and outreach supports the conclusion that Class Notice
13 was “the best notice that is practicable under the circumstances.” Fed. R. Civ. P.
14 23(c)(2)(B).

15 **B. Certification of the Settlement Class is Appropriate**

16 Because the Settlement Class expands the previously certified California Class
17 to Policies issued nationwide, Plaintiff respectfully requests that the Court certify the
18 proposed Settlement Class in its final approval order. AmGen does not oppose
19 certification of the Settlement Class, which is evaluated for settlement purposes
20 under a less rigorous analysis than for litigation purposes. *See* 2018 Advisory
21 Committee Notes to Fed. R. Civ. P. 23(e)(1).

22 **1. The Settlement Class Satisfies Rule 23(a)**

23 ***i. Numerosity***

24 Numerosity is satisfied because “the class is so numerous that joinder of all
25 members is impracticable.” Fed. R. Civ. P. 23(a)(1). 40,567 Policies are included in
26 the final Settlement Class after accounting for just two opt outs.

27 ***ii. Commonality***

1 The Court has already certified a Rule 23(c)(4) class for determining AmGen’s
2 liability for breach of contract, meaning that the common issue of AmGen’s liability
3 can be resolved identically for all Settlement Class Members. *See, e.g., In re Snap*
4 *Inc. Secs. Litig.*, 334 F.R.D. 209, 226 (C.D. Cal. 2019) (“For the purposes of Rule
5 23(a)(2), ‘even a single common question’ is sufficient.”).

6 **iii. Typicality**

7 Typicality is “satisfied when each class member’s claim arises from the same
8 course of events, and each class member makes similar legal arguments to prove the
9 defendant’s liability.” *Taylor v. Shippers Transp. Express, Inc.*, 2014 WL 12347060,
10 at *4 (C.D. Cal. Mar. 10, 2014) (citation omitted). As the Court has noted,
11 “Plaintiff’s claim is ‘reasonably coextensive’ with putative class members.” Dkt. 113
12 at 21. That the Settlement Class expands to include owners of Policies issued
13 nationwide makes no difference for this analysis.

14 **iv. Adequacy**

15 The Court noted in its preliminary approval order that “Plaintiffs and their
16 counsel have vigorously litigated this case.” Dkt. 217 at 2. This re-affirms the Court’s
17 prior conclusions that Susman Godfrey LLP and LSIMC, LLC are adequate
18 representatives. Dkt. 113 at 22.

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

20 Common issues predominate and—like the class already certified—would
21 resolve AmGen’s alleged liability except with respect to damages. The issues that
22 resulted in the Court certifying a Rule 23(c)(4) class are not apparent here because
23 Plaintiff and AmGen now *agree* on the methodology to be applied to determine the
24 amount of the Final Settlement Fund that each Settlement Class Member is entitled
25 to on a *pro-rata* basis. *See* Dkt. 215-1 at 21. “[I]t is well-established that, where
26 damages can be or are ultimately agreed to, damages certification is appropriate.”
27 *Scott v. Cal. Forensic Med. Grp.*, 2020 WL 10501243, at *7 (C.D. Cal. Sept. 30,
28 2020) (granting unopposed motion for class certification conditioned on settlement).

1 Courts, including this one, routinely approve settlements where class members
2 receive *pro-rata* distributions from a common settlement fund despite earlier
3 certifying only a Rule 23(c)(4) liability class. *See, e.g., Amador*, 2020 WL 5628938,
4 at *3; *McGaffin v. Argos USA, LLC*, 2020 WL 3491609, at *5 (S.D. Ga. June 26,
5 2020) (approving settlement that included a \$6.7 million cash fund despite earlier
6 certifying only a Rule 23(c)(4) class). For example, in *Amador*, this Court approved
7 a Settlement with damages compensation despite it previously certifying “the class
8 solely with regard to liability under Rule 23(c)(4).” 2020 WL 5628938, at *3. The
9 Court approved the settlement although “no clear procedure had been developed to
10 present the damages claims to a jury on a classwide basis” and there was concern
11 “that no workable arrangement for establishing classwide damages would be
12 developed” for trial. *Id.* The same principle favors certification and approval, here,
13 because the parties agree on the Plan of Allocation for distributing cash to the
14 Settlement Class.

15 Resolution of this litigation as a class action also meets the superiority
16 requirement. Resolving potential breach-of-contract claims arising from the “based
17 only on [EFIE]” provision of more than 40,500 Policies is superior to litigations
18 proceeding individually. Through the Settlement, Settlement Class Members obtain
19 substantial monetary relief despite there being no individual actions filed against
20 AmGen concerning redeterminations of interest rates.

21 **V. CONCLUSION**

22 For the foregoing reasons, Plaintiff respectfully requests the Court grant the
23 Settlement final approval and enter the proposed order and final judgment in this
24 case.

25 Dated: May 29, 2023

26 Respectfully submitted,
27 By: /s/ Steven G. Sklaver
28 Steven G. Sklaver
Glenn C. Bridgman
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CERTIFICATE OF COMPLIANCE

The undersigned, Class Counsel, certifies that this brief contains 6,992 words, which complies with the word limit of L.R. 11-6.1.

Dated: May 29, 2023

/s/ Steven G. Sklaver
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